
Delivering the Broadband Universal Service

Statement: Designating Universal Service Providers and setting conditions

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STATEMENT:

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1. Overview

We want people across the whole of the UK to be able to access better broadband and mobile services, so everyone can benefit from the services they deliver. That means encouraging investment in improved networks and making sure that the coverage of networks extends as far as possible - even to the hardest to reach places.

In March 2018, the Government introduced legislation for a broadband ‘universal service obligation’ (USO), to give homes and businesses the right to request a decent and affordable broadband connection. We welcome the introduction of the USO, which is an important building block to improving access to broadband services across the UK. We have worked swiftly to implement it, so people can request a connection and receive these services as soon as possible.

We are now designating BT and KCOM as the Universal Service Providers and setting conditions that will apply to them as they deliver USO connections and services.

What we have decided – in brief

BT and KCOM are designated as Universal Service Providers. They will be responsible for taking requests for USO connections and building the necessary infrastructure to deliver them within a reasonable timeframe. KCOM will be the Universal Service Provider for the Hull Area, and BT will cover the rest of the UK.

People who cannot access a decent, affordable broadband service, can request a USO connection. A ‘decent’ connection is currently defined by the Government as capable of delivering download speeds of at least 10Mbit/s and upload speeds of at least 1Mbit/s.

Universal Service Providers will have 30 days to check and confirm whether someone is eligible. To do this, they will check that the consumer’s location:

- is a home or business;
- has no access to existing decent, affordable broadband;
- will not be covered by a public scheme in the next 12 months; and
- will not cost more than £3,400 to connect (as set in the legislation). Where the cost is more than £3,400, people will have the choice to pay the excess costs of installing a USO connection or use an alternative technology, such as satellite, outside the USO scheme.
- People who only have access to a service priced over £45 per month¹ will also have the right to request a USO connection.

Universal Service Providers will be subject to challenging network build targets. BT must deliver every USO connection as quickly as possible and deliver at least 80% of connections within 12 months, 95% within 18 months, and 99% within 24 months of the confirmed USO order. KCOM must deliver a USO connection as quickly as possible and no later than 12 months after someone places their order, unless there are exceptional circumstances that make it more difficult.

USO customers will pay the same prices as the rest of the UK. Universal Service Providers must offer connections and services at the same prices as equivalent services they offer to non-USO customers. BT has also committed to offering at least one broadband connection and service that meets the USO specification at no more than £45 per month.² This provides a further affordability safeguard for BT customers, including those with broadband via a fixed wireless access service.

USO customers will receive the same quality of service as non-USO customers. The Universal Service Providers must establish a USO complaints handling procedure and USO customers will have free access to an Ofcom-approved Alternative Dispute Resolution scheme.

Universal Service Providers must report on performance and keep records. This is to help monitor compliance with the conditions, and to allow any claim for funds to be properly audited.

People will be able to request a USO connection from 20 March 2020. This is to allow Universal Service Providers to make changes to their systems and processes and prepare for building connections.

Background

- 1.1 Decent broadband is now an essential service. It needs to be available to people across the whole of the UK – including both urban and rural communities.
- 1.2 The estimated number of premises that cannot receive decent broadband is falling, but around 600,000 premises, or 2%, still cannot get a decent connection. With availability of higher-speed broadband improving, and through continued rollout of fixed technologies and better quality fixed wireless services, this number is set to fall further.
- 1.3 Ofcom is responsible for implementing the USO to help the remaining homes and businesses without access to decent broadband. In this role, our primary objectives have been to:
 - deliver the USO as quickly as possible, so consumers benefit as soon as possible;
 - ensure any designated provider can deliver services that meet the USO requirements; and
 - ensure the cost of delivery, and therefore impact on industry and consumers, is minimised.
- 1.4 In June 2018, we invited expressions of interest in being designated either on a national or regional basis. In September 2018, we consulted on draft designation regulations and proposed that direct designation is the quickest and most effective process to determine

¹ Adjusted for CPI inflation

² Adjusted for CPI inflation

who should be the Universal Service Providers. Over the course of autumn 2018 we assessed eight expressions of interest in being a Universal Service Provider.³

- 1.5 In December 2018, we proposed to designate BT and KCOM and we consulted on obligations to apply to the Universal Service Providers. We received a range of responses to this consultation. They were from the prospective Universal Service Providers, other communications providers, consumer bodies, advocacy groups, industry bodies, other organisations and individuals. Respondents were broadly supportive of our proposals. However, some concerns were raised by providers, particularly about the proposed delivery timescales and implementation period, and the pricing and affordability proposals.

Our decision

- 1.6 Having carefully considered comments on our proposals, we have decided to designate BT and KCOM as the Universal Service Providers and impose conditions on them to ensure everyone can access decent, affordable broadband services within a reasonable timeframe and receive services as good as those available elsewhere in the UK.
- 1.7 We have made some modifications to our December 2018 proposals to take account of comments received. Specifically, we have amended our approach to delivery timescales set on BT to a more targeted set of requirements that reflects the time it takes to connect premises in challenging locations and achieves our overarching objective to deliver the USO as quickly as possible, so consumers benefit as soon as possible. These targets provide greater clarity about when premises are likely to be connected and are likely to result in a greater proportion of premises being connected within reasonable timeframes.
- 1.8 To ensure the affordability of the USO, we are requiring uniform pricing so customers in USO areas pay no more than customers in other areas for an equivalent service. However, we have decided that a safeguard cap on USO connections and services is not necessary to ensure affordability since most prices are currently affordable. BT has committed to provide services at no more than £45 per month in line with the safeguard cap we proposed in the December 2018 consultation. We will review the prices and the affordability of broadband services on an ongoing basis and we will implement a safeguard cap in the future if it should prove necessary.
- 1.9 We will consult on funding regulations in Autumn 2019. This consultation will cover the procedures for any compensation that the Universal Service Providers may claim for delivering the USO and information on how a compensation fund would operate (such as who would contribute and in what proportions, and how funds would be collected and distributed). We expect to publish a statement bringing these regulations into force by early 2020.

³ The 8 providers that expressed an interest in being a Universal Service Provider were Airband, Bentley Walker, Broadway Partners, BT, Hyperoptic, KCOM, Quickline and Viasat.

2. Introduction and framework for implementing the broadband universal service

Introduction

- 2.1 In March 2018, the Government finalised the terms of a new universal service obligation (“USO”) by issuing secondary legislation (“the Order”)⁴ to introduce a USO for broadband connections and services. The Order states that affordable broadband connections and services must be provided throughout the UK with a download speed of at least 10 megabits per second (Mbit/s) and other specified technical characteristics.⁵
- 2.2 The Order followed the Government’s stated intention to introduce a USO in November 2015 where it acknowledged the growing importance of broadband as an essential service, in line with other basic services such as water and electricity. To inform its design of the USO, in March 2016 the Government asked Ofcom to provide technical advice on several aspects of the USO.
- 2.3 The technical specification in the Order aims to ensure that consumers can use the digital communications they need today, but it may have to increase over time to meet rising consumer expectations and demands. The Digital Economy Act 2017 includes an automatic review of the USO to ensure it remains relevant.⁶
- 2.4 The USO will apply to the whole of the UK and is intended to help fill the gap left by existing broadband rollout programmes, including both commercial and publicly-funded programmes. It will act as an important digital safety net for people who might otherwise get left behind by ensuring every household and business will have the right to request a decent broadband connection and service. The USO aims to improve broadband coverage to households and businesses in hard to reach areas and it is an important building block to improving access to broadband services across the whole of the UK, which is an important objective of Ofcom’s ongoing work.⁷

⁴ The [Electronic Communications \(Universal Service\) \(Broadband\) Order](#) came into force on 23 April 2018.

⁵ The technical specification of the USO include download sync speed of at least 10 megabits per second; an upload sync speed of at least 1 megabit per second; a contention ratio of no higher than 50:1; latency which is capable of allowing the end-user to make and receive voice calls over the connection effectively; and the capability to allow data usage of at least 100 gigabytes per month. DCMS provide information about these specific characteristics in [A new broadband Universal Service Obligation: Government’s response to consultation on design](#), Section 3.

⁶ It stipulates that the technical specification of the USO must be reviewed when at least 75% of premises in the UK subscribe to a broadband service that provides a download speed of at least 30Mbit/s.

⁷ Ofcom, 2019. [Ofcom’s Annual Plan 2019/20](#).

2.5 As explained in more detail below, our role is to implement the Government's Order. In this document, we set out how we are fulfilling this role, specifically, that we are designating BT and KCOM as the Universal Service Providers and imposing the universal service conditions that will apply to them.

Our work to date

2.6 In June 2018, we published our *Implementing the Broadband Universal Service Obligation: Requests for expressions of interest* ("the June 2018 document").⁸ We set out our objectives for implementing the USO, explaining that our approach must, above all, serve the interests of consumers.

2.7 We explained how we would designate the Universal Service Provider(s) and provided an early indication of the obligations and expectations we would place on these provider(s). We explained that the framework for funding a USO is set out in the Universal Service Directive and operates on the basis that the USO should be cost neutral for the Universal Service Provider(s), leaving it without a cost advantage or disadvantage from delivering the USO.⁹ We invited interested stakeholders to express interest in being designated as a Universal Service Provider, either on a national or sub-national basis.

2.8 In September 2018, we published *Implementing the Broadband Universal Service Obligation: Consultation on designation regulations* ("the September 2018 consultation").¹⁰ Following consideration of the relevant expressions of interest and responses to the June 2018 document, we consulted on a proposal to proceed with a direct designation approach, including the draft designation regulations that would support this approach.

2.9 Following our September 2018 consultation, we made The Electronic Communications (Universal Service) Regulations 2018 in December 2018 setting out the direct designation process by which providers will be designated.

2.10 In December 2018, we also published *Delivering the Broadband Universal Service: Proposals for designating providers and applying conditions* ("the December 2018 consultation").¹¹ We explained our assessment of the eight expressions of interest we received in being a Universal Service Provider which led us to propose to designate BT and KCOM to deliver the USO. We also made proposals on a set of obligations to apply to the Universal Service Providers to ensure consumers get access to a decent, affordable

⁸ Ofcom, June 2018. [*Implementing the Broadband Universal Service Obligation: request for expressions of interest in serving as Universal Service Provider for broadband.*](#)

⁹ [*Directive 2002/22/EC*](#) of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services as amended by Directive 2009/136/EC.

¹⁰ Ofcom, September 2018. [*Implementing the Broadband Universal Service Obligation: consultation on designation regulations.*](#)

¹¹ Ofcom, December 2018. [*Delivering the Broadband Universal Service: Proposals for designating providers and applying conditions.*](#)

broadband service within a reasonable timeframe and have confidence they will receive a service as good as customers elsewhere in the UK.

Our primary objectives

- 2.11 We are working to help introduce the universal service as efficiently and quickly as possible for the benefit of consumers who currently do not have access to decent and affordable broadband connections. Therefore, our primary objectives in delivering the USO under the Communications Act 2003 (“the Act”) are to:
- a) deliver the broadband universal service quickly so that consumers benefit as soon as possible;
 - b) ensure that a designated provider can deliver services that meet the specification; and
 - c) ensure the cost of delivery, and therefore impact on industry and consumers, is minimised.
- 2.12 We have taken account of these objectives when making our decisions as we explain throughout this document. In the rest of this section, we explain the legislative basis for the Order and the framework which applies to our implementation of it.

Statutory scheme and Ofcom’s role

Broadband Universal Service Order

- 2.13 The requirement to secure universal service in the UK currently derives from the Universal Service Directive.¹² Universal service means the provision of a defined minimum set of services to everyone on request and at an affordable price.¹³ The rationale for a universal service is to act as a safety net where market forces alone do not deliver affordable access to a minimum set of communications services, in order to prevent social and economic disadvantage. Accordingly, Article 3(1) of the Universal Service Directive requires Member States to ensure that the USO services are made available at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price.
- 2.14 The Universal Service Directive has been implemented into UK law through the Act and secondary legislation. In the UK, the scope of the universal service, specifying the minimum

¹² [Directive 2002/22/EC](#) of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services as amended by Directive 2009/136/EC.

¹³ Recital 4 of the Universal Service Directive. Following publication of the December 2018 consultation, on 11 December 2018 the European Electronic Communications Code (“the Code”) was adopted. Article 125 of the Code repeals (among others) the Universal Service Directive with effect from 21 December 2020. The provisions of the Universal Service Directive relating to the universal service have been replaced in the Code by Articles 84 to 92 and recitals 210 to 245. If the Code is implemented into the UK’s law, we will consider whether any modifications to the universal service conditions may be appropriate in light of the amended legislation.

set of services that must be provided to secure compliance with the Universal Service Directive, is determined by the Secretary of State by making an order under section 65 of the Act. The Digital Economy Act 2017 introduced legislative amendments to section 65 of the Act¹⁴ which allow for the inclusion of broadband connections and services in a universal service order.¹⁵

2.15 In March 2018, the Secretary of State made the Order to extend the universal service to broadband connections and services.¹⁶ The Explanatory Note to the Order sets out that this is an instrument that the Government has implemented to discharge the UK's obligations under Article 3(1) of the Universal Service Directive in respect of the availability of broadband services at an affordable price. Accordingly, the Order sets out eligibility criteria which determine the circumstances under which an end-user has the right to request an affordable broadband connection and service as described in the Order.¹⁷ It provides that prospective end-users of such connections and services, who are either consumers or businesses, will have the right to request them in the following circumstances:

- a) where the affordable broadband connection and service that meet the description in the Order are not already available to their location;
- b) where such a connection and service will not be provided to their location by a publicly-funded rollout scheme in the next year; and
- c) where the cost of such a connection is less than £3,400 (excluding VAT). Where the costs are higher than this amount, consumers and businesses will be able to receive the connection and service if they pay the additional costs over this amount.

2.16 The Order also contains guidance to Ofcom on matters concerning the costs and prices of the broadband universal service which requires Ofcom to ensure that:

- a) in calculating the cost of providing a broadband connection to a particular location, due account is taken of the extent to which the cost may be shared between multiple locations; and

¹⁴ See the inserted sub-section 65(2B) of the Act.

¹⁵ Any order in respect of broadband connections and services must specify the minimum download speed that must be provided by those connections and services; and the speed so specified must be at least 10 megabits per second.

¹⁶ In 2003, the Secretary of State also made an Order under section 65, the Electronic Communications (Universal Service) Order 2003 ("the 2003 Order").¹⁶ The 2003 Order set out that publicly available telephone services and other specified services (together "the telephony universal service") must be provided, made available or supplied throughout the UK. Ofcom implemented the 2003 Order by designating KCOM and BT as the Universal Service Providers to deliver the telephony universal service in the Hull Area and the rest of the UK respectively. This is set out in the Notification of the [*Designation of BT and KCOM as Universal Service Providers and the imposition of the specific universal service conditions*](#).

¹⁷ A number of respondents to our December 2018 consultation commented on our reading of the Order in relation to the eligibility threshold. We discuss these at Section 5 of this statement.

- b) the broadband connections and services are provided at prices that are affordable; and uniform throughout the UK, unless Ofcom has determined that there is clear justification for not doing so.¹⁸

Ofcom's role

- 2.17 Ofcom's role is to implement the Order to secure, as far as practicable, the universal service.¹⁹ In doing so, Ofcom must designate providers who will act as Universal Service Provider(s) and be subject to universal service conditions which set out how the provision of the universal service is to be achieved.²⁰

Designation process

- 2.18 Under section 66(1) of the Act, before designating any provider(s) as Universal Service Provider(s), we are required to make regulations setting out the process by which provider(s) will be designated.
- 2.19 The procedure set out in the regulations must be one which appears to us to be:
- a) efficient, objective and transparent; and
 - b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.
- 2.20 In December 2018, we decided that the direct designation approach was the most appropriate because in our view it met all of the requirements under section 66 of the Act and was the most likely to effectively meet our duties under the Act, including one of our primary objectives of delivering the broadband universal service as quickly as possible for the benefit of consumers. We therefore made The Electronic Communications (Universal Service) Regulations 2018 setting out the direct designation process by which providers will be designated.²¹

Designation of the Universal Service Providers

- 2.21 We must select provider(s) to act as Universal Service Provider(s) in accordance with the procedure set out in the 2018 Designation Regulations. In Section 4, we set out the process we have undertaken, in accordance with the procedure set out in the 2018 Designation Regulations, in order to conclude on the providers who we consider to be best placed to deliver the broadband universal service for the benefit of consumers.

¹⁸ Paragraphs 1 and 2 of Schedule 2 of the Order.

¹⁹ Section 66 of the Act, Regulation 4(1) of The Electronic Communications (Universal Service) Regulations 2003 and Regulation 3(1) of The Electronic Communications (Universal Service) Regulations 2018 ("the 2018 Designation Regulations").

²⁰ Sections 66 and 67 of the Act.

²¹ Ofcom, December 2018. [*Delivering the Broadband Universal Service: Proposals for designating providers and applying conditions*](#), Annex 5.

Universal service conditions

- 2.22 To secure the provision of the broadband universal service specified in the Order, Ofcom must exercise its powers under sections 45 and 67 of the Act to set universal service conditions on the Universal Service Providers.²²
- 2.23 We have discretion to set the conditions we consider appropriate to ensure that the Order is implemented properly and effectively, but in doing so we must have regard to any guidance set out in the Order made by the Secretary of State.²³
- 2.24 We must ensure that the universal service conditions include an obligation on Universal Service Providers requiring them to publish information about their performance in complying with those conditions and we may require that this information is independently audited and that the costs of such audit are met by the Universal Service Providers.²⁴ We may also impose performance targets on the Universal Service Providers with respect to any obligations set out in universal service conditions.²⁵ We must also include a requirement securing that the terms on which a person is provided with a broadband universal service do not require them to pay any amount relating to an unnecessary additional service.²⁶
- 2.25 We can only set universal service conditions where we are satisfied that the conditions are:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which they relate;
 - b) not unduly discriminatory against particular persons or against a particular description of persons;
 - c) proportionate to what they are intended to achieve; and
 - d) transparent in relation to what they are intended to achieve.²⁷
- 2.26 Having received responses to the detailed proposals set out in the December 2018 consultation, and in light of stakeholder comments and our further work, we have determined the scope and specifications of the obligations which we have decided to impose on the Universal Service Providers. We set these out at sections 5 to 10 of this document and explain how our decisions meet the above legal tests.

²² In accordance with section 45(10)(a) and (b) of the Act, Ofcom's power to set a universal service condition includes the power to impose (among other things): (i) a requirement to comply with such directions with respect to the matters to which the condition relates; and (ii) an obligation with respect to those matters that is framed by reference to, or is conditional upon, the giving of a consent or of an approval. The substantive and procedural requirements which Ofcom must comply with when giving directions, approvals and consent are set out in sections 49, 49A, 49B and 49C of the Act, including the legal tests set out in section 49(2).

²³ Section 67(8) of the Act.

²⁴ Section 67(5) of the Act.

²⁵ Section 67(7) of the Act.

²⁶ Section 68(3) of the Act.

²⁷ Section 47(2) of the Act.

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2.27 The Universal Service Providers will be required to comply with the regulatory obligations which are imposed in the universal service conditions. If we have evidence which suggests that a Universal Service Provider may not be complying with one or more of its regulatory obligations, we will consider taking enforcement action. In this situation, we would take into account all the relevant factors, including the risk of consumer harm arising from the alleged conduct, and any reasons for the failure to comply with the relevant obligations before deciding on the appropriate action to take.

Ofcom's duties

2.28 In addition to the statutory requirements and legal tests set out above, in fulfilling our role under the legislation in respect of the implementation of the Order, we must have regard to our duties under the Act. In particular, we must consider our principal duty to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets, where appropriate by promoting competition.²⁸

2.29 We must also act in accordance with the six Community requirements of which the following appear particularly relevant:

- a) promoting the interests of all EU citizens; and
- b) carrying out our functions in a manner which, as far as practicable, does not favour one form of network, communications service or associated facility; or one means of providing or making available such a network, service or facility.

Procedural requirements

2.30 Having considered carefully the consultation responses received in response to the December 2018 consultation and made modifications which appear appropriate to us in light of these comments, we are notifying today a final statement to the European Commission in accordance with sections 48C²⁹ and 66(8) of the Act. This statement sets out our decisions in respect of the designation and universal service conditions and our reasons for those measures.

Funding

2.31 The framework applicable to funding of the universal service operates on the principle that the universal service should be cost neutral for the Universal Service Providers, i.e. the Universal Service Providers should not have a cost advantage or disadvantage from delivering the universal service.

2.32 The Universal Service Directive and the Act establish the following key funding principles.

²⁸ Section 3(1) of the Act.

²⁹ The requirements to conduct an EU consultation contained in section 48B of the Act do not apply to decisions to impose universal service conditions because those conditions do not meet the cumulative criteria set out in section 150A to constitute proposals of EU significance.

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- a) Only the net cost of providing the universal service (i.e. net of any direct and indirect benefits) that we decide is an unfair burden on the Universal Service Provider can be compensated. We consider that it is the responsibility of the Universal Service Provider in the first instance to submit a calculation of its net costs to Ofcom and explain why it considers such net costs amount to an unfair burden. It will also need to demonstrate that the costs incurred in providing connections to meet the technical specification of the universal service were efficient.
 - b) We will review the submitted net cost calculation (including conducting an audit of the costs) and consider whether this represents an unfair burden on the Universal Service Provider.
 - c) If an unfair net cost burden exists, we are required to establish an industry fund to compensate the Universal Service Provider, including deciding which operators should contribute to it, in accordance with the principles of transparency, least market distortion, non-discrimination and proportionality.
 - d) Compensation from an industry fund occurs retrospectively and may only cover the unfair burden which has been incurred i.e. each Universal Service Provider must bear the upfront costs of delivering the universal service and cannot be provided with funds in advance of network infrastructure deployment. There will therefore be a delay between the Universal Service Providers incurring upfront capital expenditure to build broadband connections and any payments to the Universal Service Providers.
- 2.33 In this document we have not set out the detailed rules that would apply to funding of the universal service. In Section 10 we respond to stakeholder comments received on issues related to funding and explain that we intend to consult on funding regulations in the autumn.
- 2.34 Funding regulations will need to contain:
- a) procedures setting out how applications by the Universal Service Provider in respect of the net cost burden should be made;
 - b) procedures setting out how Ofcom will determine such applications (i.e. procedures for verification of the net cost and for consideration of whether or not the net cost represents an unfair burden on the Universal Service Provider, and if so, the extent of that unfair burden); and
 - c) provisions specifying how a fund would operate in the event that Ofcom determined that there was an unfair burden on the Universal Service Provider (i.e. who would contribute and in what proportions; and how funds would be collected and distributed).

Impact assessment

- 2.35 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. However, as a matter of policy, we are committed to carrying out impact assessments in relation to the great majority of our policy decisions.³⁰
- 2.36 We set out our impact assessment in the December 2018 consultation. In this statement, we take into account relevant responses and set out our conclusions on the impact of the changes.

Equality impact assessment

- 2.37 Ofcom is separately required by statute to assess the potential impact of all our functions, policies, projects and practices on race, disability and gender equality. Equality Impact Assessments (“EIAs”) also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 2.38 It is not apparent to us that the decisions set out in this statement are likely to have any particular impact on race, disability and gender equality. Specifically, we do not envisage the impact of any outcome to be to the detriment of any group of society. Nor do we envisage any need to carry out separate EIAs in relation to race or gender equality or equality schemes under the Northern Ireland and Disability Equality Schemes. This is because our implementation of the Order seeks to ensure that all consumers, irrespective of their race, disability, gender, income or the part of the UK they live in, can benefit from the broadband universal service if they meet the eligibility criteria specified in the Order.

Rest of this document

- 2.39 The rest of this document is structured as follows:
- **Section 3** provides our latest estimate of premises that cannot receive a broadband service with a download sync speed of 10Mbit/s and an upload sync speed of 1Mbit/s, an update on the progress of publicly-funded programmes and developments in broadband technologies, including our monitoring work on BT’s 4G home broadband service (under its EE brand);

³⁰ For further information about our approach to impact assessments, see the guidelines, [Better policy-making: Ofcom’s approach to Impact Assessment](#).

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- **Section 4** sets out our decision to designate BT and KCOM as Universal Service Providers;
- **Section 5** sets out the obligations we have decided to impose on the Universal Service Providers relating to how they will be required to establish eligibility for the USO;
- **Section 6** sets out the obligations we have decided to impose on the Universal Service Providers in relation to delivering the universal service connections, including delivery timeframes;
- **Section 7** sets out the obligations we have decided to impose on the Universal Service Providers in respect of pricing, quality of service and complaints handling;
- **Section 8** sets out the obligations we have decided to impose in respect of sharing information with the Universal Service Providers, and disclosure of that information;
- **Section 9** sets out obligations we have decided to impose on the Universal Service Providers relating to performance reporting and maintaining records; and
- **Section 10** sets out the implementation period for the USO, our response on certain issues raised with us in relation to funding and next steps.

3. Market context for the implementation of the broadband universal service

- 3.1 The number of premises that could benefit from the introduction of the broadband universal service is sizeable but continues to fall. In our December 2018 consultation, we set out our latest estimate of the number of premises unable to access 10Mbit/s download and 1Mbit/s upload sync speeds and outlined plans for publicly-funded rollout to deliver superfast broadband, which we considered would result in the USO footprint decreasing further. Below, we provide an update on the number of eligible premises and a further update on developments in publicly-funded schemes.
- 3.2 In our December 2018 consultation, we also explained that developments in broadband technologies, specifically fixed wireless services, could have a greater impact still on the number of premises that can access decent, affordable broadband. Since our consultation, we have undertaken monitoring of BT's 4G home broadband service (provided through the EE brand) to better understand its capability to deliver the technical specification of the USO. We explain the results of this below.
- 3.3 We know that the USO will still leave some premises unable to get a decent, affordable service. The Government has set a limit of £3,400 for the cost of each connection and so some premises will be too expensive to connect. We are committed to improving the availability of broadband services across the UK and going forward we will continue our work towards making sure everyone can get connected.

Number of premises that could benefit from the USO

- 3.4 The estimated number of premises that cannot receive a 10Mbit/s download and 1Mbit/s upload broadband service has fallen in recent years, from 15% in 2014³¹ down to 6% in 2016³² and 2% in January 2019.³³ This improvement is largely due to commercial and publicly-funded rollout programmes to deliver superfast broadband (which we define as 30Mbit/s download speeds or higher), which is now available to 95% of UK premises.³⁴

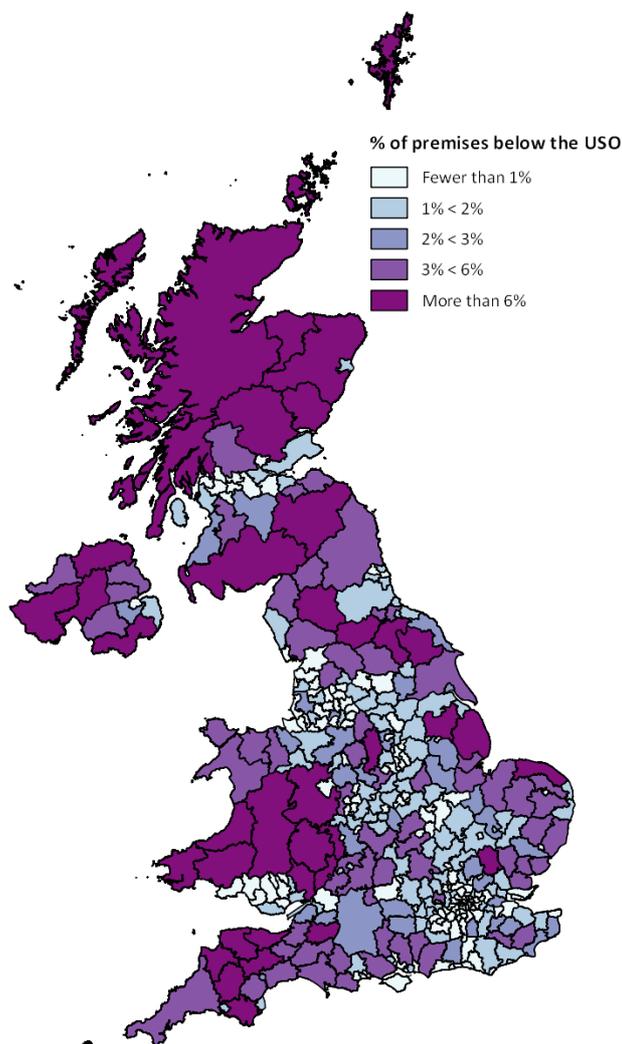
³¹ Ofcom, December 2014. [Infrastructure Report 2014](#), page 2. This figure represents 15% of UK households cannot receive 10Mbit/s.

³² Ofcom, December 2017. [Connected Nations Report 2017](#), Figure 2.

³³ See Ofcom, May 2019. [Connected Nations Update](#), page 9. Ofcom publishes an annual update focusing on coverage and performance of UK's fixed broadband and mobile networks within its Connected Nations report. In addition to the annual report, we publish two smaller updates a year, which focus on the key changes in coverage since our last report. All previous [Connected Nations](#) reports and updates are available on the Ofcom website.

³⁴ See Ofcom, May 2019. [Connected Nations Update](#), page 9.

Figure 1: Number of premises unable to receive 10Mbit/s download and 1Mbit/s upload sync speeds by local authority (January 2019)³⁵



Source: Connected Nations, data as at 1 January 2019

3.5 However, this still leaves around 619,000 premises that cannot currently receive broadband that meets the USO technical specification.³⁶ A greater proportion of these premises are in Northern Ireland, Scotland and Wales, principally because these nations are proportionately more rural than England.

3.6 The table below shows our estimates for the number of premises unable to access broadband services with a download sync speed of 10Mbit/s and an upload sync speed of 1Mbit/s, and Figure 1 shows the distribution of these premises across the UK.

³⁵ To district and unitary level.

³⁶ See Ofcom, May 2019. [Connected Nations Update](#), page 3.

Table 1: Premises unable to receive 10Mbit/s download and 1Mbit/s upload sync speeds (January 2019)³⁷

	UK	England	Northern Ireland	Scotland	Wales
Percentage of premises	2%	2%	5%	4%	3%
Number of premises	619,000	434,000	39,500	99,000	47,000

3.7 As commercial and publicly-funded network rollout continues, we expect the number of eligible premises to fall further by the time consumers and businesses can request a service under the USO. There has been a significant fall in the number of premises that cannot get decent broadband since we published our December 2018 consultation from 840,000 to 619,000 premises.³⁸ We anticipate this to be less than 600,000 by the time consumers will be able to request a USO connection on 20 March 2020.

Publicly-funded schemes

3.8 The Government has specified a number of eligibility criteria that determine whether a premises can receive a connection under the USO as set out in Section 2 of this document. Premises that are due to be able to access an affordable USO level broadband service as the result of a publicly-funded scheme within a year of their USO request are not eligible for the USO.

3.9 In Section 8, we explain how we will gather information from network providers who are responsible for delivering public schemes about the premises that are due to be covered by the different interventions; and Building Digital UK³⁹ and the Welsh Government on the vouchers they have issued. We also explain how we have decided to share this information with the Universal Service Providers to support the eligibility checking process for the USO.

3.10 Below we set out the status of existing public rollout schemes which we expect will continue to reduce the footprint of the USO.

Future Telecoms Infrastructure Review

3.11 In July 2018, the UK Government published its Future Telecoms Infrastructure Review, in which it set out how it would support its ambition for the UK to become a world leader in digital connectivity.⁴⁰ Part of its approach is to pursue an “outside in” strategy to support

³⁷ Figures rounded to the nearest thousand. See Ofcom, [Connected Nations Update: Spring 2019](#).

³⁸ We explain in Section 8 how we identify premises.

³⁹ Broadband Delivery UK was rebranded to Building Digital UK in May 2019.

⁴⁰ DCMS, July 2018. [Future Telecoms Infrastructure Review](#).

the deployment of full-fibre to the most difficult to reach areas. It also noted that the Government and Ofcom will consider further how fibre deployment can complement existing programmes, including the right to request the USO from 2020 to maximise investment in full-fibre.

- 3.12 As part of the Autumn 2018 Budget, the Chancellor announced that £200m would be made available to pilot innovative approaches to the deployment of full-fibre via the Rural Gigabit Connectivity Programme. The programme aims to deliver gigabit capable connections to key public and business buildings, including schools, as well as encouraging broadband providers to create additional connections to local homes.⁴¹ We will continue to engage with the Department for Digital, Culture, Media and Sport (“DCMS”) as this programme develops.

Building Digital UK (“BDUK”)

- 3.13 BDUK is part of DCMS and is responsible for delivering download speeds of at least 24Mbit/s through its Superfast programme and its Local Full Fibre Networks programme aims to stimulate commercial investment in full-fibre networks across the UK.⁴²
- 3.14 BDUK has extended 24Mbit/s coverage to 95% of the UK,⁴³ and estimates that by 2020 this coverage will be extended to at least a further 2% of UK homes and businesses.⁴⁴
- 3.15 The Local Full Fibre Networks Programme (“LFFN”) is allocating £200m to local projects to incentivise and accelerate commercial investment in full-fibre broadband. As part of the LFFN programme, a £67m Gigabit Broadband Voucher Scheme was launched to help small businesses and the local communities around them to contribute to the installation cost of faster connections using gigabit-capable infrastructure. Small to medium sized businesses can claim a voucher worth up to £2,500 and residents can claim a voucher worth £500 as part of a group project. The Government’s Rural Gigabit Connectivity programme will offer vouchers up to £3,500 for small businesses and £1,500 for residents to reflect the higher cost of deployment in rural areas.
- 3.16 The Better Broadband Voucher Scheme is in place to provide an affordable, basic broadband installation of at least 10Mbit/s to homes and businesses that are unable to access a broadband service with a download speed of at least 2Mbit/s and will not benefit from superfast broadband rollout within the next 12 months. Since its launch in December 2015, the scheme has improved the broadband speeds of more than 20,000 homes and businesses.

Reaching 100% programme (R100) in Scotland

⁴¹ DCMS, February 2019. [*Press release: More than 100 rural schools to get gigabit speed broadband.*](#)

⁴² The UK Government defines superfast broadband as download speeds of above 24Mbit/s.

⁴³ DCMS stated that this was achieved in December 2017. [*Press release: Superfast broadband now available to more than 19 out of 20 UK homes and businesses.*](#)

⁴⁴ DCMS, March 2018. [*A new broadband Universal Service Obligation: Government’s response to consultation on design.*](#)

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- 3.17 The Scottish Government has committed to extending the availability of superfast broadband to 100% of premises in Scotland through its Reaching 100% Programme. The Scottish Government has said that the programme is designed to maximise competition whilst delivering new future-proofed fibre infrastructure in some of the most challenging geographies in the UK. The Scottish Government has committed £600 million⁴⁵ to the procurement with contracts expected to be awarded in 2019.
- 3.18 We continue to provide technical advice where necessary and engage with the Scottish Government on the interaction of the R100 programme and the USO.

Superfast Cymru programme in Wales

- 3.19 The Welsh Government has announced that BT has won all three lots of the new Phase 2 Superfast Cymru programme. This will initially provide access to fast broadband to 26,000 premises by March 2021 with the majority of these premises being served by FTTP connections.
- 3.20 The other two elements in the Welsh Government's approach include the Access Broadband Cymru Voucher Scheme, which provides financial assistance for individual connections; and the community support approach which is still in development. The Welsh Government has committed to invest more than £90 million to deliver 30Mbit/s services or above through a combination of these supply side, voucher and community measures.
- 3.21 From 22 March 2019, business and residents in Wales are eligible for additional funding from the Welsh Government towards the cost of installing gigabit capable broadband to their premises when part of a group project by contributing up to an additional £3,000 per small and medium-sized business (SME) and up to £300 per resident to help connect harder to reach places in Wales.

Northern Ireland's Programme for Government

- 3.22 Northern Ireland's draft Programme for Government has a target to improve access to broadband services with download speeds of at least 30Mbit/s. The £150 million broadband funding under the Confidence and Supply Agreement with the UK Government offers the Department for the Economy the potential to build on achievements to date. This includes the Department for the Economy's Superfast Rollout Programme, which was completed in September 2018 and brought services of at least 24Mbit/s to around 42,000 premises.

⁴⁵ Of which £21 million is from the UK Government.

Capability of different technologies in meeting the technical specification of the USO

- 3.23 The Government specified that only premises unable to access an affordable service that meets the following technical specification will be eligible to receive a USO connection:
- a) a download sync speed of at least 10 megabits per second;
 - b) an upload sync speed of at least 1 megabit per second;
 - c) a contention ratio of no higher than 50:1;
 - d) latency which is capable of allowing the end-user to make and receive voice calls over the connection effectively;
 - e) the capability to allow data usage of at least 100 gigabytes per month.
- 3.24 In our 2016 technical advice to Government, we assessed the capability of different technologies to meet a range of potential USO technical specifications, one of which was the technical specification that the Government set out in the Order.⁴⁶ Below we update our assessment of the technologies that may be capable of meeting the technical specification.

Fixed technologies

- 3.25 We consider that Fibre to the Premises (“FTTP”), which delivers fibre directly to the customer’s premises, can meet the technical specification in the Order. Fibre to the Cabinet (“FTTC”), which delivers fibre to the street cabinet and then serves the customer’s premises through a copper line, is also capable of meeting the technical specification in the Order in most cases. Some FTTC connections may not deliver a suitable service because of the length of the copper line or the quality of the connection.
- 3.26 Some premises may also receive a service that meets the technical specification of the USO through a standard broadband connection which is delivered through a copper connection from the exchange. However, a standard broadband connection will not meet the technical specification in all cases, and particularly in rural areas, where premises may be too far from the exchange.

Fixed wireless and mobile network technologies

- 3.27 There have been significant developments to fixed wireless broadband services in recent years. These developments mean that these technologies could potentially provide access to decent broadband to a significant number of premises.

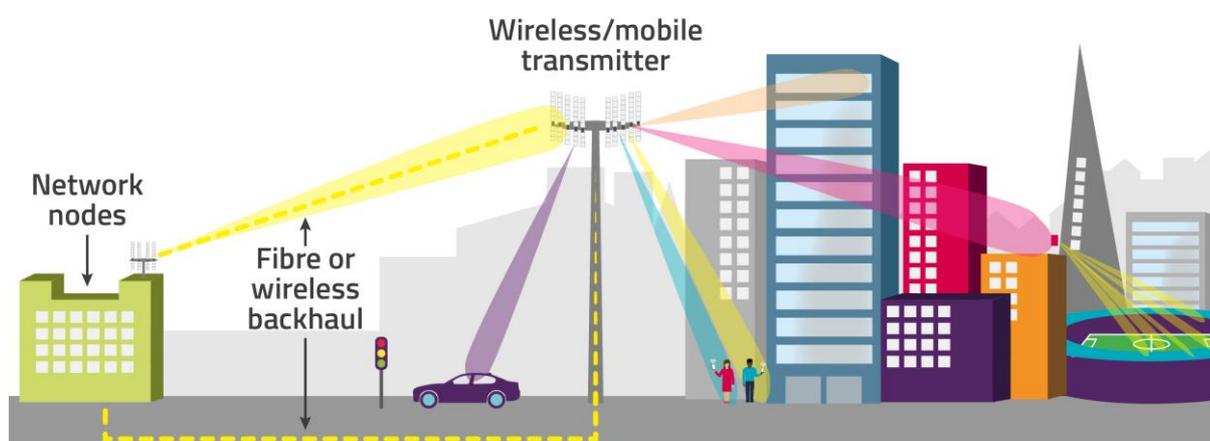
⁴⁶ Ofcom, December 2016. [Technical Advice to Government](#), section 7.

3.28 Below, we explain these technologies, how they provide broadband services to consumers, and the work we have undertaken to monitor their effectiveness in meeting the technical specification of the USO.

Fixed wireless technologies

3.29 Fixed wireless networks use a wireless link for the final connection to a home or business, avoiding the installation of a wired line into the building, as shown in Figure 2. This connection can be shared with an existing mobile network where the mobile transmitter providing broadband services is part of an existing mobile network, or it can be a network with dedicated spectrum serving fixed wireless broadband users only.

Figure 2: Fixed wireless connection



3.30 The most common models use either licence-exempt and light licensed spectrum or spectrum used by mobile networks for the wireless link. The majority of fixed wireless providers in the UK mainly operate in the 5 GHz bands that are shared with other services to deliver a service within line-of-sight, although some can provide non-line-of-sight services using TV white space and mobile technologies using licensed spectrum.

3.31 Whilst we consider that fixed wireless and mobile network wireless technologies, operating between two or more fixed points, can meet the specification in the Order, the bandwidth offered by an individual mast may be limited by the amount of spectrum available and the number of users served at a particular site, because this bandwidth is typically shared by several users. This could either cause the speed of connections to drop in busy periods (leading to poorer quality of experience as the number of customers or committed data rate increases) or require more masts to be built (with cost implications).

3.32 We have engaged with fixed wireless providers to understand how their networks operate and perform when compared to traditional fixed wired broadband providers, especially on the services consumers can typically expect to receive, and the types of speeds and packages available.

3.33 We believe that there are well over 100 small wireless Internet Service Providers in the UK that are capable of providing decent broadband to consumers through a wireless link

between the provider's mast and an external antenna fitted to the home or business. We asked providers to supply us with details of their network and services as part of our Connected Nations data collection process. We received data from 12 providers. Based on our modelling, we estimated over 900,000 premises are able to receive a decent broadband service from such providers on licence-exempt or light licensed spectrum, with fixed wireless technologies being the only means to receive a decent broadband connection for 41,500 of these premises.⁴⁷

BT/EE 4G home broadband service

- 3.34 In February 2018, BT/EE launched a 4G home broadband router, delivering fixed wireless access using the EE mobile network. The EE 4G home broadband service has packages with comparable pricing and data caps to fixed wired broadband packages.
- 3.35 At the time of our December 2018 consultation, BT said that its existing EE 4G network delivered high speeds, low latency and data throughput capabilities that meet or exceed the technical specification of the USO. BT reported that the average download speed for this service was 31Mbit/s with speeds of 100Mbit/s achieved in trials in the Cumbrian Northern Fells.⁴⁸ This suggested that it could be a cost-effective alternative to fixed wired broadband services, particularly in rural areas where there are likely to be a higher number of premises that cannot get a service that meets the technical specification of the USO.
- 3.36 As a result of this product, BT suggested that its fixed wireless coverage could substantially reduce the USO footprint by providing coverage to 450,000 of the estimated 600,000 eligible premises in 2020.⁴⁹
- 3.37 Given the potential impact of this service shrinking the size of the USO footprint, we commenced work in November 2018 with BT and SamKnows to conduct measurements and gather more information on the performance of the broadband services received by existing fixed wireless customers of the EE 4G home broadband router.⁵⁰ As part of our work for the home broadband report, we collect information on fixed wired residential broadband speeds from a panel of UK residential broadband users. To monitor the performance of fixed wireless services, we collected comparable data from a sample of customers using the EE 4G home broadband router to understand the capabilities of fixed wireless in meeting the technical specification of the USO.
- 3.38 Following on from our guidance in the broadband code of practice⁵¹ where, for a fixed line, the speed estimate has been adjusted to account for the impact of congestion at peak times, we looked at the speed of fixed wireless connections at peak hours between 6pm

⁴⁷ Ofcom, December 2018. [Connected Nations 2018](#), page 16.

⁴⁸ BT response to the June 2018 document, pages 10-11.

⁴⁹ BT response to the June 2018 document, page 14.

⁵⁰ Broadband performance company SamKnows Limited was Ofcom's technical partner for this research

⁵¹ Ofcom, March 2019. [Broadband Speed Code of Practice](#).

and 8pm. Of the 58 connections we analysed, 53 had average peak hour download speeds above 9.5Mbit/s.⁵²

- 3.39 Whilst this is not a statistically representative sample, it does provide us with some reassurance that the service is likely to be able to deliver the technical specification of the USO in most cases. It does however suggest that a proportion of connections will struggle to get decent broadband through this fixed wireless product.
- 3.40 BT has suggested that for connections delivered using fixed wireless that customers consider do not deliver decent broadband, BT will:
- a) Seek to provide advice to the consumer on improving the performance of existing equipment, for example, ensuring the placement of the router is in the optimal place.
 - b) Where this is unable to improve the service, the customer will be offered an external antenna at the cost of £100 to help boost the quality of the connection received.
 - c) If it is not possible for the consumer to receive a decent broadband connection, the consumer will be offered the opportunity to enter the broadband USO process.⁵³

Other fixed wireless services

- 3.41 Fixed wireless services using mobile technology are also available from Three, who have over 20,000 active customers on their network.⁵⁴ This is a nationwide service with the main deployments centred around London, Swindon and Reading, on Three's 3.5 GHz and 3.6 GHz bands. Three has also announced that it is planning to launch a 5G wireless home broadband service in the second half of 2019, which is expected to be able to deliver download speeds of 80-100Mbit/s.⁵⁵
- 3.42 We are also engaging with other mobile operators to understand any plans they have to develop fixed wireless products, and the potential for this technology to reduce the USO footprint.

⁵² As the maximum download speed of a line should be above 10 Mbit/s and the upload speed above 1 Mbit/s to meet the specifications of the USO, we benchmarked connections to deliver at least 9.5 Mbit/s downstream (95% of 10 Mbit/s) and 0.95 Mbit/s upstream (95% of 1 Mbit/s) during the 8-10pm peak-time period to provide an insight into their comparability with conventional 'wireline' fixed connections, where this would be the expected level of variation during peak periods. Out of our 58 4GEE Home panellists, four had average peak-time download below 9.5 Mbit/s and four had an average peak-time upload speed of less than 0.95 Mbit/s. Overall, five of the 58 panellists did not receive 9.5 Mbit/s downstream and 0.95 Mbit/s upstream.

⁵³ BT response to s.135 Notice of 29 May 2019.

⁵⁴ Since publishing the December 2018 consultation, Relish has been rebranded as Three Broadband. We reported on Three's fixed wireless footprint in our [Connected Nations report](#), December 2018, page 17.

⁵⁵ Three, 20 November 2018. Press Notice: [5G home broadband predicted to double internet speeds](#).

Satellite and other technologies

- 3.43 We had concerns at the time of our 2016 technical advice that broadband services using geostationary satellites would not meet the latency tolerances due to the distances involved in transmission of signals to and from the satellites. We noted that delays may not be an issue for some internet services, such as email and streaming video, but could be significant for real-time and interactive services such as video calling and gaming.
- 3.44 In 2016, we also noted that capacity available from existing satellites was insufficient to meet USO needs. This was based on our estimate that it would take ten geostationary high throughput satellites using the widest bandwidth available to provide just 0.7% of UK premises with 10Mbit/s broadband.⁵⁶
- 3.45 While low-earth orbital satellite services remain unavailable, SpaceX and OneWeb have both launched satellites this year. However, many more satellites are needed to support a commercial service and therefore these services are unlikely to be available at the time of the USO implementation. In future years they may be able to deliver broadband services in the UK that meet the technical specification of the USO. We will continue to monitor the developments closely, including whether these new services are offered at affordable prices.
- 3.46 In our 2016 technical advice, we recognised that other technologies, such as TV white space could be used for the delivery of decent broadband in future. There remains a level of uncertainty around providers using TV white space being able to consistently access the required spectrum and therefore their ability to effectively deliver the technical specification of the USO at all times.

⁵⁶ Ofcom, December 2016. *Technical Advice to Government*, Annex 4. This was modelled for satellites in the Ka band, based on a 20:1 contention ratio and assuming some capacity is used for aircraft and ships.

4. Our decision to designate BT and KCOM as Universal Service Providers

4.1 In this section, we set out our decision to designate BT as the Universal Service Provider for the whole of the UK except the Hull Area, and to designate KCOM as the Universal Service Provider in the Hull Area.

Our December 2018 consultation

4.2 In our December 2018 consultation, we set out our decision that a direct designation process most effectively meets our primary objectives and made the 2018 Designation Regulations setting out the process by which providers will be designated.

4.3 We also explained that we had received 8 expressions of interest⁵⁷ in response to our June 2018 document and assessed each of the interested providers against our two step assessment criteria explained below. We proposed that BT and KCOM should be designated pursuant to the 2018 Designation Regulations.

Assessment Criteria

4.4 Following receipt of expressions of interest in Summer 2018, we shared a set of objective criteria with interested providers which framed our assessment of which provider(s) to propose as Universal Service Provider(s). The criteria were split into two steps.

4.5 The first step included three criteria which we considered necessary for any provider to meet to be considered as a Universal Service Provider:

- a) whether the proposed technology that would be used to deliver the service would meet the technical specification set out in the Order;
- b) whether there would be sufficient sources of funding in place to deliver the service; and
- c) whether the proposed geographic coverage area covers more than 5000 eligible USO premises.

4.6 If any of the step 1 criteria were not met, we did not progress that provider's application any further in the assessment process.

4.7 Step 2 of the assessment looked at the following:

⁵⁷ The interested providers were Airband; Bentley Walker, Broadway Partners, BT, Hyperoptic, KCOM, Quickline and Viasat. As explained in more detail below, Hyperoptic, having initially expressed an interest in being a Universal Service Provider, subsequently withdrew its interest prior to the December 2018 Consultation being published.

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- a) the applicant's operational ability and whether it had the ability to build the necessary infrastructure to provide the USO connections;
- b) its ability to deliver service quality;
- c) its proposed pricing for the USO service; and
- d) its ability to manage and resolve customer complaints.

Summary of our assessment

- 4.8 Having considered each of the providers against the above criteria, we considered that BT, KCOM and Hyperoptic met the step 1 criteria and therefore progressed to step 2 of the process.
- 4.9 We did not consider that Airband, Bentley Walker, Broadway Partners, Quickline, or Viasat met all of the step 1 criteria. We did not therefore progress the applications made by these providers to step 2 of the assessment. While Hyperoptic provided evidence to meet the preliminary criteria in step 1, we did not consider that we had sufficient information from Hyperoptic to make a step 2 assessment of its ability to effectively deliver the USO.
- 4.10 We engaged further with Hyperoptic, but it subsequently withdrew its interest in being a Universal Service Provider at that time. Therefore, of the providers that expressed an interest in being designated, only BT and KCOM remained.

Assessment of BT and KCOM in meeting the step 1 criteria

Proposed technology

- 4.11 Both BT and KCOM proposed to use FTTP and FTTC to connect premises under the USO. Our assessment of these technologies was that they were capable of delivering the USO specification and therefore determined that both BT and KCOM had met this criterion.

Sources of funding

- 4.12 BT provided evidence that it had modelled the capital expenditure required to deliver the USO. This, coupled with our knowledge of BT's financial situation through our ongoing regulation of BT, provided confidence that BT met this criterion.
- 4.13 KCOM stated it had the funds allocated in its business plan to deploy FTTP to every premises in the Hull Area and that the majority would be delivered before the USO comes into effect.
- 4.14 BT and KCOM both provided evidence that they had considered the capex needed to effectively deliver the USO to the areas for which they were interested in being designated. Further, both BT and KCOM demonstrated that they had access to sufficient sources of funding in order to meet these funding requirements. We also considered whether BT and KCOM could maintain adequate operation of the USO service between deployment and

any due compensation that may be received for that deployment. We determined that both BT and KCOM were able to do so.

Geographic coverage area proposed by the applicant

4.15 BT stated that it was interested in being designated as the Universal Service Provider for the whole of the UK (excluding the Hull Area), and KCOM stated that it was interested in being the Universal Service Provider solely in the Hull Area.⁵⁸ Both of these geographic areas met our geographic criterion and we therefore concluded that this criterion had been met by both BT and KCOM.

Assessment of BT and KCOM in meeting the step 2 criteria

Provider's ability to provide USO connections

4.16 BT outlined plans to connect 450,000 premises through its commercial fixed wireless deployment prior to the USO coming into effect and outlined how it planned to deliver connections to the remaining eligible USO premises. BT included its plan to set up a Universal Broadband Support Group which would be responsible for handling USO requests and managing customers through the whole customer journey.

4.17 We also took account of the fact that BT already has an extensive network throughout the UK, and our knowledge that BT has the capacity and resources to deploy large-scale build programmes.

4.18 KCOM stated that by March 2019 the vast majority of premises in Hull would already have an FTTP connection and therefore would not be eligible for the USO.⁵⁹ The premises left without a service meeting the technical specification of the USO are what KCOM defines as "exceptions", i.e. those that are very hard to connect.⁶⁰ KCOM expects that by summer 2019, 60 per cent of these exceptions will be outstanding⁶¹ but that by March 2020 these exceptions will also all be connected.⁶²

4.19 In the event that these premises are not all connected before customers can start requesting a connection in March 2020, we considered KCOM's current network infrastructure and the fact that it already has very extensive coverage in Hull, allowing it to deliver USO connections across the Hull Area.

4.20 In light of the above, we were satisfied with BT and KCOM's ability to provide any USO connections.

⁵⁸ KCOM response to the June 2018 document, page 1.

⁵⁹ KCOM response to the June 2018 document, page 3.

⁶⁰ KCOM stated that the costs of providing a USO connection to businesses in the Hull Area may cost more than the £3,400 cost threshold given the exceptions are disparate in nature.

⁶¹ KCOM response to the June 2018 document, page 3.

⁶² KCOM response to the June 2018 document, page 7, footnote 18.

Applicant's ability to deliver service quality

- 4.21 BT stated that it would offer the same level of quality of service to premises connected under the USO as it does to premises connected in the rest of the UK.⁶³ BT also stated that USO services, which would be based on FTTP and FTTC, would be included in the automatic compensation scheme that Ofcom has recently implemented.⁶⁴ These measures should ensure that USO premises receive the same quality of service levels as non-USO premises.
- 4.22 KCOM suggested that its 'Service Promise' would apply to USO premises in the same way that it does for commercially covered premises. This 'Service Promise' states that repairs will be fixed by the end of the next working day after being reported.⁶⁵ KCOM has also now introduced a voluntary compensation scheme which would apply to USO premises.
- 4.23 In light of the above, and our assessment of current service levels, we considered that both BT and KCOM are able to meet this criterion.

Proposed pricing of USO connections and services

- 4.24 BT stated that USO services connected using fixed wired technologies (FTTC or FTTP) would be priced in the same way as premises connected on a commercial basis.⁶⁶ BT has also made a pricing commitment (which we explain in Section 7) which we consider will ensure that any services delivered through fixed wireless will be affordable.
- 4.25 KCOM stated that premises connected under the USO would be offered the same prices as premises in non-USO areas. KCOM said that if the USO were to come into effect at the point at which it submitted its response (in February 2019) this would mean USO premises were offered a service capable of delivering the USO specification for £32 per month.
- 4.26 Taking into account the above points, we considered that both BT and KCOM were able to deliver USO services at affordable prices.

Applicant's ability to manage and resolve consumer complaints

- 4.27 BT stated that its Universal Broadband Support Group would deal with any disputes in line with its existing complaints policy, including recourse to the Alternative Dispute Resolution ("ADR") scheme run by Ombudsman Services: Communications. BT said that it would also compile statistics on the total number of enquiries, outcomes at each step of the process, and the number and outcome of any disputes.⁶⁷

⁶³ BT response to the June 2018 document, page 24.

⁶⁴ BT response to the June 2018 document, page 25.

⁶⁵ KCOM response to the June 2018 document, page 5.

⁶⁶ BT response to the June 2018 document, page 39.

⁶⁷ BT response to the June 2018 document, page 24.

- 4.28 BT has an established complaint handling process for consumers across the UK and this, coupled with its proposal to develop a Universal Broadband Support Group, means that we were satisfied with BT's plans to manage and resolve consumer complaints.
- 4.29 KCOM also has an established complaint handling process for its customers. It stated that its intention would be to manage any such complaints in line with its standard complaints handling procedures. KCOM stated that it publishes its complaints code of practice and is a member of an ADR scheme, Ombudsman Services: Communications.⁶⁸ KCOM's proposal to extend its current complaints handling process meant that we were satisfied with its ability to manage and resolve consumer complaints.

December 2018 proposal

- 4.30 We also considered whether there were any other providers, who did not express an interest, but might nonetheless be suitable to propose for designation. We considered the existing UK network infrastructure and the expectation that the majority of USO eligible premises will be connected to BT's existing network or will be in areas where BT's network is present, except in Hull, where KCOM has an extensive presence. BT and KCOM are therefore able to incrementally expand and upgrade existing network infrastructure more easily than alternative providers. We had no evidence or analysis that suggested any other providers were better placed to deliver the USO and therefore we were not able to identify other providers suitable for designation.
- 4.31 Therefore, having undertaken the assessment, and pursuant to paragraph 3(2) of the 2018 Designation Regulations, we proposed KCOM for designation in the Hull Area and BT for designation in the rest of the UK. We also set out that in accordance with the 2018 Designation Regulations we were open to alternative proposals from any provider which thinks that it would be better placed to deliver the broadband universal service than BT or KCOM.

Responses to our December 2018 consultation

- 4.32 A number of respondents, including the Advisory Committee for Northern Ireland ("ACNI"), Kent County Council, Truespeed, and Virgin Media agreed with our proposals. BT stated that it was "prepared to do its part to meet the objectives of the broadband USO scheme" and did not propose another operator better suited to be designated as a Universal Service Provider.⁶⁹

⁶⁸ KCOM response to the June 2018 document, page 7.

⁶⁹ See responses to the December 2018 consultation: ACNI page 1, Kent County Council page 1, Truespeed page 1, Virgin page 8 and BT page 8.

- 4.33 Alan Mason, Staffordshire County Council, and Vodafone suggested that Openreach, rather than BT, should be designated as the Universal Service Provider as Openreach will ultimately be responsible for delivering the USO over its network.⁷⁰
- 4.34 The BiT Commons proposed that O2 and Vodafone could be designated and could meet the obligation via their FWA networks.⁷¹ George Adam suggested that community broadband schemes could have a role to play in delivering the USO.⁷²
- 4.35 [S&K] argued that BT should not be designated as a Universal Service Provider as doing so would allow it to charge customers ~£65 a month for an FWA service.⁷³

Our decision

- 4.36 Having reviewed the responses received to the December 2018 Consultation we consider that our assessment continues to be appropriate. This assessment has informed our decision on which provider(s) would be best placed to deliver the broadband universal service for the benefit of consumers.
- 4.37 We did not receive alternative proposals from any provider which thought that it would be better placed to deliver the broadband universal service than BT or KCOM.
- 4.38 In designating Universal Service Providers, we have taken account of our legal obligation to designate an operator capable of receiving requests and managing interactions with individual consumers at the retail level. We have therefore determined that BT, rather than Openreach, should be the designated entity.
- 4.39 In relation to the suggestion that O2 and/or Vodafone would be best placed to deliver the USO, we have no evidence to suggest that they would be better placed than BT and/or KCOM. Responding to George Adam's point that community broadband schemes should play a role in delivering the USO, we consider that community broadband schemes could help to reduce the USO footprint prior to the USO going live, but they may also have a role to play if they can assist the designated providers with the most efficient means of delivery. This is discussed further below in Section 6.
- 4.40 Responding to [S&K] suggestion that by designating BT, Ofcom would be allowing it to charge £65 for a fixed wireless service, we consider that the pricing obligations and commitment received by BT will ensure that consumers receive an affordable service. We set out our approach to pricing in Section 7, but note that BT's 100GB fixed wireless product is currently priced at £40 per month including VAT.
- 4.41 Therefore, for the reasons set out in our December 2018 consultation and having taken account of responses to that consultation, we have decided that BT, for the whole of the

⁷⁰ See responses to the December 2018 consultation: Alan Mason page 1, Staffordshire County Council page 3 and Vodafone page 4.

⁷¹ The BiT Commons response to the December 2018 Consultation, page 4.

⁷² George Adam response to the December 2018 Consultation, page 1.

⁷³ [S&K] response to the December 2018 Consultation, page 1.

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UK except the Hull Area, and KCOM, for the Hull Area, are best placed to deliver the USO. We have therefore decided to designate BT and KCOM as the Universal Service Providers.

- 4.42 We consider that the decisions above comply with our December 2018 Designation Regulations (specifically paragraph 3 (7)) and meet our duties and the Community requirements under sections 3 and 4 of the Act.

5. Establishing eligibility for the broadband USO

5.1 This section explains the decisions we have made in relation to eligibility for the USO. We set out the steps that we require the Universal Service Providers to take to assess eligibility for the USO when a request is made, including how they should calculate the estimated cost of connections. We are setting an eligibility price threshold at £45 per month, meaning consumers paying more than £45 per month may be eligible for the USO, depending on the other eligibility criteria.⁷⁴ In addition, the Universal Service Providers will need to take steps to make consumers aware of their right to request the USO and confirm the outcome of a request within 30 calendar days of the date of a consumer's request.

Introduction

5.2 The Order provides that a premises will be eligible for the USO where an affordable broadband connection and service that meets the technical specification in the Order is not already available, and will not be made available within a year of the date of the request as the result of a publicly-funded intervention.

5.3 The Order also sets out that a reasonable cost threshold of £3,400 applies to each USO connection which means that, subject to meeting the other eligibility criteria, consumers will be eligible where the cost of the USO connection is no more than £3,400.⁷⁵

5.4 To determine whether a consumer is eligible under the USO scheme, the Universal Service Providers will need to assess the following:

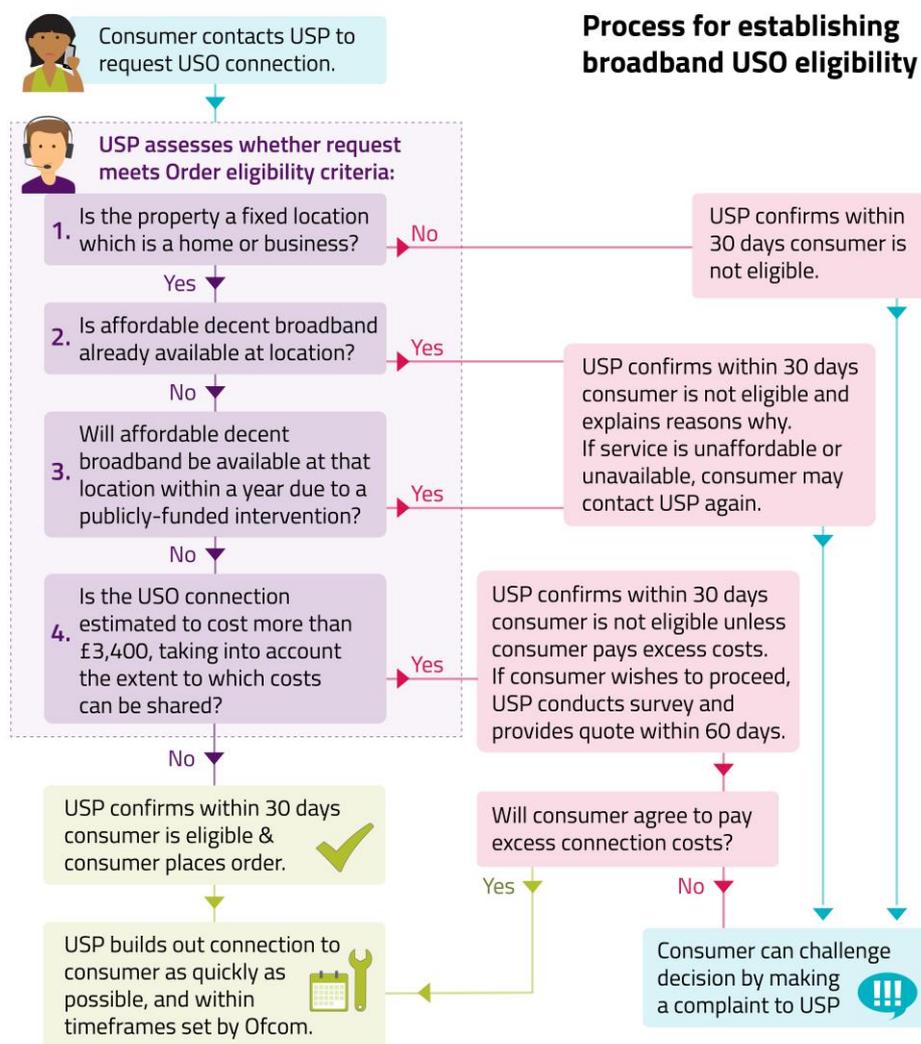
- a) whether an affordable connection and service meeting the technical specification is or will become available; and
- b) whether the cost of a USO connection is more than £3,400 (excluding VAT).

5.5 We explained in our December 2018 consultation that in assessing each aspect, our priority is to ensure a quick and simple process for consumers that is as practical as possible for the Universal Service Providers to carry out. Figure 3, below, sets out the final process we have decided.

⁷⁴ The threshold price is the monthly average charge over the fixed commitment period, inclusive of VAT, connection charges, the monthly payment and any other broadband charges. The eligibility threshold of £45 is set by reference to prices which prevailed as at November 2018. When the USO opens for requests on 20 March 2020 the threshold will be updated to £46.10p to reflect inflation. We have based this adjustment on the Office of Budget Responsibility forecast of the Consumer Price Index (CPI). The threshold will be updated annually thereafter to reflect CPI.

⁷⁵ The £3,400 cost threshold excludes VAT. Where the cost of a connection is higher than this amount, eligible consumers and businesses will be able to receive a USO connection and service if they pay (i) any costs over £3,400 (excluding VAT) and (ii) any VAT on the cost over £3,400. For example, for a connection costing £4,000 excluding VAT, the customer would have to pay £600 plus the VAT on this sum (i.e. £120 amounting to a total connection charge of £720 when VAT is at 20%)

Figure 3: Establishing eligibility for the USO



Checking whether a premises is a residence or a place of business

5.6 The Order defines premises for the purposes of the USO as those which are fixed locations which are a residence or place of business.⁷⁶ Given the UK Government’s ambition is for the USO to help deliver universal coverage, the definition of eligible properties includes both homes (including second homes) and businesses.⁷⁷

Our December 2018 consultation

5.7 We proposed that Universal Service Providers should use the Ordnance Survey’s AddressBase Premium product (the “AddressBase product”) to establish whether a

⁷⁶ The Order, Schedule 1, para 2 (a).

⁷⁷ DCMS, March 2018. *A new broadband Universal Service Obligation: Government’s response to consultation on design*, page 31.

requesting location meets the definition of being a fixed location, which is a residence or a place of business. If in exceptional cases an address could not be found on the AddressBase product, we proposed to require the Universal Service Providers to request evidence from the person making the request of the location's liability for council tax if it is a home, or liability for non-domestic (business) rates if it is a business.

Responses to our December 2018 consultation

5.8 KCOM agreed with our proposed approach to how the Universal Service Providers should establish if a requesting location meets the definition of residence or place of business in the Order.⁷⁸ No other respondents commented specifically on our proposed approach or proposed alternative approaches.

Our decision

5.9 We remain of the view that the simplest way for the Universal Service Providers to establish whether a requesting location meets the definition of being a fixed location which is a residence or place of business is by checking the address of that location against the most up-to-date version of Ordnance Survey's AddressBase product.

5.10 This product is considered the most comprehensive dataset of addresses where services are provided in the UK, combining information from local government, Ordnance Survey and Royal Mail. For this reason, we have decided that if the Universal Service Providers can find the location on the AddressBase product, and it has a unique property reference number which has been categorised as residential, commercial, dual use, stately home or place of worship, this is sufficient to confirm that the location meets the definition of premises as set out in the Order.⁷⁹

5.11 If the address of the requesting location cannot be found in the AddressBase product, or it is not in the qualifying categories listed above, we have decided that the Universal Service Providers are required to request evidence from the person making the request of the location's liability for council tax if it is a home, or liability for non-domestic rates (business) rates if it a business.

5.12 This evidence could be any document confirming the location's liability for such forms of taxation, including a copy of a council tax or business rates bill, or a letter from the relevant body confirming the location's liability. Receipt of such evidence from the person

⁷⁸ KCOM response to the December 2018 consultation, page 4.

⁷⁹ Premises with the following AddressBase Premium (for Great Britain) and AddressBase Islands (for Northern Ireland) classification codes are in scope: commercial (C); residential (R); dual use (X); places of worship (ZW) and stately homes (ZS). In this situation, no evidence is required from the person making the request. The reporting of broadband coverage in Connected Nations is based on delivery point locations, excluding PO boxes, large organisations and premises under construction (see [Connected Nations 2018 Annex A - Methodology](#)). Analysis to adapt the Connected Nations method for compatibility with the approach for the USO Order is underway.

making the request is sufficient for the Universal Service Providers to confirm that the location meets the premises definition in the Order.⁸⁰

Checking the availability of an affordable broadband service at each requested location

- 5.13 The Order sets out that a location is eligible for the USO where an affordable broadband connection and service that meets the technical specification in the Order is not available from an existing network provider. If the premises meets the definition of residence or place of business set out above, the Universal Service Providers will need to establish whether there is already an affordable broadband connection and service serving that location.
- 5.14 In assessing the eligibility of consumers who request the USO, the Universal Service Providers will have to take account of:
- a) the technical capabilities of the broadband services that are currently available to that consumer's premises; and
 - b) the affordability of broadband services offered on those networks.

Our December 2018 consultation

What is meant by an available existing service

- 5.15 We proposed that a broadband service on an existing network should be considered as available if it could be delivered within 30 days of the customer's order date. This proposal was based on Ofcom's research which indicates that the vast majority of landline or broadband orders are delivered on a commercial basis within 30 calendar days of the customer's order date.⁸¹

What is meant by an affordable existing service

- 5.16 We proposed a threshold for an affordable price at £45 per month including VAT, connection charges, monthly payments and other broadband charges ("eligibility price threshold").⁸² For example, a consumer could be eligible for the USO if they have a broadband service available to them, that meets the technical specification in the Order, but where the price of that connection and service is more than £45 per month over the course of their contract.

⁸⁰ For clarity, we expect static caravans to be included under the residential category of the AddressBase product if they are liable for council tax.

⁸¹ Ofcom, May 2018. [Comparing Service Quality 2017](#), page 24.

⁸² In the December 2018 consultation, this was referred to as an "eligibility threshold". This has been changed to clarify that we are referring specifically to price rather than other eligibility criteria, e.g. download speeds or contention ratios.

Process by which the Universal Service Providers check if decent and affordable broadband is available at a location

- 5.17 We proposed that upon receiving a USO request, the relevant Universal Service Provider should first consult their own address-level network information to identify if they already offer an affordable service which meets the technical specification of the USO.
- a) Where it does, the customer should be offered this service on standard commercial terms.
 - b) Where it does not, the Universal Service Provider should check if Ofcom holds information that indicates that a broadband service is available on any third-party network(s) using information derived from Ofcom's Connected Nations reports.
- 5.18 If there is information about a service provided on any third-party network(s) at that location, the Universal Service Provider should advise the consumer to contact the third-party network provider(s) directly to request an appropriate service.⁸³
- 5.19 The Universal Service Provider should inform the consumer that they may still be eligible to receive the USO if a decent and affordable broadband service is not available from any third parties, and that in this case they have the right to contact the Universal Service Provider again.
- 5.20 We also proposed that the Universal Service Provider should keep records of the consumer's first request and provide the consumer with a unique reference number so that any subsequent request by that consumer could be dealt with by the Universal Service Provider as quickly as possible, building on the information already provided.

Responses to our December 2018 consultation

Responses on what is meant by an available existing service

- 5.21 No respondents disagreed with our proposal to set a 30-calendar day timeframe, from the date of the customer's order, as the appropriate period to define the availability of a broadband service on an existing network.

Responses on what is meant by an affordable existing service

- 5.22 A number of respondents (Gigaclear, TalkTalk, ACNI, Which?, the Communications Consumer Panel 'CCP', Kent County Council, George Adam and [X]) agreed with our proposal to introduce an eligibility price threshold. Kent County Council welcomed the eligibility threshold citing complaints about affordability it received from consumers in

⁸³ In a small number of cases, a third-party network provider may not provide a broadband service directly to consumers but will be able to direct consumers to retailers operating on its network.

Kent.⁸⁴ ACNI said that they supported the threshold subject to the appropriate economic rationale being robustly tested.⁸⁵

5.23 BT and KCOM disagreed with the inclusion of an eligibility price threshold for the following reasons.

- a) **An eligibility price threshold goes beyond the Order:** BT and KCOM⁸⁶ said that Ofcom misinterpreted the Order which distinguishes between eligibility conditions and affordability. By merging the two concepts, BT said that Ofcom failed to recognise that constraints on prices from competition in non-USO areas would also constrain prices paid by USO customers.⁸⁷
- b) **An eligibility price threshold is inappropriate:** KCOM said that it would be inappropriate for Ofcom to expect the Universal Service Provider to consider consumers or businesses eligible for the USO if the Universal Service Provider already offered an entry level fibre broadband service above 10 Mbit/s and priced above the eligibility price threshold. KCOM said that this would force the introduction of new products outside their current portfolio.⁸⁸
- c) **Risk of network overbuild:** BT and KCOM⁸⁹ said that Ofcom had underestimated the risk of network overbuild in areas where the majority of customers are willing to take higher specification broadband from alternative providers at a price marginally higher than £45. BT said that it would be obliged to extend its network in these areas to connect the few consumers that request a USO connection which is inefficient and an unnecessary cost to the USO fund.⁹⁰
- d) **Impact on investment:** BT and KCOM said that the eligibility price threshold will distort the market in some locations with potentially damaging consequences for investment incentives.⁹¹

5.24 In addition to BT and KCOM, TrueSpeed also disagreed with the eligibility price threshold describing it as a form of price control and highlighted the risk of costly network overbuild which would be paid for by industry through the fund.⁹²

5.25 Virgin Media said that there was little evidence of an affordability issue and that this measure should be applied where there is a demonstratable need.⁹³ Vodafone pointed to the impact on fibre investment and said consumers in rural areas may have to wait even

⁸⁴ Kent County Council response to the December 2018 consultation, page 1.

⁸⁵ ACNI response to the December 2018 consultation, page 1.

⁸⁶ KCOM response to the December 2018 consultation, page 2.

⁸⁷ BT response to the December 2018 consultation, page 9.

⁸⁸ KCOM response to the December 2018 consultation, page 2.

⁸⁹ KCOM response to the December 2018 consultation, page 2.

⁹⁰ BT response to the December 2018 consultation, page 9.

⁹¹ See responses to the December 2018 consultation: BT page 9 and KCOM page 2.

⁹² TrueSpeed response to the December 2018 consultation, page 1.

⁹³ Virgin Media response to the December 2018 consultation, page 8.

longer for a fibre service because competing providers would be discouraged from rolling out fibre in the USO area as consumers have a reduced need for it.⁹⁴

Responses on setting the level of the eligibility price threshold at £45

- 5.26 TalkTalk and Gigaclear said that the eligibility threshold was set at the appropriate level, however, Gigaclear cautioned against Ofcom’s reasoning for arriving at the £45.⁹⁵ Gigaclear was concerned that our calculations only considered providers whose networks exclusively served urban areas and did not take account of those delivering to rural areas with higher ‘costs per premise passed’.
- 5.27 ACNI and Gigaclear said that there should be a process in place for reviewing the eligibility price threshold at intervals.⁹⁶ Gigaclear also suggested an inflationary buffer so that the level increases each year in line with inflation.
- 5.28 Although consumer bodies did not specifically comment on the level of the eligibility price threshold, they did comment on the level of the safeguard cap which we proposed to set at the same level. We consider that comments on the level of the safeguard cap are relevant to our decision on the level of the eligibility price threshold.
- 5.29 Which?⁹⁷, CCP and Federation of Small Businesses (“FSB”) argued that the safeguard cap was set too high preventing take-up by low-income consumers and SMEs. Vodafone⁹⁸ and Alan Mason⁹⁹ argued that at £45, the cap was set too high for a 10 Mbit/s service. Vodafone said that consumers will likely end up receiving a service that is at least 50% slower than the average national broadband service and pay approximately double.
- 5.30 Which? noted Ofcom’s intention to update the safeguard cap annually to reflect the CPI and said that in its view this approach is not wholly appropriate given the intention should be to maintain affordability. It suggested an alternative approach for the safeguard cap to be adjusted by the lower of either CPI or market price trends or alternatively if CPI is used exclusively, then Ofcom must commit to undertaking periodic reviews of the cap to ensure that it remains affordable.
- 5.31 TrueSpeed said that the safeguard cap, set at £45, would encourage the Universal Service Provider to build copper rather than fibre infrastructure which means the network would have little chance of upgrade when USO thresholds are increased in the future.¹⁰⁰
- 5.32 BT said that if Ofcom were to proceed with the eligibility price threshold, it should not fall below £45, should rise with inflation and should reflect any VAT changes. BT also said that

⁹⁴ Vodafone response to the December 2018 consultation, page 11.

⁹⁵ See responses to the December 2018 consultation: TalkTalk page 1 and Gigaclear page 4.

⁹⁶ See responses to the December 2018 consultation: ACNI page 1 and Gigaclear page 4.

⁹⁷ See responses to the December 2018 consultation: Which? page 7, CCP page 6 and FSB page 2.

⁹⁸ Vodafone response to the December 2018 consultation, page 11.

⁹⁹ Alan Mason response to the December 2018 consultation, page 2.

¹⁰⁰ Truespeed response to the December 2018 consultation, page 3.

Ofcom should explicitly recognise that if the eligibility criteria changed in future, the eligibility price threshold would be revisited.¹⁰¹

- 5.33 KCOM suggested increasing the eligibility price threshold to £55 and said that it was not clear why Ofcom considered £45 to be the correct level when analysis identified the range to be £20-£55. On this basis, KCOM would expect the eligibility price threshold to be set at £55.¹⁰² KCOM noted that the proposed eligibility price threshold is above its commercial pricing for on-net consumer fibre broadband services that they offer across the Hull area and the wider East Riding of Yorkshire and that these fibre services far exceed the requirements of the USO.¹⁰³
- 5.34 Alan Mason¹⁰⁴ and [SC]¹⁰⁵ expressed concern about the data specification of the USO. Alan Mason suggested increasing the data specification from 100GB to 500GB and [SC] suggested an increase to 250GB if the eligibility price threshold was to be set at £45.

Responses on the process for checking if decent and affordable broadband is available at a location

- 5.35 Respondents generally agreed that the proposed process by which the Universal Service Provider checks if decent and affordable broadband is available at a location was reasonable. Consumer bodies CCP¹⁰⁶ and ACNI¹⁰⁷ urged clear communication with consumers so that consumers understood their role at each stage of the process.
- 5.36 Which? suggested that if decent broadband was available at a location already, the Universal Service Providers should establish if services available on any third-party network(s) were affordable before referring consumers to contact them directly.¹⁰⁸ If the process remained as proposed, they urged Ofcom to be clear about what evidence consumers would need to present to the Universal Service Providers to demonstrate that services on any third-party network(s) were not affordable.
- 5.37 BT said that Ofcom's proposals presented practical issues as the onus would be on consumers to calculate whether decent broadband services available on any third-party network(s) were affordable in line with Ofcom's eligibility price threshold. BT noted that consumers might find this a complex calculation. Instead, BT asked for Connected Nations information from Ofcom to take into account the affordability of existing broadband services so that consumers would not be referred on to any unaffordable network provider(s).

¹⁰¹ BT response to the December 2018 consultation, page 10.

¹⁰² KCOM response to the December 2018 consultation, page 3.

¹⁰³ KCOM's standard USO qualifying Lightstream broadband package is a fibre-based service delivering 30Mbit/s with a 150GB data allowance priced at £37 per month. KCOM response to the December 2018 consultation, page 4.

¹⁰⁴ Alan Mason response to the December 2018 consultation, page 1.

¹⁰⁵ [SC] response to the December 2018 consultation, page 10.

¹⁰⁶ ACNI response to the December 2018 consultation, page 1.

¹⁰⁷ CCP response to the December 2018 consultation, page 2.

¹⁰⁸ Which? response to the December 2018 consultation, page 4.

- 5.38 Alternatively, if this was not possible, BT suggested that either the Universal Service Providers might need to verify consumer claims by requesting evidence from consumers, or that the Universal Service Providers could take the consumer's word for it, in which case they would expect to recover any cost of connecting these premises from a USO fund.

Our decision

Our decision on what is meant by an available existing service

- 5.39 The Order states that a home or business is eligible for the USO where an affordable broadband connection and service that meets the technical specification in the Order is not available to that location.
- 5.40 Ofcom's May 2018 *Comparing Service Quality* report showed that for Virgin Media and the main retail providers that use the Openreach network, the vast majority of orders (in excess of 90%) were delivered within 30 calendar days of the customer's order.¹⁰⁹ This represents when a service is readily available, compared to when a network build may need to be carried out in order to deliver a service. For this reason, we proposed that a 30-day timeframe would be an appropriate period to define the availability of an existing broadband service. The May 2019 *Comparing Service Quality* report continues to support our proposal.¹¹⁰ Given this, we have decided to define the availability of an existing broadband service in the conditions as one that can be delivered within 30 calendar days from the date of the customer's order.
- 5.41 This means that where the Universal Service Provider, or any third-party network provider, offers an affordable broadband connection and service that meets the technical specification of the Order to a location on a commercial basis, but in practice they cannot activate the consumer's service within 30 days of the customer's order date, that consumer will be eligible for the USO, subject to the other eligibility criteria being met. However, consumers should bear in mind that a commercially available service that takes slightly longer than 30 days from the customer's order date to be activated will likely be delivered more quickly than the USO service which requires new network to be built.

We have decided to introduce a price threshold as part of the eligibility process

- 5.42 Having reviewed the consultation responses, we remain of the view that an eligibility price threshold is necessary to ensure consumers have access to an affordable USO broadband service.
- 5.43 We do not agree with BT and KCOM that an eligibility price threshold goes beyond the Order. As set out in Section 2, the Explanatory Note to the Order sets out that this is an instrument which the Government has made in order to fully discharge the UK's obligation

¹⁰⁹ Ofcom, May 2018. [Comparing Service Quality 2017](#), page 24.

¹¹⁰ Ofcom, April 2019. [Comparing Service Quality 2018](#), page 27.

under the Universal Service Directive, which requires Member States to ensure that the USO services are made available at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price.¹¹¹ Our approach is consistent with the Order being the means by which the UK is discharging this obligation, to ensure that a service of specified quality is available to all consumers at an affordable price. As a practical matter, this means that it is necessary to define an eligibility price threshold to determine whether an affordable broadband connection and service are available.

- 5.44 We do not agree with BT that this is unnecessary because of the requirement for BT and KCOM to offer uniform prices. Not all premises in the UK can, or will be able to, access a decent broadband service via the Openreach network (which is that used by BT and other providers such as TalkTalk, Sky and Vodafone to offer retail broadband services – typically at 10Mbps or above – to the vast majority of the UK). Premises where the Openreach network cannot provide decent broadband may only be able to access decent broadband from an alternative network provider, such as a fixed wireless broadband provider or a provider with its own fibre network. Some of those providers focus on harder to reach areas of the UK. They do not have the same exposure to competition for decent broadband as providers in the rest of the UK and they may also be exposed to higher average costs than those that prevail in the rest of the UK. A requirement for BT and KCOM to offer uniform prices across their own networks would not ensure that consumers at these premises can access a decent broadband connection and service at an affordable price.
- 5.45 We acknowledge that an eligibility price threshold may have an impact on those providers that currently supply broadband products at prices above the threshold. We discuss the nature of that impact in more detail below.

We are setting the level of the eligibility price threshold at £45 per month

- 5.46 To ensure that the USO provides access to affordable broadband services as required by the Order, we are implementing an eligibility price threshold of £45 per month (in November 2018 prices), which includes VAT, connection charges, the monthly payment and other broadband charges spread over the life of the contract (hereafter referred to as “£45 per month”).
- 5.47 This means that if a consumer cannot access a decent broadband connection at their premises for £45 per month or less, they can request a broadband connection from the Universal Service Provider. The request would be subject to the other eligibility requirements for the USO scheme.
- 5.48 For example, a consumer would be eligible for the USO if they have a broadband service available that meets the technical specification in the Order, but where the cost to the

¹¹¹ The Universal Service Directive, Article 3(1).

consumer of that connection and service is more than £45 per month over the course of the contract.¹¹² However, a consumer that is currently paying more than £45 per month for broadband who has the option to switch to another service that is priced below £45 per month and meets the USO technical specification, would not be eligible for a broadband connection and service under the USO.

- 5.49 We set out in Annex 2 analysis which further supports our judgement that £45 per month is sufficient to deliver affordability.

Consideration of a higher eligibility price threshold

- 5.50 We recognised in the December 2018 consultation that there was the potential for an eligibility price threshold to impact on other broadband network providers due to overbuild by the Universal Service Provider. Imposing a higher eligibility price threshold would reduce the risk of overbuild for a greater number of other network providers, but this is in tension with the requirement for affordability.
- 5.51 For most areas of the UK, a threshold of £45 per month will have no impact as generally there is a wide choice of broadband providers and most providers offer entry level products at prices well below the level of the threshold. Across the UK as a whole, 96% of premises can currently receive a broadband service, that meets the technical specification of the Order, from Openreach, KCOM, or Virgin Media's networks and will therefore have access to prices that are affordable.¹¹³ Entry level prices that are lower than £45 per month are available on a number of other networks.¹¹⁴ BT told us that it plans to roll out its fixed wireless service to 450,000 premises that would otherwise be eligible for the USO and it has committed to provide these connections and services for less than £45 per month.¹¹⁵ There will also be some premises that are eligible for the USO regardless of the eligibility price threshold because no network is capable of delivering a service which meets the technical specification. Consequently, we do not expect the eligibility price threshold to distort retail broadband competition generally.
- 5.52 However, there are a small number of network providers, based mostly in rural areas, that do not offer a broadband connection and service that meets the technical specification of the USO for less than £45 per month. If these providers continue to offer prices above the eligibility price threshold, their networks may be overbuilt by the Universal Service

¹¹² Where an eligible consumer chooses to take up a USO service, he or she will still be subject to any contract terms (e.g. early termination charges) that may apply from their existing provider.

¹¹³ For example, BT currently offers standard and superfast broadband prices starting at around £32 per month over the fixed commitment period. KCOM offers standard and superfast broadband packages at around £39 per month over the fixed commitment period. Virgin Media offer 54Mbit/s download speeds for around £27 per month over the fixed commitment period.

¹¹⁴ For example, broadband connections and services are available on the networks of CityFibre, Hyperoptic, OFNL, Community Fibre, Three Broadband (FWA), and Gigaclear which meet the technical specification of the Order for less than £45 per month.

¹¹⁵ [BT's pricing commitment](#) is published alongside this Statement.

Provider if customers request a USO connection, have no alternative service available to them, and if the cost of building those USO connections is below the £3,400 reasonable cost threshold.

- 5.53 As set out above, our approach is consistent with the Order being the means by which the UK is discharging its obligation under the Universal Service Directive to ensure that a service of specified quality is available to all consumers at an affordable price. We set out in Annex 2 analysis which supports our judgement that a higher price threshold (e.g. £50 per month) would carry too great a risk of affordability concerns.¹¹⁶ This intervention is therefore necessary in order to fulfil the Order fully.
- 5.54 In any event, we believe that the impact of the eligibility price threshold on those network providers that currently offer no products below £45 per month will be relatively small:
- a) Secure Web Services Broadband, Cromarty Firth Wireless Networks, Lothian Broadband and Kencomp¹¹⁷ told us that they used publicly-funded vouchers for some of their customers and that where customers are eligible for a voucher they reduce the price of broadband below the £45 per month threshold. Lothian Broadband said that its use of vouchers had reduced recently due to the scheme requirements becoming more onerous.
 - b) In addition, some of the providers we spoke to said they would alter their pricing structures or change their services in other ways such that they would have a service that met the requirements of the USO and would be below the £45 per month threshold. Call Flow, Cromarty Firth Wireless Networks and Truespeed said that they would introduce entry-level products that were below the threshold, whilst Secure Web Services Broadband said it would reduce the price of its existing entry-level product.¹¹⁸
 - c) Secure Web Services, Call Flow, Lothian Broadband and Kencomp said that the eligibility price threshold would have a minimal effect on their business.¹¹⁹

Consideration of a lower eligibility price threshold

- 5.55 Some stakeholders argued that the eligibility threshold of £45 was too high. Which?, CCP, and FSB said that a level of £45 would prevent low income consumers and SMEs from being able to access a decent broadband connection. Vodafone and some responses from individuals argued that this was too high for a 10Mbit/s connection.

¹¹⁶ Fewer than 20% of dual play and standalone broadband customers pay prices of £50 or more. This proportion is lower still [§<] for customers that take an ADSL service.

¹¹⁷ Secure Web Services Broadband, Cromarty Firth Wireless Networks, Lothian Broadband and Kencomp response to s.135 Notice of 24 May 2019.

¹¹⁸ Call Flow, Truespeed, Secure Web Services Broadband and Cromarty Firth Wireless Networks response to s.135 Notice of 24 May 2019.

¹¹⁹ Secure Web Services, Call Flow, Lothian Broadband and Kencomp response to s.135 Notice of 24 May 2019.

- 5.56 The purpose of the eligibility threshold is to ensure that premises can access an affordable broadband service. It is not the function of the eligibility price threshold to deliver a broadband service that is as keenly priced as it could be when compared to certain broadband services available elsewhere.
- 5.57 We set out in Annex 2 our analysis of why we believe a threshold of £45 is sufficient to ensure affordability. Whilst a lower threshold may deliver additional comfort that connections and services will be affordable, we do not believe that this is necessary. As we set out in Annex 2, broadband services appear to be affordable for the vast majority of UK consumers and many are likely to be able to afford to pay more than they currently pay.¹²⁰
- 5.58 A lower price threshold would also have a greater impact on competing network providers. This could have an adverse impact on any network expansion plans, and/or could lead to a greater scope for overbuild of commercial networks.¹²¹ Any additional overbuild would increase the size of the net cost of the USO.

Future changes to the eligibility price threshold

- 5.59 Some respondents including BT, KCOM, ACNI, and Gigaclear commented on how the threshold should be adjusted and reviewed over time:
- a) **Inflation** – BT and Gigaclear argued that the eligibility price threshold should increase in line with inflation. Which? suggested that the safeguard cap should be adjusted by the lower of either CPI, or market price trends, or alternatively if CPI is used exclusively, then Ofcom must commit to undertaking periodic reviews of the cap to ensure that it remains affordable. We agree that it is appropriate to increase the eligibility price threshold in line with inflation so that it remains constant in real terms. Given that the level of the threshold is based on data from November 2018, we have set the level of the eligibility price threshold at £46.10p in the first year, based on the Office for Budget Responsibility’s projections of CPI inflation up to and including the first quarter of 2020.¹²² In subsequent years the level of the threshold will adjust on an annual basis in line with CPI. We address Which?’s suggestion of periodic reviews below.
 - b) **VAT** – BT argued that the eligibility threshold should be set excluding VAT so that if VAT were to change in the future, this cost (or benefit) could be passed on to consumers automatically. We do not agree with this proposal from BT. Our assessment of affordability is based on broadband prices inclusive of VAT. An increase in VAT is likely to raise the price of many goods, which will put pressure on household finances, and

¹²⁰ We also note that socio-economic analysis of 2015 postcode data indicated that in 2015, people living in the USO areas had on average higher household incomes than the rest of the UK. This research was conducted with Experian and published alongside Ofcom’s Technical Advice to Government on the USO. Ofcom, December 2016. [Technical Advice to Government, Annex 8: Socio-economic analysis of 2015 postcode data](#).

¹²¹ For example, if instead the eligibility price threshold was set at £40, additional providers such as Gigaclear (charging around £41.70 per month on average) and Boundless Networks (charging around £41.10 per month on average) would also be at risk of overbuild. Prices as at 29 April 2019.

¹²² We calculated the geometric mean of CPI inflation for the five quarters from Q1 2019 to Q1 2020 inclusive, rounded to the nearest 10p. Office for Budget Responsibility, [Economic and fiscal outlook - March 2019](#), March 2019.

thereby reduce affordability of broadband services. That said, changes in VAT will be reflected, with a lag, in the CPI and as such, the price threshold is likely to change if there were a large change in VAT. Given this and the fact that for reasons explained in Annex 2, we have chosen a threshold in the upper half of the broadband price distribution, we do not envisage modest changes in VAT creating significant cost-recovery problems.

- c) **Reviews of the threshold** – ACNI and Which? said that we should reconsider the level of the threshold at regular intervals, whilst BT argued that if the eligibility criteria changed in the future, for example, an increase in the minimum download speeds, we should revisit the eligibility threshold. In our view, it is not necessary to review the level of the threshold to a pre-determined timetable. However, we will review the level of the threshold from time to time where there is a reason to do so; for example, should there be strong evidence that it is no longer effective, or should there be a large change in VAT.

Process by which the Universal Service Provider checks if decent and affordable broadband is available at a location

5.60 We remain of the view that the most practical approach upon receiving a USO request is for the Universal Service Providers to first check their address-level information to ascertain if they already provide decent, affordable broadband to the location.

- a) If they do, they should offer that consumer a service on standard commercial terms (i.e. that consumer is not eligible to receive the USO).
- b) If they do not, they should check information derived from Connected Nations to see if a decent broadband service is available on any third-party network(s). If they do, the Universal Service Providers should advise the consumer to contact those network provider(s) directly.¹²³

5.61 We note suggestions that the Universal Service Providers should check if third-party services are affordable before referring consumers to any third-party network provider(s). However, we do not think that it is proportionate to require the Universal Service Providers to monitor all pricing information across the market, or for Ofcom to provide pricing data to support this assessment on an ongoing basis. This is for the following reasons.

- a) Based on engagement with network providers explained above, our expectation is that decent broadband will be available to consumers on third-party networks at prices which are below the eligibility price threshold in the majority of cases.
- b) Further, where pricing available from providers on any third-party network(s) is above the eligibility price threshold, referring the consumer to contact them directly gives these providers the opportunity to offer that consumer personalised pricing at a price

¹²³ In a small number of cases, a third-party network provider may not provide a broadband service directly to consumers but will be able to direct consumers to retailers operating on its network.

below the eligibility price threshold. If they do so, this will be a quicker and easier way for consumers to access decent, affordable broadband, than via the USO which will typically require new network to be built. For this reason, we do not think it is necessary to take account of affordability in Connected Nations information.

- 5.62 Where a consumer is referred to a third-party network provider(s) which already provides decent broadband to a location, but the consumer finds that it is charged above the price threshold, then it is open to the consumer to restart its request for a USO connection.¹²⁴ We do not think that it is fair for the Universal Service Providers to require consumers to submit evidence to verify this, for example by asking them to submit a written quotation. This is because the consumer's account may be based on a telephone conversation with the relevant network provider(s), or the provider(s) may not be willing to provide a written quotation to support the consumer's USO request to BT (and in exceptional cases KCOM).
- 5.63 We have decided that the Universal Service Providers should accept the information provided by consumers unless that information does not appear reasonable, for example, on the basis of published pricing information displayed on the relevant providers' websites. Ofcom's General Conditions of Entitlement require all providers to ensure that clear and up-to-date information on the applicable prices and tariffs and standard terms and conditions in respect of access to and use of the services provided by them to consumers is published.¹²⁵
- 5.64 A number of respondents, including BT and consumer bodies, were concerned that an eligibility price threshold could complicate the consumer journey. We want the consumer journey to be as simple as possible and have placed considerable emphasis on this. Nevertheless, we recognise that in some instances, a consumer may be directed to an alternative network provider that can provide a decent broadband service, but is required to recontact the Universal Service Provider because the service is above the eligibility price threshold. We consider that it is more important that the eligibility price threshold ensures that this consumer is able to access an affordable service. In any event, we believe that this will happen in only limited cases given the strong incentives for alternative providers to adjust their pricing, as indicated in the exchanges we have had with a number of alternative providers.
- 5.65 We explain how we expect the Universal Service Providers to confirm the outcome of a consumer's request, including the information to be given to consumers, later in this section.

¹²⁴ In a small number of cases, a third-party network provider may not provide a broadband service directly to consumers but will be able to direct consumers to retailers operating on its network.

¹²⁵ Ofcom General Conditions of Entitlement, Condition C2.2

Checking whether the location is due to be covered by a publicly-funded intervention

5.66 The Order defines how the USO interacts with ongoing publicly-funded broadband interventions. For eligibility purposes, it sets a one-year cut-off date for future publicly-funded interventions.

Our December 2018 consultation

5.67 In our December 2018 consultation, we explained that consumers who request the USO are not eligible where their home or business is due to receive an affordable broadband service which will meet the technical specification in the Order as the result of a publicly-funded rollout scheme within one year of the date of their USO request.

Responses to our December 2018 consultation

5.68 A few respondents highlighted that some ongoing and future publicly-funded rollout schemes would take longer than 12 months to deliver. They warned that, if USO connections are delivered in these areas, they could undermine the viability of these public contracts.¹²⁶

5.69 To mitigate this risk, respondents suggested that Ofcom should interpret the Order in such a way as to exclude all premises that are in scope of future publicly-funded interventions from eligibility for the USO, even where these are due to deliver in more than 12 months' time, or that the Order should be amended to achieve this outcome. Alternatively, they suggested that Ofcom should require the Universal Service Providers to use the network which had won the public contract to meet any USO requests in those areas.¹²⁷

5.70 Other respondents argued that locations which are due to benefit from publicly-funded broadband vouchers (i.e. grants) which would deliver affordable, USO-level broadband within 12 months of their issue date should be excluded from eligibility for the USO.¹²⁸

5.71 Some respondents questioned if locations which are due to benefit from commercially-funded roll-out plans should be excluded from eligibility for the USO.¹²⁹

Our decision

5.72 We note the comments from respondents that some publicly-funded schemes may take longer than one year to deliver. In addition, we note that some schemes are currently in

¹²⁶ Gigaclear response to the December 2018 consultation, page 5

¹²⁷ See responses to the December 2018 consultation: The BiT Commons page 1 and Gigaclear page 5

¹²⁸ Wessex Internet letter to Ofcom dated 26 February 2019, page 1 and KCOM response to the December 2018 consultation, page 2

¹²⁹ Wessex Internet letter to Ofcom dated 26 February 2019, page 1 and KCOM response to the December 2018 consultation, page 5

the procurement phase, and this means that delivery is likely to take longer than 12 months from when consumers will be able to make requests for the USO.

- 5.73 However, the Order clearly defines how the USO should interact with ongoing publicly-funded broadband interventions. For eligibility purposes, it sets a one-year cut-off date. This means that consumers who request a USO connection are not eligible where their home or business is due to receive decent and affordable broadband as the result of a publicly-funded intervention within one year of the date of their USO request. As explained above, our role is to ensure a proper and effective implementation of the provisions of the Order.
- 5.74 In relation to publicly-funded broadband vouchers, we agree with respondents that these should qualify as publicly-funded interventions under the Order. Consequently, we have decided that locations should not be eligible for the USO where they have been issued with such vouchers which will fund the delivery of affordable broadband which will meet the technical specification of the Order, and these connections will be delivered within a year of the date of the USO request.
- 5.75 The Order is clear that only publicly-funded interventions can be considered when assessing this aspect of eligibility under the USO. Future commercially-funded rollout plans, or rollouts funded by charitable grants, individuals or groups of individuals, are not within the scope of the Order.
- 5.76 We respond to comments about the Universal Service Providers' use of third-party networks to deliver USO connections and services in Section 6 of this statement.

Checking whether premises fall within the cost threshold of £3,400

- 5.77 The Order requires Ofcom to ensure that, when assessing the cost of providing a connection, the Universal Service Providers take due account of the extent to which costs may be shared by multiple locations. Where network infrastructure can be shared, build costs should be shared between premises to determine whether the cost of provision to an individual location would fall below £3,400. This is referred to in the Order as "demand aggregation".

Our December 2018 consultation

- 5.78 We explained our view that the most effective means of aggregating demand (in order to determine the extent of shared costs) is to use a forecast of take-up of USO connections, as this would minimise the delay from waiting for actual USO connection requests. We proposed to set a 70% take-up forecast for the purposes of calculating the cost of provision of a USO connection.
- 5.79 When estimating the cost per connection, we explained that the Universal Service Providers should only include costs that directly arise from connecting USO premises, not the costs that would already exist in the network. We proposed that only infrastructure-

related costs should be included in the calculation, and that customer premises equipment (e.g. routers or modems) should be excluded.

Responses to our December 2018 consultation

- 5.80 Respondents broadly agreed with using a forecast approach to demand aggregation. However, Wessex Internet questioned whether this approach is consistent with the Order, which states that the USO only applies if a prospective end-user requests that a broadband connection is provided to that location. Wessex Internet also said that this would allow the Universal Service Providers to cherry pick the most attractive areas without any real reference to demand from the local area for their services.¹³⁰
- 5.81 Regarding the most appropriate level at which to set the take-up forecast:
- a) BT, Gigaclear and Virgin Media argued that a 70% forecast is too high. BT and Virgin Media both said that the characteristics of USO areas mean that demand for a 10Mbit/s service is likely to be lower than in the rest of the country. BT noted that it uses a 61% take-up assumption in its BDUK contracts, while Virgin Media said that a better assumption based on our analysis would be 60%, although it said that this is still a stretch because it reflects demand for much faster speed services. Gigaclear said that the take-up forecast should take account of competition from faster services made available through state aid programmes. It also said that we had overlooked a risk that too high a forecast will result in premises being connected involuntarily, which may render them ineligible for state aid.¹³¹
 - b) Which? said that we should set an 80% take-up forecast, as the cost of overestimating take-up would be shared across a broad base, whereas the cost of underestimating it would fall heavily on a small number of individual consumers.¹³²
- 5.82 The CCP agreed with our proposal to require that the Universal Service Providers monitor and use actual take-up as the basis for demand aggregation, if it exceeds forecast take-up after the USO has been introduced.¹³³ Virgin Media said that Ofcom should commit to reviewing the take-up assumption annually and adjust the forecast downwards if it is too optimistic.¹³⁴
- 5.83 Respondents also commented on the accuracy of connection cost estimates.

¹³⁰ Wessex Internet letter to Ofcom, dated 26 February 2019.

¹³¹ See responses to the December 2018 consultation: BT page 16, Virgin Media pages 3-4 and Gigaclear page 7.

¹³² Which? response to the December 2018 consultation, page 5.

¹³³ CCP response to the December 2018 consultation, page 5.

¹³⁴ Virgin Media response to the December 2018 consultation, page 4.

- c) In circumstances where actual costs exceed the reasonable cost threshold, BT said that it would expect to be able to withdraw eligibility (e.g. if costs escalate by more than 10% above the threshold).¹³⁵ KCOM asked us to confirm that the Universal Service Provider would have to subsume the cost impact in those circumstances.¹³⁶
 - d) CCP and Which? said that Ofcom should scrutinise the Universal Service Providers' connection cost estimates – for instance through spot check audits – to ensure that cost estimates are accurate.¹³⁷
- 5.84 CityFibre agreed that the Universal Service Provider's connection cost estimates should exclude those costs that already exist in the network, and should take full account of all premises in the their designated area that may share relevant network assets.¹³⁸ Virgin Media agreed that only infrastructure-related costs should be included, and only where they do not relate to existing infrastructure that will be used for non-USO service provision.¹³⁹ In contrast, BT said that the calculation should include both network costs and avoidable downstream costs associated with providing the retail universal service, including the provision of a customer router.¹⁴⁰

Our decision

- 5.85 In summary, we have decided to adopt a forecast approach to demand aggregation, and to use a 70% take-up forecast. We have set out our reasoning in more detail below.

Approach to demand aggregation

- 5.86 We remain of the view that the best approach for ensuring a proper and effective implementation of the Order is to use a forecast take-up for demand aggregation. This is primarily because it allows the USO to be delivered more quickly than if shared connection costs were assessed, based on actual demand for USO connections at a given point in time.
- 5.87 We disagree with Wessex Internet that this approach will allow the Universal Service Providers to “cherry pick” the most attractive areas as, subject to eligibility, the Universal Service Providers will be required to provide USO connections wherever a request is made. Our forecast take-up approach will only allow them to consider the likely extent of shared costs involved in delivering that requested connection.¹⁴¹ As such, we consider that this approach is consistent with the Order and will not lead to premises being connected involuntarily as Gigaclear has suggested.

¹³⁵ BT response to the December 2018 consultation, pages 14-15.

¹³⁶ KCOM response to the December 2018 consultation, page 5.

¹³⁷ See responses to the December 2018 consultation: CCP page 6 and Which? pages 5-6.

¹³⁸ CityFibre response to the December 2018 consultation, page 9.

¹³⁹ Virgin Media response to the December 2018 consultation, page 7.

¹⁴⁰ BT response to the December 2018 consultation, page 14.

¹⁴¹ It is also unclear which areas would be “attractive” to the Universal Service Providers, given that these are areas where commercial network rollout to provide decent broadband has not yet occurred.

Take-up forecast

- 5.88 In our December 2018 consultation, we proposed a 70% forecast for long-run USO take-up. This was the midpoint between take-up of 10Mbit/s or above services in non-USO areas in 2017 (around 60%) and take-up of all fixed broadband services (80%), which we considered reflects the long-run level of fixed broadband demand.
- 5.89 We have since collected more up-to-date information on the proportion of non-USO premises receiving download speeds of 10Mbit/s or above. This proportion increased from 61% in 2017 to 67% in 2018.¹⁴² Assuming that demand for decent broadband speeds continues to increase at similar rates, this proportion will exceed 70% by the time that customers can start requesting USO connections in 2020. All other things equal, this suggests that the long-run level of USO take-up would more likely sit somewhere between 70% and 80%.
- 5.90 However, as stakeholders have noted, there are reasons why the distribution of speeds in USO areas may not converge to the distribution of speeds in non-USO areas:
- a) The characteristics of USO areas may be different. BT and Virgin Media said that USO areas have a greater proportion of premises with no usual residents (e.g. second homes or non-occupied premises), as well as a higher proportion of older residents for whom fixed broadband demand may be lower. We recognise that such variations in premises mix – particularly in respect of non-occupied premises – could imply lower innate demand for a decent broadband service in USO areas. Furthermore, BT submitted some information showing that the number of Openreach marketable premises (ORMP) as a proportion of all premises is lower in USO areas than comparable non-USO areas.¹⁴³ This is consistent with USO areas having relatively more premises which do not typically demand broadband services. However, our analysis of this information indicates that the proportion of ORMP in some USO areas may be artificially low because BT’s data appears to count some premises that do not meet our definition of a premises. These premises would be excluded from the list of properties (derived from Ofcom analysis of network coverage information collected for the Connected Nations reports) which do not have access to decent broadband.¹⁴⁴
 - b) It is also possible that a proportion of non-USO premises currently receiving speeds of 10Mbit/s or above would be satisfied with a slower broadband connection, but they receive a service at or greater than 10Mbit/s because it is the most basic service

¹⁴² See page 18, Ofcom, [Connected Nations 2018: UK report](#) (December 2018), 65% of all premises had an active broadband service that delivers a download speed higher than 10 Mbit/s in 2018, which is equivalent to 67% of all premises that have access to speeds greater than 10 Mbit/s. This followed an increase of 3 percentage points (from 58% to 61%) between 2016 and 2017.

¹⁴³ BT response to s.135 Notice of 25 April 2019. Openreach marketable premises is defined as those with a working copper circuit in the last 5 years. All other things equal, we expect premises without a working copper circuit to be less likely to request a USO connection because it implies they may not require fixed line telephony (including broadband) services in general.

¹⁴⁴ See Section 8 for further details on the data that we will provide to Universal Service Providers.

available to them. If this is the case, it suggests that fewer USO premises would be expected to proactively request a service upgrade when it is made available to them. Having said this, the Universal Service Providers must undertake targeted awareness activity – involving direct contact with customers – to raise consumer awareness about the USO (as set out later in this section), which could help to drive take-up even among customers who would not otherwise request a USO connection.

- c) Gigaclear said that USO take-up might be lower due to competition from state aid programmes. Any premises benefiting from public rollout schemes within 12 months would be excluded from USO eligibility, so should not feature in the base of premises over which take-up is forecast. Where schemes are due for completion more than a year away, this could potentially affect USO demand. However, this relies on customers being aware of the scheme. It also assumes that the scheme would deliver faster services than a USO connection, which may not always be the case.¹⁴⁵

- 5.91 While it is difficult to quantify the magnitude of these impacts, we recognise that they provide reasons for shading down the take-up forecast.
- 5.92 We have considered whether the experience of BDUK can inform our view on USO take-up. BT said it forecasts take-up of 61% in its BDUK contracts. Actual take-up of phase 1 BDUK projects reached 55% in December 2018, but it has been growing steadily and we project it could increase to around two-thirds by Q1 2020.¹⁴⁶ Furthermore, the availability of decent ADSL broadband services in some BDUK areas may depress BDUK take-up relative to USO areas where decent broadband is by definition not available. On the other hand, this is not directly comparable with USO take-up for our purposes because [§<]. Given these differences, and the fact that BDUK take-up does not yet appear to have reached a steady state level, we consider the implications for USO demand are unclear.
- 5.93 We have also considered the relevance of available market research for forecasting likely USO take-up, but we consider that it provides limited additional insight. Virgin Media noted a survey undertaken by BDUK on its market pilot tests, in which 39% of respondents who did not participate in the pilots said that it was because they were happy with their existing service (with a further 17% saying they do not use the internet that often). However, the sample size for this question was very low (54 respondents) and limited to five local areas, while the questions focused on likelihood of taking alternative technologies to respondents' existing supplier (e.g. satellite or fixed wireless).¹⁴⁷

¹⁴⁵ We note that BT has said it intends to deliver most USO connections using FTTP, which would deliver comparable speeds to state aid programmes. See for instance paragraph 2.62 of BT's response to the December 2018 consultation.

¹⁴⁶ [BDUK: Table of local broadband projects](#). Projections based on Ofcom analysis. We have assumed take-up grows linearly at the same rate as average quarterly growth over the last two years (2.4 percentage points per quarter). Quarterly growth has remained relatively stable (at between 2.1 and 2.8 percentage points) since 2016.

¹⁴⁷ BDUK, February 2016. [Emerging findings from the BDUK Market Pilot tests](#), Annex D, Figure 5. BT also undertook some market research into awareness and impact of the USO in September 2018. As part of this research, [§<] of respondents said they would be very likely to request a USO service and [§<] of respondents said they would be likely or very likely to

- 5.94 Overall, we consider that a 70% take-up forecast remains appropriate for the purposes of calculating the cost of provision of a USO connection. This is the lower end of our revised range, which reflects the possibility that demand for USO connections may be lower than take-up of 10Mbit/s and above services in the rest of the country.
- 5.95 In response to Which?, we agree that the additional cost of setting too high a forecast would be spread over a broader base, but this still represents a cost and potentially an increase in consumer bills. Indeed, the purpose of the reasonable cost threshold is to ensure that consumers with extremely costly connections are not inappropriately subsidised by other customers. We do not therefore consider that it would be appropriate to set a forecast that significantly exceeds our best estimate of likely take-up in the long-run, to increase the number of customers benefiting from the USO. We also note that, even though underestimating long-run take-up could result in a delay for some customers receiving a USO connection, they would still become eligible for the USO once actual take-up exceeds the forecast (as the Universal Service Provider should thereafter use actual take-up to calculate shared costs).
- 5.96 As set out in our December 2018 consultation, we may review and adjust this forecast in future if we consider that it is not set at an appropriate level. Virgin Media said that we should commit to reviewing it annually or else oblige the Universal Service Providers to adjust the take-up assumption downwards – when this can be justified using data – if the projection turns out to be too optimistic. We do not consider that an automatic annual review would be appropriate. However, we agree that a revision to the long-run take-up forecast would be appropriate, if there was data that demonstrated the take-up assumption was clearly too high or too low.

Accuracy of connection cost estimates

- 5.97 The Universal Service Providers must initially assess whether the cost of providing a connection falls below £3,400, by way of an estimate. This estimate could be incorrect for several reasons, besides actual take-up departing from forecast take-up. For instance, network build costs may turn out to be higher than expected if wayleaves take longer to agree, or if it transpires that a duct has collapsed. Equally, build costs may also be lower than estimated, for example if the network rollout takes less time than planned.
- 5.98 There are two risks associated with connection cost errors:
- a) The Universal Service Providers underestimate costs, meaning some premises obtain a USO connection without paying excess costs despite *actual costs* breaching the cost threshold. This risk is most relevant to BT, as its overall cost of delivering the USO is likely to be much higher than KCOM (increasing the impact for any industry fund); and

request a USO service. These proportions were [3<] and [3<] respectively after excluding respondents who said they already received a 10 Mbit/s service. However, a further [3<] of respondents said they were neither likely nor unlikely to do so. Furthermore, the survey showed that awareness of the broadband USO was low in general. As explained below, we would expect better consumer awareness to help drive take-up once the USO is introduced next year.

- b) The Universal Service Providers overestimate costs, meaning some premises are incorrectly denied a USO connection because *estimated costs* breach the threshold.

Underestimated costs

- 5.99 In respect of underestimated costs, we recognise that the Universal Service Providers should not be automatically expected to finance excess connection costs by themselves, as this could leave them unfairly exposed to circumstances genuinely beyond their control. The Universal Service Providers should be eligible for compensation for the actual costs associated with USO provision, so long as they were efficiently incurred.
- 5.100 This approach, however, places the risk associated with underestimated connection costs entirely with industry fund contributors, and by extension their customers (as fund contributors may pass on at least some of the cost of contributing to the fund to their customers). In particular, it leaves open the possibility that, in circumstances where costs are significantly underestimated, the Universal Service Providers would be required to deliver extremely costly connections which may far exceed the reasonable cost threshold. We therefore agree with BT that the Universal Service Providers should in principle be able to withdraw eligibility if it transpires that actual costs will exceed the reasonable cost threshold by a certain margin (and if the customer does not agree at this point to pay excess costs).
- 5.101 The appropriate level of this margin should balance the risk to industry fund contributors described above, with the benefits from a simpler and more straightforward consumer journey. In assessing this trade-off, we have considered the following.
- a) The primary drawback from a lower margin is that it could increase the number of instances where customers are told that they are ineligible for the USO after significant time has elapsed since they made their USO request. This would significantly worsen outcomes for those customers, who may otherwise have taken alternative broadband services in the meantime (e.g. satellite broadband). Furthermore, it could also lead to wasted costs incurred up to the point that the Universal Service Provider establishes that actual costs will exceed the reasonable cost threshold, plus any margin.
 - b) Set against this, we consider that the risk borne by contributors to any industry fund is already mitigated by the following measures that we have put in place, to provide the Universal Service Providers with the ability and incentive to ensure that their connection cost estimates are as accurate as possible.
 - i) First, we have clarified that network planning activities will be undertaken during the implementation period in relation to those premises which are expected to fall below the reasonable cost threshold. We expect that this is likely to improve the accuracy of BT's cost estimates for these premises, therefore reducing the number of instances of premises incorrectly receiving USO connections.
 - ii) Second, as part of our assessment of any unfair net cost claim by the Universal Service Providers, we would expect the Universal Service Providers to provide an

explanation and evidence to justify claiming for any connections that exceed the reasonable cost threshold. Any excess costs which cannot be reasonably explained by unforeseen circumstances would not be considered efficient.¹⁴⁸

- 5.102 We therefore consider that BT's proposed margin (i.e. 10% above the reasonable cost threshold) is too low. Recognising that this is a matter of regulatory judgement, we consider that a more appropriate margin would be 100% of the reasonable cost threshold; in other words, the Universal Service Providers should continue delivering a USO connection to a consumer who has been declared eligible until it becomes apparent that the connection cost would likely exceed £6,800 (excluding VAT). We expect that Universal Service Providers would only reach the upper end of this margin in very limited circumstances.¹⁴⁹
- 5.103 We consider that this margin would better achieve our objective of sufficiently protecting the fund against significant cost overruns and an undue burden on the industry fund, while also reducing instances of poor consumer outcomes. Given the mitigations set out above, we expect that incidences of significant cost overruns will be low. However, should this turn out not to be the case, we will review this margin in future and we may adjust it if we consider that it is not set at an appropriate level.

Overestimated costs

- 5.104 As explained above, BT will undertake network planning activities during the implementation period to those premises expected to fall below the reasonable cost threshold. To the extent that this reveals that BT's initial estimates for those premises have been overestimated, BT should revise its estimates for all other premises which are potentially eligible for the USO (i.e. those premises which BT initially estimated would exceed the cost threshold). This should improve the overall accuracy of connection cost estimates, thus lowering the number of consumers who are incorrectly classified as ineligible at this stage.¹⁵⁰
- 5.105 Furthermore, for both BT and KCOM, consumers whose estimated connection cost still exceeds the reasonable cost threshold at the point of request can request a detailed quotation from their Universal Service Provider, based on a full survey. This should provide an even more accurate estimate of the cost to that specific premises. Customers can also make a complaint if they are unhappy with the eligibility decision as we set out later in this section. Together, we consider that these provisions further mitigate the risk of consumers being incorrectly denied a USO service.

¹⁴⁸ Furthermore, as we explain in Section 10, the Universal Service Providers would also contribute towards funding the net cost of the USO. We would expect this to strengthen the incentives to accurately estimate connection costs.

¹⁴⁹ At this point, the Universal Service Provider should follow the process where costs exceed the reasonable cost threshold, as set out below, and determine whether the customer would like to pay the excess costs (which in these instances would be above £6,800 given the reliance placed by the consumer on the initial eligibility assessment).

¹⁵⁰ This reflects Condition C.1(b) whereby BT must take reasonable steps to use the most up-to-date information when assessing whether the criteria under Conditions A.3 and B.1 to B.10 (inclusive) are met. KCOM is already progressing its network build to USO premises in the Hull Area, which should mitigate this risk for them.

5.106 Additionally, as set out in Section 9, we will monitor the number of USO requests that are rejected on the basis that costs exceed the reasonable cost threshold. We do not consider that committing to carrying out regulatory spot checks or audits is necessary at this stage. However, if in future we consider it necessary, we will interrogate a sample of the Universal Service Providers' cost estimates to understand the basis on which they have rejected a USO request. If we consider that there is insufficient evidence for this, we will consider appropriate next steps. This could include taking enforcement action.

Relevant costs for determining eligibility

5.107 When assessing whether a customer is eligible for the USO, as set out in the Order, we are interested in the costs that directly arise from provision of the broadband connection to the premises. We agree with BT that this can include both network costs and downstream costs which are incremental to the provision of USO connections (i.e. it should not be limited to infrastructure costs).¹⁵¹ In particular, we agree that labour and capital costs and project management costs should in principle also be included as part of estimated connection costs, so long as: first, they are genuinely incremental to USO connections; and, second, are appropriately spread over all USO premises to which these costs apply.

5.108 However, we remain of the view that the following costs should be excluded from the Universal Service Provider's calculation of connection costs.

- a) Costs associated with promoting awareness of the USO, as they are not directly related to the provision of the broadband connection.
- b) The costs of customer support associated with the USO (e.g. BT's Universal Broadband Support Group, or UBSG). Although customers cannot technically request and obtain a USO connection without the UBSG, its primary purpose is to establish a customer's eligibility status, rather than supporting the deployment of connections to those consumers who are eligible. UBSG will also be involved in dealing with complaints or other queries which are not directly related to the provision of the connection.
- c) The cost of customer premises equipment such as a router, as this is related to the provision of a broadband service rather than the connection itself. We consider that this is consistent with the Order, which states that eligibility depends on provision of the broadband connection (rather than connections *and* services) costing less than £3,400.

5.109 As set out in the December 2018 consultation, these costs would nevertheless be eligible in principle for funding, should we determine that an unfair net cost burden has arisen.

¹⁵¹ This would include all costs listed under "Openreach" and "Enterprise" on page 15 of BT's response to the December 2018 consultation, other than the customer's router (as explained below).

Informing consumers of the outcome of their request

Our December 2018 consultation

- 5.110 In our December 2018 consultation, we proposed that 30 calendar days was a reasonable and proportionate timeframe within which consumers should be informed by the Universal Service Providers whether they are eligible for a USO service. Where further information may be required from the customer to determine eligibility, we proposed that the Universal Service Provider should allow the consumer 5 calendar days within the 30-day period to provide this evidence. If the consumer took longer than 5 days to provide the requested information, the Universal Service Provider could extend the 30-day period incrementally by the number of additional days it took for the consumer to provide the information.
- 5.111 We proposed that where the Universal Service Provider confirms that a consumer is eligible for the USO, it should make an offer to supply the connection and service for the consumer to accept. If a request is declined, the Universal Service Provider should clearly explain the reason for its refusal to each consumer and direct the consumer to relevant third parties or advise them of any other appropriate next step (for example, to consider if they wish to pay any excess connection costs above the £3,400 reasonable cost threshold).
- 5.112 Where a consumer's USO request is declined because their estimated connection cost exceeded the £3,400 reasonable cost threshold and that person decides to pay those costs, we proposed that they should be paid to the Universal Service Provider on delivery of the USO. Where that person decides not to pay the excess connection costs, we proposed that the Universal Service Provider should offer that consumer the opportunity to be re-contacted if they become eligible for the USO in the future i.e. because the costs of connecting them reduce.

Responses to our December 2018 consultation

Timeframe for responding to requests

- 5.113 Respondents broadly agreed with our proposal to require the Universal Service Providers to confirm the outcome of a consumer's request within 30 calendar days of the date of the consumer's request. The CCP noted that this timeframe was reasonable, and that using calendar days rather than working days would be simpler for consumers to understand.¹⁵² Kent County Council welcomed the setting of a clear timeframe for the Universal Service Providers to respond to requests.¹⁵³

¹⁵² CCP response to the December 2018 consultation, page 2

¹⁵³ Kent County Council response to the December 2018 consultation, page 2.

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- 5.114 BT agreed that 30 days was an appropriate timeframe for responding to consumer requests on the basis that connection costs would be based on pre-prepared estimated costs.¹⁵⁴
- 5.115 KCOM argued that the 30-day timeframe to confirm the outcome of a consumer's request should be subject to exceptional circumstances, as there were a number of cost issues which could take time to resolve, for example wayleaves.¹⁵⁵
- 5.116 In our further engagement with BT, it disagreed with our proposal that where evidence of liability for council tax or business rates is required because a consumer's address cannot be found, the consumer should be given 5 calendar days within the 30-day period to provide this evidence; and that where they took longer than 5 days to provide it the Universal Service Provider could extend the 30-day period incrementally. BT explained that in these cases it would be more complex to assess eligibility, and so they would be more likely to need the full 30-day period to confirm the outcome of the consumer's request. Further, this proposal would require complex systems design.¹⁵⁶

Information to be provided to consumers on the outcome of their request

- 5.117 The CCP agreed that when confirming the outcome of a consumer's request, the Universal Service Provider should be required to explain why it had reached its decision on eligibility, and that this should include signposting next steps for the consumer to receive the USO, or providing contact information for relevant third-parties, including the names and contact details of any third-party network provider(s) which already provide decent broadband to a location, or the names and contact details of relevant publicly-funded interventions.¹⁵⁷
- 5.118 Gigaclear argued that there was a risk that the Universal Service Providers might try to reactively retain customers who made requests who could not receive USO-level broadband on their network, by offering them a discount to retain their existing service, thereby discouraging them from exploring the availability of decent and affordable broadband on any third-party networks. Gigaclear argued that Ofcom should regulate the communication between the Universal Service Providers and consumers to prevent this.¹⁵⁸ During its further engagement BT asked in what order the Universal Service Providers should list any third-party network provider(s) which offered decent broadband to a location.
- 5.119 Which? said that, in circumstances where a consumer's estimated connection cost exceeds the £3,400 reasonable cost threshold, the Universal Service Providers should:¹⁵⁹

¹⁵⁴ BT response to the December 2018 consultation, page 16.

¹⁵⁵ KCOM response to the December 2018 consultation, page 4.

¹⁵⁶ BT response to s.135 Notice of 29 May 2019.

¹⁵⁷ CCP response to the December 2018 consultation, pages 2-3.

¹⁵⁸ Gigaclear response to the December 2018 consultation, page 8.

¹⁵⁹ Which? response to the December 2018 consultation, pages 5-6.

- a) make clear to consumers that they can challenge the outcome by making a complaint and if this remains unresolved accessing the dispute resolution body; and
- b) inform consumers of their full range of options, including waiting for more premises in their area to apply for the USO (therefore potentially bringing the connection cost below the £3,400 reasonable cost threshold), or waiting for delivery through another means e.g. public interventions.

Where connection costs exceed the £3,400 reasonable cost threshold

- 5.120 BT said consumers whose estimated costs exceeded the £3,400 reasonable cost threshold should be provided with a detailed quotation, which would be based on a full survey. BT proposed that it should have 60 calendar days from the date of the consumer's confirmation that they would like to proceed to undertake a full survey and provide the quote to the consumer.¹⁶⁰ BT also said in its engagement with Ofcom that flexibility should be permitted on at what point excess costs should be paid by consumers, and how they should be structured. This could be for example by allowing the Universal Service Provider to seek an appropriate deposit from consumers, or allowing them to spread the costs over time.
- 5.121 Which? argued that the Universal Service Providers should recalculate the consumer's excess cost once the connection is delivered (if the consumer has agreed to pay the excess costs themselves), and adjust the payment required from the consumer if take-up is higher than originally forecast.
- 5.122 Several respondents suggested that, where costs exceed the £3,400 reasonable cost threshold, publicly-funded broadband voucher schemes could be used to help consumers meet these costs.¹⁶¹

Re-contacting a consumer who becomes eligible for the USO

- 5.123 BT disagreed that the Universal Service Providers should re-contact consumers who were not eligible because they were above the £3,400 reasonable cost threshold if they subsequently become below the threshold and eligible for the USO. It said this would be complex and difficult to implement. It would also increase the cost of the scheme for little additional value.¹⁶²
- 5.124 Where a consumer is not eligible because a publicly-funded intervention was forecast to provide decent, affordable broadband to a location within 12 months of the date of the consumer's request, Which? argued that Universal Service Providers should periodically re-

¹⁶⁰ BT response to s.135 Notice of 29 May 2019.

¹⁶¹ Staffordshire County Council response to the December 2018 consultation, page 2.

¹⁶² BT response to the December 2018 consultation, page 17.

assess if the publicly-funded intervention was progressing on time and recontact the consumer if it was not.

Our decision

Timeframe for responding to requests

- 5.125 We have considered responses to our December 2018 consultation on the timeframe for the Universal Service Providers to assess eligibility and to inform the consumer of the outcome of their request. We remain of the view that it is important for consumers to have a clear timeframe on when they will know the outcome of their request.
- 5.126 Respondents, including both consumer groups and the Universal Service Providers, supported the proposed 30 calendar day timeframe, and we continue to believe that it strikes the right balance between our objective for consumers to be informed of the outcome of their request as soon as possible, and the need to allow the Universal Service Providers sufficient time to conduct the eligibility-checking exercise during periods where they may receive a large number of requests.
- 5.127 However, we accept that, to meet this timeframe, connection costs will be based on pre-prepared estimated costs, rather than on full surveys, as it is unlikely to be possible for the Universal Service Providers to carry out full surveys to calculate connection costs for every premises which may be eligible for the USO in advance of a request being received.
- 5.128 Where a request is made, and the location's address cannot be found on the AddressBase product in the qualifying categories, the Universal Service Provider is required to request evidence from the consumer of that location's liability for council tax or business rates. In this situation, we think that there is merit in BT's argument that these cases may be more complex to establish eligibility for, and so the full 30-day period is more likely to be needed by the Universal Service Provider to assess eligibility and to confirm the outcome of a consumer's request. For this reason, we have decided to allow the Universal Service Provider to extend the 30-day timeframe incrementally by the number of additional days it takes for the consumer to provide evidence of the location's liability for council tax or business rates.

Information to be provided to a consumer on the outcome of their request

- 5.129 We agree with respondents that, when confirming the outcome of a consumer's request, it is important that the Universal Service Provider should explain clearly why it has made its decision about eligibility.
- 5.130 Where the Universal Service Provider confirms that a consumer is eligible under the USO scheme, the Universal Service Provider should explain that the request meets the eligibility criteria and simultaneously make an offer to supply the connection and service for the consumer to accept. Where the consumer accepts this offer, this is the customer's confirmed order date.

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- 5.131 If a request is declined by the Universal Service Provider because it does not meet one or more of the eligibility criteria specified in the Order, we will require the Universal Service Provider to clearly explain the reason for its refusal to the affected consumer, and where relevant to direct the consumer to appropriate third parties.
- 5.132 Where there is already a broadband service at a location which meets the technical specification in the Order from any other network provider(s), the Universal Service Provider must advise the consumer which network provider(s) serve that address and give the consumer the name(s), telephone number(s) and website address(es), so that the consumer can contact them. If the Universal Service Provider does not provide this information and instead seeks to discourage a consumer from contacting any third-party network(s) by offering a discounted non-USO compliant broadband service on their network, as suggested by Gigaclear, this would contravene the universal service conditions.
- 5.133 By way of guidance, we expect the Universal Service Providers to explain the availability of third-party networks to consumers without commenting on the benefits of different broadband speeds, technologies or other service aspects.
- 5.134 We have considered existing practice by industry and public schemes, and have decided that the Universal Service Providers should provide the names of any relevant third-party network(s) in alphabetical order.¹⁶³ We expect the Universal Service Providers to take this approach, and we will work with them to ensure that consumers are given clear, concise information and that this does not give any network provider(s) an unfair advantage.
- 5.135 Similarly, where a location is forecast to have access to decent and affordable broadband as the result of a publicly-funded intervention within a year of the date of the consumer's request, we will require the Universal Service Providers to give the consumer the name and contact details of the local body for public enquiries. This is so that the consumer can find out further information and register for updates on the scheme's progress. Where the publicly-funded intervention is as the result of a voucher scheme, we will require the Universal Service Providers to give consumers the name and contact details of the supplier.
- 5.136 In the following situations, the Universal Service Provider must inform the consumer that they have the right to contact them again to make another request: (i) if the schemes change and their location is no longer due to be covered; (ii) rollout is delayed and they will not be covered within a year of their request; (iii) or the broadband service which is delivered is not affordable in line with the eligibility price threshold.
- 5.137 In these circumstances, the Universal Service Provider does not need to reassess the availability of a connection delivered by a publicly funded scheme within the next 12 months. They can assume that this eligibility criterion has been met.

¹⁶³ Openreach, Gigaclear and publicly-funded voucher schemes (e.g. Better Broadband) list providers available on their networks / approved voucher connection suppliers in alphabetical order.

Where costs exceed the £3,400 reasonable cost threshold

- 5.138 Where pre-prepared estimated costs indicate that connection costs exceed the £3,400 reasonable cost threshold, we agree with BT that it is in the best interests of consumers for costs quoted by the Universal Service Providers to be as accurate as possible, and that the Universal Service Providers should provide consumers who would like to proceed with a detailed quotation based on a full survey. Given the potential number of surveys which the Universal Service Providers may have to carry out, we consider that 60 calendar days from the date of the consumer's confirmation that they would like a full survey would allow the Universal Service Providers sufficient time to provide these.
- 5.139 We expect that detailed quotations for consumers should clearly explain the work required to deliver the specific connection and an explanation of the various costs involved. We expect the Universal Service Provider to explain to consumers that they have the following options:
- a) paying any excess connection costs themselves;
 - b) doing some of the deployment work themselves to help reduce costs (e.g. digging a trench on their land); or
 - c) purchasing commercially available satellite broadband (outside the USO scheme).
- 5.140 Where consumers agree to pay excess costs themselves, we consider that it would be appropriate to allow the Universal Service Providers to decide in the first instance on how best to reach agreement with consumers on how they will pay these costs. This would allow the Universal Service Providers to take a deposit to confirm the order, or to take payment in instalments giving consumers the option of spreading the costs. If a Universal Service Provider decides that it is appropriate to require consumers to pay a deposit, we consider that the proportion of any deposit relative to the total amount should reflect only what is necessary to secure a firm commitment from the consumer that they will pay the balance and subscribe to the USO service on delivery.
- 5.141 If actual costs are lower than forecast, for instance due to higher than forecast take-up, the consumers should pay less than agreed at the eligibility stage (as suggested by Which?). In addition, where excess costs are quoted by the Universal Service Provider, the consumer may wish to negotiate a more highly-specified broadband service as part of the arrangement, providing that the consumer agrees to meet the relevant costs above the £3,400 reasonable cost threshold. This would be a commercial arrangement between the consumer and the Universal Service Provider outside the scope of the USO scheme.
- 5.142 If consumers decline to pay any excess costs themselves (either before or having received a detailed quotation), we agree with Which? and other respondents that the Universal Service Providers should explain to consumers that they may nevertheless become eligible for the USO in due course, and that they have the right to submit a new request at a later date. They must also explain that the consumer may challenge an eligibility decision by making a complaint and include a copy of the Customer Complaints Code for USO

complaints. Our decisions in relation to complaints handling and dispute resolution are explained in Section 7 of this statement.

- 5.143 We do not consider that the Universal Service Providers should refer to planned public interventions, when the details and timing of these schemes are significantly beyond 12 months or have no forecast delivery date, as these plans can be uncertain and there would be a high risk of giving consumers false or inaccurate information.
- 5.144 It is for the UK, Nations and local government to consider whether it is appropriate to allocate public funds, for example through broadband voucher schemes, to help consumers meet excess costs. This decision is not within Ofcom's remit as part of our work to implement the USO.

Re-contacting a consumer who becomes eligible for the USO

- 5.145 We recognise that requiring the Universal Service Providers to monitor the eligibility status of individual consumers on an ongoing basis, and re-contact them if their circumstances change (e.g. due to changes in estimated connection costs, or the coverage of publicly-funded interventions) would likely increase the cost and complexity for them.
- 5.146 We expect the Universal Service Providers to continue to undertake targeted consumer awareness about the USO, particularly where circumstances in a given area materially change (e.g. where new commercial deployments significantly lower the incremental connection costs to USO premises, or where the coverage of public interventions changes).¹⁶⁴ Furthermore, consumers can also request to be kept up-to-date on the delivery progress of publicly-funded schemes by the relevant local body or voucher connection supplier (and, as set out above, the Universal Service Providers will have explained to consumers that they may become eligible for the USO at a later date, and that they have the right to submit a new request). Together, we consider that this will reduce instances whereby consumers subsequently become eligible for the USO but are not aware of this.
- 5.147 Therefore, we no longer consider that it would be proportionate to require the Universal Service Providers to monitor eligibility and proactively re-contact consumers who become eligible for the USO in due course. We have therefore removed this proposed obligation.

Ensuring appropriate consumer awareness of the Broadband USO

Our December 2018 consultation

- 5.148 In our December 2018 consultation, we highlighted the importance of consumers, who may be eligible for the USO, being made aware of how they can request a USO connection and explained that we considered responsibility for raising consumer awareness rested

¹⁶⁴ We discuss our obligations on respect of consumer awareness in more detail in the next section.

with the Universal Service Providers. We therefore proposed a general requirement on the Universal Service Providers to take all reasonable steps to ensure they raise awareness of the USO.

Responses to our December 2018 consultation

- 5.149 Which?, CCP, Virgin Media, TrueSpeed, Ombudsman Services, FSB, the Local Government Association (“LGA”), Kent County Council, KCOM, BT, ACNI, George Adam, Alan Mason and [X] all agreed with our proposals in principle.
- 5.150 No respondents objected to our overall proposal on consumer awareness. However, some stakeholders provided suggestions on how the requirement could be strengthened and highlighted the importance of raising awareness across a variety of channels.
- a) **Monitoring Universal Service Provider compliance:** Which? were concerned that Ofcom had not set out how they intended to monitor the Universal Service Provider’s compliance with the condition and what consequent action it would take for non-compliance. Which? said that the Universal Service Providers should be required to test marketing material to ensure that it is effective in educating consumers about the USO.¹⁶⁵
 - b) **Working with Local Government:** Several stakeholders (Which?, FSB, ACNI, LGA, Kent County Council, Staffordshire County Council) said that it was important for the Universal Service Providers to work with local authorities to target their awareness approach.¹⁶⁶
 - c) **Impact on vulnerable consumers:** The CCP¹⁶⁷ and ACNI¹⁶⁸ said that there may be a risk of an indirect impact on vulnerable consumers, including disabled people, and urged the use of a diverse range of channels to raise awareness.
 - d) **Raising awareness with SMEs:** The FSB¹⁶⁹ and CCP¹⁷⁰ highlighted the importance of tailoring messaging to SMEs and microbusinesses and said that without significant effort to raise awareness it is likely that many SMEs would not take advantage of the USO.¹⁷¹
 - e) **Interaction with other public rollout schemes:** Some respondents (ACS, ACNI, FSB) argued that in light of the number of public broadband schemes running in parallel to

¹⁶⁵ Which? response to the December 2018 consultation, page 3.

¹⁶⁶ See responses to the December 2018 consultation: Which? page 3, FSB page 1, ACNI page 1, LGA page 2, Kent County Council page 2 and Staffordshire County Council page 3.

¹⁶⁷ CCP response to the December 2018 consultation, page 2.

¹⁶⁸ ACNI response to the December 2018 consultation, page 1.

¹⁶⁹ FSB response to the December 2018 consultation, page 1.

¹⁷⁰ CCP response to the December 2018 consultation, page 2.

¹⁷¹ The FSB cited the Connected Nations 2017 Report which found that business parks are disproportionately less likely to have access to speeds in excess of 10Mbps and that SMEs were less likely to have benefitted from BDUK.

the USO, it is important that consumers are aware of the relationship between these and the USO.¹⁷²

- 5.151 Although BT agreed that it should take steps to raise awareness of the USO, it said that a general requirement, rather than prescriptive regulation, would be more appropriate. BT suggested an amendment to the draft universal service condition so that the Universal Service Provider would be required to take ‘reasonable steps’ instead of ‘all reasonable steps’ to raise awareness.

Our decision

- 5.152 We consider that there are a range of ways in which the Universal Service Providers should raise awareness of the USO. Our intention when drafting the original proposed condition was not to require the Universal Service Providers to take each and every reasonable step to raise awareness of the USO but rather for them to identify which formats and channels are most appropriate to raise awareness of the USO, taking into account the minimum steps we identify below. In this circumstance, we consider that it is not appropriate to impose a requirement for Universal Service Providers to take “all reasonable steps” and that “reasonable steps” is sufficient.
- 5.153 BT has provided us with information on its proposed approach to raising awareness as follows:
- a) **Direct contact with customers** - BT’s preference is to raise awareness through direct contact with customers (for example, by post) instead of Ofcom’s recommendation of using press and local radio campaigns.
 - b) **Targeting awareness activity** - BT highlighted the importance of targeted messaging in their campaigns so it is appropriate to the given customer group. For example, BT considered that those premises that are estimated to cost below the £3,400 reasonable cost threshold should receive different messaging to those above the cost threshold, so that they are aware of the need to meet any excess costs.
 - c) **Information for raising awareness** - BT said that it would need information showing the premises Ofcom has identified as eligible for the broadband USO to facilitate targeted awareness raising activity. It stressed that this data would need to be carefully managed.
 - d) **Working with Ofcom and Government** - BT said that Government and Ofcom had an important role in ensuring that the public has clear expectations about what the USO will deliver and said that it would work with Government and Ofcom to ensure coordination and consistency of messaging.¹⁷³

¹⁷² See responses to the December 2018 consultation: ACS page 2, ACNI page 1 and FSB page 1.

¹⁷³ BT response to the December 2018 consultation, page 18.

- 5.154 At this stage, we consider the approach proposed above by BT to be broadly reasonable. However, we think that it is important to maintain on-going engagement with both the Universal Service Providers to understand their progress towards raising awareness of the USO. We intend to engage with the Universal Service Providers further in the lead up to consumers first being able to request a USO connection to understand their consumer awareness plans and will continue this engagement as required to ensure that the Universal Service Providers are complying with the relevant condition.
- 5.155 We maintain the view that the minimum steps the Universal Service Providers should take to market the USO include the following:
- a) contacting likely eligible premises, including at least once by post, to let them know they may be able to receive a USO connection;
 - b) having clear information, in plain English, which is easily accessible and prominently displayed on the Universal Service Provider's website (i.e. no more than one click away from the homepage);
 - c) clearly displaying the contact number for the USO at the top of any correspondence or marketing material; and
 - d) working with relevant local authorities to raise consumer awareness of the USO in areas that have a high number of premises that are unable to receive 10Mbit/s download and 1Mbit/s upload sync speeds. The Universal Service Provider should also consider advertising in these areas through local radio and/or newspapers.
- 5.156 Although the same requirement in respect of raising consumer awareness will be imposed on both BT and KCOM in the universal service conditions, we recognise that KCOM's need to raise consumer awareness is different to BT's in practice. This is because KCOM have told us that they have just over 3,400 bookable exceptions and their intention is to ensure that all of these premises are cleared either before or by the end of March 2020. In practice this means they intend to connect most premises with FTTP by 2020.¹⁷⁴ This will mean that very few premises are likely to be eligible for the USO. However, we expect KCOM to ensure that where consumers cannot receive a broadband service within the normal commercial timeframes (30 days), those consumers are made aware that they may be eligible for the USO.
- 5.157 We note stakeholder comments on the importance of raising awareness across all groups of consumers, including vulnerable consumers and SMEs, and the importance of working with local government and in parallel to publicly-funded rollout schemes. We expect the Universal Service Providers to consult and work with relevant stakeholders when developing their awareness plans. In our December 2018 consultation, we said that we will also require the Universal Service Providers to take into consideration the need to disseminate information in appropriate formats and through appropriate channels for

¹⁷⁴ KCOM response to s.135 Notice of 10 May 2019.

customers likely to be eligible for the USO. Our expectation is also that the Universal Service Providers will allow consumers to make USO requests via different channels, including through their website, by telephone or in writing. In addition, we would expect that the Universal Service Providers will make the different request routes clear in any direct communications or USO information.

- 5.158 Ofcom also has an important role in raising awareness of the USO so taking a coordinated and complementary approach is important. In addition to engaging with the Universal Service Providers, we intend to engage with Government and consumer bodies on raising consumer awareness of the USO.

Universal service conditions and legal tests

- 5.159 Our decisions on the process for determining the eligibility of requests made for USO connections and services set out above are captured in universal service conditions on BT and KCOM.
- a) The conditions specify the substantive requirements and process the Universal Service Providers must follow to determine eligibility of each consumer who requests a USO connection and service. This includes the substantive requirement and process for checking the following:
 - i) whether a premises is a residence or a place of business;
 - ii) whether an affordable broadband service is available at each requested location;
 - iii) whether the location is due to be covered by a publicly-funded intervention; and
 - iv) whether premises fall within the cost threshold of £3,400.
 - b) The conditions also impose an obligation on the Universal Service Providers to respond to each consumer within 30 calendar days of his or her request, confirming whether the consumer is eligible to receive the USO connection and service and explaining the reasons for the provider's decision on eligibility.
 - c) In addition, the conditions contain an obligation on the Universal Service Providers requiring them to take reasonable steps to raise awareness of the USO.
 - d) The conditions also include the power for us to give directions, approvals and consent so that we are able to specify further detail concerning the substantive requirements and the process the Universal Service Providers should follow if appropriate. The conditions also include a requirement for the Universal Service Providers to comply with any such direction(s), approval(s) and consent so that any contravention would constitute a contravention of the conditions itself and would therefore be subject to enforcement action under sections 94 to 104 of the Act.
- 5.160 For the reasons set out above and summarised below, we are satisfied that that universal service conditions A.1, A.3, B.1 to B.10, C.1(b), H.1 and I.1 (as set out in Annex 1) meet the

relevant tests set out in the Act. Our decisions in respect of the conditions form part of the process of implementing the Order as required by the Act. Once those conditions are in force, their purpose will be to give effect to the terms of the Order.

5.161 When considering the imposition under sections 67 and 45 of the Act of universal service conditions in a particular case, we must be satisfied that the legal tests in section 47(2) of the Act are met. Conditions A.1, A.3, B.1 to B.10, C.1(b), H.1 and I.1 which we are imposing are:

- a) **objectively justifiable**, as they seek to set clear substantive requirements and processes which the Universal Service Providers should follow to determine the eligibility of a request as defined by the Order within a timeframe that provides certainty to consumers; our approach seeks to enable the Universal Service Providers to check the eligibility of consumers promptly so that consumers can start benefiting from the USO scheme within an appropriate time; our condition requiring the Universal Service Providers to raise awareness of the USO is aimed at ensuring that consumers are aware that they may benefit under the USO scheme;
- b) **not unduly discriminatory**, as the same obligations are imposed on BT and KCOM, as the Universal Service Providers within their respective areas;
- c) **proportionate**, since we have taken account of comments raised by the stakeholders and balanced the need for the Universal Service Providers to have clear and workable criteria and processes, and the need for consumers to be able to easily understand, access and navigate the request route in order to find out quickly whether they are eligible for a connection under the USO; and
- d) **transparent**, in that the conditions we are imposing are clear in their intention and seek to ensure that the Universal Service Providers have clear and workable criteria and processes to determine eligibility and deliver USO connections and services. They also seek to ensure that Universal Service Providers provide certainty to consumers about a location's eligibility as soon as possible. Further, we have sought to be transparent in devising the conditions through public consultation.

5.162 We also consider that the conditions we are imposing meet our duties and the Community requirements under sections 3 and 4 of the Act. We think that the conditions further the interests of citizens in relation to the communications matters and the interests of consumers in the relevant markets as well as promote the interests of EU citizens because they seek to ensure that consumers and businesses find out whether they are eligible as soon as possible and that the eligibility checking process is easy to understand, access and navigate from consumers' perspective.

6. Delivering USO connections to eligible consumers

- 6.1 In this section, we set out our decision to impose obligations on BT and KCOM relating to the length of time it takes to deliver a USO connection from the point at which a consumer confirms an order for a USO connection.
- 6.2 We are requiring the Universal Service Providers to take all necessary steps to ensure that each USO order is delivered as soon as possible.
- a) BT will be required to deliver at least 80% of orders within 12 months of a confirmed order, at least 95% of orders within 18 months, and at least 99% of orders within 24 months. For any orders that take longer than 24 months to deliver, BT must demonstrate to Ofcom that each such order was not capable of being delivered within 24 months.
 - b) KCOM will be required to deliver orders within 12 months of the order being placed. KCOM must be able to demonstrate 'exceptional circumstances' existed in preventing it being able to deliver connections within 12 months.
- 6.3 We also respond to comments regarding the technologies and use of third-party infrastructure to deliver the USO.

Timeframe for delivering USO connections

Our December 2018 consultation

- 6.4 In our December 2018 consultation, we proposed that once a consumer confirms an order for a USO connection it would be required to deliver the USO connection as soon as reasonably practicable and in any event within a 12-month timeframe. We proposed that the Universal Service Provider should provide written confirmation of the indicative connection and service delivery time to the customer; and nearer the time of delivery, confirm the specific customer service activation date.
- 6.5 We recognised that there may be some limited circumstances where there are legitimate reasons why the 12-month timeframe for delivery cannot be met so proposed to allow for the 12-month timeframe not to apply where there are specific exceptional circumstances outside the control of the Universal Service Provider.
- 6.6 We considered that exceptional circumstances would only apply where there were external factors, beyond the Universal Service Provider's control, that caused a significant delay leading to the 12-month delivery timeframe to be missed, in a situation where the Universal Service Provider would otherwise have met the obligation. We proposed that exceptional circumstances would be limited to: environmental factors such as extremely difficult network build conditions; damage caused by exceptionally severe weather (for

example floods or storm damage); restrictions to street access; and customer or other private wayleave which had the following characteristics:

- a) it is beyond the normal range of expectations;
- b) it has a significant impact on either access or to existing infrastructure that causes prolonged delay; and
- c) it is critical to delivery of the USO service.

6.7 If required, we proposed to provide further detail through a direction given under the universal service condition or through guidance on circumstances that we would consider exceptional in practice.

Responses to our December 2018 consultation

Delivery timeframes

- 6.8 Several respondents, including KCOM, agreed with our proposals for a 12-month maximum network build timeframe.¹⁷⁵
- 6.9 Alan Mason, the CCP, and the FSB considered that our proposed 12-month network build timeframe was too long and that it should be reduced to less than 6 months.¹⁷⁶
- 6.10 BT said that our proposed 12-month timescale is unachievable for all cases and should be more flexible. BT instead proposed that the Universal Service Provider should be required to deliver the 'majority' of premises within 12 months and 'all' premises within 24 months.¹⁷⁷ BT also highlighted several factors that contribute to longer network build timescales, including the need to negotiate private wayleaves, road closure notice periods, and tree or branch clearing.¹⁷⁸
- 6.11 Virgin Media also disagreed with our proposals, stating that they did not accurately reflect the timeframes achieved through commercial delivery and that Ofcom would be setting the bar far too high. Virgin Media also suggested that delivery timeframes should be relaxed where publicly-funded deployment is uncertain.¹⁷⁹
- 6.12 The BiT Commons disagreed with our proposals and suggested that our proposals were unachievable and underestimated the complexity of USO build. The BiT Commons suggested that 36 months would be a more appropriate timeframe.¹⁸⁰

¹⁷⁵ KCOM response to the December 2018 consultation, page 7.

¹⁷⁶ See responses to the December 2018 consultation: Alan Mason page 2, CCP pages 2-3 and FSB page 2.

¹⁷⁷ BT response to the December 2018 consultation, pages 4-5.

¹⁷⁸ BT response to the December 2018 consultation, page 18-26.

¹⁷⁹ Virgin Media response to the December 2018 consultation, page 9.

¹⁸⁰ The BiT Commons response to the December 2018 consultation, pages 4-5.

- 6.13 [3<] said that where a publicly-funded intervention did not deliver as forecast, the Universal Service Provider should fast-track the delivery of any subsequent request.¹⁸¹
- 6.14 We note that Gigaclear and CityFibre also suggested network build would take longer than 12 months in response to our June 2018 document.¹⁸²

Exceptional Circumstances

- 6.15 A number of respondents, including KCOM, agreed with our ‘exceptional circumstances’ proposals, noting that Ofcom would need to carefully consider these circumstances when they arise.¹⁸³
- 6.16 The ACNI, the LGA, Kent County Council, and the CCP all raised concerns that our definition of ‘exceptional circumstances’ could be too broad and could allow Universal Service Providers to miss the 12-month timeframe. The LGA said that the Universal Service Providers should engage with local authorities as early as possible to identify potential delays and mitigations.¹⁸⁴
- 6.17 The CCP asked whether Ofcom could address certain forms of ‘exceptional circumstances’ via regulatory or statutory interventions, for example measures to address restricted street access.¹⁸⁵
- 6.18 As noted above, BT did not agree with the overall approach proposed by Ofcom in respect of the USO delivery obligation. BT said that if this approach was however adopted, it had concerns that the definition of ‘exceptional circumstances’ was too narrow and recommended an alternative set of wording that removed the words “it is beyond the normal range of expectations” on the grounds that there are numerous common occurrences that can have a significant impact on delivery timescales. BT’s proposed alternative definition of exceptional circumstances: ““Exceptional Circumstances” means any environmental factor, restriction to street access, or customer or third-party wayleave process which has the following characteristics: (i) it is beyond BT’s control; (ii) it has a significant impact on either access or existing infrastructure that causes prolonged delay to the delivery of Broadband Services; and (iii) it is critical to the delivery of Broadband Services”.¹⁸⁶

¹⁸¹ [3<] response to the December 2018 consultation page 1.

¹⁸² See responses to the June 2018 document: Gigaclear page 2 and CityFibre page 8.

¹⁸³ KCOM response to the December 2018 consultation, pages 4-5.

¹⁸⁴ See responses to the December 2018 consultation: The Advisory Council for Northern Ireland page 2, LGA pages 2-3, Kent County Council pages 2-3 and CCP pages 2-3.

¹⁸⁵ CCP response to the December 2018 consultation, page 4.

¹⁸⁶ BT response to the December 2018 Consultation, pages 26-27.

Our decision

Further analysis on BT's delivery timeframes

- 6.19 Having considered responses to the December 2018 consultation, we sought further detail from BT on the underlying assumptions and evidence supporting BT's proposed timeframes for delivering USO connections using fibre to the premises.
- 6.20 BT stated that it would undertake four distinct phases as part of the network build process, which it estimates will take between 12 and 24 months to complete:
- a) **Pre-planning** - this would include network modelling, negotiating supplier contracts and forecasting internal resources.
 - b) **Planning** - planning of network spine, desktop planning and designing job packs.
 - c) **Build** - physical build of the network including ducting, joints, cabling and light tests.
 - d) **Provisioning** - delivering connections to individual premises.¹⁸⁷
- 6.21 We consider that FTTP is likely to be an efficient technology choice for delivering USO connections to the majority of USO premises, so we have specifically focused on the evidence to establish reasonable timeframes for FTTP. However, there may be circumstances where it is more appropriate to use a different technology and we have factored the timeframes for other technologies into our assessment of the options.
- 6.22 BT provided us with information on the delivery timeframes for 3,000 BDUK phase 3 projects that were delivered using FTTP. BDUK Phase 3 projects deliver superfast broadband to premises which are often in hard to reach rural locations of the UK. BT informed us that based on a sample analysis on premises delivered through BDUK projects the majority of projects were built within 12 months. Also, BT informed us that premises being delivered through the BDUK programme are more comparable to USO premises than any of its commercial network roll out in terms of their complexity.¹⁸⁸
- 6.23 Table 2 sets out the percentile distribution per month taken to provide a broadband connection for 3,000 BDUK phase 3 projects delivered since 2017 if all planning and surveys are carried out in advance. This data shows that BT delivered 80% of BDUK connections within 12 months, 95% within 18 months and 99% within 24 months.
- 6.24 These figures are based on BT carrying out all the planning and surveying work during the implementation period prior to a customer being able to place an order. We consider that it is appropriate for BT to carry out these activities during the implementation period of the USO so that it is ready to deliver USO connections when the USO conditions come into force and it starts to receive orders. We further discuss the timings for pre-planning and planning during the implementation period in Section 10 of this document.

¹⁸⁷ BT response to s.135 Notice of 25 April 2019.

¹⁸⁸ BT response to s.135 Notice of 25 April 2019.

Table 2: BT estimated percentage of USO connections completed by month

Percentile	The number of months taken to provide a connection if planning and surveys are carried out in advance
[redacted]	[redacted]
80th	12 months
[redacted]	[redacted]
95th	18 months
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

6.25 The position we set out in our December 2018 consultation proposed a 12-month timescale for delivering USO connections to the vast majority of eligible premises, whilst allowing longer timeframes in justified, difficult cases. On the basis of this BDUK data, BT is unlikely to be able to deliver all USO connections within 12 months, particularly given that the delivery of USO connections is likely to be more challenging than the delivery of BDUK connections. Following responses to the consultation, we have also considered the difficulties that arise with defining ‘exceptional circumstances’ to ensure that the definition only capture genuine circumstances that could lead to a justifiable delivery delay and are not too broad such that they would give BT too much flexibility to deliver connections over a longer time period.

6.26 At the time of our December 2018 consultation, we did not have data and evidence from BT to specify exceptional circumstances more precisely. Subsequently, we have interrogated and tested the BDUK phase 3 data provided by BT by examining the individual aspects of network build that make up the overarching timeframes. This data has given us a better understanding of the timescales involved in delivering challenging projects similar to the USO. We consider that it is reasonable to use this data as a benchmark, while noting that delivery of the USO is likely to be more challenging than previous network rollout projects given the hard to reach, disparate nature of premises unable to get decent

broadband. We think that using this data will ensure achievable but appropriately challenging targets for BT.

- 6.27 We have therefore identified a more precise set of network build obligations to be imposed on BT as the Universal Service Provider. We consider that the package of remedies set out below better achieves our overarching objective to deliver the USO as quickly as possible, so consumers benefit as soon as possible. It will also be more transparent, providing greater clarity about when premises are likely to be connected, and is likely to result in a greater proportion of premises being connected within reasonable timeframes.
- 6.28 We think that it is important that BT delivers connections as soon as it can. Therefore, we are imposing:
- a) an obligation for BT to take all necessary steps to ensure that each USO order is delivered as soon as possible; and
 - b) an obligation to require 80% of connections within 12 months; 95% within 18 months; and 99% within 24 months of a confirmed order being placed.
- 6.29 The remaining 1% may take longer than 24 months but only where BT can demonstrate that each such connection was not capable of being delivered within that 24-month period i.e. there was a factor outside of BT's control that directly caused build to be delayed by an extended period.¹⁸⁹
- 6.30 Combined, the obligations will ensure that BT does not simply meet the percentage obligations but is instead required to deliver connections above these percentage targets where possible. They also seek to prevent BT from leaving behind certain consumers due to it having up to 24 months to deliver some connections. We are also setting public reporting requirements and additional reporting to Ofcom on connection and supply times. We set this out in Section 9.

Obligation on KCOM's delivery timescales

- 6.31 We have considered whether it is appropriate to align the network build timescales in the Hull Area with those we are implementing in the rest of the UK. However, we think that given the likely small number of USO premises and KCOM's expansive existing infrastructure in the Hull Area, the situation in Hull is sufficiently different from the situation in the rest of the UK for it to be appropriate to adopt our consultation proposals in relation to the delivery timeframes in the Hull Area.
- 6.32 KCOM will therefore be required to deliver all USO connections within 12 months from the point at which a consumer makes a request, except in exceptional circumstances. Having considered and interrogated network build data provided by KCOM, and the cause and

¹⁸⁹ For example, a 'no-dig' order from the Local Authority that prevents any civil works from taking place within a specific area for several years. As noted above, in these circumstances, BT would still be required to take, and be able to demonstrate to Ofcom that it has taken, all necessary steps to ensure that each USO order is delivered as soon as possible.

length of delays to delivery, we consider that it is very unlikely that any premises in Hull will not be provisioned within 12 months of making a request.

Keeping consumers informed of when they will be connected

- 6.33 We consider it necessary that the Universal Service Providers keep consumers effectively informed as to the progress of their network build and likely delivery of the USO service to ensure that consumers remain aware of progress on the delivery.
- 6.34 BT has suggested that it may only enter into a contract with a USO consumer once the required infrastructure to deliver the connection has been built. We consider that the Universal Service Providers are best placed to decide in the first instance when to enter into contracts with their customers. We have therefore decided not to impose any obligations in this regard. However, we do consider that consumers should be informed about their rights and the Universal Service Provider's obligations under Ofcom's conditions. We have captured that obligation in the universal service condition.¹⁹⁰
- 6.35 We consider that delivering connections as quickly as possible is integral to the success of the USO and will therefore be closely monitoring the Universal Service Provider's performance. We set out in Section 9 the reporting requirements we are imposing on BT.
- 6.36 Finally, in relation to [X] suggestion that where a publicly-funded intervention did not deliver as forecast, the Universal Service Provider should fast-track the delivery of any subsequent request, although we appreciate that this will be frustrating for affected consumers, we do not think that it will be practical for the Universal Service Providers to prioritise delivery of these connections.

Universal service conditions and legal tests

- 6.37 The requirements we are imposing on BT on the timeframe for delivering USO connections set out above are captured in universal service conditions as follows:
- a) BT must take all necessary steps to ensure that each USO order is delivered as soon as possible; and in any event, deliver 80% of connections within 12 months of an order; 95% within 18 months of an order; and 99% within 24 months of an order. BT may deliver the remaining 1% of connections in a period longer than 24 months provided BT can demonstrate that each such order was not capable of being delivered within 24 months even though BT has taken all necessary steps.
- 6.38 The requirements we are imposing on KCOM on the timeframe for delivering USO connections set out above are captured in universal service conditions as follows:
- a) Unless exceptional circumstances arise, KCOM is required to deliver a USO connection and service to each eligible end-user as soon as reasonably practicable and, in any

¹⁹⁰ This is outlined in Condition C8.

event, no later than 12 months from the date on which that end-user placed an order with KCOM.

- b) We have defined exceptional circumstances as environmental factors such as extremely difficult network build conditions, damage caused by exceptionally severe weather (for example floods or storm damage), restrictions to street access, and customer or other private wayleave, which each has the following characteristics: it is beyond the normal range of expectations; it has a significant impact on either access or existing infrastructure that causes prolonged delay; and it is critical to delivery of the USO service. Where the exceptional circumstances arise, the 12-month delivery period may be extended to take account of any period of delay which is beyond KCOM's control and arises despite KCOM taking all measures within its control to seek to deliver a USO connection and service within the 12-month delivery period. For the purposes of this condition, an order is proposed to be defined as a confirmed request for a USO connection and service which is submitted to the Universal Service Provider by an eligible end-user by any method of communication, including by telephone, email and letter.

6.39 We have decided to include the power for us to give directions, approvals and consent under these universal service conditions. The conditions also include a requirement for the Universal Service Providers to comply with any such direction(s), approval(s) and consent so that any contravention would constitute a contravention of the condition itself and would therefore be subject to enforcement action under sections 94 to 104 of the Act.

6.40 For the reasons set out above and summarised below, we are satisfied that universal service conditions for BT C.5 to C.8 and I.1 and for KCOM C.5 to C.7 and I.1 (as set out in Annex 1) meet the relevant tests set out in the Act. Our decision in respect of the conditions form part of the process of implementing the Order as required by the Act. Once those conditions are in force, their purpose will be to give effect to the terms of the Order.

6.41 When considering the imposition of universal service conditions under sections 67 and 45 of the Act in a particular case, we must be satisfied that the legal tests in section 47(2) of the Act are met. The conditions which we have decided to impose on BT and KCOM are:

- a) **objectively justifiable**, in that they seek to ensure that eligible consumers and businesses are provided with broadband connections as specified in the Order as soon as possible, so that those consumers and businesses are no longer at a social and/or economic disadvantage;
- b) **not unduly discriminatory**, because even though we have decided to impose a different set of obligations on BT than KCOM, both sets are underpinned by our objective to ensure that consumers can receive USO connections and services as soon as possible whilst recognising that the Universal Service Providers need sufficient time in justified, difficult cases. The obligations which we have decided to impose on each

provider reflect its circumstances and the scale of the USO task that each provider faces;

- c) **proportionate**, since we have taken account of our duty to implement the Order and comments raised by the stakeholders, in particular BT and KCOM. The set of obligations we have decided to impose on each Universal Service Provider seeks to ensure that eligible consumers and businesses can receive USO connections and services as soon as possible whilst recognising the scale of the task that each provider faces; and
- d) **transparent**, in that the conditions are clear in their intention to ensure that the Universal Service Providers deliver USO connections and services as soon as possible for the benefit of eligible consumers and businesses. Further, we have sought to be transparent in devising the conditions through public consultation.

6.42 We also consider that the conditions meet our duties and the Community requirements under sections 3 and 4 of the Act. We think that our decisions further the interests of citizens in relation to the communications matters and the interests of consumers in the relevant markets as well as promote the interests of EU citizens because they seek to ensure that all consumers and businesses who meet the eligibility criteria can receive USO connections and services as soon as possible following their requests. This will help ensure that those persons are no longer at a social and/or economic disadvantage and can benefit from having decent and affordable broadband.

Other issues raised by stakeholders relating to the delivery of USO connections

Technologies used to deliver the USO

Our December 2018 consultation

- 6.43 We explained that the USO is technology neutral, and that it falls to Universal Service Providers to decide how to provide a USO connection to the consumer in a way which meets the Order. In doing so, Universal Service Providers should:
- a) ensure their choice of technology meets the technical requirements of the USO and can deliver connections to all eligible premises within the timeframes specified in the universal service conditions; and
 - b) demonstrate that the costs incurred in providing the USO connection were efficient, if any compensation is subsequently sought from an industry fund.
- 6.44 We stated that it would not be appropriate to determine in advance which technology would be most efficient in all cases, but that we would only compensate a net cost where it can be demonstrated that the costs incurred in providing connections were efficient.

Responses to our December 2018 consultation

- 6.45 Respondents generally supported our intention to consider, as part of any net cost assessment, whether the Universal Service Provider's choice of technology was efficient (taking account of operating costs as well as capital costs). However, Virgin Media said that it struggled to see how operating cost efficiencies could justify using full-fibre to deliver the USO, instead of FTTC or wireless broadband.
- 6.46 Virgin Media also said that the Universal Service Providers should not be eligible for any funding where they had been found to deploy inefficient or 'gold plated' technologies (as opposed to claiming a reduced amount, based on an *ex-post* assessment of the cost of the most efficient technology).¹⁹¹

Our decision

- 6.47 We remain of the view that an assessment of the Universal Service Provider's technology choice is an important aspect of verifying the net cost of the USO. If the Universal Service Providers make an application for funding, we expect them to demonstrate that the technology or technologies used to deliver USO connections were efficient choices.
- 6.48 In doing so, we recognise that it is not necessarily efficient for the Universal Service Providers to undertake multiple detailed survey exercises to each USO premises, based on different technologies. Rather, in areas where multiple technologies are viable, we expect them to have considered at the pre-planning and planning stages the most efficient way of feasibly delivering USO connections to a given cluster of USO premises, taking account of (i) the technologies available to them at the time; and (ii) the conditions imposed upon them (including in respect of delivery timescales, as set out above).
- 6.49 We also recognise that it may not be efficient to mix technologies in a particular area, where this prevents the Universal Service Providers from realising important economies of scale or scope. We consider that this is another relevant consideration when assessing the efficiency of the Universal Service Providers' overall technology choices (at a programme level), and we would take account of this as part of any assessment.
- 6.50 We have also considered stakeholder views on specific technologies that could be used for the USO. In respect of fixed deployments, as noted by Virgin Media, it is possible that FTTC may be a less expensive technology for some premises than full-fibre, even after operating efficiencies are considered. However, given the dispersed nature of USO premises, full-fibre may in other instances be more efficient than deploying cabinet-based technology which may only serve a relatively small cluster of premises.¹⁹² Full-fibre deployment could also generate higher revenues than FTTC connections, which would lower the *net* cost of

¹⁹¹ Virgin Media response to the December 2018 consultation, page 3.

¹⁹² A significant proportion of areas that can be supplied with a superfast service using FTTC, and where there is a large concentration of premises, have been covered by BDUK rollout programmes in recent years. This means that USO premises are more likely to be in areas where FTTC is not a viable solution.

the USO (which is the relevant measure of efficiency when assessing compensation from an industry fund).

- 6.51 In circumstances where full-fibre is used, we would expect the Universal Service Provider to submit such evidence justifying the efficiency of this network build choice. This would, for example, involve demonstrating that the lifetime net cost of a full-fibre connection was lower (e.g. for one or more of the reasons discussed above), or that it was necessary to meet the technical requirements of the USO in terms of minimum upload and download speeds (i.e. that FTTC was not a viable technology for that customer).
- 6.52 In respect of wireless broadband, we have set out in Section 3 that this technology is likely to be able to deliver the technical specification of the USO in most cases. We would therefore consider this as part of our assessment. The cost and viability of using fixed wireless to deliver USO connections will depend heavily on the specific nature of the solution, as well as the precise location and clustering of potentially eligible USO premises. We expect that fixed-line technologies could well be more efficient than fixed wireless in certain circumstances. In particular, for the areas in which BT has been designated as the Universal Service Provider, we note that BT already intends to make its 4G home broadband product available to a large number of existing USO premises on a commercial basis. This suggests that the remaining USO premises are likely to be those for which incremental fixed wireless delivery costs are higher.
- 6.53 Nevertheless, if and when the Universal Service Providers make a funding claim, we would expect them to provide evidence showing that they had fully considered all viable options for wireless broadband when planning their network expansion.
- 6.54 If we concluded that the Universal Service Providers had used an inefficient technology to deliver some USO connections, we would make appropriate adjustments to the net cost. We disagree that no compensation whatsoever should be allowed, as this would not compensate the Universal Service Providers for the efficient net cost of complying with its USO obligations. We consider that this provides sufficient incentives for the Universal Service Providers to make efficient technology choices, as it would still result in them making a loss from any inefficient decisions they make in delivering USO connections.

Use of third-party networks to deliver the USO

Our December 2018 consultation

- 6.55 We explained that, while using existing third-party infrastructure may in some cases be the most efficient approach to delivering USO connections, there are reasons why this would not always deliver connections in shorter timeframes and at lower cost. Nonetheless, we said that our assessment of any unfair net cost claim would consider whether the Universal Service Provider could have delivered the USO more efficiently, using this alternative network infrastructure.

Responses to our December 2018 consultation

- 6.56 CityFibre welcomed our proposal to consider, as part of any net cost assessment, whether the Universal Service Provider could have delivered the USO more efficiently using alternative network infrastructure.¹⁹³ Gigaclear also welcomed our proposal, but it urged us to specifically set out the measures we would take to assess whether a Universal Service Provider's selection of its own network infrastructure was more efficient. Gigaclear noted that it already provides wholesale access on its network [§<].¹⁹⁴
- 6.57 TrueSpeed and Vodafone said that we are not mandating that the Universal Service Providers use other operators' networks to deliver the USO, where it is cheaper or more efficient to do so, despite the benefits of this approach.¹⁹⁵

Our decision

- 6.58 As set out in our December 2018 consultation, we will consider whether the Universal Service Providers could have delivered the USO more efficiently using alternative network infrastructure as part of our assessment of any unfair net cost claim. We consider that this will provide the Universal Service Providers with incentives to pursue such arrangements, where there is a realistic prospect of cost savings.
- 6.59 The first step in this process involves identifying where other network infrastructure is already present in USO areas, before understanding how many USO premises are located significantly nearer to pre-existing alternative network infrastructure than the Universal Service Provider's own infrastructure. This step is likely to be undertaken during the implementation period, when we expect most network planning activities to occur.
- 6.60 However, as set out in Section 8, we are not providing the Universal Service Providers with information on the location of other providers' network coverage footprints. This makes it more difficult for them to identify possible opportunities to use alternative network infrastructure. As such, we consider that alternative network providers are best placed to approach the Universal Service Providers in the first instance, to discuss such arrangements. They can do this by using our publicly-available Connected Nations dataset to identify how many USO premises are located in postcode areas in which their pre-existing network is present. The Universal Service Providers would then be expected to engage in discussions and negotiate with alternative network providers in good faith concerning the use of their network to serve those premises.
- 6.61 Where credible opportunities for cost-saving arrangements emerge from such discussions, we would expect the Universal Service Providers to pursue such opportunities and contract with the network operator, or else document the outcome of those discussions (including, if they were not successful, the specific reasons for this). We would verify this as part of

¹⁹³ CityFibre response to the December 2018 consultation, page 10.

¹⁹⁴ Gigaclear response to the December 2018 consultation, page 10.

¹⁹⁵ See responses to the December 2018 consultation: TrueSpeed page 2 and Vodafone page 4.

our assessment of the net cost. While we cannot pre-empt the outcome of any discussions, we note the following factors are particularly likely to affect whether using alternative infrastructure is more efficient than using the Universal Service Provider's own network.

- a) **The number of affected premises:** If pre-existing alternative network infrastructure is only close to a few USO premises, it is likely that the additional time and costs required to negotiate wholesale access agreements, and to integrate with the Universal Service Provider's network and systems, may outweigh any network build savings from such agreements.¹⁹⁶ Furthermore, these agreements are only likely to be more efficient if an alternative network can be used to deliver a discrete cluster of USO premises. If it can only serve a smaller set of USO premises, it may not deliver cost savings because the Universal Service Provider may still be required to extend its network nearby, in order to serve other premises that request a USO connection.
- b) **The price of network access:** The Universal Service Providers may not secure ongoing network access at cost. For example, the alternative provider may include a margin over its own costs, the effect of which could be to drive the wholesale price above the Universal Provider's own costs.
- c) **The timing of discussions:** The Universal Service Providers need to undertake network planning activities in advance of customers being able to request connections. We therefore consider that opportunities for using alternative networks are more likely to be viable if the Universal Service Providers are given sight of these opportunities at the earliest possible stage i.e. as soon as possible after designation.

¹⁹⁶ We recognise that Gigaclear already provides wholesale access on its existing network, which would reduce some of these one-off costs in this instance. However, in the context of the USO, BT would be contracting to extend Gigaclear's network to premises not currently being served with decent broadband, which we would expect to fall outside the scope of existing network access.

7. Proposed requirements to ensure USO customers receive a fair service

7.1 In this section, we explain how we will secure a fair outcome for USO consumers on pricing, quality of service and complaints handling. Our decisions aim to ensure that USO connections and services are affordable and priced in line with comparable services, and that USO customers receive the same quality of service as other customers connected on commercial networks. We also set out how consumers will be able to challenge the Universal Service Provider's decision about eligibility under the USO scheme.

Uniform and affordable pricing

7.2 The Order states that Ofcom should ensure that the Universal Service Providers offer USO connections and services at prices that are:

- a) affordable; and
- b) uniform throughout the UK, unless Ofcom has determined that there is clear justification for not doing so.¹⁹⁷

Our December 2018 consultation

7.3 To ensure that prices for USO connections and services will be affordable and uniform we proposed an obligation which consists of two elements:

- a) A requirement that the Universal Service Providers offer broadband connections and services to USO customers at the same price that they offer to non-USO customers.
- b) A safeguard cap on the amount the Universal Service Providers can charge USO customers for a broadband connection and service, set at £45 per month, including VAT, averaged over the fixed commitment period, including any upfront connection charges, monthly payments and other broadband charges. This level would be kept constant in real terms by updating it annually to reflect the consumer price index ("CPI"). We explained that we may adjust the level of the safeguard from time to time to ensure that it remains effective.

7.4 We also noted that while the USO does not make provision for a social tariff, we would be seeking voluntary commitments from BT and KCOM to offer their broadband social tariff to USO customers.

¹⁹⁷ Paragraphs 1 and 2 of Schedule 2 of the Order.

Responses to our December 2018 consultation

Responses on uniform pricing

7.5 No respondents objected to our proposal on uniform pricing. BT, KCOM, Kent County Council, Which?, the CCP, ACNI, Alan Mason, George Adam and [X] all supported the proposal. TrueSpeed said that it partly agreed and pointed to general concerns with our pricing proposals as outlined in Section 5. The CCP said that Ofcom should monitor uniform pricing closely, and if necessary, take steps to ensure that all consumers are treated fairly.¹⁹⁸

Responses on the safeguard cap

7.6 Which?, Gigaclear, the LGA, Kent County Council, ACNI, ACS, Alan Mason and George Adam agreed with our proposals to introduce a safeguard cap. The LGA said that without a cap there would be a large variance between the cost and affordability of installing and supplying a USO connection between local areas.¹⁹⁹

7.7 Which? said that Ofcom should clarify the fixed commitment period and specify that USO consumers cannot be subject to a longer fixed term period than they would otherwise usually be offered.²⁰⁰

7.8 ACS said that there should be safeguards to ensure that those premises that are connected through fixed wireless are not subject to overcharging as Scotland has a higher percentage of fixed wireless properties than the UK average with 21% in rural areas compared to a UK average of 12.6%.²⁰¹

7.9 BT and KCOM disagreed with the safeguard cap for the following reasons.

- a) **The cap would have the effect of introducing a new form of retail price regulation:** BT raised concerns that the cap introduced a restriction on what BT can charge in USO areas and in its view the uniform pricing mechanism would extend that restriction to non-USO areas. BT said that this was contrary to Ofcom's duties and overarching approach to price regulation.²⁰²
- b) **Uniform pricing provides sufficient protection for consumers:** BT²⁰³ and KCOM²⁰⁴ said that uniform pricing should address Ofcom's concerns as it extends the benefits of retail competition and existing wholesale regulation in the fixed market to USO areas.

¹⁹⁸ CCP response to the December 2018 consultation, page 6.

¹⁹⁹ LGA response to the December 2018 consultation, pages 1-2.

²⁰⁰ Which? response to the December 2018 consultation, page 8.

²⁰¹ ACS response to the December 2018 consultation, page 3.

²⁰² BT response to the December 2018 consultation, page 10.

²⁰³ BT response to the December 2018 consultation, page 10.

²⁰⁴ KCOM response to the December 2018 consultation, page 7.

- c) **The eligibility price threshold makes the safeguard cap redundant:** BT said that if Ofcom imposes a price threshold as part of eligibility, the safeguard cap is made redundant as BT must in any case offer a USO service below £45.²⁰⁵
 - d) **Business price caps:** KCOM said that it is inappropriate to apply a different business price cap for its typically faster and more expensive business broadband products.²⁰⁶
 - e) **Migration of consumers to faster broadband:** BT said that a cap risks constraining the ability of industry to migrate customers to faster products.²⁰⁷
- 7.10 Virgin Media objected to the safeguard cap saying that it saw little evidence of a broadband affordability problem and that it is better instituted when the evidence on the ground demonstrates a need.²⁰⁸
- 7.11 Consumer bodies and local government commented on our intention to seek voluntary commitments on social tariffs. Kent County Council welcomed our proposal to seek voluntary arrangements for introducing a USO related broadband social tariff.²⁰⁹ The LGA²¹⁰, the CCP²¹¹ and Which? argued that to prevent further digital exclusion, a social tariff should be mandated in a similar manner to the telephony USO, and without this it is unlikely that the most financially vulnerable would be able to afford a broadband bill of £45 a month. Which? asked Ofcom to keep this under close review.²¹²

Our decision

- 7.12 Our role is to secure a proper and effective implementation of the Order. In our judgment, to achieve that, we need to ensure that people connected under the USO pay no more for equivalent services than people in other parts of the country, and that broadband connections and services under the USO are provided at affordable prices.
- 7.13 To ensure that prices for USO connections and services will be affordable and uniform, we have decided to impose a uniform pricing obligation on the Universal Service Providers. This requires the Universal Service Providers to offer broadband connections and services to USO customers at the same prices that they offer to non-USO customers, in line with the December 2018 consultation.
- 7.14 After our careful consideration of stakeholder responses and further industry engagement, and taking account of BT's commitment, we have decided that implementing a safeguard cap is not necessary at this stage.

²⁰⁵ BT response to the December 2018 consultation, page 11.

²⁰⁶ KCOM response to the December 2018 consultation, page 8.

²⁰⁷ BT response to the December 2018 consultation, page 7.

²⁰⁸ Virgin Media response to the December 2018 consultation, page 9.

²⁰⁹ Kent County Council response to the December 2018 consultation, page 3.

²¹⁰ LGA response to the December 2018 consultation, page 2.

²¹¹ CCP response to the December 2018 consultation, page 6.

²¹² Which? response to the December 2018 consultation, page 7.

7.15 Ofcom reviews the prices and the affordability of broadband services on a regular basis.²¹³ We will implement a safeguard cap in the future if it should prove necessary to do so.

Uniform pricing

7.16 A uniform pricing requirement will ensure that the prices of the same services delivered under the USO are uniform throughout the areas covered by the Universal Service Providers. Under current market conditions, we would expect this to be sufficient in most cases to ensure that prices are affordable, as required by the Order. We note that none of the respondents to our December 2018 consultation objected to our proposal on uniform pricing.

7.17 Most providers offer a range of different broadband products with different prices depending on the characteristics of the product offered (e.g. its speed) and the technology used to deliver it.

7.18 Where the Universal Service Provider is required to charge its USO customers the same price as its non-USO customers for the same broadband product, it will set prices on the basis of the market conditions it faces across both areas. Where the ratio of USO to non-USO premises served by the Universal Service Provider is very small, prices would be expected to reflect the market conditions that prevail over the vast majority of premises, i.e. non-USO areas.

7.19 Table 3 presents the current entry-level packages of the Universal Service Providers on possible USO technologies. The monthly in-contract tariff prices and connection fees for these, as published on the BT, EE, and KCOM websites, are set out below.

Table 3: Prices for entry level packages on proposed USO technologies²¹⁴

	BT FTTx	BT/EE FWA	KCOM FTTx
Average download speeds²¹⁵	36Mbit/s	31Mbit/s	30Mbit/s
Data usage	Unlimited	100GB	150GB
Contract length	18 months	18 months	12 months
Monthly payment	£29.99	£40.00	£35.00
One-off charges	£29.99	£0.00/£100 ²¹⁶	£25.00

²¹³ The latest Ofcom reports are available here: [Pricing trends for communications services in the UK](#) (May 2018) and [Affordability of communications services research](#) (October 2018)

²¹⁴ Prices inclusive of VAT. Cheapest product presented that meets the USO specification. Correct as of 16 May 2019.

²¹⁵ These are the speeds advertised on provider websites. The Advertising Standards Authority (ASA) requires an average speed to be available to 50% of customers at peak times.

²¹⁶ If a customer requires an external antenna due to a poor signal inside the home, this comes with an £100 installation fee which represents an additional £5.56 per month over the 18 month fixed commitment period.

Average contract price²¹⁷	£31.66	£40.00/£45.56	£37.08
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Source: provider websites May 2019.

- 7.20 The table shows that entry level prices for BT’s fibre products are comfortably below the £45 per month level that we consider affordable (see Annex 2). KCOM also offers entry level products that are comfortably below £45 per month. BT’s fixed wireless prices are currently below £45 per month for those customers that do not require an antenna but are slightly above £45 per month for those customers that require an antenna.²¹⁸ We also note that the monthly prices of this fixed wireless service have exceeded £45 per month in the past 12 months.²¹⁹
- 7.21 In non-USO areas, BT typically faces competition from a range of broadband suppliers including those with their own networks such as Virgin Media and those primarily retailing services over the Openreach network such as TalkTalk, Sky and Vodafone. This is the case for the vast majority of the country (over 98%²²⁰ of premises) and in these areas standard broadband services (delivered over copper connections) also compete with superfast broadband services (delivered over full-fibre or fibre enhanced copper connections). As such there are a range of competitive constraints acting on BT’s retail broadband prices, including on its fibre-based services, which we expect to account for the majority of connections delivered under the USO.
- 7.22 We do not expect USO connections to form a large part of KCOM’s overall network²²¹ and while there is much less retail competition in non-USO areas compared to the rest of the UK, we found in the 2018 review of competition in the Hull Area that fixed broadband packages were broadly comparable to the rest of the UK, albeit priced somewhat higher.²²² As shown in Table 3 above, KCOM’s entry level fibre packages are below the £45 per month and are priced between BT’s fibre and fixed wireless prices.
- 7.23 Further, both BT and KCOM’s fixed copper and fibre networks are subject to access regulation.²²³ Were BT and KCOM to increase their retail prices, this would also increase

²¹⁷ This is the monthly contract price plus one-off charges spread across the length of the contract.

²¹⁸ Antennas may be required at some properties with good outdoor coverage but variable indoor coverage.

²¹⁹ For example, on 30 April 2019 this was priced at £45, and was £55 (excluding antenna) in September 2018. BT response to June 2018 consultation, page 12.

²²⁰ Ofcom, *Wholesale Broadband Access Market Review 2018*, July 2018, para. 4.1. This is the share of premises in Market B, defined as areas in the UK with at least two additional ‘principal operators’ present in addition to BT. Five operators were considered to be principal operators; BT, Sky, TalkTalk, Virgin Media, and Vodafone.

²²¹ KCOM response to s.135 Notice of 10 May 2019. KCOM informed us that there are currently 3,400 non-bookable exceptions and their intention is to ensure that all of these premises are cleared either before or by the end of March 2020.

²²² In the 2018 *Wholesale Local Access and Wholesale Broadband Access* reviews in the Hull Area, we found (para 3.42) “...while there are some differences in terms of speeds offered, data allowances and pricing, packages available in the Hull Area are broadly comparable to the rest of the UK. While KCOM’s prices are in general somewhat higher than BT’s, KCOM’s prices are likely to reflect both the higher speeds offered over KCOM’s FTTP network (at least for the relevant tariffs) and the absence of specific wholesale remedies or any material competition at the retail level.”

²²³ Ofcom, BT – *Wholesale Local Access Market Review: Statement – Volume 1* (March 2018) and KCOM – *Wholesale Local Access and Wholesale Broadband Access Market Reviews* (July 2018)

the margin available to providers that use (or could use) regulated network access to supply end users, which may encourage retail competitors to expand.

- 7.24 BT has told us that it intends to deliver the USO using fibre; however, it is open to BT to use any technology available to it (including fixed wireless) to fulfil the USO, provided that the technology used delivers a service that meets the technical specification of the USO and is efficient.
- 7.25 BT's fixed wireless network is much smaller than its Openreach copper and fibre-based network: as of November 2018, BT had around [§<] connections. BT has told us that it intends to expand its coverage significantly with the aim of covering around 450,000 premises that might otherwise be eligible for the USO. This may influence its incentives to set prices, as in these areas there are fewer competitors present. As these premises are costlier to reach, those competitors that are present may charge higher prices than are seen in the rest of the UK. BT may also face further incentives to increase its fixed wireless prices if it encounters more capacity constraints than it expects following its planned expansion.
- 7.26 BT's fixed wireless prices are higher than services delivered over its fixed line services - offering similar speeds (see, for example, Table 3 above), and have exceeded the £45 per month in the recent past. In future, absent a regulatory safeguard cap or a pricing commitment from BT, it could have incentives to raise its fixed wireless prices, and therefore we are not confident that uniform pricing alone will be sufficient as a means of ensuring the affordability of fixed wireless services.

Safeguard cap

- 7.27 We have decided not to implement the safeguard cap at this time. As we have set out above, BT and KCOM raised a number of objections to a safeguard cap. Virgin Media said that it saw little evidence of an affordability problem and a need for a safeguard cap.
- 7.28 We set out in Annex 2 why we think that, to ensure that connections and services are affordable, it is necessary that customers have access to a broadband connection and service that is priced at less than £45 in real terms. As we have outlined above, we are not confident that uniform pricing alone will be sufficient to ensure that BT's fixed wireless service will be priced below £45 in real terms. BT said that if it was to raise the price of its fixed wireless service above the eligibility price threshold, then fixed wireless customers may be able to request the USO. However, as we have already noted, it is open to BT to use any technology available to it to fulfil a USO request; this includes its fixed wireless service. Absent some other form of constraint or commitment, BT would be under no obligation to supply a fixed wireless based service to USO customers at a price below £45 per month. It would only need to ensure that its pricing was uniform with its fixed wireless pricing in non-USO areas.

Statement: Delivering the broadband universal service

- 7.29 BT has now made a public commitment²²⁴ to ensure that, at least one broadband service is made available to USO premises which meets the specification of the USO which is priced below £45 per month in November 2018 prices (including VAT and any broadband charges averaged over the fixed commitment period). BT's public commitment on which we are relying, in combination with the uniform pricing obligation, means that we no longer consider it appropriate to impose a safeguard cap. We expect these factors to be sufficient to ensure the affordability of broadband connections and services offered to USO customers.
- 7.30 We expect the uniform pricing obligation to be sufficient to ensure that USO services are affordable and uniform in the Hull Area. We do not expect USO connections to form a large part of the KCOM network, as KCOM plans to deliver fibre-based services to 100% of its customers in the Hull area by the end of March 2020.²²⁵ If KCOM meets this commitment very few, and possibly none, of the premises in the Hull Area would be eligible for the USO.
- 7.31 If BT does not deliver on its commitment, or if we consider that there are other concerns around affordability of USO services, then we will introduce further price protections, if appropriate, to address any such affordability concerns as envisaged under the Order (Schedule 2, para 2).
- 7.32 Given our decision not to impose a safeguard cap at this time, it is not necessary to address the detail of the objections raised by BT and KCOM in this Statement.
- 7.33 We do not agree with Which? that the USO conditions should specify that USO consumers cannot be subject to a longer fixed term period than they would otherwise usually be offered. The fixed commitment period for broadband contracts is already limited to a maximum of 24 months and we do not regard a further restriction as necessary to ensure that connections and services provided under the USO are affordable.²²⁶

Social tariffs

- 7.34 The Government Order did not give Ofcom the power to implement a mandatory social tariff for broadband, so it is beyond the scope of the USO and cannot form part of the commitments we are imposing on the Universal Service Providers. Nonetheless, both BT and KCOM currently offer a voluntary social tariff for broadband, albeit at a lower specification than the technical specification in the Order. BT said that it voluntarily applies a discount to the broadband service for customers that qualify for BT Basic (BT's telephony social tariff) and take a copper broadband service. BT has no plans, for the time being, to extend this to services provided using FTTC, FTTP or fixed wireless. KCOM said that it is reviewing its provision of social tariffs for broadband customers.

²²⁴ [BT's pricing commitment](#) is published alongside this Statement.

²²⁵ KCOM response to June 2018 consultation, page 5.

²²⁶ GC C1.4 states that Regulated Providers shall not include a term in any contract with a Consumer for the provision of Electronic Communications Services that stipulates a Fixed Commitment Period of more than 24 months in duration.

- 7.35 We also note that the Code, which will replace the Universal Service Directive with effect from 21 December 2020, introduces significant changes to the framework governing social tariffs, including the responsibility on Ofcom to monitor the evolution and level of retail prices available on the market, in particular in relation to national prices and national consumer income. However, it is for the Government to determine precisely how these changes will be implemented into the UK's law.

Delivering good service quality

Our December 2018 consultation

- 7.36 We proposed a requirement to provide a safeguard for USO consumers which would tie the quality of service levels concerning faults, missed appointments and provision in USO areas to those offered in the rest of the UK. This would ensure that premises connected through the USO will receive a service from the Universal Service Providers that is at least as good as customers receive in the rest of the UK.

Responses to our December 2018 consultation

- 7.37 We have general support from respondents on our proposals relating to quality of service. KCOM agreed with our consultation proposals.²²⁷ The CCP also agreed with our proposals and highlighted the importance of ongoing Ofcom monitoring to ensure the quality of service is the same for USO services as it is for non-USO services.²²⁸
- 7.38 BT agreed that USO customers should receive the same quality of service as non-USO customers and stated that its intention for USO services is to be subject to the same quality standards as non-USO services. It said that the voluntary auto-compensation scheme applies to fixed broadband products and will be triggered by services delivered within USO areas in the same way as it currently does throughout the rest of the UK. As a result, BT did not consider that we needed to impose a specific obligation to ensure that USO customers receive the same quality of service as non-USO customers, or that any specific USO quality of service reporting is required, as it intends for USO services to receive the same quality of service as non-USO services.²²⁹
- 7.39 Which? suggested that the USO should match the automatic compensation scheme which entitles consumers to receive £5 compensation for each calendar day of delay to a new service. Which? noted that only one of the proposed Universal Service Providers has signed up to automatic compensation but believed there should be consistency across different Universal Service Providers as consumers will have no ability to choose their preferred

²²⁷ KCOM response to the December 2018 consultation, page 8.

²²⁸ CCP response to the December 2018 consultation, page 4.

²²⁹ BT response to the December 2018 consultation, page 28.

Universal Service Provider. Which? suggested that automatic compensation should be universally available irrespective of the Universal Service Provider or technology used.²³⁰

- 7.40 Truespeed agreed with our proposals but suggested that it may be difficult to define and police this requirement. It highlighted that longer lines will generally be required to deliver the USO and these are more susceptible to quality of service issues.²³¹
- 7.41 The BiT Commons also agreed with our proposals in principle but raised concerns that our proposed requirements did not guarantee video calls or address peak hour data, packet loss, delay or jitter.²³²

Our decision

- 7.42 We continue to consider it necessary to require BT and KCOM to provide broadband services to eligible USO customers to at least the same quality of service levels they meet in providing commercial broadband services, regardless of the technology used to deliver the service. This will allow consumers in USO areas to benefit from the high-quality of service consumers benefit from in non-USO areas as a result of competitive pressures and through the additional obligations we have imposed on communication providers.
- 7.43 We have considered the existing obligations and commitments that apply to BT and KCOM, to identify whether these provide sufficient protection to USO consumers.
- **Wholesale Local Access Market Review** – the quality of service obligations implemented through the WLA Market Review offer protection at the wholesale level for fixed services delivered using Openreach’s network. These include binding quality standards on BT for installing and repairing broadband services using its copper and FTTC network.²³³
 - **Automatic Compensation Scheme** – signatories of this scheme provide compensation to consumers if quality parameters are not met i.e. loss of service (set at £8 per day), delayed provisioning (£5 per day) and missed appointments (£25 per incident). BT is a signatory to the scheme for services it delivers using copper and FTTC/ FTTP (but not fixed wireless), KCOM is not a signatory to the scheme.²³⁴
 - **Commercial Pressures** – market forces can incentivise providers to offer a high level of quality of service in order to compete with other providers, however, this is unlikely to be the case in USO areas given that competition is limited.
- 7.44 Whilst these obligations provide sufficient assurance of a high level of quality of service to most consumers, we have concerns that these measures will not effectively ensure that all USO connections receive at least as good a quality of service as non-USO customers. In particular, we have concerns that consumers may not be sufficiently protected if BT

²³⁰ Which? response to the December 2018 consultation, page 7.

²³¹ Truespeed response to the December 2018 consultation, page 2.

²³² The BiT Commons response to the December 2018 consultation, page 5.

²³³ Ofcom, March 2018, [Wholesale Local Access Market Review](#).

²³⁴ Ofcom, April 2019, [Automatic Compensation Scheme](#).

delivers the USO connections using fixed wireless technologies; or if the connection is delivered by KCOM, as wholesale requirements, compensation and commercial pressures will not apply to the same extent.

- 7.45 In order to address our concerns regarding USO connections delivered using BT’s fixed wireless technology or delivered by KCOM, we carried out further engagement with both providers to better understand the procedures each has in place to secure quality of service. In particular, we sought to establish whether consumers that may not be eligible for the automatic compensation scheme would receive adequate protections through existing arrangements that BT and KCOM have in place.
- 7.46 KCOM has recently introduced its own automatic compensation scheme which mirrors the scheme implemented by Ofcom.²³⁵ KCOM’s scheme pays compensation for loss of service (set at £8 per day), delayed provisioning (£5 per day) and missed appointments (£25 per incident). This is an important step in ensuring consumers receive a good quality of service in the Hull Area and ensuring consistent quality of service between consumers served by different Universal Service Providers, as raised by Which?.
- 7.47 We also requested information from BT on the compensation and quality of service provisions it has in place for customers being served through a fixed wireless connection. BT outlined that fixed wireless customers may, depending on the cause, be entitled to a discount if they experience network disruption.²³⁶ [X]. The level of any discount is dependent on how long the service is disrupted for.

Table 4: BT’s fixed wireless credit scheme²³⁷

Duration of degraded service	Credit available
[X]	[X]
[X]	[X]
[X]	[X]

- 7.48 While these measures have potential to ensure a good quality of service for USO customers connected using fixed wireless or a USO connection delivered by KCOM, the absence of wholesale quality of service measures and commercial pressures means that we do not consider that they are complete. We therefore remain of the view that a quality of service obligation is necessary to provide greater confidence that USO customers will receive the same high levels of service as the rest of the UK and provide transparency around their experience. We also consider it necessary to ensure that USO premises connected using a fixed wireless solution receive a quality of service level that is the same as that delivered to premises connected using other technologies. We do not consider that

²³⁵ KCOM, March 2019, [Automatic Compensation Summary](#), and Ofcom, April 2019, [Automatic Compensation Scheme](#).

²³⁶ EE pay monthly network terms, BT/ EE, October 2018.

²³⁷ EE Network Credit Policy, BT/EE 7 April 2019.

this obligation will impose a significant burden on BT or KCOM, rather, it will be a safeguard measure to protect consumers.

- 7.49 We are therefore requiring BT and KCOM, in each financial year or any other period approved by Ofcom, to provide broadband services to eligible USO customers to at least the same quality of service levels they meet in providing commercial broadband services in that same period. By linking the quality of service of USO consumers to that of non-USO consumers, we consider that this ensures that the Universal Service Providers maintain a satisfactory level of service.
- 7.50 As part of the public reporting requirements as set out in Section 9, the Universal Service Directive requires us to impose reporting obligations on the Universal Service Providers on connection supply times and faults. We can also use our formal information gathering powers in order to monitor the Universal Service Providers performance against any of our obligations, including on quality of service. Whilst we acknowledge Truespeed's suggestion that defining and policing quality of service may be difficult, we consider that the obligations we have imposed will allow us to identify if there are areas of concern with the quality of services provided.
- 7.51 Our approach to quality of service for the USO is based on ensuring that the specification set out in the USO order is met. The BiT Commons concern that the requirements do not guarantee video calls and do not address peak hour data, packet loss, delay or jitter go beyond the technical specification in the Order and we do not therefore consider it necessary to specifically address these points through our quality of service requirements.

Complaints handling and dispute resolution

Our December 2018 consultation

- 7.52 In our December 2018 consultation, we proposed that consumers should be able to challenge the Universal Service Provider's decision about their eligibility, and other issues in relation to the ongoing delivery of the USO, if the Universal Service Provider's actions do not appear to be in accordance with the universal service obligations. We proposed that this should be by the consumer making a complaint to the Universal Service Provider, with free recourse to an Ofcom-approved alternative dispute resolution body for an independent decision if the complaint remains unresolved after 8 weeks, or sooner if deadlock has been reached. This body's decision would be binding on the Universal Service Provider. This arrangement would mirror existing rules which protect residential consumers and microbusinesses under Ofcom's General Conditions of Entitlement.²³⁸

²³⁸ Ofcom's General Conditions of Entitlement are available here: <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-conditions-of-entitlement>

- 7.53 In addition, we proposed to approve the two alternative dispute resolution bodies, which are currently approved by Ofcom under the General Conditions of Entitlement for resolving disputes in relation to the USO.

Responses to our December 2018 consultation

- 7.54 All respondents that commented on our approach to complaints handling and dispute resolution agreed with our proposed approach.²³⁹ The main reason mentioned in support of our proposals was that mirroring existing telecoms complaints handling and dispute resolution procedures for the broadband USO would be simple and understandable for consumers.²⁴⁰
- 7.55 A number of other points were raised by respondents.
- a) **Universal Service Providers should inform consumers how to complain at the point of confirming the outcome of their USO request.** The CCP supported our proposal to require Universal Service Providers to inform consumers how to complain at the point the Universal Service Providers confirm the outcome of their request.²⁴¹
 - b) **Complaints about the broadband USO should be recorded separately by Universal Service Providers.** BT argued that this would support ongoing monitoring of the USO. BT also proposed that Ofcom should consider treating USO complaints separately in Ofcom's quarterly *Telecoms and Pay-TV Complaints* report.
 - c) **Consumers should be able to take their complaint to alternative dispute resolution without a deadlock letter in less than 8 weeks.** The CCP called for this because in relation to an eligibility ruling, the 8-week period would add to the delay of a USO connection.²⁴²
 - d) **Eligibility assessments by the Universal Service Providers will rely in part on information provided by Ofcom.** BT suggested that it would not be appropriate for BT to defend individual complaints which stem from disputes about Ofcom information.²⁴³
- 7.56 Respondents agreed with our proposal to approve the dispute resolution schemes currently approved by Ofcom under the General Conditions (OS: Communications and CISAS), for resolving disputes in relation to the USO.²⁴⁴
- 7.57 CISAS, one of the existing approved schemes, noted that this was a sensible proposal as they had significant experience of telecoms disputes, and they did not expect disputes in

²³⁹ See responses to the December 2018 consultation: ACNI page 2, CCP page 3, George Adam page 2, CISAS page 1, OS: Communications page 3, BT page 29, Kent County Council page 3, KCOM page 8 and [3<] page 2.

²⁴⁰ See responses to the December 2018 consultation: OS: Communications page 3 and CISAS page 1.

²⁴¹ CCP response to December 2019 consultation, page 3.

²⁴² CCP response to December 2019 consultation, page 4.

²⁴³ BT response to the December 2018 consultation, page 29.

²⁴⁴ Alan Mason response to the December 2018 consultation, page 3.

relation to the USO to be dissimilar to other telecoms disputes.²⁴⁵ OS: Communications, the other existing approved scheme, agreed and highlighted that this would avoid unnecessary costs of establishing a new dispute resolution body or separate special procedures.²⁴⁶ The CCP agreed that approving the existing schemes was the right approach to keep the process simple for consumers, and urged Ofcom's final decision to be communicated to the schemes in good time so that they could train staff and prepare.²⁴⁷

Our decision

Complaints handling

- 7.58 Ofcom's role is to ensure that the Order is implemented properly and effectively. The Order gives consumers who meet the eligibility criteria a legal right to obtain a USO connection and service. Ofcom must ensure that consumers can exercise this right effectively.
- 7.59 Our objective is for consumers who make requests for the broadband USO to benefit from the same protections as other consumers, and for USO complaints to follow the same procedures as other telecoms complaints under the General Conditions. Our consultation proposals received strong support because they would be simple for consumers to understand.
- 7.60 We have therefore decided to adopt our consultation proposal and to impose obligations on Universal Service Providers based on General Condition C4.2. We will require them to:
- a) have and comply with procedures for the handling of USO complaints that conform with the provisions of Section 1 of the Ofcom Approved Complaints Code set out in the annex to General Condition C4;
 - b) have and comply with a Customer Complaints Code in respect of USO complaints that conforms with the provisions of Section 2 of the Ofcom Approved Complaints Code; and
 - c) retain written records of USO complaints in conformity with the provisions of Section 3 of the Ofcom Approved Complaints Code.
- 7.61 When informing a consumer of the outcome of their USO request, the Universal Service Provider should inform the consumer of their right to challenge the Universal Service Provider's decision by making a complaint and provide the consumer with a copy of the Universal Service Provider's Customer Complaints Code in respect of USO complaints using the consumer's preferred communications format.²⁴⁸

²⁴⁵ CISAS response to the December 2018 consultation, page 1.

²⁴⁶ OS: Communications response to the December 2018 consultation, page 2.

²⁴⁷ CCP response to the December 2018 consultation, pages 3-4.

²⁴⁸ This could be by including a weblink to the Customer Complaints Code, or by sending the consumer a physical copy of the Customer Complaints Code depending on the consumer's preferred communications format.

- 7.62 In relation to internal complaints handling procedures, Universal Service Providers should ensure that staff interacting with consumers who make USO requests, and those handling complaints in relation to the USO, have sufficient training on the statutory scheme, including the eligibility criteria. Universal Service Providers should also ensure that these staff have access to technical advice, particularly on establishing connection costs, taking into account the impact in individual cases of the approach to demand aggregation.
- 7.63 To ensure that complaints continue to be dealt with promptly and effectively, the Universal Service Providers are required to monitor compliance by all staff who interact with USO consumers and handle complaints, and to take appropriate steps to prevent the recurrence of any problems that are identified.
- 7.64 On reporting of complaints in relation to the broadband USO, we agree that to enable the effective monitoring of complaint volumes and how a Universal Service Provider is handling USO complaints, it will be necessary for the Universal Service Providers to record these separately from other non-USO complaints. This will also be required so that the Universal Service Providers can comply with performance reporting obligations which are explained further in Section 9.
- 7.65 Ofcom will consider further whether to include complaints in relation to the USO in quarterly *Telecoms and Pay-TV Complaints* reports and if so, how these should be presented, when the USO is live and the volume of complaints is clearer.
- 7.66 Our objective is for consumers who make requests for the USO to benefit from the same protections as other consumers, and for USO complaints to follow the same procedures as other telecoms complaints. Therefore, we do not consider that it would be appropriate to reduce the period of time before consumers can access the alternative dispute resolution body to less than 8 weeks, as required by the General Conditions of Entitlement.²⁴⁹ We note that, like other telecoms customers, USO customers will be able to access the alternative dispute resolution body in less than 8 weeks if deadlock has been reached.²⁵⁰

Dispute resolution

- 7.67 Ensuring that consumers who make USO requests, and receive ongoing USO services, have free access to an ADR scheme will ensure that the costs of pursuing a complaint does not prevent them from effectively exercising their legal right to request USO connections and services.
- 7.68 We have therefore decided to proceed with our consultation proposal and to impose obligations on the Universal Service Providers based on General Condition C4.3. We will require them to:

²⁴⁹ Please refer to Ofcom's approved complaints code of practice for customer service and complaints handling in the Annex to General Condition C4 at paragraph 12 for further detail.

²⁵⁰ Please refer to Ofcom's approved complaints code of practice for customer service and complaints handling in the Annex to General Condition C4 at paragraph 11 for further detail.

- a) be a member of an approved Alternative Dispute Resolution (“ADR”) scheme;
 - b) comply with the ADR scheme, including abiding by any final decision of the body which administers the ADR scheme, within the time period specified in that final decision;
 - c) ensure that customers have the right to use the ADR scheme free of charge; and
 - d) provide information about the ADR scheme in customer bills.
- 7.69 On the point raised by BT, the Universal Service Providers will not be expected to defend the accuracy of any information provided by Ofcom for the purposes of assessing eligibility at dispute resolution. Rather, they will need to show that an eligibility decision was reasonable based on the best available information they had at that time.
- 7.70 The fact that consumers will have recourse to such a body should not be taken as suggesting that Ofcom is less likely to enforce any potential non-compliance with one or more of the universal service conditions.
- 7.71 In addition, taking account of the comments we received from respondents, we have decided to approve the two ADR schemes approved under the General Conditions (OS: Communications and CISAS) under the universal service conditions for resolving disputes in relation to the broadband USO. This is on the basis that we have approved both schemes under the Alternative Dispute Resolution Regulations 2015 and section 54 of the Act for the resolution of disputes between providers and their domestic and small business customers for the purposes of the General Conditions. We conducted our most recent review of the schemes in November 2017 and concluded that both OS: Communications and CISAS continued to meet, and were performing satisfactorily against, the approval criteria. We believe these criteria are equally applicable for our assessment of whether the schemes should be approved under the universal service conditions.²⁵¹
- 7.72 The Universal Service Providers will be required to appoint one of the schemes approved under the universal service conditions for the purposes of resolving disputes in relation to the broadband USO. Ofcom is required to keep schemes approved under the General Conditions under review,²⁵² and we intend to consider whether to re-approve schemes under the universal service conditions alongside future reviews of approvals under the General Conditions.
- 7.73 To enable the scheme appointed by each Universal Service Provider to make decisions in individual cases, we have decided to require the Universal Service Providers to provide their appointed scheme with any necessary training and support on the broadband USO, and to share relevant information with their appointed scheme.

²⁵¹ The criteria was devised by Ofcom taking account of sections 52(3) and 54(2) of the Act. The criteria, which we consider to be broadly consistent with the minimum standards set out in the ADR Regulations 2015, included accessibility, independence, fairness, efficiency, transparency, effectiveness, accountability and non-discrimination. In addition to these criteria, section 54(7) of the Act requires Ofcom to have regard to the need to ensure that there is consistency between the schemes. See Ofcom, November 2017. [Review of Ofcom’s approval of Alternative Dispute Resolution Schemes](#).

²⁵² Under section 54(4) of the Act

Universal service conditions and legal tests

- 7.74 Our decisions on pricing, quality of service, complaints handling and dispute resolution set out above are captured in universal service conditions we are imposing on BT and KCOM.
- a) **Pricing:** The conditions require the Universal Service Providers to offer broadband connections and services to USO customers at the same prices as they offer such connections and services to non-USO customers. In addition, we have included an obligation requiring the Universal Service Providers to ensure that the terms and conditions on which the USO is provided do not require consumers to pay for any additional service which is not necessary. We are required to impose that obligation in accordance with section 68(3) of the Act.
 - b) **Quality of service:** The condition contains an obligation which requires the Universal Service Providers to provide on average at least the same quality of service levels concerning fault repair, missed appointments and provision in USO areas for services delivered as that offered by those providers in non-USO areas.
 - c) **Complaints handling and dispute resolution:** The conditions imposed contain obligations on the Universal Service Providers requiring them to: (i) have and comply with internal procedures for the handling of USO complaints similar to the handling of other complaints under General Condition C4; and (ii) appoint an independent body to resolve disputes between consumers and the Universal Service Provider in relation to the USO.
 - d) **Direction making powers:** Under the above conditions, we have decided to include the power for us to give directions, approvals and consent so that we are able to specify further detail concerning pricing, quality of service and complaints handling if appropriate. The conditions also include a requirement for the Universal Service Providers to comply with any such direction(s), approval(s) or consent so that any contravention of a direction would constitute a contravention of the conditions itself and would therefore be subject to enforcement action under sections 94 to 104 of the Act. As explained above, we have decided that OS: Communications and CISAS should be approved under condition E.2 to resolve disputes concerning the USO.
- 7.75 For the reasons set out above and summarised below, we are satisfied that universal service conditions for BT D.1, C.9, E.1 to E.3 and I.1 and for KCOM D.1, C.8, E.1 to E.3 and I.1 (as set out in Annex 1) and the approvals of OS: Communications and CISAS meet the relevant tests set out in the Act. Our decision in respect of the conditions form part of the process of implementing the Order as required by the Act. The purpose of imposing these conditions and giving the approvals is to give effect to the terms of the Order.
- 7.76 When setting universal service conditions and giving approvals under sections 45, 49 and 67 of the Act in a particular case, we must be satisfied that the legal tests in section 47(2) and 49(2) of the Act are met. Conditions for BT D.1, C.9, E.1 to E.3 and I.1 and for KCOM D.1, C.8, E.1 to E.3 and I.1 and the approvals which we have decided to set are:

- a) **objectively justifiable**, in that they seek to ensure that USO customers receive a fair service and are not in any way treated in a less favourable way than non-USO customers; in particular, the conditions aim to ensure that broadband connections and services as defined in the Order are delivered to eligible consumers and businesses at prices that are affordable and uniform which do not require them to pay for any unnecessary service, and that these consumers receive the same quality of service and access to appropriate complaints handling and dispute resolution services as other non-USO consumers;
- b) **not unduly discriminatory**, as the same obligations are imposed on both BT and KCOM, and only on BT and KCOM, as the Universal Service Providers within their respective areas;
- c) **proportionate**, since we have taken account of comments raised by the stakeholders and balanced: the need to ensure the cost of delivery (and therefore impact on industry and consumers) is minimised and that the designated providers can reasonably meet the requirements placed on them, with the need to deliver affordable connections and services at a fair quality of service and with access to complaints handling; and
- d) **transparent**, in that the conditions are clear in their intention and seek to ensure that consumers are in a clear position so that they can effectively exercise their legal right to request USO connections and services. Further, we have sought to be transparent in devising the conditions and approvals through public consultation.

7.77 We also consider that the conditions and approvals meet our duties and the Community requirements under sections 3 and 4 of the Act. We think that our decision on these matters furthers the interests of citizens in relation to communications matters and the interests of consumers in relevant markets as well as promoting the interests of EU citizens because it seeks to ensure that USO customers receive a fair service and are not treated in a less favourable way than non-USO customers. This decision will help ensure that people living in USO areas are no longer at a relative social and/or economic disadvantage and can benefit from having decent and affordable broadband.

8. Information sharing and disclosure

- 8.1 This section explains the decisions we have made in relation to the information that the Universal Service Providers should use to help determine eligibility for the USO, for the purposes of network planning and raising consumer awareness. It also sets out our decisions on the need for Ofcom to disclose certain information to the Universal Service Providers, and the accompanying safeguards that we are imposing in the universal service conditions to protect this information and ensure that it is only used for the purposes of the USO.

Information to check the availability of decent broadband at each requested location

Our December 2018 consultation

- 8.2 For our Connected Nations reports, we collect information from network providers on their fixed line broadband coverage three times a year. To give a clearer picture of broadband coverage across the UK, since December 2018 our reports have included information from a wider range of full-fibre networks, as well as more of those network providers offering fixed wireless services to homes and businesses. We collect information from smaller fixed wireless providers once a year and will collect information from mobile networks which offer fixed wireless services three times a year.
- 8.3 In our December 2018 consultation, we explained that to enable the Universal Service Providers to carry out the USO eligibility-checking process effectively, we considered that it may be appropriate to provide the Universal Service Providers with access to an Ofcom-held database. This database, which would be specially created for the purposes of the USO, would allow the Universal Service Providers to check, on an individual address-level basis, whether Ofcom holds information about a broadband service that meets the technical specification in the Order which is already offered at that location. It would also include the name(s) of the network provider(s) so that the Universal Service Provider could refer the consumer making the request to those network provider(s) directly.²⁵³

Responses to our December 2018 consultation

- 8.4 Respondents generally supported our proposal for the Universal Service Providers to use Connected Nations information to check if a decent broadband service is already available

²⁵³ This database would contain information gathered for our Connected Nations reports on whether decent broadband was predicted to be receivable at a location, supplemented by additional information on whether a property was forecast to benefit from a publicly-funded intervention and in what timeframe. We proposed that this information would be disclosed to the Universal Service Providers on a one-address-at-a-time basis via an application programming interface (also known as an API).

from any third-party network provider(s), as it provided a single source of coverage information for the Universal Service Providers to use to help establish consumer eligibility.²⁵⁴

- 8.5 KCOM highlighted the importance of this information being sufficiently up-to-date and capturing all qualifying broadband coverage to minimise the risk of unnecessary network build.²⁵⁵ Some respondents to our engagement with network providers on disclosure of information suggested that Ofcom should consider collecting coverage information more frequently than three times a year. Virgin Media urged Ofcom to consider how satellite broadband coverage information could be included in Connected Nations reports in future.²⁵⁶
- 8.6 Some network providers suggested that Connected Nations information should not be used by the Universal Service Providers as this information was commercially confidential to the networks providing the information, and that there was a risk it could be used by the Universal Service Providers to their commercial advantage. Instead, they proposed that price comparison websites or other publicly-available sources of coverage information could be used by the Universal Service Providers or consumers themselves to check coverage of existing broadband networks.

Our decision

- 8.7 We remain of the view that Connected Nations information is the best available, most comprehensive and most reliable single source of information for the Universal Service Providers to use to check existing network coverage. This is because the information is collected using our statutory information request powers from a wide range of network providers, including from smaller full-fibre and fixed wireless networks. While there is a risk that this information may not be complete, we continue to expand the number of networks we collect coverage information from, and we encourage network providers to engage with the Connected Nations report process so that their coverage can be taken into account when establishing consumer eligibility for the USO.²⁵⁷
- 8.8 We do not consider coverage information on price comparison websites, or other publicly-accessible information to be as comprehensive or reliable as information derived from the Connected Nations reports. This is because this information is dependent on commercial agreements between networks and third-parties, and there is no consistent approach to how coverage information is assessed and presented. Further, they do not include coverage information from the wide range of full-fibre and fixed wireless networks that are included in the Connected Nations reports. It is important that the information which

²⁵⁴ KCOM response to the December 2018 consultation, page 2.

²⁵⁵ KCOM response to the December 2018 consultation, page 2.

²⁵⁶ Virgin Media response to December 2019 consultation, page 1.

²⁵⁷ We invite network providers who would like to submit coverage information to Ofcom for the Connected Nations reports to contact connectednationsreport@ofcom.org.uk.

Universal Service Providers use to assess eligibility for the USO is as reliable as possible. This is so that consumers can exercise their right to request decent and affordable broadband effectively, and that USO connections are not provided to properties which should not be eligible. For these reasons, we do not think that information on price comparison websites or from other publicly-available sources is a suitable basis for the Universal Service Providers to use when establishing eligibility for the USO.

- 8.9 We recognise that collecting the information for the Connected Nations reports three times a year from fixed line and mobile networks which offer fixed wireless services, and once a year from smaller fixed wireless providers, means that there is a risk that the data does not reflect any network rollout completed in the intervening period. However, we consider that this frequency of data collection strikes the right balance between our aim to provide up-to-date coverage information about existing networks, while not imposing a disproportionate burden on industry and Ofcom. We have therefore decided that this frequency of updates is sufficient for the USO.
- 8.10 If there are developments in broadband technologies, including satellite services, which mean that they become capable of providing decent broadband to homes and businesses, we will consider the case for their inclusion in the Connected Nations reports at that time.
- 8.11 To minimise the risk that a premises where a USO request is made cannot be found in Ofcom's information on third-party coverage, we will seek to match information provided to Ofcom from network providers for the Connected Nations reports to the AddressBase product. We will consider various forms of address identification to ensure that a comprehensive list of premises and third-party coverage is available to inform the Universal Service Provider's assessment of eligibility.
- 8.12 We accept that the Universal Service Provider can only make an assessment on the eligibility of a premises based on the best available information at that time. If the Universal Service Provider has made a reasonable assessment that a premises is eligible for the USO based on this information, but it turns out that a connection did not have to be provided, and in the event that we find that these costs are part of an unfair net cost burden, these costs will be compensated through any industry fund.

Information to check whether the location is due to be covered by a publicly-funded intervention

Our December 2018 consultation

- 8.13 In our December 2018 consultation, we explained that we intended to use our statutory information gathering powers to collect future publicly-funded broadband rollout plans directly from the relatively small number of network providers contracted to deliver these schemes, and to share this information with the relevant Universal Service Provider. We proposed to collect this information three times a year, alongside our Connected Nations information requests.

Responses to our December 2018 consultation

- 8.14 We engaged with contractors delivering publicly-funded broadband rollout schemes in relation to the proposed collection of relevant information by Ofcom. They highlighted that deployment timings at address-level can be uncertain and subject to change. They noted that the further ahead from the point information was collected by Ofcom, the less specific and reliable any forecast delivery date at the premises-level would be. They also highlighted that forecast delivery dates were not contractually binding and may at best be the end of a forecast month, or the end of a calendar quarter.
- 8.15 One contractor suggested that information should be collected by Ofcom less frequently than three times a year because of the resources required to respond to statutory information requests.

Our decision

- 8.16 We have decided to proceed with the following approach in order to collect information relevant to this aspect of eligibility for the USO:
- a) For publicly-funded broadband rollout schemes, we will collect information directly from the network providers contracted to deliver publicly-funded rollout schemes.²⁵⁸
 - b) For publicly-funded broadband voucher schemes, we will collect relevant information directly from the bodies which manage qualifying voucher schemes.²⁵⁹ These currently include Building Digital UK and the Welsh Government.
- 8.17 Our aim is to collect sufficient information to enable the Universal Service Providers to check whether a location is due to benefit from a publicly-funded intervention and the timeframe for delivery. We accept that deployment timings at address-level can be uncertain and subject to change and the further ahead from the point information is collected, the more uncertain the forecast delivery date will be. However, we consider that information collected by Ofcom will be the best available source of information. The Universal Service Providers should therefore be able to rely on this data to assess this aspect of eligibility.
- 8.18 For reasons of practicality, we have decided that where the best available forecast delivery date for a publicly-funded rollout scheme at a location is a calendar month and year, or a calendar quarter and year, the Universal Service Providers should assume that this means the end of that period, and take the following approach in relation to the 12-month cut-off for eligibility:

²⁵⁸ Network providers contracted to deliver publicly-funded broadband rollout schemes include Openreach, Gigaclear and Airband. There are no publicly-funded rollout schemes in the Hull Area.

²⁵⁹ We consider qualifying broadband voucher schemes to include: Better Broadband (excluding connections to be delivered by satellite broadband as these do not currently meet the technical specification in the Order); Gigabit Connectivity; and Access Broadband Cymru (excluding connections to be delivered by satellite broadband).

- a) for example, where a USO request is made on 2 May 2020 and the publicly-funded intervention is forecast to deliver by the end of May 2021, that request is not eligible; or
 - b) where a USO request is made on 2 May 2020 (i.e. in calendar Q2 2020) and the publicly-funded intervention is forecast to deliver by the end of calendar Q2 2021, that request is not eligible.
- 8.19 We engaged with BDUK and the Welsh Government to understand how information about locations which had been issued with publicly-funded broadband vouchers could be taken into account by the Universal Service Providers when assessing this aspect of eligibility for the USO. We consider that where vouchers have been issued or offered to a location, the presumption should be that these premises will receive decent and affordable broadband within a year. They should not therefore be eligible for the USO, unless the consumer can provide evidence that the voucher has been cancelled, for example a notification from the relevant scheme manager.
- 8.20 In terms of the frequency of collection of information, we remain of the view that the most proportionate approach is to collect information about publicly-funded rollout plans from contracted network providers and locations which have been issued with broadband connection vouchers from relevant scheme managers three times a year, in line with our Connected Nations information requests for fixed line networks.
- 8.21 We appreciate the concerns raised by some contracted network providers that responding to information requests from Ofcom is resource-intensive, but we have decided that this frequency is reasonable. This is because as highlighted by the respondents, forecast information is subject to regular change and it is therefore important that information which will be used to assess consumer eligibility for the USO is sufficiently accurate and up-to-date.

Information on premises which cannot access decent broadband to support eligibility-checking, network planning and consumer awareness

Our December 2018 consultation

- 8.22 In order to estimate the number of eligible premises which could share a given network asset, we considered that the Universal Service Providers will need to be aware of the location of premises that cannot get decent broadband (i.e. the location of potentially eligible premises).
- 8.23 To facilitate this, we proposed to provide the Universal Service Providers with access to a full list of premises (i.e. addresses and unique property reference numbers) that do not have access to decent broadband in the geographic areas for which they are designated. These lists would be derived from Ofcom analysis of network coverage information

collected for the Connected Nations reports and would remove properties where access to decent broadband was forecast to be provided as the result of publicly-funded intervention within the relevant timeframe. We said that we would provide these lists of properties to the relevant Universal Service Providers separately to the Ofcom-held database described above.

Responses to our December 2018 consultation

- 8.24 BT said that it would need premises-level information on the premises which cannot access decent broadband to assist with pre-planning activities (including forecast demand assumptions and the reasonable cost threshold). BT also said that this information would facilitate appropriately targeted awareness raising activity, in line with the proposed conditions on raising consumer awareness of the USO.²⁶⁰ BT said that this information should identify premises which meet both the technical and affordability eligibility criteria.
- 8.25 Gigaclear agreed that the Universal Service Providers need to be aware of the location of premises which cannot get decent broadband, in order to estimate shared costs, and that this would be most effectively done by sharing information derived from Connected Nations data.²⁶¹
- 8.26 In contrast, Virgin Media questioned whether premises-level data was necessary to help determine connection costs. It said that BT had significant experience of assessing coverage (and therefore upgrade costs) at the postcode-level.²⁶²

Our decision

- 8.27 The provision of premises-level data is necessary for the Universal Service Providers to undertake network planning prior to customers requesting an order. This is critical to the implementation process that will enable the Universal Service Providers to be ready to provide USO connections and to deliver them as quickly as possible. These activities can only be undertaken in full if BT knows at a granular level where USO premises are located.
- 8.28 Premises-level data will enable the Universal Service Providers to materially improve the accuracy of their connection cost estimates, relative to postcode-level data. This is because the Universal Service Provider cannot necessarily infer how many other premises would share infrastructure costs with a given USO premises, if it only has visibility over the number of premises in a given postcode. This is particularly the case in larger, rural postcodes where premises are spread over wide distances and so individual connection costs could vary considerably depending on where the USO premises are located in the

²⁶⁰ BT response to the December 2018 consultation, p. 18 and 22.

²⁶¹ Gigaclear response to the December 2018 consultation, p. 7.

²⁶² Virgin Media response to the December 2018 consultation, attached letter.

postcode.²⁶³ As such, this could significantly increase the error margins of connection cost estimates.

- 8.29 We agree that this data would also improve the effectiveness of the Universal Service Providers' consumer awareness activities, by allowing them to undertake appropriately targeted awareness campaigns. Good consumer awareness of USO eligibility is another important aspect of the effective delivery of the USO.
- 8.30 For these reasons, we remain of the view that providing this data is appropriate for the Universal Service Providers to effectively deliver the USO and meet our primary objectives.
- 8.31 Finally, we recognise that there may be specific cases where this data could differ from the true number of eligible premises. In particular, as set out in Section 5 (and raised by BT above), this information will not include premises which can receive a broadband service that meets the technical specification in the Order, but where the connection and service is not affordable when measured against the eligibility price threshold. To mitigate the impact of this on demand aggregation, the Universal Service Providers should therefore keep a record of any premises which are not included in the initial eligibility list, but which are identified as eligible when the customer requests a USO connection (i.e. because the only fixed broadband service available to the customer at that premises is unaffordable), so as to include these premises within subsequent demand aggregation calculations.²⁶⁴ This means that the accuracy of connection cost estimates should improve over time.

Decision to disclose information to enable the Universal Service Providers to deliver the USO

- 8.32 We consider the proposed disclosure of information by Ofcom to the Universal Service Providers and the specific concerns raised by stakeholders regarding such disclosure below.

Our December 2018 consultation

Checking existing and planned coverage to establish eligibility for the USO

- 8.33 In our December 2018 consultation, we proposed to disclose network coverage information and future publicly-funded intervention information to the Universal Service Providers as follows:
- a) We proposed to disclose information collected by Ofcom for the Connected Nations reports that would allow the Universal Service Providers to check if decent broadband is available from another network at a specific location and to direct consumers to contact those named network provider(s) serving that location. We

²⁶³ BT response to s.135 Notice of 25 April 2019.

²⁶⁴ This reflects Condition C.1(b) whereby BT must take reasonable steps to use the most up-to-date information when assessing whether the criteria under Conditions A.3 and B.1 to B.10 (inclusive) are met.

proposed to include this information in a new, Ofcom-held database specifically created for the purpose of the USO and to provide the Universal Service Providers with access to that database. We proposed to provide the Universal Service Providers with access to this database via a controlled-access live feed (also known as an application programming interface, or API), providing access to this information on a one address-at-a-time basis, in a way that means that they do not have access to the whole database.

- b) We proposed to disclose information that would enable the Universal Service Providers to establish whether a location will be able to access decent broadband as the result of publicly-funded intervention within 12 months of the date of a USO request, and direct consumers to the local body or voucher scheme supplier forecast to provide broadband connections at their location. We proposed to disclose this information in the Ofcom-held database described above, accessed via the API.
- c) We also proposed to provide the Universal Service Providers with access to a full list of premises that do not have access to decent broadband in the geographic areas for which they are designated (as set out in paragraph 8.25 above) and said that we would remove properties where access to decent broadband was forecast to be provided as the result of publicly-funded intervention within the relevant timeframe. However, we did not propose sharing information on the location of other network providers in these lists, due to the risk that this could afford the Universal Service Provider an unfair competitive advantage. We considered that this approach would protect providers' claims over potentially commercially sensitive data.

Safeguards and technical restrictions

- 8.34 In our December 2018 consultation, we explained that any disclosure of information would only be made to the relevant Universal Service Providers after putting in place all necessary safeguards. Specifically, we proposed legally binding obligations in the universal service conditions which would require them to use any information provided by Ofcom only for the purposes of complying with their USO obligations, and to put in place mechanisms to ensure that access to any information provided is restricted to the division within the relevant Universal Service Provider dealing with USO requests.

Disclosure exercise

- 8.35 In our December 2018 consultation, we explained that under the relevant legislation Ofcom is prohibited from disclosing information with respect to a particular business without the consent of the person carrying out that business. However, this prohibition does not apply where such disclosure is for the purposes of facilitating the carrying out of

Ofcom's functions, which in this context is ensuring the proper and effective implementation of the Order.²⁶⁵

- 8.36 In addition to considering responses to our public consultation, we also engaged directly with contributors who submit their broadband coverage information in connection with Ofcom's work on the Connected Nations reports, and network providers contracted to deliver ongoing publicly-funded rollout schemes, to seek their views on our proposed disclosure approach between January and March 2019. We did this to help us decide whether the proposed disclosure of information to the Universal Service Providers would be appropriate for the purposes of facilitating the implementation of the Order. We refer to this further engagement with those stakeholders as our "disclosure exercise".

Responses to our December 2018 consultation and disclosure exercise

Checking existing and planned network coverage

- 8.37 As set out above, some respondents suggested that Connected Nations information should not in principle be used by the Universal Service Providers as the basis for checking existing coverage as this information was commercially confidential to the networks providing the information and there was a risk it could be used by the Universal Service Providers to their commercial advantage.
- 8.38 However, many respondents generally agreed with our proposal to disclose Connected Nations information to the Universal Service Providers via the proposed application programming interface (API), and to use it to derive and share separately a list of premises that cannot access decent broadband for the USO.
- 8.39 Respondents acknowledged that our API proposal would support the effective implementation of the USO and would enable the Universal Service Providers to give consumers the names and contact details of any network provider(s) which may be able to provide access to decent broadband at their location.²⁶⁶ However, some respondents argued that it was not necessary to disclose the names of any third-party network provider(s) in order to implement the Order. They argued that this information was commercially confidential. Instead, they suggested that consumers should be advised to contact Ofcom to find out this information.²⁶⁷
- 8.40 Virgin Media argued that providing BT with access to a full list of premises that do not have access to decent broadband risked giving them an unfair competitive advantage by allowing them to establish with a high degree of accuracy where Virgin Media has recently, or is likely to, expand its network. Virgin Media said that, if this information is provided,

²⁶⁵ Communications Act 2003, sections 393(1) and (2)

²⁶⁶ See responses to the December 2018 consultation: TalkTalk page 2, CityFibre page 9, Truespeed page 1.

²⁶⁷ Wessex Internet letter to Ofcom 26 January 2019, page 2.

there should be stronger universal service conditions relating to the separation of the information and containment of it within BT for its specific, limited use.²⁶⁸

- 8.41 Gigaclear said that it would continue to work with Ofcom to ensure that this process does not compromise commercially sensitive data.²⁶⁹
- 8.42 CityFibre agreed that Ofcom should not share information about other providers' full network coverage footprints, as this would risk giving the Universal Service Providers an unfair commercial advantage.²⁷⁰
- 8.43 In relation to both the API and the list of premises, some respondents argued that rather than providing it only to the relevant Universal Service Providers, both sets of information should be published by Ofcom.
- 8.44 No network provider contracted to deliver publicly-funded rollout schemes objected to our proposal to use our statutory information gathering powers to collect future publicly-funded broadband intervention plans. None of the providers of these publicly funded schemes argued against our proposal to disclose these to the relevant Universal Service Providers via the API, and to remove them from the list of premises which cannot access decent broadband. Respondents understood that this information would be necessary so that the Universal Service Providers could assess this aspect of eligibility for the USO and supported the proposal on the basis that this information would be protected by the proposed safeguards in the universal service conditions.

Safeguards and technical restrictions

- 8.45 In relation to both the API and list of premises, respondents generally welcomed our proposal to include legally-binding obligations on the Universal Service Providers in the universal service conditions.
- 8.46 Respondents said that any information disclosed by Ofcom to the Universal Service Providers should prevent access to third-party network providers' coverage footprint information being accessed at scale and information being used by the Universal Service Providers for any commercial purposes. They also suggested that the conditions should require teams using the information to be ringfenced to prevent access to the information by staff who were not working on the USO. Respondents also asked whether there would be a licence agreed by the Universal Service Providers, industry and Ofcom to enable the Universal Service Providers to access and use the API and the list of premises.
- 8.47 In relation to the API, some respondents suggested technical restrictions that Ofcom should put in place on the API to act as a safeguard in respect of the information which could be accessed via the API. For example, setting restrictions on the number of look-ups which could be made by the Universal Service Providers over certain time periods, and

²⁶⁸ Virgin Media response to the December 2018 consultation, page 6 and attached letter.

²⁶⁹ Gigaclear response to the December 2018 consultation, page 7.

²⁷⁰ CityFibre response to the December 2018 consultation, page 9.

including functionality which would allow Ofcom to check the locations being looked up linked back to actual USO requests received by Universal Service Providers.

- 8.48 Virgin Media said that Ofcom should carry out compliance assessments and audits of the Universal Service Providers' use of the information, preferably led by the Openreach Monitoring Unit.²⁷¹

Our decision

Summary

- 8.49 We have carefully considered all responses to the December 2018 consultation and responses to our disclosure exercise. We have decided that disclosure of coverage information collected by Ofcom for the purposes of the Connected Nations reports, together with information collected from network providers contracted to deliver publicly-funded interventions, is appropriate to fulfil our functions in relation to implementing the Order.
- 8.50 As set out above, such disclosure will enable the Universal Service Providers to carry out the consumer eligibility-checking process properly and effectively, and to ensure that consumers can be given important information regarding the names of any other network provider(s) who can provide decent broadband to their location so that they can contact them directly to confirm that it is available and affordable in line with the eligibility price threshold. It will also allow them to give consumers the names of any publicly-funded schemes which are forecast to make decent broadband available at their location within the relevant timeframe.
- 8.51 The Universal Service Providers also require a list of properties²⁷² in the geographic areas for which they are designated which cannot access decent broadband and are not forecast to receive access to decent broadband as the result of a publicly-funded intervention within the relevant timeframe. As set out above, this will allow the Universal Service Providers to conduct appropriate network planning to deliver USO connections as soon as possible. It will also allow the Universal Service Providers to accurately calculate the costs of the network build for which it will be necessary to identify the extent to which connection costs can be shared with other properties that cannot access decent broadband. Further, this list will enable the Universal Service Providers to contact consumers who may be eligible for the USO in order to fulfil their obligations in relation to raising consumer awareness of the USO.
- 8.52 In light of respondents' concerns about the commercial confidentiality of such information, and the unfair commercial advantage which could arise from the misuse of such information, we have decided to strengthen the safeguards which protect and restrict the

²⁷¹ Virgin Media response to the December 2018 consultation, page 6 and attached letter.

²⁷² This list will comprise of addresses and unique property reference numbers and will be derived from information gathered for Ofcom's Connected Nations reports.

use of any information disclosed by Ofcom to the Universal Service Providers in the universal service conditions. We also explain below the key features of licence agreements we intend to have in place between Ofcom and the Universal Service Providers before we pass any such information to them.

- 8.53 As explained in more detail below, these strengthened conditions will allow Ofcom to trigger an audit of measures put in place by the Universal Service Providers to comply with the information sharing conditions; require appropriate separation of data to prevent access by those not working on the USO; require that those who have access to certain Ofcom supplied information do not influence commercial deployment decisions whilst they have access; and require the Universal Service Providers to provide a statement(s) to Ofcom on the measures that they have put in place to protect relevant information. We also explain terms we intend to set in licence agreements which govern the use of the information we provide, as well as technical restrictions on the use of the API.

Checking existing and future network coverage

- 8.54 In terms of the information derived from the Connected Nations reports which will be shared with the Universal Service Providers via the API:
- a) We have decided to adopt our proposed approach as it is appropriate to ensure the proper and effective implementation of the Order. As explained above, it is important that Universal Service Providers can give consumers contact details of any network provider(s) which may be able to provide access to decent broadband at their location, so that consumers can contact such third-party network provider(s) directly. It is also appropriate that the API contains information on publicly-funded schemes, so that the Universal Service Provider can assess this aspect of eligibility.
 - b) We do not consider that it would be in the interests of consumers for the Universal Service Providers to only have access to anonymised information to check consumer eligibility, as this would mean that they could not tell consumers the name(s) of any third-party network provider(s) which serve their location and so could not provide their contact information. We consider that not providing this critical information to consumers and instead requiring them to contact Ofcom, or to carry out their own research to find out which network(s) covers their location, would unreasonably complicate the consumer journey. Further, it may not be practical for consumers to conduct their own research if they do not have access to decent broadband. This extra step in the process could be frustrating and confusing for consumers, and there is a significant risk that it could lead consumers to abandon their request.
 - c) We agree that information shared with the Universal Service Providers via the API should be restricted to prevent access to other network providers' coverage footprint information at scale, and information being used by the Universal Service

Providers for commercial benefit. To address respondents' concerns, we will require the Universal Service Providers to agree to strict terms and conditions set by Ofcom in a licence agreement before we allow them access to the API. This licence will set out restrictions on how the information is used and set technical restrictions on the number of look-ups that can be made over certain periods of time to prevent attempts to gain access to large sections of the data. Ofcom will provide log-ins to the Universal Service Providers and keep records of the Universal Service Providers' use of the API, so that we have the ability to match API look-ups made to USO requests received. Further, we have decided to significantly enhance the safeguards which protect and restrict the use of the information disclosed by Ofcom to the Universal Service Providers in the universal service conditions (see below).

- d) In response to suggestions that Ofcom should make the information in the API publicly available (i.e. on Ofcom's website), in light of significant concerns raised by stakeholders about the disclosure of information, we consider that the most appropriate and proportionate approach is to disclose only the minimum information required to implement the USO scheme effectively, and to do so no wider than is necessary (that is to the Universal Service Providers only). We do not consider that it is necessary or proportionate to make the names of network provider(s) serving specific locations publicly available in order to implement the USO scheme, particularly in light of the concerns raised by various stakeholders regarding the potential commercial confidentiality of the relevant information. We also note that Ofcom would not be able to offer the same level of protection in respect of any published information as this could not be accompanied by regulatory conditions in the universal service conditions.

8.55 In relation to network planning and calculating connection costs, Virgin Media said that providing access to a full list of premises which cannot access decent broadband could damage competition by allowing BT to 'reverse-engineer' Virgin Media's network footprint. For the avoidance of doubt, using the list of premises in this way would constitute a clear breach of the universal service conditions G1 to G6 imposed upon BT (see below), dictating the terms of use of this data and the terms of the proposed licence. As explained in more detail below, we will take any allegations of non-compliance with the information sharing provisions very seriously. However, we have also considered the potential implications in the event that such a breach was to occur. In our view, we consider that this data provides relatively limited additional information on Virgin Media's coverage beyond what is already publicly available to BT:

- a) Firstly, this information will not give BT any visibility over the coverage footprint of Virgin Media (or other providers') networks in areas where Openreach's network already delivers speeds of 10 Mbit/s or more. This constitutes the majority of Virgin Media's network coverage;

- b) Secondly, even in areas where Openreach's network *does not* provide such speeds, this information will not allow BT to identify which specific network providers are offering decent broadband (though we recognise that Virgin Media is the biggest alternative network provider and so is likely to be present in many of these areas);
- c) Thirdly, as noted by Virgin Media, there is already publicly-available Connected Nations data showing decent broadband coverage at a postcode-level. This would allow BT to identify in which postcodes other networks are present. The proposed premises-level information would therefore only affect BT's commercial decisions to the extent that it decided to target future commercial rollout at a premises-level. Given the cost and complexity of this, we consider this to be unlikely.

8.56 Nevertheless, we recognise that the information does in theory provide BT with some degree of additional visibility over competitors' network coverage (particularly Virgin Media), in some areas of the country. For this reason, we have put strengthened safeguards in place to ensure that this data is not used by the Universal Service Providers for any purpose other than assisting with determining USO eligibility, network planning, and raising consumer awareness. As explained in more detail below, these include additional measures on top of our December 2018 consultation proposals. We consider that these measures are sufficient and proportionate, given the potential risk to fair and effective competition that could be caused by any inadvertent compilation and disclosure of this data.

8.57 Finally, we consider that it is necessary and appropriate that publicly-funded interventions are taken account of in the list of properties which cannot access decent broadband derived from information gathered for the Connected Nations reports. Properties where decent broadband is forecast to be made available as the result of a publicly-funded scheme within the relevant timeframe will therefore be removed from these lists.

Safeguards and technical restrictions

8.58 Having taken account of responses to our December 2018 consultation, feedback from our disclosure exercise, and engagement with BT and KCOM, we have decided to strengthen the condition we proposed in G.1 as set out below.

8.59 In response to stakeholder comments that there should be more specific conditions to prevent access by those who are not working on the delivery of the USO and prevent its use for commercial purposes²⁷³, we have decided that the Universal Service Providers should ensure that the Ofcom-supplied list of premises which cannot access decent broadband and are not forecast to receive it as a result of a publicly-funded intervention within the relevant period is only accessed by named employees and agents of the Universal Service Providers who are working on the delivery of the USO. Further, employees and agents who have access to the list must not influence any decisions related

²⁷³ Virgin Media response to the December 2018 consultation, page 6.

to the commercial deployment of the Universal Service Providers' networks whilst they have access to the list, and they must not influence such decisions for an appropriate period of time after the point that they cease having access to the list. The aim of this is to minimise the risk that any of the list information could inadvertently be used for any commercial purposes. We consider that it is for the Universal Service Providers to decide what period of time is appropriate on a case by case basis taking into account factors including (i) the length of time a person had access to the list; and (ii) the person's seniority. We explain further below the action we can take if we consider the approach taken by the Universal Service Providers in respect of these provisions to be inadequate.

- 8.60 For the information which will be shared with the Universal Service Providers via the API, we require the Universal Service Providers to ensure that only employees or agents of the Universal Service Providers who are working on the delivery of the USO are allowed to access that information. We do not consider it necessary to place the same restrictions as above on those who has access to the API information, as this information will be provided one premises at a time and it is unlikely it could have any impact on commercial decision making.
- 8.61 Given the importance of ensuring that information is not accessed by those who are not working on the delivery of the USO, the measures implemented by the Universal Service Providers must include appropriate separation of data to prevent access to USO information by employees or agents who are not working on the delivery of the USO.
- 8.62 We consider that the Universal Service Providers are best placed in the first instance to design appropriate measures to protect information in order to comply with the universal service conditions. We have therefore decided not to prescribe any specific measures at this point (except for requiring appropriate separation of data), but have provided guidance on relevant considerations set out in paragraph 8.63 below which the Universal Service Providers should take into account. If we consider the measures adopted by the Universal Service Provider(s) to be inadequate, we will investigate compliance if appropriate and, as noted below, may require an audit to support our analysis. If, following such investigation, we identify concerns about the controls implemented by the Universal Service Provider(s), we will consider among other things the option of prescribing specific measures.
- 8.63 In order to comply with the universal service conditions (including in relation to the statement as mentioned below), the Universal Service Providers will need to develop and tailor mechanisms specifically to mitigate the risks they have identified, including developing controls to ensure that information relating to the USO is only used for the specific purposes which relate to the delivery of the USO. When implementing appropriate measures, we expect the Universal Service Providers to consider the following issues at a minimum:

- i) **Training of staff and internal guidance:** to ensure that all relevant staff have a strong awareness of the information sharing restrictions, including what information should not be shared.
 - ii) **Location of staff:** to consider what controls are appropriate in cases where staff who are directly involved in the delivery of the USO are co-located with other employees.
 - iii) **IT system controls:** to ensure that there are controls in place restricting staff access to information systems which contain USO-related information. Appropriate controls could include restricted access to ICT systems that contain such information so that only employees who are working on the delivery of the USO have access.
 - iv) **Internal compliance checks:** to ensure that the measures in place to manage USO information are sufficient, including regular risk assessments.
- b) In order to ensure that there are adequate records to support any future compliance investigation, we have placed an obligation on the Universal Service Providers to maintain a list of individuals, including their roles, who have received information provided by Ofcom or collected by the Universal Service Provider in connection with performing their obligations under the USO conditions unless the information that they have received is immaterial. This obligation also requires the Universal Service Providers to record a description of the nature of the information that they have received on this list.
- c) We have also decided to require the Universal Service Providers to provide to Ofcom a statement of the measures that they have implemented to comply with the information sharing conditions. We believe that this is necessary to provide reassurance to Ofcom and stakeholders that the Universal Service Providers have sufficient measures in place to comply with the relevant universal service conditions before receiving any information from Ofcom. Where these measures change materially, the Universal Service Providers are required to update their statements. We explain in Section 10 that, in order to ensure that consumers receive USO connections as quickly as possible, BT needs to use the implementation period to undertake necessary network planning. To do this, it requires access to the list of premises which cannot access decent broadband and are not forecast to receive it as a result of a publicly-funded intervention within the relevant period. BT is therefore required to provide its statement to Ofcom within four weeks of our decisions in this statement. We will liaise with KCOM to decide when it should provide its statement but this will need to be before KCOM can receive any Ofcom information. We will also consider whether it would be appropriate to publish the statements from BT and KCOM for the purpose of providing greater transparency to network providers whose coverage information is being disclosed about the steps the Universal Service Providers have taken to ensure their compliance with the conditions.

- 8.64 In response to stakeholder comments that Ofcom should carry out audits and assessments of the Universal Service Providers' compliance with the information sharing conditions²⁷⁴, we have decided to include a mechanism for Ofcom to trigger an audit of measures put in place by the Universal Service Providers to comply with the information sharing obligations in the universal service conditions. This will allow either Ofcom, or another approved party on Ofcom's behalf, to carry out an audit of measures implemented by the Universal Service Providers. The condition requires the Universal Service Provider to cooperate with any such audit, and to pay the costs of the audit.
- 8.65 Under sections 96A-96C and 97 of the Act, Ofcom has powers to impose significant sanctions on the Universal Service Providers who act in breach of the regulatory obligations contained in the universal service conditions. We will take any allegations of non-compliance with the information sharing provisions very seriously and, where appropriate, will take action where we have concerns about each Universal Service Provider's conduct.
- 8.66 In addition to the safeguards in the universal service conditions, before any information is provided by Ofcom to the Universal Service Providers, we will require each provider to accept the terms and conditions governing the use of the API and the list of premises, in two separate licence agreements. The exact terms of these licences are still subject to discussions with the Universal Service Providers, however, our intention is that they will contain terms along the following lines (amongst others):
- a) **USO API licence:** this will restrict the Universal Service Providers' use of this information to one specific purpose: to inform people who request the USO whether a decent broadband service is available at their property from another network provider(s) and whether their location is due to benefit from a publicly-funded intervention and in what timeframe. To prevent attempts to gain access to large sections of the data, the API licence will set limits on the number of requests which can be made by Universal Service Providers over certain time periods. Our intention is to set these initially at 60 requests per minute for BT, and 20 requests per minute for KCOM. In addition, we intend to limit the maximum number of requests which can be made per month to 5,000 for BT and 1,000 for KCOM. We will review these limits once the USO is live to ensure that they remain appropriate, taking into account the number of USO requests which each Universal Service Provider receives. Our intention is that the licence terms will also reflect some of the requirements in the universal service conditions on the treatment of information. This licence will also forbid the use of the API to attempt to reverse engineer the coverage footprints of third-party network providers and the storage of information obtained from the API, except where it is necessary for complying with the record keeping requirements in the universal service conditions.

²⁷⁴ Virgin Media response to the December 2018 consultation, page 6; CityFibre response to the December 2018 consultation, page 9.

b) **List of premises licence:** this will restrict the Universal Service Providers' use of this information to three specific purposes: (1) for calculating whether the costs of providing a USO connection to individual properties exceeds the £3,400 reasonable cost threshold, taking into account the extent to which costs can be shared with other properties; (2) for the purposes of network planning; and (3) for raising consumer awareness of the USO (i.e. by contacting properties which may be eligible). Our intention is that this licence will also reflect some of the requirements in the revised universal service conditions on the treatment of information.

8.67 Further, before any information is shared, we will require confirmation from a senior executive representative of each Universal Service Provider that they are satisfied that the Universal Service Provider has adequate controls in place to comply with the universal service conditions and has agreed to the relevant licence/s in respect of the information.

Interaction with obligations imposed through the WLA and WBA market reviews

8.68 Following our proposals concerning the disclosure of information to the Universal Service Providers, BT wrote to us about potential linkages between the proposed information sharing universal service conditions and the no undue discrimination requirements imposed last year following the WLA and WBA market reviews.²⁷⁵

8.69 These no undue discrimination obligations require BT not to unfairly favour to a material extent an activity carried on by it so as to place one or more third party providers at a competitive disadvantage in relation to activities carried on by BT, except in so far as Ofcom may from time to time otherwise consent in writing.

8.70 BT explained that if it is designated, in order to ensure that it can carry out its role as the Universal Service Provider in compliance with the obligations imposed by Ofcom, the following information relating to the planning and delivery of the USO will need to be shared within BT and Openreach that will not be shared with any other provider:

- a) Openreach and BT Enterprise will need to share information with BT Consumer; and
- b) Openreach will need to share information with BT Enterprise.

8.71 As set out in this section, and Section 5, we recognise that BT will need to share certain information to plan and ensure the smooth delivery of the USO. We also agree with BT that any sharing of the USO-related information with third-party providers would be unlikely to be necessary, or indeed compliant with, BT's universal service obligations unless any such providers are involved in the delivery of the USO (for example, as a consequence of an

²⁷⁵ SMPs condition 2 set out in Annex 1 of the Wholesale Broadband Access (WBA) Market Review 2018 and SMP condition 4 set out in Annex 33 of the Wholesale Local Access (WLA) Market Review 2018 ("the no undue discrimination obligations").

infrastructure sharing agreement with BT in which case some information sharing may be appropriate).

- 8.72 In light of the above, we consider that information sharing within BT and/or Openreach will not be unduly discriminatory for the purposes of the no undue discrimination requirements imposed following the WLA and WBA market reviews so long as:
- a) it is limited to what is necessary for BT to comply with its universal service obligations; and
 - b) it is carried out in accordance with those obligations and all of the information protection measures BT has implemented to comply with the obligations contained in G.1 to G.6 inclusive.

Universal service conditions and legal tests

- 8.73 Our decisions on the information to be used by the Universal Service Providers for the purposes of determining eligibility for the USO, conducting network planning and raising consumer awareness of the USO, and on the treatment of such information, as set out above, are captured in the universal service conditions we are imposing on BT and KCOM.
- a) **Information to be used for determining eligibility, network planning and raising consumer awareness:** the conditions require the Universal Service Providers to first use any relevant information they hold, and then information provided by Ofcom via the USO API and list of premises for the purpose of determining whether relevant eligibility criteria in the Order are met. The list of premises will also be used for the purposes of network planning and raising consumer awareness.
 - b) **Treatment of information:** the conditions require the Universal Service Providers to ensure that any information provided by Ofcom, and information that they collect in connection with undertaking their USO obligations, is only used for USO purposes. They require the Universal Service Providers to implement appropriate separation of data to prevent access by those not working on the USO, to maintain a list of people who have access to the information, and to provide statement(s) to Ofcom on the measures that they have put in place to protect relevant information. Further, they allow Ofcom to trigger an audit of measures put in place by the Universal Service Providers to comply with the information sharing conditions. For the list of premises which do not have access to decent broadband and are not forecast to receive it as a result of a publicly-funded intervention within the relevant period, employees and agents of the Universal Service Providers who have access must not influence any commercial deployment decisions.
 - c) **Direction making powers:** under the above conditions, we have decided to include the power for us to give directions, approvals and consent so that we are able to specify further detail concerning the information to be used for determining eligibility and the treatment of such information if appropriate. The conditions also include a

requirement for the Universal Service Providers to comply with any such direction(s), approval(s) or consent so that any contravention of a direction would constitute a contravention of the conditions itself and would therefore be subject to enforcement action under sections 94 to 104 of the Act.

8.74 When considering making our decisions under sections 67 and 45 of the Act in a particular case, we must be satisfied that the legal tests in section 47(2) of the Act are met. We consider that universal service conditions B.2, B.6, B.9 and conditions G.1 to G.6 (inclusive) are:

- a) **objectively justifiable**, in that they seek to ensure that the Universal Service Providers have sufficient information in order that they can determine eligibility of each consumer who requests a USO connection and service, and that requests can be dealt with properly and effectively as envisaged in the Order. They will also ensure that the Universal Service Providers have the information that they need to conduct network planning and to raise consumer awareness of the USO. Our conditions concerning the treatment of information seek to ensure that the information provided by Ofcom to the Universal Service Providers, and information collected by the Universal Service Providers in connection with performing their obligations, is only used for the purpose of complying with the universal service conditions in order to ensure that the Universal Service Providers do not gain an advantage in areas not related to the USO;
- b) **not unduly discriminatory**, as the measures to protect information are the same for both BT and KCOM, and take account of their respective circumstances;
- c) **proportionate**, since the information protection obligations are imposed in recognition that the Universal Service Providers will require relevant information in order to determine eligibility for USO connections and services in accordance with the eligibility criteria in the Order, to conduct network planning and to raise consumer awareness of the USO. They also seek to ensure that information provided by Ofcom, and information collected by Universal Service Providers in connection with performing their obligations, is not used for other non-USO purposes. In designing those obligations, we are ensuring that they provide adequate protection to address the concerns whilst at the same time taking account of the Universal Service Providers' circumstances to make sure that the measures are proportionate and practical to implement.
- d) **transparent**, in that the conditions we are imposing are clear in their intention and seek to ensure that the Universal Service Providers have sufficient information to support workable processes to determine eligibility for USO connections and services, conduct network planning and to raise consumer awareness of the USO. They also seek to ensure that information provided by Ofcom, and information collected by Universal Service Providers in connection with performing their obligations, is adequately protected. Further, we have sought to be transparent in devising the conditions

through public consultation, and through direct engagement with relevant stakeholders.

- 8.75 We also consider that the conditions meet our duties and the Community requirements under sections 3 and 4 of the Act. We think that they further the interests of citizens in relation to communications matters and the interests of consumers in the relevant markets as well as promote the interests of EU citizens because they seek to ensure that all requests made by consumers in the UK can be dealt with properly and effectively as envisaged in the Order.

9. Obligations on performance reporting and maintaining records

- 9.1 This section explains our decision on the performance reporting and record keeping requirements we are imposing on the Universal Service Providers.
- 9.2 The main elements of our performance reporting requirements include:
- a) public reporting by the Universal Service Providers on connection supply times and faults which the Universal Service Directive requires us to impose;
 - b) public reporting by the Universal Service Providers on other parameters that we think are necessary to monitor how they are meeting the universal service conditions in respect of the outcome of a consumer's request for a USO connection; meeting connection supply times; and performance in relation to complaints handling; and
 - c) additional annual reporting by the Universal Service Providers to Ofcom to demonstrate compliance with specific timeframes within the obligations in respect of eligibility checking and delivery timeframes.
- 9.3 We also set out what monitoring and reporting Ofcom will undertake through the annual Connected Nations report on the progress of the USO including the number, type and location of connections delivered.
- 9.4 The Universal Service Providers must also keep accounting records to support any net cost claim which they may need to make. This information should include the underlying records necessary to enable Ofcom to perform an effective audit and verification of costs.
- 9.5 Whilst our public reporting requirements cover a subset of the obligations we are imposing, we can use our formal information gathering powers in order to monitor the Universal Service Providers performance against any of our obligations, should we identify any areas of concern.

Public performance reporting

Our December 2018 consultation

- 9.6 In our December 2018 consultation, we proposed that the Universal Service Providers should publicly report on:
- a) parameters which the Universal Service Directive requires us to impose on the Universal Service Providers on connection supply times and faults; and
 - b) parameters which would provide additional, necessary transparency on whether the Universal Service Providers are meeting their obligations set out in the universal service

conditions, specifically the outcome of a consumer's request; meeting connection supply times; and performance in relation to complaints handling.

Responses to our December 2018 consultation

- 9.7 Respondents to our December 2018 consultation generally agreed with our approach to the Universal Service Providers' performance reporting requirements, although both BT and KCOM considered that the proposals were too prescriptive.
- 9.8 BT considered that it was premature to be prescriptive about the reporting requirements as they were still in the process of designing the databases and systems that will support the Universal Broadband Support Group. It considered that this development could highlight different aspects of reporting that the current approach would not be able to reflect and there was a risk of putting in place obligations that were not needed.
- 9.9 BT noted that it expected more detailed reporting requirements to result in greater resources required to build and maintain the systems and processes. BT proposed that Ofcom should remove Schedule 2 of the draft legal instruments or change the status of these to guidelines; or if they are maintained, to limit it to the key requirements necessary.²⁷⁶
- 9.10 KCOM suggested that Ofcom should monitor the progress of the USO using our information gathering powers in the first instance.²⁷⁷
- 9.11 TalkTalk²⁷⁸ highlighted the importance of Ofcom specifying the requirements that the Universal Service Providers must fulfil and not leaving it to their discretion, whilst Which?²⁷⁹ suggested service quality should be more strongly represented in our performance reporting requirements.
- 9.12 The CCP suggested we require reporting on the number of quotes in excess of £3,400 to understand what proportion of customers were choosing to pay excess connection costs to receive a USO connection, and to undertake independent scrutiny of a sample of these cases. The CCP were particularly concerned about the protection of vulnerable customers when faced with a connection cost estimate above the £3,400 reasonable cost threshold.²⁸⁰ Alan Mason²⁸¹ also considered that the Universal Service Providers should record the number of requests above and below the £3,400 reasonable cost threshold.

²⁷⁶ BT response to the December 2018 consultation, pages 29-30.

²⁷⁷ KCOM response to the December 2018 consultation, page 9.

²⁷⁸ TalkTalk response to the December 2018 consultation, page 2.

²⁷⁹ Which? response to the December 2018 consultation, page 8.

²⁸⁰ CCP response to the December 2018 consultation, pages 5-6.

²⁸¹ Alan Mason response to the December 2018 consultation, page 3.

- 9.13 The BiT Commons suggested that reporting needed to reflect the number of USO requests that did not meet the eligibility criteria because they would be delivered by BDUK rollout.²⁸²

Our decision

- 9.14 The purpose of requiring the Universal Service Providers to publicly report information is to increase transparency of the provider's performance to consumers and industry, and to help establish whether a Universal Service Provider is meeting its obligations. This is recognised in section 67(2) and (3) of the Act which places an obligation on Ofcom to impose reporting requirements that Ofcom considers appropriate as well as to include certain specific reporting requirements derived from the Universal Service Directive.
- 9.15 We consider that our overall approach to performance reporting, as outlined in our December 2018 consultation, is appropriate in light of consultation responses and that it is appropriate and proportionate to require the Universal Service Providers to publicly report information:
- a) relevant to a consumer's request for a USO connection and confirming the outcome of the request;
 - b) that connection supply times are being met, along with fault rates and repair times; and
 - c) on performance in relation to complaints handling and dispute resolution.
- 9.16 We disagree with:
- a) BT's characterisation of our performance reporting being prematurely prescriptive and that the reporting requirements we proposed would lead to obligations that are not needed;
 - b) BT's suggestion that we change the status of Schedule 2 to the universal service conditions to be 'guidelines'; and
 - c) KCOM's comment that we should use our information gathering powers to monitor the progress of the USO.
- 9.17 The reporting requirements, that are set out in more detail below, reflect the obligations put in place under the universal service conditions. We agree with TalkTalk that it is important for us to be clear about the requirements that the Universal Service Providers must fulfil. We have carefully considered each of the requirements in the obligations we have imposed and believe these provide early clarity and certainty to the Universal Service Providers, consumers and other interested stakeholders on the information we consider appropriate for the Universal Service Providers to publish to demonstrate compliance with the universal service conditions.

²⁸² The BiT Commons response to the December 2018 consultation, page 5.

- 9.18 The reporting requirements will allow us to monitor the Universal Service Providers' performance, giving us the ability to step in and quickly remedy any issues to ensure consumers receive their connections as quickly as possible. The requirements should also act as an incentive on the Universal Service Provider to deliver these obligations effectively and will benefit a wider set of stakeholders who will be able to monitor the delivery of the USO.
- 9.19 We do not consider it appropriate to change the status of Schedule 2 to the universal service conditions to be 'guidelines' (as BT suggested) or rely solely on our information gathering powers to monitor the progress of the USO (as suggested by KCOM). To ensure that it is clear to the Universal Service Providers that they have a duty to comply with those obligations, we consider that it is appropriate to capture them in a direction given under the relevant universal service condition.
- 9.20 In relation to further reporting on the number of USO requests that did not meet the eligibility criteria because they would be delivered by BDUK rollout, we do not think that this reporting is necessary or appropriate for us to impose on the Universal Service Providers, given it does not relate to an obligation in the universal service conditions.
- 9.21 We note that Which? suggests that quality of service should be more strongly represented in our performance reporting requirements. Our reporting obligations cover connection supply time, fault and complaints handling. We consider this will give us sufficient insight to any quality of service issues that may arise. We can use our formal information gathering powers in order to monitor the Universal Service Providers performance against any of our obligations, should we identify any areas of concern.
- 9.22 We set out the specific information we are requiring to be published below. The performance reporting requirements include publication of information on the performance of the Universal Service Providers based on the parameters set out in Annex III of the Universal Service Directive.

USO requests and confirmed orders

- 9.23 In considering the CCP's comment that we should require reporting on the number of quotes in excess of the £3,400 reasonable cost threshold, we note that the reporting requirements proposed in our December 2018 consultation would not record the number of requests that are accepted because the consumer agreed to pay any excess costs. Information submitted by BT as part of its response to our June 2018 document suggested that it considered around 110,000 premises would cost above the £3,400 reasonable cost threshold based on the modelling of its own data. Of these, it estimated approximately 70,000 would cost in excess of £10,000 to connect, whilst just 10,000 premises (less than 10%) would cost up to an additional £600 (above the £3,400 reasonable cost threshold) to

connect.²⁸³ As a result, the number of consumers that choose to pay excess costs could be low.

9.24 However, the Universal Service Providers will already need to record this information in order to invoice any consumers that choose to pay any costs above the £3,400 reasonable cost threshold. We think that requiring the publication of this information will help provide clarity over the numbers of consumers who agree to contribute to the costs of connection above the £3,400 reasonable cost threshold. We are therefore requiring the Universal Service Providers to report the number of confirmed orders in each month that involved a customer agreeing to pay excess costs.

9.25 Our requirements on the reporting of the number of USO requests has been amended from our consultation position to reflect this additional reporting by including c) below:

- a) the number of USO requests received by the Universal Service Provider in each month;
- b) the number of requests accepted (i.e. customer orders placed) by the Universal Service Provider in each month;
- c) the number of Confirmed Orders received each month that involved a Customer agreeing to pay costs in excess of £3,400; and
- d) the number of requests rejected by the Universal Service Provider in each month of the relevant reporting period including an explanation of the reason why.²⁸⁴

Timeframe for confirming the outcome of broadband USO requests

9.26 No stakeholder commented or raised concerns about the proposed requirements on the reporting of the timeframe for confirming the outcome of broadband USO requests. We therefore consider that the proposed requirements are appropriate to impose. The Universal Service Providers will be required to report:

- a) the number of USO requests in each month where the Universal Service Provider confirmed the outcome of the request to the consumer in writing within 30 calendar days of the date of the request; and
- b) the number of requests in each month where the Universal Service Provider did not confirm the outcome of the request to the consumer in writing within 30 calendar days of the date of the request.

²⁸³ BT response to the June 2018 document, page 18. Once we have shared the list of premises that cannot access decent broadband, as explained in Section 8, BT intend to update this analysis.

²⁸⁴ The reasons why USO requests are not accepted should be broken down by appropriate categories, for example: broadband service which meets the technical specification of the USO is already available at the location; broadband service which meets the technical specification of the USO is due to be made available as the result of a publicly-funded intervention within one year of the request date; excess costs were quoted and the consumer does not agree to pay.

Connection supply time and faults

- 9.27 BT commented directly on our proposed requirements set out in paragraph 1(c) of Part 3 of Schedule 2 of the draft legal conditions in relation to the provision of broadband services, where we proposed the Universal Service Provider report:
- i) the number of Broadband Services delivered in each month;
 - ii) the number of Broadband Services delivered in each month within the following periods from the dates on which Confirmed Orders were placed: 0 up to and including 3 months; more than 3 months up to and including 6 months; more than 6 months up to and including 9 months; more than 9 months up to and including 12 months; more than 12 months up to and including 18 months; more than 18 months up to and including 24 months; and more than 24 months;
 - iii) the supply time of Broadband Services from the date of the Confirmed Order in each month;
 - iv) the fault rate per access line for all Broadband Services in each month; and
 - v) the fault repair time for all Broadband Services in each month.
- 9.28 BT considered that we should delete the requirements set out in 1(c)(ii) as these were already being captured under 1(c)(i) and 1(c)(iii) of the same schedule.²⁸⁵ We do not agree with BT on this point and do not consider there is an overlap between the reporting requirements.
- a) The requirements under 1(c)(i) will provide information on the number of services delivered in each month, and therefore the overall trend in delivery of USO connections.
 - b) The requirements under 1(c)(ii) will break the total number of services reported under the requirements under 1(c)(i) in each month with reference to the point at which connections started to be delivered, and will therefore provide clarity on the connection supply times for all services delivered.
 - c) The requirements under 1(c)(iii) will be made by reference to the parameters, definitions and measurement methods set out in the Universal Service Directive and represent the minimum requirements the Universal Service Providers are required to report on. For connection supply time, BT will be required to report the times by which the fastest 50%, 95% and 99% of orders are completed.
- 9.29 We have reviewed requirements under 1(c)(ii) more generally in light of our decision on the network build delivery timeframe where we are requiring BT to deliver 80% of connections in 12 months, 95% in 18 months and 99% within 24 months; and in light of information provided by KCOM that suggest there will be very few premises that will be

²⁸⁵ BT response to the December 2018 consultation, page 30.

eligible for the USO. We have decided to require that the reporting intervals for the number of broadband services delivered should be every six months (instead of every three months as proposed at consultation) as we consider that the monthly reporting under 1(c)(i) will provide us early enough sight of any performance issues in delivering connections in line with the delivery timeframe we are imposing.

- 9.30 BT also suggested the requirements under 1(c)(iv) and 1(c)(v) of Part 3 of Schedule 2 should be removed as they relate to standard provision and fault repair timelines and are covered by Openreach KPIs. We have considered BT's consultation response on this point in light of the quality of service requirements we have imposed on BT through the Wholesale Local Access market review. As part of this market review, we require Openreach to report publicly and provide additional reporting to Ofcom on a number of quality service parameters, including fault repairs. Existing information the Universal Service Providers may already be reporting through the WLA market review could satisfy the minimum requirements we have imposed which should be based on the parameters, definitions and measurement methods set out in the Universal Service Directive. We will engage further with the Universal Service Providers during the implementation period to on this.
- 9.31 As set out above, the Universal Service Providers are required to report on minimum requirements based on the parameters, definitions and measurement methods set out in the Universal Service Directive and we will therefore be adopting a requirement for the Universal Service Providers to report on 1(c)(iv) and 1(c)(v).
- 9.32 BT suggested that we should remove the prescribed format for the preparation and publication of 1(c)(iii), 1(c)(iv) and 1(c)(v) as required by paragraph 2 of Part 3 of Schedule 2 and as set out at Annex 1 of Schedule 2. Sections 67(2) and 67(3) of the Act require that the universal service conditions relating to performance reporting must contain a provision which requires the information to be published "to be framed by reference to the quality of service parameters, definitions and measurement methods for the time being set out in Annex III to the Universal Service Directive". This statutory requirement was reflected in our proposed paragraph 2 of Part 3 of Schedule 2 and Annex 1 of Schedule 2 to the Universal Service Conditions.
- 9.33 In further correspondence with BT on this issue following its consultation response, it suggested that Ofcom has discretion under the Universal Service Directive and the Act as to what is included in the reporting and monitoring of the USO.²⁸⁶ We have considered BT's comments on this point and have decided to make a minor amendment to paragraph 2 of Part 3 of Schedule 2 to more accurately reflect the statutory wording in Article 11(1) of the Universal Service Directive and section 67(3)(c) of the Act which implements that provision so that "in accordance with" will be replaced by "based on". Otherwise, we do not agree with BT's suggestion that Ofcom should remove Paragraph 2 of Part 3 of Schedule 2 and

²⁸⁶ BT response to s.135 Notice of 25 April 2019.

Annex 1 to schedule 2 to the universal service conditions, as this will provide important information on service quality standards, and the wording of Schedule 2 reflects the statutory requirements of section 67(3)(c) of the Act and the Universal Service Directive.

- 9.34 Whilst KCOM made no specific comment on the reporting requirements for connection supply times and faults, we consider any premises in Hull connected through the USO should be subject to the same level of transparency as for premises outside Hull.
- 9.35 Our requirements on the reporting of connection supply time and faults have been adjusted from our consultation position to reflect the consultation responses we received. The Universal Service Providers will be required to report on:
- a) the number of Broadband Services delivered in each month; and
 - b) the number of Broadband Services delivered in each month within the following periods from the dates on which Confirmed Orders were placed: 0 up to and including 6 months; more than 6 months up to and including 12 months; more than 12 months up to and including 18 months; more than 18 months up to and including 24 months; and more than 24 months.
- 9.36 The Universal Service Providers will also be required, except in so far as Ofcom may from time to time consent, to report on minimum requirements based on the parameters, definitions and measurement methods set out in the Universal Service Directive.²⁸⁷ These parameters are:
- a) connection supply time - the times by which the fastest 50%, 95% and 99% of orders are completed;
 - b) fault rate per access line - number of faults reported per fixed access line²⁸⁸; and
 - c) fault repair time - the time by which the fastest 80% and 95% of valid faults on access lines are repaired and/or percentage of faults cleared within any time stated as an objective by the service provider.

Complaints handling and dispute resolution

- 9.37 No stakeholder has commented or raised concerns about the proposed requirements on the reporting of the timeframe for confirming the outcome of broadband USO requests. We therefore consider that our proposals are appropriate. The Universal Service Providers will be required to report:

²⁸⁷ The definitions and measurement methods are set out in the relevant European Telecommunications Standards Institute (ETSI) standard. [ETSI ES 202 057-1 v2 1.1 \(2013-01\)](#) sets out the relevant parameter definitions and measurement method. Parameters should allow for performance to be analysed at a regional level. (i.e. no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat.

²⁸⁸ For the purposes of this reporting parameter, we would consider 'fixed access line' to include any technology used to provide a USO service to a fixed location.

- a) the number of complaint cases in relation to the USO made to the Universal Service Provider in each month of the relevant reporting period;
- b) the number of USO complaints resolved to the customer's satisfaction in each month of the relevant reporting period;
- c) the proportion of USO complaints not resolved to the customer's satisfaction in each month of the relevant reporting period; and
- d) the number of USO complaint cases not resolved to the customer's satisfaction in each month of the relevant reporting period that are accepted for investigation by the Universal Service Provider's alternative resolution scheme.

Demonstrating compliance with eligibility checking and delivery timeframes to Ofcom

Our December 2018 consultation

9.38 In our December 2018 consultation, we proposed Universal Service Providers should provide additional information to Ofcom about their compliance with certain obligations. We proposed this should include reporting where the Universal Service Provider has not confirmed the outcome of a consumer's request in writing within 30 calendar days from the date of a request; not delivered connections by the agreed customer service activation date; or not delivered connections within 12 months of the date on which the consumer placed an order.

Responses to our December 2018 consultation

9.39 The CCP suggested that the requirements set out at paragraph 9.12 (c) of the consultation relating to additional reporting by the Universal Service Providers to Ofcom should be published alongside the remedial action the Universal Service Providers will take to prevent any similar delays.²⁸⁹

Our decision

9.40 As explained in Sections 5 and 6, we have decided to set obligations on the Universal Service Providers to meet specific timeframes to confirm eligibility of a request and deliver USO connections to eligible consumers. We consider more detailed information is needed to enable us to monitor the Universal Service Providers' compliance with those obligations. As this information is likely to be more granular and potentially confidential, we believe that it would be appropriate for BT and KCOM to provide it to Ofcom to demonstrate compliance in meeting these obligations.

²⁸⁹ CCP response to the December 2018 consultation, page 5.

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- 9.41 Where the Universal Service Provider does not meet the obligations to confirm the outcome of a consumer's request in writing within 30 calendar days from the date of a request or to deliver connections by the agreed customer service activation date, the following information must be reported to Ofcom:
- a) for each case where the Universal Service Provider took longer than 30 calendar days from the date of the consumer's request to confirm in writing the outcome of the request, the reason(s) why this timeframe was not met; and
 - b) for each case where the Universal Service Provider has changed or missed the customer service activation date originally communicated to the customer, the reason(s) why that date has been changed or missed.
- 9.42 We are adjusting the reporting requirements on BT to reflect its delivery timeframe obligations which require BT to deliver 80% of connections within 12 months, 95% of connections within 18 months and 99% of connections within 24 months. For each year, BT will have to provide us with sufficient information to demonstrate how it has complied with these obligations no later than 3 months after the end of each year. Where BT does not deliver connections within 24 months of the date on which the consumer placed an order, the following information must be reported to Ofcom:
- c) For each case where BT took longer than 24 months from the date on which the customer placed an order to the customer service activation date, the reason(s) why this timeframe was not met. This must include an explanation of the circumstance(s) leading to the rollout taking longer than 24 months, an explanation of how BT sought to manage the risk of the circumstance(s) arising, and how BT sought to minimise the delay caused to the connection being delivered once the circumstance(s) occurred.
- 9.43 Where KCOM does not deliver connections within 12 months of the date on which the consumer placed an order, the following information must be reported to Ofcom:
- c) For each case where KCOM took longer than 12 months from the date on which the customer placed an order to the customer service activation date, the reason(s) why this timeframe was not met. This must include an explanation of the exceptional circumstance(s) leading to the rollout taking longer than 12 months, an explanation of how KCOM sought to manage the risk of the circumstance(s) arising, and how KCOM sought to minimise the delay caused to the connection being delivered once the exceptional circumstance(s) occurred.
- 9.44 Whilst the CCP suggested that we should require the Universal Service Providers to publish remedial plans should they not deliver connections within 12 months, we do not think this is appropriate given our decision on the network build delivery timeframe.
- a) For BT, we are imposing specific delivery timeframes through an absolute obligation. If BT does not meet this obligation, it will be in breach of its legal requirements and could be subject to enforcement action.

- b) For KCOM, it has provided us with information to suggest there will be very few premises that will be eligible for the USO once it comes into effect.²⁹⁰ We therefore expect KCOM to be able to deliver to these premises within 12 months.

Timing and retention of public and compliance reporting

Our December 2018 consultation

- 9.45 We proposed that the performance reporting information be published by the Universal Service Providers and provided to Ofcom as applicable as follows:
- first publication should occur no later than 30 calendar days after the expiry of the first 6-month period during which the USO obligations are in force; and
 - each subsequent publication should occur no later than 30 calendar days after the expiry of each subsequent 6-month period.
- 9.46 We also considered it important that the Universal Service Providers be subject to a general obligation to maintain for 6 years adequate records which are relevant to the provision of USO connections and services (in addition to the obligations to maintain accounting records) to ensure that they are able to demonstrate to Ofcom that they have complied with the universal service conditions.

Responses to our December 2018 consultation

- 9.47 BT proposed a 12-month transition period should we decide to maintain the requirements set out in Schedule 2 of the draft legal instruments.²⁹¹ It also highlighted that our proposed six-year period to maintain customer records went beyond its two-year standard retention period.

Our decision

- 9.48 We sought further clarification from BT to understand the practical reasons as to why it needed a longer transition period. BT said that while it would be possible to provide some information in respect of the metrics specified in the proposed direction from the outset, it was concerned that this may not meet Ofcom's requirements, and that any future changes to reporting would require system changes. BT also suggested it would need 12 months to complete the development of the USO and the transition period should align with this.²⁹²
- 9.49 The performance reporting requirements we are imposing on the Universal Service Providers will only come into effect after the implementation period has elapsed, as detailed in our revised definition of a "Relevant Period" in Schedule 2 and Schedule 4 of the Legal Instruments set out at Annex 1 of this document. As set out in Section 10, we

²⁹⁰ KCOM response to s.135 Notice of 10 May.

²⁹¹ BT response to the December 2018 consultation, pages 29-30.

²⁹² BT response to s.135 Notice of 25 April 2019.

have decided to give the Universal Service Providers a nine-month implementation period to prepare for the delivery of the USO and this should ensure sufficient time for the Universal Service Providers to build in the reporting requirements to any system or process changes required to deliver the USO.

- 9.50 In our December 2018 consultation, we proposed that the Universal Service Providers need to maintain performance (and financial reporting records which we discuss later in this section) for a period of six years. BT commented that it currently only retains customer records for two-years as standard. We consider that it is important for the Universal Service Providers to maintain records from the point at which an initial request for a USO connection is made. Whilst in most individual cases, a two-year retention period may be appropriate as connections will be delivered in a shorter time period than this, for some premises, the network delivery time could be as long as 24 months after a customer confirms an order for a connection. In these cases, a two-year retention period would not be suitable.
- 9.51 We also need to ensure that we are able to monitor the delivery of the USO as a whole and to be able to identify if there are any issues that we need to investigate further and take enforcement action if required. Given the request-based nature of the USO, and the fact that connections will be made at different points in time, the Universal Service Providers need to maintain records for long enough to demonstrate compliance with the universal service conditions.
- 9.52 We will also need access to information in order to verify any future net cost claim, for example, to demonstrate that any costs incurred are effectively supported by a genuine confirmed order for a USO connection. We set out in Section 10 that we would expect to fully compensate Universal Service Providers for their net cost within 5 years of publishing a final determination. Due to this important link between consumer records and verification of any net cost claim, we are mirroring the retention period for maintaining financial and performance records.
- 9.53 We are therefore adopting our proposal to maintain for 6 years adequate records which are relevant to the provision of USO connections and services (in addition to the obligations to maintain accounting records as set out below) to ensure that they are able to demonstrate to Ofcom that they have complied with the universal service conditions.
- 9.54 We are requiring that the performance reporting information be published by the Universal Service Providers and provided to Ofcom as applicable as follows:
- first publication should occur no later than 30 calendar days after the expiry of the first 6-month period during which the USO obligations are in force; and
 - each subsequent publication should occur no later than 30 calendar days after the expiry of each subsequent 6-month period.

- 9.55 BT and KCOM will have 3 months from the end of each relevant year to prepare the information required to demonstrate how they have complied with the delivery timeframe obligations.
- 9.56 As BT is required to deliver 80% of connections within 12 months, 95% of connections within 18 months and 99% of connections within 24 months, it:
- a) will need to demonstrate its compliance with the 12-month obligations by 20 June 2022 the requests that were received between 20 March 2020 and 19 March 2021; and
 - b) will need to demonstrate its compliance with the 12-month, 18-month and 24-months obligations by 20 June for each subsequent year.

Ofcom monitoring and reporting

Our December 2018 consultation

- 9.57 In our December 2018 Consultation, we explained that we will report on the progress of the USO, including the number, type and location of connections delivered, in our annual Connected Nations Report.²⁹³ We also set out our intention to use our information gathering powers to collect the relevant information from the Universal Service Providers to enable us to do so.
- 9.58 To monitor the services USO customers receive and to help establish if these services meet the technical specification of the USO, we proposed to introduce a requirement for the Universal Service Providers to facilitate any periodic future testing of USO connections requested by Ofcom. Information collected from equipment connected to customers' routers will enable Ofcom to make robust, evidence-based assessments of the performance delivered by the Universal Service Providers to USO consumers.

Responses to our December 2018 consultation

- 9.59 There was general agreement on our approach to Ofcom's monitoring and reporting of USO progress amongst respondents to our December 2018 consultation. The FSB²⁹⁴ and the LGA both suggested increasing the frequency of Ofcom's publication of performance from every 12 months to every 6 months. The LGA also suggested breaking the performance figures down by local authority to help councils understand how successful the USO had been in their local area.²⁹⁵

²⁹³ DCMS, March 2018. [A new broadband Universal Service Obligation: Government's response to consultation on design](#), page 65.

²⁹⁴ FSB response to the December 2018 consultation, page 3.

²⁹⁵ LGA response to the December 2018 consultation, page 3.

- 9.60 Which?²⁹⁶ and the CCP²⁹⁷ suggested that we report on the performance of Universal Service Providers in Ofcom’s Comparing Service Quality report to ensure USO customers are receiving the same service standard as non-USO customers.
- 9.61 Which? proposed that Ofcom should commit to undertake testing of the quality of the broadband service being delivered and customers should be made aware of how they can test their own download sync speed given its importance to the overall success of the USO programme.²⁹⁸

Our decision

- 9.62 We note suggestions by some respondents to increase the frequency of our reporting from annually to every 6 months. As set out earlier in this section, we are requiring detailed public reporting by the Universal Service Providers on their performance in delivering the USO. We consider that this reporting will provide sufficient transparency of the providers’ performance to consumers and other interested stakeholders in a timely manner. Given this, we do not consider the benefits of more frequent reporting outweigh an additional burden we would impose on the Universal Service Providers by collecting this information twice a year. We therefore consider that our consultation proposal to report on this annually is appropriate.
- 9.63 We will use our information gathering powers to collect the following information from the Universal Service Providers and provide annual updates in our annual Connected Nations Report on the:
- a) number of USO connections delivered in the period; and
 - b) type of premises connected (home or business), and their location (urban or rural, and by UK Nation).
- 9.64 In response to the LGA’s proposal to report on the number of connections delivered by each local authority, as part of our Connected Nations reporting, we already report coverage information by local authority areas. We will consider what any appropriate further reporting we can include in Connected Nations at local authority level once we start collecting data from the Universal Service Providers.
- 9.65 We have considered whether it would be appropriate to include further reporting in Ofcom’s Comparing Service Quality report as suggested by Which? and the CCP, in addition to the public reporting we are requiring the Universal Service Providers to undertake and the annual update we will provide in the Connected Nations Report. USO customers may inform the representative sample surveyed as part of the Comparing Service Quality report in future years but at this stage, we consider the public reporting we are requiring by the

²⁹⁶ Which? response to the December 2018 consultation, page 8.

²⁹⁷ CCP response to the December 2018 consultation, page 5.

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Universal Service Providers will provide sufficient performance information, focused on the potential quality issues that may arise for this group of consumers.

- 9.66 We agree with Which? that it is important for consumers to have the ability to measure the speed they are receiving. We are currently exploring options on how consumers can measure the speed they are receiving and the broadband speed testing tools and other data sources they may need. Consumers receiving a poor connection should be able to use these tools to provide information to their existing provider on the quality of the performance of their broadband connection. In a similar way, a USO customer can use these tools to highlight concerns about the performance of their broadband service. We expect this work to be completed by the time consumers start to receive their USO connections.
- 9.67 To monitor the services that USO customers receive and to help establish if these services meet the technical specification of the USO, we consider that it is reasonable and proportionate to require the Universal Service Providers to facilitate any periodic future testing of USO connections requested by Ofcom. This will include the Universal Service Providers supporting the recruitment of an agreed representative sample of USO consumers, and the distribution of an Ofcom-appointed technical partner's testing equipment to them.
- 9.68 Information collected from equipment connected to customers' routers will enable Ofcom to make robust, evidence-based assessments of the performance delivered by the Universal Service Providers to USO consumers.

Obligations on maintaining accounting records

Our December 2018 consultation

- 9.69 In our December 2018 consultation, we outlined that in order to ensure that we have sufficient information to assess any possible future claims for funding, we considered that the Universal Service Providers must keep accounting records to support any net cost claim which they may make. This information would include the underlying records necessary to enable Ofcom to perform an effective verification exercise.
- 9.70 We proposed that the Universal Service Providers:
- a) must maintain records for a minimum period of 6 years from the date on which these records are created;
 - b) must separately record incremental costs, revenues, and assets associated with the provision of USO services; and
 - c) must record costs on a historical cost accounting (HCA) basis.
- 9.71 We also explained that these records must enable the Universal Service Providers to demonstrate that:

- a) direct costs were incurred, were necessary for the provision of the USO, and were efficiently incurred;
- b) the net cost calculation took proper account of direct and indirect benefits; and
- c) the counterfactual scenario of operating without the universal service obligations (as referred to in the Universal Service Directive) used in the net cost calculation is reasonable and based on sound assumptions.

9.72 We also proposed to include the power for us to give directions, approvals and consent under this condition.

Responses to our December 2018 consultation

9.73 Stakeholders generally agreed with the principle of our approach to maintaining accounting records, however some asked for further clarity on aspects of our proposals which we outline below.

Maintaining Accounting Records

9.74 BT had concerns with our proposal to require the maintenance of records on a historic cost accounting basis, the Universal Service Provider's ability to provide records that demonstrate costs were efficiently incurred, and the requirement for the records to demonstrate the counterfactual.

9.75 Vodafone raised concerns with what it described as our "hands-off" approach to reporting and record keeping. Vodafone commented that the suggested cost categories and the 'potential minimum level of information' that providers should record and report when seeking funds, to be "wholly inappropriate" and proposed that we should specify the completion of detailed pro-forma documents.²⁹⁹

9.76 The BiT Commons said that accounting records should be maintained for the USO that included records of subsidised network upgrades paid for by BDUK and Local Delivery bodies.³⁰⁰

9.77 KCOM said that it agreed with Ofcom but would like to discuss the practicalities in further detail. KCOM subsequently indicated to us that it does not expect to make a net cost claim, and as such it would be disproportionate to require it to complete the same pro-forma templates that BT will complete in advance of any claim.

²⁹⁹ Vodafone response to the December 2018 consultation, page 12.

³⁰⁰ The BiT Commons response to the December 2018 consultation, page 6.

Assessing Future Claims for Funding

- 9.78 Virgin Media³⁰¹ and CityFibre³⁰² agreed with our proposal that infrastructure related costs included in a net cost claim must exclude existing and sunk costs.
- 9.79 BT said that it would like to discuss what records it should keep and proposed submitting cash costs of USO spend prior to a net cost claim.³⁰³
- 9.80 The BiT Commons also made comments around the oversight of BDUK expenditure and the possible double claiming of funds in relation to the USO and other publicly funded schemes.³⁰⁴ Vodafone also asked us to consider investigating BT's use of the BDUK funding programme.³⁰⁵
- 9.81 In respect of the direct benefits of the USO, Vodafone said that we should consider other revenue streams in the net cost calculation such as TV revenue. Vodafone commented that there is a strong public interest argument for disclosing information underpinning a net cost claim and gave an example of a hypothetical information deficiency issue in relation to a net cost claim. It said that the broadband USO provider must have an independent auditor in place to audit its reporting and the records used to justify any funding claim.³⁰⁶ Virgin Media noted that it would like to see more extensive disclosure of the cost calculations.³⁰⁷

Our decision

Maintaining Accounting Records

- 9.82 As we set out in the December 2018 consultation, we consider that the Universal Service Providers are best able to judge, in the first instance, what accounting information needs to be recorded and maintained in order to support any net cost claim. This means that the provider must show that the incremental costs included in its net cost claim are not overstated and the incremental benefits of delivering the USO included within its net cost claim are not understated. The Universal Service Providers should maintain accounting records that they consider necessary to support this and enable Ofcom to check this.
- 9.83 Whilst we accept BT's point that recording costs will not demonstrate these costs have been efficiently incurred, we expect the Universal Service Provider's record keeping, to go beyond simply recording invoices. It should include records of accounting and budgetary control showing that costs are monitored for example, through variance analysis, and that proactive action is taken to identify, explain and address examples of adverse variances.

³⁰¹ Virgin Media response to the December 2018 consultation, page 7.

³⁰² CityFibre response to the December 2018 consultation, page 9.

³⁰³ BT response to the December 2018 consultation, page 31.

³⁰⁴ The BiT Commons response to the December 2018 consultation, page 6.

³⁰⁵ Vodafone response to the December 2018 consultation, page 5.

³⁰⁶ Vodafone response to the December 2018 consultation, page 12.

³⁰⁷ Virgin Media response to the December 2018 consultation, page 6.

We would, in any case, expect the Universal Service Providers to be recording this information in the absence of the USO for the purposes of budgetary control of their businesses.

- 9.84 We agree with BT that the recording of incurred costs does not require the specification of any accounting convention. We recognise that our accounting records condition is focused on how information is maintained rather than how it is included within a net cost claim and that considerations of appropriate accounting conventions will be more relevant to the completion of a net cost claim. As we have not set out our detailed approach to the funding arrangements, which in turn will determine the form of the net cost claim, we agree with BT that there is no need to specify an accounting convention at this stage. We have therefore removed the accounting convention specification requirement from the universal service condition.
- 9.85 BT sought further clarification on the counterfactual scenarios. As set out in the December 2018 consultation, the net cost of the USO is calculated as the difference between the net cost of operating with and without the USO. This requires an assessment of what the costs and benefits to the Universal Service Provider would likely have been without the USO. We do not consider that this requires BT to specifically record the costs and benefits of an alternative business; rather, as part of a net cost claim, BT should include a reasoned view on the costs and benefits that it would have incurred or received, absent the USO. Any counterfactual should be evidence based, and we expect the starting point to be the actual costs and revenues BT incurred and generated before building assets to provide USO connections and selling USO services. For instance, in relation to revenues, the counterfactual could be based on actual revenues which are earned from an existing customer which requests a USO connection, prior to that connection being delivered.
- 9.86 We disagree with Vodafone's description that our approach to record keeping is 'hands off'. In our December 2018 consultation, we put illustrative cost categories, based on information that BDUK obtains, which we considered to be an appropriate starting point for developing our future proposals. Vodafone's suggestion that the Universal Service Providers should complete detailed pro-forma documents to support their net cost claim is one that we are considering further. As part of our funding consultation, our intention is to provide more detailed templates that the Universal Service Providers should complete to inform our on-going verification of costs incurred. We have had preliminary discussions with BT to better understand its reporting requirements for BDUK as part of our early work to inform the design of the proposed pro-forma templates for the USO.
- 9.87 We disagree with The BiT Commons comment about requiring the Universal Service Providers to maintain accounting records in respect of subsidised network upgrades already paid by BDUK and local delivery bodies.³⁰⁸ Information in respect of past subsidies for network upgrades will be excluded from the net cost claim as the Universal Service

³⁰⁸ The BiT Commons response to the December 2018 consultation, page 6.

Providers can only include costs incremental to providing the USO in any net cost claim. We will verify this to ensure that this is the case. We do, however, recognise that there may be a risk that the Universal Service Providers may seek to claim funding for the same network upgrade from separate sources where the administration of those funds is not coordinated. We will set out how we intend to prevent any possible double-recovery of network upgrade costs in our forthcoming funding consultation.

- 9.88 Although KCOM indicated that it does not intend to submit a net cost claim, it remains subject to the same accounting records requirements as BT. If KCOM later chooses to submit a net cost claim, we need to ensure that any such claim will provide sufficient information for us to be able to verify it. However, as we expect KCOM to deliver significantly fewer USO connections, the proposed format for KCOM (which we will be set out in the funding consultation) is likely to be less detailed than that for BT.
- 9.89 Our decisions on maintaining records are captured in the universal service conditions in Annex 1. In summary, they include the following main requirements.
- a) The Universal Service Providers must maintain records for a minimum period of 6 years from the date on which these records are created.³⁰⁹ These records must be sufficient to demonstrate the Universal Service Providers' compliance with the universal service conditions. This proposed condition places a basic requirement on the Universal Service Providers to ensure that they retain sufficient information including source data such as invoices, vouchers, and timesheets.
 - b) The Universal Service Providers must separately record actual costs, revenues, and assets associated with the provision of USO services. The Universal Service Providers will also be expected to demonstrate how they have calculated the incremental cost and revenue elements, and explain the transactions underlying the cost of providing USO connections.
- 9.90 We continue to believe that the Universal Service Providers should maintain records which will enable them to demonstrate to Ofcom the following:
- a) that direct costs were incurred, necessary for the provision of the USO, and efficiently incurred;
 - b) the net cost calculation took proper account of both direct and indirect benefits; and
 - c) the counterfactual scenario of operating without the universal service obligations (as referred to in the Universal Service Directive) used in the net cost calculation is reasonable and based on sound assumptions.

³⁰⁹ Six years is consistent with the length of time a limited company is required to keep accounting records for the HMRC.

Assessing Future Claims for Funding

- 9.91 As part of the net cost verification process, Vodafone said we should consider a range of revenue streams (not just the basic broadband revenue) over a long period, as the customer has little option to switch.³¹⁰ We agree with Vodafone; in the December 2018 consultation we said that direct benefits, which would be included in a net cost claim, would include higher margin broadband offers such as those with chargeable IPTV.
- 9.92 In response to BT's suggestion on how the information might be supplied to us, we think BT's suggestion that submitting cash costs (in respect of network build) every 6 months from date of designation is reasonable.
- 9.93 We can see some merit in carrying out elements of the verification work in advance of a net cost claim, as it may help to speed up the process, allow us to identify trends in costs and revenues, ask timely questions and refine the information to be evaluated in a net cost claim. However, we think that the appropriate point to decide on the appropriate approach will be as part of our work to inform the funding consultation.
- 9.94 Vodafone queried what would happen if a Universal Service Provider submitted data that Ofcom deemed insufficient to validate the claim, but the Universal Service Provider could not collect any further, historic information. We will require the Universal Service Providers to maintain records that not only demonstrate that direct costs were incurred, but also that they were necessary for the provision of the USO, and that they were efficiently incurred. Our intention is to set out proposals on the format of the net cost claim, which will likely include details of any relevant detailed templates that the Universal Service Providers would need to complete to inform our on-going verification of costs incurred. We will set out proposals in this area as part of our funding consultation and intend to have the arrangements in place before the Universal Service Providers start incurring any significant costs of delivering the USO.
- 9.95 Vodafone also suggested that we should specify that the Universal Service Provider must have an independent auditor in place to audit its reporting and the records used to justify any funding claim. The Universal Service Directive specifies that any accounts and/or other information serving as the basis for the calculation of the net cost of universal service obligations should be audited or verified by the national regulatory authority or an independent body.³¹¹ We will consider the use of independent accountants and other contractors where it is more effective and efficient to perform some of the verification tests or procedures, and set this out in our funding consultation.
- 9.96 Vodafone and Virgin Media both advocated for disclosure of information related to the net cost claim and our verification of this. We note that there is a wide range of publication options for the net cost calculation and potentially the underlying information behind it.

³¹⁰ Vodafone response to the December 2018 consultation, page 12.

³¹¹ Universal Service Directive, Art 12, para 2.

The Universal Service Directive requires that “the results of the cost calculation and the conclusions of the audit shall be publicly available”.³¹² We will set out our publication proposals, alongside proposals on how any net cost claim will be verified, as part of our funding consultation.

- 9.97 In response to the BiT Common’s concern on the re-use of subsidised assets, as noted earlier in this section, existing network upgrades paid for by past subsidies is not a relevant consideration for the USO as the Universal Service Providers will need to demonstrate that costs incurred were incremental to providing the USO in any net cost claim. The same also applies to any use by BT of the existing BDUK funding which Vodafone asked us to investigate.

Universal service conditions and direction and legal tests

- 9.98 Our decision on maintaining records set out above is captured in the conditions which impose obligations on the Universal Service Providers to maintain records, including accounting records, to:
- a) show how those providers have complied with the universal service conditions; and
 - b) ensure that Ofcom has sufficient information to assess any possible future claims for funding.
- 9.99 We are including the power for us to give directions, approvals and consent under this condition so that we are able to specify further detail concerning obligations to report information and/or maintain sufficient records. The conditions also include a requirement for the Universal Service Providers to comply with any such direction(s), approval(s) or consent(s) so that any contravention would constitute a contravention of the conditions itself and would therefore be subject to enforcement action under sections 94 to 104 of the Act.
- 9.100 As noted in Section 2, section 67(2) of the Act also requires Ofcom to include a condition obliging the Universal Service Providers to publish information about their performance in complying with the universal service conditions. We consider that it is appropriate to capture our proposals concerning publication and provision of performance information to Ofcom in directions given to each of BT and KCOM under proposed condition F.3 given that these requirements specify the level of detail at which this information must be published and provided.
- 9.101 For the reasons set out above and summarised below, we are satisfied that the universal service conditions F.1 to F.3 and directions (as set out in Annex 1) meet the relevant tests set out in the Act. Our decision in respect of the conditions and directions form part of the

³¹² Universal Service Directive, Art 12, para 2

process of implementing the Order as required by the Act. Their purpose is to give effect to the terms of the Order.

9.102 When imposing universal service conditions and directions under section 67, 45 and 49 of the Act in a particular case, we must be satisfied that the legal tests in sections 47(2) and 49(2) of the Act are met. Conditions F.1 to F.3 and directions which we have proposed to give are:

- a) **objectively justifiable**, in that they seek to ensure that the Universal Service Providers publish and provide stakeholders and Ofcom with adequate and up-to-date information about the Universal Service Providers' performance in delivering the USO so that Ofcom is able to establish whether a Universal Service Provider is meeting its obligations and that the Universal Service Provider's compliance with its obligations is transparent; the obligation to maintain accounting records seeks to ensure that Ofcom has sufficient information to assess and verify any possible future claims for funding as required by the legislation;
- b) **not unduly discriminatory**, as the obligations we have decided to impose on BT and KCOM as the Universal Service Providers take account of their individual circumstances;
- c) **proportionate**, since we have taken account of the need to ensure that the obligations are not unduly burdensome for the Universal Service Providers and of the need to deliver transparency on the Universal Service Provider's performance to consumers. This provides assurance that the Universal Service Providers are meeting their obligations so that Ofcom can take appropriate action if required. The obligation to maintain records recognises that it should be for the Universal Service Providers to decide in the first instance what information needs to be recorded; and
- d) **transparent**, in that the conditions and directions are clear about what information the Universal Service Providers are required to report and/or maintain and the format in which this information should be reported and/or maintained to provide transparency. Further, we have sought to be transparent in devising the conditions through public consultation.

9.103 We also consider that the conditions and directions meet our duties and the Community requirements under sections 3 and 4 of the Act. We think that these further the interests of citizens in relation to the communications matters and the interests of consumers in the relevant markets as well as promote the interests of EU citizens because they seek to ensure that there is transparency about the Universal Service Providers' compliance with their obligations and that we have sufficient information to assess and verify any future claims for funding. This will help ensure that Ofcom is able to intervene if there are concerns about compliance with the universal service conditions.

10. Implementation, future consultation on funding and next steps

- 10.1 In this section, we set out our decision to implement a nine-month implementation period that will allow the Universal Service Providers to prepare themselves to deliver USO connections as soon as they start to receive requests for connections from consumers in March 2020. We also set out our decision to include the existing obligations on BT and KCOM to provide telephony services with the requirements to provide broadband.
- 10.2 We respond to stakeholder comments on funding and explain that we will consult on funding regulations in autumn 2019 and expect to publish a statement bringing these regulations into force by early 2020.

Implementation period

Our December 2018 consultation

- 10.3 In our December 2018 consultation, we proposed to give the Universal Service Providers five-months to prepare for the delivery of the USO from the date of our decision on designation of the Universal Service Providers and the universal service conditions. In line with one of our primary objectives to deliver the broadband universal service as quickly as possible for the benefit of consumers, we considered that this timeframe would allow the Universal Service Providers to ensure that they have systems in place and staff are sufficiently trained to start processing requests for USO services as soon as they are made.

Responses to our December 2018 consultation

- 10.4 BT made several substantive comments in relation to the proposed five-month implementation period. It said the proposed period was insufficient, and that it needed more time to establish a high-quality consumer facing function; plan for network build; and ensure it had its systems and processes in place to ensure compliance with the universal service conditions specifically on quality of service, performance reporting, complaints handling and record keeping.
- 10.5 BT stated it would need 12 months from designation to start receiving customer enquiries and would be ready to start taking orders from summer 2020. In parallel, it would undertake the 'pre-planning' work required to prepare itself to start the network build. BT stated that this was subject to it receiving the necessary data from Ofcom to inform the eligibility checking process.³¹³

³¹³ BT response to the December 2018 consultation, page 4.

- 10.6 BT, in its response, also stated that a further 4-5 month period following a request for a connection would be required to undertake full ‘planning’ activities, before it would commence rolling out the network to the requesting premises.³¹⁴
- 10.7 KCOM made no specific comment in relation to the proposed five-month implementation period but has maintained its intention to connect 100% of premises in Hull with FTTC or FTTP by March 2020.³¹⁵

Our decision

- 10.8 Whilst we accept that designing the USO processes may be complex and the Universal Service Providers will need time to prepare for its delivery, one of our primary objectives, as set out in Section 2, is to deliver the broadband universal service as quickly as possible for the benefit of consumers.
- 10.9 We have obtained further information from BT through information requests and meetings in order to understand the sequencing and timeframes of the different activities it will need to undertake to be ready to deliver the USO. This includes preparing its consumer facing activities through the Universal Broad Support Group as well as its activities to carry out the network build.

BT’s Universal Broadband Support Group

- 10.10 BT is proposing to set up a new dedicated helpdesk and implement an end to end solution to deliver USO. This solution will be ring-fenced from a compliance perspective at each stage of the process. Given the scope of the USO, part of the solution will develop bespoke processes with logically segmented systems and part will use existing systems, BT has suggested that the solution will need to interact with:
- a) BT’s existing systems – to identify if the premises can be covered with a commercial fixed line product and to identify if it can offer a decent affordable broadband service through its existing products;
 - b) EE systems – to identify if the premises can be covered with a commercial fixed wireless product;
 - c) Ofcom’s API – to direct any consumers not eligible for the USO to other relevant operators and to inform of planned public procurement; and
 - d) Openreach and Enterprise systems – to determine the cost, and subsequently to help keep customers informed on the progress of the delivery of its USO connection.³¹⁶
- 10.11 BT informed us that this new system will allow it to: (i) provide consumers with information on the USO; (ii) check eligibility of requests for a connection; (iii) place orders

³¹⁴ BT response to the December 2018 consultation, page 4.

³¹⁵ KCOM response to s.135 Notice of 10 May 2019.

³¹⁶ BT response to s.135 Notice of 30 May 2019.

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for a USO connection; and (iv) keep consumers up to date on the progress of delivering the connection.

- 10.12 Based on its experience of setting up new customer management processes and systems, BT stated that this would normally take around [3<] to deliver. BT has developed an accelerated path to deliver this system which involves scoping the new system prior to designation, an accelerated design and build phase, and minimal pre-launch testing of the new system. BT said that it cannot deliver this in less than 12 months without there being a loss of quality to the overall consumer journey.
- 10.13 We have explored different ways to reduce this time period, including a 'soft-launch' in a specific geographic region, or using a manual system until a full system launch is ready. We do not think that either of these are appropriate substitutes for a full system launch. The USO is not a rollout programme and therefore geographically limiting the soft launch does not align with the USO scheme being a national and request-based intervention. We have concerns that using a manual approach has a higher risk of leading to a poor consumer journey given the number of steps involved in the eligibility checking process.
- 10.14 Therefore, based on the information BT has provided, we consider that BT will need 12 months to prepare to start receiving connection requests. As BT has already started its preparations for setting up the Universal Broadband Support Group in earnest, nine-months from designation should be sufficient to set up the Universal Broadband Support Group. As set out in Section 9, we are requiring BT to maintain accounting records to support any net cost claim which it may make, including any relating to costs incurred prior to the USO going live.

BT's preparation for network build

- 10.15 In its response to the December 2018 consultation, BT stated:
- a) that it would need 6-12 months to carry out the preparatory 'pre-planning' required to deliver the USO which would include any network modelling using survey assumptions and negotiating supplier contracts; and
 - b) then a further 4-5 months of 'planning' once a request for a USO connection is made to 'walk the route' and carry out any other survey work and detailed desktop planning of the network roll out.
- 10.16 BT explained that the 'pre-planning' activities would be undertaken at a programme level based on the premises that do not meet the technical specification of the USO. BT has already commenced this work based on its own information of the locations of current USO eligible premises but will be able to complete a more accurate pre-planning exercise once it receives from us the list of premises which cannot access decent broadband.
- 10.17 BT has confirmed to us that the 'pre-planning' and 'planning' activities do not need to be entirely consecutive and, as a result, all preparation activities could be completed within an implementation period of nine-months. The 'pre-planning' activities will give BT a more

accurate view of the premises that are likely to cost below the £3,400 reasonable cost threshold in any given area and therefore allow planning activities in that area to commence and be focused on premises that are likely to meet the eligibility criteria.

- 10.18 We consider that it is important for Universal Service Providers to sufficiently prepare for delivering the USO during the implementation period so that they are able to commence network build as soon as requests for USO connections are made. Undertaking planning activities will also improve the accuracy of cost estimates that feed into the eligibility process.
- 10.19 We recognise that carrying out planning activities for all potentially eligible USO premises may lead to costs being incurred for premises that may ultimately not request a USO connection. However, we consider that these are in principle legitimate implementation costs that could form part of a net cost claim. They would be subject to verification by Ofcom to ensure they have been efficiently incurred and any net cost claim will be assessed to confirm that it represents an unfair burden on the Universal Service Provider. We have assessed the risk of ‘stranded planning costs’ to the industry fund which will ultimately bear any unfair net cost burden and consider this risk to be low.
- 10.20 BT has estimated that the overall cost of this planning and surveying would be in the region of £5m-£8m.³¹⁷ Of the 40,000 premises it currently considers will be eligible for the USO, BT believes there is a higher degree of confidence in a confirmed order materialising in planned rollouts covering 30,000 premises³¹⁸, based on the number of USO premises that could be served within the planned rollout. Based on these estimates, costs incurred for premises where a connection is ultimately not requested would likely be low, i.e. in the region of £1-2m.
- 10.21 Consumer awareness also has an important role in ensuring that as many USO eligible premises request the USO as possible. We will closely monitor the Universal Service Providers’ consumer awareness approach, as well as undertaking our own campaign to help raise awareness of the USO.

Our decision on the implementation period for BT

- 10.22 We are introducing a nine-month implementation period for BT.³¹⁹ This, alongside the work carried out prior to designation, should give BT sufficient time to put in place relevant systems and processes to establish the Universal Service Support group and to carry out appropriate planning so that it can commence network build as soon as requests for connections are made.

³¹⁷ BT response to s.135 Notice of 29 May 2019.

³¹⁸ BT response to s.135 Notice of 25 April 2019.

³¹⁹ The full implementation period is nine months and two weeks but for the purpose of this document, we refer to this as nine months. Whilst we are introducing a nine-month implementation period for BT, a number of conditions will come into force at the point of designation of the Universal Service providers. These cover treatment of information, complaints handling and dispute resolution, raising awareness of the USO and power to give directions, approvals and consent.

Our decision on the implementation period for KCOM

- 10.23 We have also considered the appropriate implementation period for KCOM. As set out above, KCOM made no specific comment in relation to the proposed five-month implementation period but has maintained its intention to connect 100% of premises in Hull with FTTC or FTTP by March 2020. KCOM estimates that as of March 2019, there were just over 3,400 premises in the Hull Area that could not meet the specification of the USO but has stated its intention to prioritise the planning of those addresses in Hull that are currently unable to obtain a service that meets the technical specification of the USO.³²⁰
- 10.24 Our overall objective is to deliver the USO as quickly as possible for the benefit of consumers. In the case of KCOM, we consider this would be best achieved by reflecting its current rollout plans in our decision on the appropriate implementation period to deliver the USO. As such, we consider that a nine-month implementation period is appropriate.³²¹ This will ensure that most, if not all, premises in the Hull Area will be covered by KCOM's commercial rollout plans.
- 10.25 We know, however, that plans can change, and KCOM cannot guarantee that all these premises will be covered by March 2020. Consumers that may still be eligible for the USO in the Hull Area will need sufficient protection to ensure they can request and receive a decent broadband connection at least in line with other eligible premises outside the Hull Area. A nine-month implementation period will mean KCOM has enough time to prepare to respond to USO requests from March 2020.

Interaction with the telephony USO

Our December 2018 consultation

- 10.26 We proposed to include the existing obligations on BT and KCOM to provide telephony services with the requirements to provide broadband given that both represent core universal service obligations as defined by the Secretary of State in secondary legislation and both are likely to be provided using elements of the same infrastructure.³²² We therefore proposed to revoke the specific telephony conditions applicable to BT and

³²⁰ KCOM response to s.135 Notice of 10 May 2019.³²¹ The full implementation period is nine months and two weeks but for the purpose of this document, we refer to this as nine-months. Whilst we are introducing a nine-month implementation period for KCOM, a number of conditions will come into force at the point of designation of the Universal Service providers. These cover treatment of information, complaints handling and dispute resolution, raising awareness of the USO and power to give directions, approvals and consent.

³²¹ The full implementation period is nine months and two weeks but for the purpose of this document, we refer to this as nine-months. Whilst we are introducing a nine-month implementation period for KCOM, a number of conditions will come into force at the point of designation of the Universal Service providers. These cover treatment of information, complaints handling and dispute resolution, raising awareness of the USO and power to give directions, approvals and consent.

³²² As set out in Section 2, telephony universal service is defined in the 2003 Order.

KCOM³²³ and to capture the same obligations in proposed conditions applicable to telephony and broadband services.

- 10.27 We proposed to include a condition to ensure that Universal Service Providers' networks are installed, kept installed and run for the purposes of providing the broadband and telephony USO.

Responses to our December 2018 consultation

- 10.28 BT was the only respondent that commented on our proposal to include the existing obligations on BT and KCOM to provide telephony services with the requirements to provide broadband.
- 10.29 In Schedule 1 of the draft Legal Instruments, we defined a telephony service to mean "either or both a connection at a fixed location to the Public Communications Network and access to Publicly Available Telephone Services, including the ability to make and receive calls and facsimile".
- 10.30 BT proposed that we amend our definition to either delete "and facsimile" or amend it to read "and facsimile where feasible".³²⁴

Our decision

- 10.31 The 2003 Order, paragraph 1(2) states that connection to publicly available telephone services which must be provided throughout the UK must be capable of allowing end-users to make and receive local, national and international telephone calls and facsimile. Ofcom has a duty to ensure that the 2003 Order is implemented so we have no power to delete the reference to facsimile from the conditions which give effect to the 2003 Order. However, if the Order is modified in the future, we will consider what amendments to the conditions are appropriate.
- 10.32 We therefore consider it appropriate to include the existing obligations on BT and KCOM to provide telephony services with the requirements to provide broadband given that both represent core universal service obligations as defined by the Secretary of State in secondary legislation and both are likely to be provided using elements of the same infrastructure.
- 10.33 We are therefore revoking the specific telephony conditions applicable to BT and KCOM and are capturing the same obligations in proposed conditions at Annex 1 of this statement. We have not made any substantive amendments to the remaining conditions, although we will need to consider whether changes to these provisions may be required in

³²³ As a result of the proposed revocations, we have also proposed certain consequential changes to the remaining conditions and definitions.

³²⁴ BT response to the December 2018 consultation, page 39.

light of any amendments to the UK legislation following the anticipated adoption of the European Electronic Communications Code.

- 10.34 We are also including a condition to ensure that Universal Service Providers' networks are installed, kept installed and run for the purposes of providing the broadband and telephony USO. We consider this is necessary to ensure that the Universal Service Providers comply with the core obligations to provide the telephony and broadband USO on request as required in the secondary legislation.

Implementation period and legal tests

- 10.35 For the reasons set out above and summarised below, we are satisfied that the implementation period, universal service conditions A.1, A.2, A.4 and revocations meet the relevant tests set out in the Act. Our decisions form part of the process of implementing the Order as required by the Act and ensure that core universal service obligations are set out clearly.
- 10.36 When considering making our decisions under sections 67 and 45 of the Act in a particular case, we must be satisfied that the legal tests in section 47(2) of the Act are met. We consider that our implementation period and universal service conditions A.1, A.2, A.4 and revocations are:
- a) **objectively justifiable**, in that they seek to ensure that the Universal Service Providers have sufficient time to prepare for the delivery of the USO so that requests made by consumers can be dealt with properly and effectively as envisaged in the Order and that the core universal service obligations in respect of telephony and broadband are set out clearly;
 - b) **not unduly discriminatory**, as we have imposed the same measures for each BT and KCOM taking account of their respective circumstances;
 - c) **proportionate**, since the measures are imposed in recognition that the Universal Service Providers will require sufficient time to prepare for the delivery of the USO; and
 - d) **transparent**, in that the measures are clear in their intention to ensure that the Universal Service Providers have sufficient time to prepare for the delivery of the USO and that the core universal service obligations are set out clearly. Further, we have sought to be transparent in devising the measures through public consultation.
- 10.37 We also consider that the implementation period, the conditions and revocations meet our duties and the Community requirements under sections 3 and 4 of the Act. We think that they further the interests of citizens in relation to communications matters and the interests of consumers in the relevant markets as well as promote the interests of EU citizens because they seeks to ensure that all requests made by consumers in the UK can be dealt with properly and effectively as envisaged in the Order and that the universal service obligations in respect of telephony and broadband are set out clearly.

Future consultation on funding of USO services

Our December 2018 consultation

- 10.38 We explained that the net cost of meeting USO obligations will be determined by several uncertain factors, such as the number of premises that are eligible for the USO, the technologies used to supply USO premises, and the cost of building the infrastructure necessary to deliver the USO.
- 10.39 We also explained that we did not consider that the Universal Service Providers require information on funding arrangements in advance of making our designation decision, because it should not affect how they will fulfil the obligations to deliver USO connections.
- 10.40 We said that we expected to consult on funding regulations in summer 2019, but that we will review the position and provide an update as part of our designation statement.

Responses to our December 2018 consultation

- 10.41 BT and Vodafone said that we should provide greater clarity over our funding approach as soon as possible. BT said this clarity is required for it to accelerate the scheme by incurring costs ahead of formal designation. Vodafone said that the absence of funding details created more risk and uncertainty at a time where the industry needs a stable and clear regulatory environment that helps to attract investment.³²⁵
- 10.42 BT requested that we provide greater clarity in respect of the following.
- a) Ofcom should give an indicative assessment of whether there is likely to be an unfair net burden. BT suggested an unfairness threshold of £10 million and said we should confirm that a net cost in the region of £50 million to £80 million would be deemed an unfair burden.
 - b) Ofcom should set out the expected timing of when reimbursement might commence. BT itself proposed that funding could be paid over a 3-year to 4-year period, on a cash accounting basis.
 - c) Ofcom should set out now how such a mechanism will work in terms of raising revenue, if a net cost is established.³²⁶
- 10.43 BT also said that the net cost calculation is for Ofcom to conduct, and that Ofcom is best placed to administer a funding mechanism.³²⁷
- 10.44 Other respondents submitted comments on how a funding claim should be considered. In particular, Virgin Media noted that the concept of an “unfair burden” has been judicially

³²⁵ See responses to the December 2018 consultation: BT page 3, Vodafone page 4.

³²⁶ BT response to the December 2018 consultation, page 6 and Section 3.

³²⁷ BT response to the December 2018 consultation, page 38.

considered by the European Court of Justice, which determined that there must be an individual assessment of the impact of bearing that cost on the relevant operator.³²⁸ Vodafone said that we should make allowances in any funding scheme for the excessive profits which Vodafone said BT has earned in rural areas (such as under the Wholesale Broadband Access charge control for Market A).³²⁹

- 10.45 Vodafone also queried what would happen if funding regulations are not in place by the time that a Universal Service Provider submits a net cost claim e.g. if they are subsequently appealed.³³⁰

Our conclusions

- 10.46 We remain of the view that the Universal Service Providers do not require detailed information on funding arrangements in advance of us making our decisions in this statement. The Universal Service Providers must fulfil the obligations to deliver USO connections which have been set out in this statement. The costs that are incurred in complying with these obligations are in principle eligible for compensation from an industry fund, so long as they are necessary for the provision of such connections and have been incurred efficiently. We have clarified that this includes the costs associated with network planning during the implementation period, as we consider this is an important implementation activity required to ensure connections can be delivered as soon as a request is received.
- 10.47 Before taking any decision on compensation from an industry fund, Ofcom must first verify the size of the net cost of the USO (which itself follows a submission from the Universal Service Provider). The net cost assessment will then take account of the size of the verified net cost, as well as the specific circumstances of the Universal Service Provider at the time. We cannot pre-judge the outcome of any such assessment now.
- 10.48 Nevertheless, we have set out below some further details about how we would expect to approach the process of submitting and assessing a net cost claim.
- a) We agree that it is for Ofcom to determine the net cost. However, in the first instance, we consider that the Universal Service Provider(s) should support their application for funding with a submission which demonstrates to Ofcom that there is an unfair net cost burden. The Universal Service Providers are best placed to submit relevant information on the size of the net cost, which will serve as the basis for (though not the outcome of) our determination. As set out in Section 9, this should include: information on capital expenditure incurred in delivering connections; information on the direct benefits accruing from those connections; evidence supporting the Universal Service

³²⁸ Virgin Media response to the December 2018 consultation, page 5.

³²⁹ Vodafone response to the December 2018 consultation, page 5.

³³⁰ Vodafone response to the December 2018 consultation, page 13.

Provider's view on the magnitude of indirect benefits which result from USO designation; and evidence to support its view of the counterfactual scenario.

- b) As set out in the Universal Service Directive, the Universal Service Providers are in principle free to submit a funding claim at any point. In assessing and verifying these claims, we consider there is a balance to be struck between compensating Universal Service Providers in a timely manner, while ensuring that we have sufficient information to accurately estimate the likely size of the overall net cost of the USO. Aggregating net cost claims would also help to reduce the complexity and administrative burden of the funding process for Ofcom and stakeholders.
- c) Having verified a net cost claim and established the size of the net cost, we would undertake an assessment of whether this constitutes an unfair burden.
 - i) This assessment would first compare the size of the net cost with the cost of establishing and administering a fund. We would not establish a fund if the cost of doing so and administering the fund was excessive, compared to the amount of any prospective compensation.
 - ii) We would then consider the impact on the Universal Service Provider of bearing the net cost, having regard to its specific characteristics. We envisage that this would be affected by factors such as: (i) the extent to which the Universal Service Provider is constrained by regulation (which could limit its ability to recover some or all of the net cost through future service charges); and / or (ii) the degree of competition to which the Universal Service Provider is exposed or is likely to be exposed in future (since firms with greater market power are less likely to suffer a competitive disadvantage from bearing a net cost). Given that the retail broadband market in most of the UK is effectively competitive³³¹, we consider that a given net cost is more likely to impede Universal Service Providers' ability to compete fairly than would be the case in a market with less retail competition.
 - iii) We consider that the method of designation is also relevant to the question of whether a verified net cost constitutes an unfair burden. As set out in Section 4, we have chosen to directly designate BT and KCOM as Universal Service Providers. This is distinct from other methods of designation (e.g. a competitive process) where prospective Universal Service Providers – who might have commercial objectives to achieve through being a Universal Service Provider – may have more influence over whether they are designated and the obligations they will be required to fulfil.

³³¹ See for instance paragraph 3.66 of [Ofcom's Wholesale Local Access market review](#), Statement, March 2018 and Section 1 of Ofcom's [Wholesale Broadband Access market review](#), Statement, July 2018. We have found that competition in the Hull Area (i.e. where we have designated KCOM as the Universal Service Provider) still lags significantly behind the rest of the UK, and our regulation reflects the limited competitive growth that we have seen in that area. See our most recent Review of competition as presented in the [Wholesale Broadband Access market review](#) in the Hull Area, July 2018.

- iv) In response to Vodafone, we have previously set out our general approach to returns in regulated telecoms markets.³³² Our approach to wholesale regulation is designed to maintain a balance between, on the one-hand, incentivising BT to invest in new technology (and become more cost efficient through time) and, on the other hand, ensuring fair prices for retail competitors and their customers. We recognise that BT's accounting returns in the wholesale broadband market referred to by Vodafone (i.e. the regulated "Market A" – which typically comprises rural exchange areas) have historically been above the cost of capital. However, as we explained in the 2018 WBA statement, we do not consider that these accounting returns represent an accurate picture of the economic returns in this market.³³³ Even where past returns have been above the cost of capital, we do not consider it conducive to regulatory predictability and future investment incentives to claw-back such returns through an adjustment to separate regulation – such as any USO net cost claim (if such net cost were found unfair).
- d) If we determine that there is an unfair net cost burden, we would expect to establish an industry fund and begin administering payments. Depending on the size of the net cost, we may decide to compensate Universal Service Provider(s) in a single payment, or we may spread industry fund payments over several years. Even in the latter case, we would expect to compensate Universal Service Providers for any unfair net cost within 5 years of publishing a final determination. As set out in the December 2018 consultation, we would also compensate Universal Service Providers for any delay between the timing of the costs being incurred, and the timing of such compensation.
- e) As BT recognised in its consultation response³³⁴, the Universal Service Providers would also contribute towards funding the net cost of the USO. In that regard, we note that BT is the largest retail provider.
- 10.49 We will consult on funding regulations in autumn 2019 and we expect to publish a statement bringing these regulations into force by early 2020. We do not envisage the Universal Service Providers submitting a net cost claim before that point. If our funding regulations were subject to an appeal, and Universal Service Providers submit a net cost claim while this appeal is ongoing, we would proceed with assessing this claim – in line with the approach to be set out in our funding regulations – until the outcome of any such appeal determined otherwise.

Next steps

- 10.50 Following the nine-month implementation period, consumers will be able to start requesting connection from the Universal Service Providers on 20 March 2020.

³³² See for instance Ofcom, [Statement regarding BT's regulatory accounts for 2017/18](#).

³³³ See paragraph 5.26 to 5.27 of Ofcom, [Wholesale Broadband Access Market Review: final statement](#), July 2018.

³³⁴ BT response to the December 2018 consultation, footnote 33.

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- 10.51 We will consult on funding regulations in autumn 2019 which will contain:
- a) procedures setting out how applications by the Universal Service Provider in respect of the net cost burden should be made;
 - b) procedures setting out how Ofcom will determine such applications (i.e. procedures for verification of the net cost and for consideration of whether or not the net cost represents an unfair burden on the Universal Service Provider, and if so, the extent of that unfair burden); and
 - c) provisions specifying how a fund would operate in the event that Ofcom determined that there was an unfair burden on the Universal Service Provider (i.e. who would contribute and in what proportions; and how funds would be collected and distributed).
- 10.52 As set out above, we expect to make the funding regulations by early 2020.

A1. Legal instruments

A1.1 We have published the [legal instruments](#) alongside this statement.

A2. Affordability of broadband connections and services

- A2.1 This annex sets out our analysis of the affordability of broadband services. We assess the price threshold beyond which broadband connections and services are likely to become unaffordable. Our objective is to determine a threshold that will deliver affordable broadband connections and services generally. The analysis in this annex supports our decision about the level of the eligibility price threshold which we discuss in Section 5.
- A2.2 In summary, we find that broadband prices in the UK are generally affordable. However, to set an eligibility price threshold we must pick a point within the distribution of prices available to consumers in the UK and this makes it necessary for us to make a judgement about the price level at which affordability problems might arise.
- A2.3 In our view, it is appropriate to pick a price towards the upper end of the range of prices paid by households for broadband in the UK. Ofcom research indicates that few households in the UK face problems affording a broadband connection and service and it is likely that many consumers are able to afford prices that are higher than those they currently pay.
- A2.4 In our judgement, a threshold of £45 per month (including any up-front fees spread across the life of the contract and expressed in November 2018 prices) is a reasonable level to ensure that most premises can access an affordable service. In our view, a higher threshold (e.g. £50 per month) would carry too great a risk that broadband would be unaffordable for a material proportion of customers.

Broadband prices in the UK appear to be affordable

- A2.5 Ofcom research indicates that few households in the UK face problems being able to afford a broadband connection and service. Our Affordability Tracker 2018³³⁵ found the following:
- a) around 2% of consumers with some responsibility for communications services said that they had difficulty paying for fixed broadband³³⁶;
 - b) around 2% of consumers with some responsibility for communications services said that they did not have fixed broadband due to cost³³⁷; and

³³⁵ Ofcom, [Affordability of communications services research – Data tables](#), October 2018,

³³⁶ Ofcom, [Affordability of communications services research – Data tables](#), October 2018. Table 7, page 53. 1% of respondents said that they had difficulties paying for a fixed standard broadband service, and a further 1% said that they had experienced difficulty paying for a fixed superfast broadband service.

³³⁷ Ofcom, [Affordability of communications services research – Data tables](#), October 2018. Table 17, page 160.

- c) around 67% of consumers that said they did not have one or more communications services due to cost also said that this had no negative effect on them.³³⁸

A2.6 In light of this, we consider that current prices for broadband are generally affordable for the vast majority of customers. Therefore, our starting point when considering affordability, is to look at the amounts customers across the UK are currently paying for their broadband services.

A price point towards the upper end of the range of prices available UK wide is likely to be sufficient to deliver affordability

A2.7 Our research suggests that the vast majority of consumers with some responsibility for paying for communications services consider broadband to be affordable and most have access to the full range of prices. However, the nature of a threshold is that we must pick a point within this range of prices and this necessarily requires some judgement about which part of the distribution of prices we should retain to maintain widespread affordability of broadband.

A2.8 In our view, given the survey results evidence above, setting a threshold below the average price for broadband in the UK is likely to result in a threshold that is lower than is necessary to ensure affordability. This could also result in more premises being eligible for the USO and would be inconsistent with our objective to ensure that the cost of delivery of the USO, and therefore the impact on industry and consumers, is minimised.

A2.9 We consider that setting a threshold towards the upper-end of the distribution is appropriate. The price consumers currently pay is informative about what prices they can afford, and, from the survey evidence above, most consumers in the UK can afford the service they pay for. Furthermore, prices will, in most cases, be some way below the maximum level consumers are willing to pay, more so where prices are subject to competitive pressures. Therefore, most customers are likely to be able to afford higher prices than they currently pay.

A2.10 Setting a price threshold towards the top end of the distribution, carries a greater risk that consumers would find broadband unaffordable; particularly at the higher price levels charged to only a small proportion of broadband customers in the UK.

³³⁸ Ofcom, [Affordability of communications services research – Data tables](#), October 2018. Table 20, page 191. This is for all consumers that said they didn't have one or more communications services due to cost. We do not present this figure broken down further to consider specifically consumers that did not have broadband due to cost as not all relevant respondents were asked this question resulting in a sample size of only 27.

Broadband customers in the UK typically pay between £21 and £54 per month for their broadband

- A2.11 In the December 2018 consultation, we used data provided by the largest four broadband providers, covering the third quarter of 2017, to estimate dual play prices. The data consisted of an average price from each provider for each tariff, for example, standalone broadband or dual play. Based on this data we said that prices for dual-play packages in the UK ranged from less than £20 per month for the cheapest standard broadband packages, to around £55 per month for faster fibre products, particularly where customers were out of contract.
- A2.12 We have updated this analysis using customer level data that we collected from each of the largest four broadband providers: BT, Virgin Media, Sky, and TalkTalk, as well as each of their sub-brands.³³⁹ Collectively these providers account for 93% of broadband customers in the UK.
- A2.13 This data consisted of around 21 million individual customer records taken in November 2018. For each customer, the data included details of the product purchased and the amounts that the customer paid for that product; including the monthly payment, the connection fee and any other payments charged.
- A2.14 We have focused our analysis primarily on customers that take dual play products. Triple play and quad play products will have other services, such as pay TV or mobile, bundled in with broadband, under the same monthly payment. Dual play payments typically include a line rental charge. However, as this is necessary to obtain broadband in most cases, we consider that a dual play payment is representative of the price of a broadband service.³⁴⁰ In addition to this, we also include the standalone broadband services offered by Virgin Media,³⁴¹ and EE's FWA service.
- A2.15 This leaves us with a dataset of around 11 million customers which we feel is sufficient to draw robust inferences from.
- A2.16 We calculate the monthly price of a broadband connection and service as follows:

³³⁹ Plusnet and, EE (which are both BT brands), and NOW TV (which is owned by Sky).

³⁴⁰ We asked providers to exclude any optional charges not directly attributable to the broadband service. Consequently, optional charges for call packages and call charges are excluded from our analysis. However, some dual play products include some bundled calls as part of the basic monthly payment. As these services are not optional for broadband consumers we have included them as part of the price of obtaining a broadband service. For examples of inclusive call packages, see BT which includes unlimited weekend calls in all its dual play packages, and Virgin Media which includes 60 minutes of weekend calls in all its dual play packages. Correct as at 24 April 2019.

³⁴¹ It should be noted that this still implicitly includes line rental. Virgin Media's broadband-only services are priced at a premium compared to its equivalent dual play bundles. For example, Virgin Media is offering VIVID 50 standalone broadband for £35 per month on a 12-month contract, or £27 for the same service with a phone line. Correct as at 24 April 2019.

- a) For customers who are out-of-contract, we use the standard monthly payment as of November 2018; and,
- b) For in-contract customers, on top of the standard monthly payments, we also spread any up-front charges or other broadband charges across the fixed commitment period.

A2.17 The vast majority of UK households pay between £21 to £54 per month,³⁴² with a mean price for broadband packages of around £36 per month.³⁴³ The full distribution of prices is presented below.

Figure 4: Cumulative distribution of monthly broadband prices

[✂]

Table 5: Percentile distribution of monthly broadband prices

Percentile	Price
10 th	£21
20 th	£25
30 th	£28
40 th	£30
50 th	£34
60 th	£39
70 th	£44
80 th	£49
90 th	£54

Source: s.135 responses

A2.18 A price threshold of £45 per month sits towards the upper end of the distribution (at just above the 70th percentile). This means that almost 30% of consumers taking dual play and standalone broadband pay more than £45 per month. A price threshold of £50 would capture fewer customers, with less than 20% paying prices more than this level.

A2.19 Customers on lower incomes, or who are at risk of affordability problems for other reasons, may choose to purchase products which typically have slower speeds (since prices are typically increasing in the speed of package offered). We therefore consider it useful,

³⁴² This is the range after removing data points within the top and bottom 10% based on our definition of price.

³⁴³ Prices inclusive of VAT.

as a cross check, to look at the distribution of prices for customers taking slower speed services. See below for the distribution of prices for services delivered over ADSL which we have chosen as this is typically the technology used to supply standard broadband.³⁴⁴

Figure 5: Cumulative distribution of monthly broadband prices for customers using ADSL

[✕]

Table 6: Percentile distribution of monthly broadband prices for customers using ADSL

Percentile	Price (ADSL)
10 th	£19
20 th	£20
30 th	£22
40 th	£25
50 th	£30
60 th	£30
70 th	£32
80 th	£40
90 th	£45

Source: s.135 responses

A2.20 A much smaller proportion of customers that take services delivered over ADSL pay prices greater than £45 per month. As shown in Table 6, only 10% of ADSL customers pay more than £45 a month. A higher price threshold of £50 per month would lose touch with what these customers currently pay, representing the [✕] percentile.

Conclusion

A2.21 Given the degree of judgement involved in setting an eligibility price threshold we wish to avoid spurious accuracy and so have restricted our decision on the threshold to £5 per month increments. £45 per month is around the middle of the upper half of the distribution of broadband prices and just within the range of prices paid by customers that take ADSL-based services. Balancing the range of relevant considerations set out above,

³⁴⁴ Standard broadband is defined as a broadband service less than 30Mbit/s.

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our conclusion is that a price threshold no higher than £45 per month should be sufficient to ensure broadband is affordable.

- A2.22 In our view, a higher threshold (e.g. £50 per month) would carry too great a risk that broadband would be unaffordable for a material proportion of customers. Fewer than 20% of broadband customers pay prices in excess of £50 and a threshold at this level would lose touch with the prices that are paid by customers that take ADSL-based services.

A3. Glossary

Access network An electronic communications network which connects end-users to a service provider running from the end-user's premises to a local access node and supporting the provision of access-based services. It is sometimes referred to as the 'local loop' or the 'last mile'.

Bandwidth The maximum amount of data that can be transmitted along a channel.

BDUK Building Digital UK (formerly Broadband Delivery UK), part of the Department for Digital, Culture, Media and Sport.

Broadband A service or connection generally defined as being 'always on', providing a bandwidth greater than narrowband.

Broadband speed The speed at which data are transmitted over a broadband connection, usually measured in megabits per second (Mbit/s).

Core network The central part of any network aggregating traffic from multiple backhaul and access networks.

Contention ratio The degree to which bandwidth is shared between different end-users at the same network node. When more end-users share the same bandwidth within a network this can lead to a slowdown in performance.

Connection charge The fee a broadband provider charges customers when it installs a new line to connect their premises to its network, or the fee a broadband provider charges customers when it takes over the fixed broadband line serving their premises. This fee is often waived or reduced if customers also take up certain retail broadband packages with the provider.

Decent broadband A broadband connection that enables full and effective social and economic participation in a digital society, which we currently define as a line capable of delivering 10Mbit/s download and 1Mbit/s upload sync speeds.

Download speed Also downlink or downstream speed. Rate of data transmission from a network operator's access node to a customer, typically measured in Megabits per second (Mbit/s).

DCMS Department for Digital, Culture, Media and Sport.

Eligibility price threshold A threshold price, set by Ofcom, to determine whether a consumer has access to an affordable broadband service and connection. If a consumer cannot access a decent broadband service for a price below this threshold, they may be eligible for a USO service, subject to the other eligibility criteria.

Excess costs Any costs of providing a Broadband Connection which are more than £3,400 excluding VAT.

Exchange The local telephone exchange is the building where consumers' copper telephone lines are connected to enable telephone calls to be switched, and where network equipment is installed which enables consumers' data traffic to be routed via an operator's core network to its destination.

Fibre to the Cabinet (FTTC) Access network consisting of optical fibre extending from the access node to the street cabinet. The street cabinet is usually located only a few hundred metres from the subscribers' premises. The remaining segment of the access network from the cabinet to the customer is usually a copper pair.

Fibre to the Premises (FTTP) A form of fibre optic communication delivery in which the optical signal reaches the end-user's home or business. Also known as full-fibre broadband.

Fixed broadband Broadband delivered over a fixed line to a customer's premises.

Fixed commitment period The fixed period of time over which the provider and a customer have entered into an agreement for communications services and for which an early termination charge may be payable by the customer if they cancel their contract during this period. Also known as minimum contract period.

Fixed wireless (FWA) Broadband delivered over radio waves to a customer's premises.

Latency The time it takes a single packet of data to travel from a user's PC to a third-party server and back again. The figure is most commonly measured in milliseconds, and a connection with low latency will feel more responsive for simple tasks like web browsing.

Long Term Evolution (LTE) This is a 4G technology which is designed to provide faster upload and download speeds for data on mobile networks.

Mbit/s Megabits per second. A unit measuring the bit-rate.

Net cost The cost of providing the broadband USO less any direct and indirect benefits.

Next Generation Access (NGA) New or upgraded broadband networks. Can use a number of technologies including cable, FTTC and FTTP. Most often used to refer to networks using fibre optic technology in whole or in part.

Reasonable Cost Threshold (RCT) A cost threshold set by Government in the Order to determine eligibility for the USO. A Universal Service Provider is not obliged to supply a USO connection, where the cost of providing the connection exceeds £3,400; unless the end-user pays the excess costs over £3,400.

Safeguard cap A requirement that the Universal Service Provider offers at least one broadband connection and service at a price below a level specified by Ofcom. We consulted on this requirement in December 2018 but for the reasons set out in Section 7 we have decided not to implement it.

Satellite broadband Broadband services delivered over a satellite connection. The broadband data is transmitted via an uplink from the Earth to the satellite and then back to Earth to customers. Current satellite broadband services use satellites in geostationary orbits.

Superfast broadband The next generation of faster broadband services, which delivers headline download speeds of greater than 30Mbit/s. The UK Government defines superfast broadband as broadband services which deliver download speeds of greater than 24Mbit/s.

Sync speed The modem sync speed is the maximum speed achievable between a consumer's premises and their internet service provider's network.

TV white spaces (TVWS) Broadband services delivered using gaps in the radio spectrum in frequency bands mainly used for digital terrestrial television and programme making and special events.

Universal Service Directive European Parliament and Council Directive (EC) 2002/22 (OJ L108, 24.4.2002) on universal service and users' rights relating to electronic communications networks and services.

USO Universal Service Obligation.

Universal Service Provider (USP) KCOM has been designated as the Universal Service Provider for the Hull Area, and BT as the Universal Service Provider for the rest of the UK.

The Order The Electronic Communications (Universal Service) (Broadband) Order which came into force on 23 April 2018.

Upload speed Also uplink or upstream speed. Rate of data transmission from a customer's connection to a network operator's access node, typically measured in Megabits per second (Mbit/s).