Wholesale Fixed Telecoms Market Review – Openreach Quality of Service

Further consultation on proposed quality of service remedies

[Wholesale Fixed Telecoms Market Review – Openreach Quality of Service] – Welsh overview

Non-confidential version – redacted for publication [✂]

Contents

1. Overview

In January 2020, we consulted on our wholesale fixed telecoms markets review (WFTMR) for the period April 2021 to March 2026. This included proposals on the quality of service (QoS) remedies for the wholesale local access (WLA), leased lines access (LLA) and inter-exchange connectivity (IEC) markets, in which we provisionally identified BT as having significant market power (SMP).

This document sets out some changes to these proposals, which we have made following responses to our January consultation, as well as changes to fault reporting practices since then, and taking into account Covid-19.

What we are proposing

Covid-19: To take account of the pandemic by reviewing the appropriateness of the QoS standards during Year 1 of the WFTMR period. We will assess whether to retain, remove or discount some or all of the QoS standards in light of Openreach's performance and other factors related to Covid-19.

WLA First Available Date: To relax the proposed QoS standard so that Openreach would be required to offer an installation appointment within 12 working days, on 89% of occasions. This standard was set at 10 working days in the most recent compliance period (2020/21) and we proposed to maintain this standard in the January consultation. However, a significant and sustained increase in repair volumes since June suggests that Openreach requires additional resource flexibility.

WLA Repair: To change the definition of a 'fault' to exclude faults that are automatically raised. This would provide flexibility for Openreach and industry to agree ways of working that address the challenges posed by the proactive submission of machine-tested faults.

WLA Management Regions: To reduce the number of regions referred to in the proposed QoS standards and reporting requirements, so they reflect changes to Openreach's operational structure.

Ethernet Upper Percentile: To change the design of the proposed QoS standard, so that it focuses on open orders. Openreach would be required to have, as an average over each annual compliance period, no more than 5% of its open orders older than 133 working days on the last calendar day of each month in the compliance period. This would remove any incentive on Openreach not to close older orders and better reflect what performance is reasonably achievable.

Ethernet KPIs: To make minor changes to one of our proposed Key Performance Indicator (KPI) reporting obligations on Openreach, to remove customer caused delay from the timeframe. This is to ensure it is aligned with an associated KPI.

Next steps

The closing date of this consultation is 4 December 2020. We expect to publish our final decision relating to the wholesale fixed telecoms market review by 31 March 2021.

2. Introduction

Background

2.1   Homes and businesses rely on broadband and leased lines more than ever before. This means that when things go wrong it is not just frustrating and inconvenient – it can cause financial and non-financial harm.

2.2   The ongoing Covid-19 pandemic means that the reliance on good quality broadband services is heightened. Large parts of the population of the UK were required to work remotely and many people continue to do so.

2.3   In addition, leased lines provide essential support to the UK's digital infrastructure, including to some of the country's most important services. Ensuring high levels of service in this area is vital.

2.4   The supply of broadband and leased lines is a complex environment and QoS standards set out the minimum standards Openreach should meet when installing and repairing these telecoms services.

2.5   QoS standards do not deal directly with the number or frequency of faults. But, the more faults there are, the more difficult it is likely to be for Openreach to meet the standards. Openreach therefore has an incentive to continue to invest in its network to reduce faults.

2.6   Separately, Openreach has Service Level Agreements (SLAs) and Service Level Guarantees (SLGs) as part of its agreements with telecoms providers. These include compensation arrangements for failure to meet targets associated with the provision and repair of services.

2.7   We have imposed QoS standards on Openreach[1] for wholesale broadband since 2014[2] and leased lines since 2016[3] in order to ensure that service levels remain at good levels for consumers and businesses.

2.8   In the January consultation we provisionally found BT to have SMP in certain WLA, LLA and IEC markets. The package of remedies proposed in each of these markets included an SMP Condition which requires BT to comply with such QoS standards and reporting requirements as Ofcom may direct, as well as directions setting out the specific QoS standards and data reporting requirements. In this further consultation, we only propose changes to those proposed directions.

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[1] As explained in Volume 2 of the January consultation, we propose to find BT to have SMP in the physical infrastructure, wholesale local access, leased line access and inter-exchange connectivity markets. To address this SMP we propose to impose remedies on BT. We refer to Openreach in this consultation reflecting that BT's Openreach division, run by Openreach Limited, is responsible for providing services over the copper and fibre connections between BT's exchanges and homes and businesses.

[2] Fixed Access Market Review 2014, volume 1, paragraphs 11.1 to 11.3.

[3] Business Connectivity Market Review 2016, volume 1, pages 387 – 542.

WFTMR QoS Proposals

2.9   In the January consultation we set out our proposals for (i) an SMP condition which requires BT to comply with any QoS standards and reporting requirements as Ofcom may direct, in relation to the WLA, LLA and IEC markets; and (ii) directions requiring BT to meet certain QoS standards and data reporting requirements in those markets. These can be found in more detail in the January consultation. [4] The proposed QoS standards are also summarised in Table 2.1 below.

Table 2.1: Proposed QoS standards (January consultation)

WLA market: MPF and GEA-FTTC products	QoS Level (adjusted for *force majeure*)
Repair completion within SLA timescales	88% (85%)
Repair completion within SLA + days	97%
% of installations to be completed by Committed Date	95% (94%)
Quality standards in relation to the FAD for installations requiring an engineer visit – working days within which first date offered for installation appointments	10
Quality standards in relation to the FAD for installations requiring an engineer visit – Frequency with which regulated installation appointment date must be offered	90% (89%)
LL and IEC markets: all EAD (including EAD LA), EBD, Cablelink and Dark Fibre products	**QoS Level (adjusted for *force majeure*)**
MTTP (Mean time to provide across orders)	No more than 38 working days
Upper percentile limit for provisions	No more than 3% delivered in more than 133 working days
Certainty: % of orders completed on or before initial Contractual Delivery Date (iCDD)	86%
Certainty Cross-Link: Maximum mean period for the iCDD	No more than 53 working days
% of faults repaired within the SLA	94%

2.10   A number of stakeholder responses to the January consultation included comments on quality of service. We are still considering these responses and will address stakeholders' comments in our final WFTMR Statement in 2021.

2.11   We are proposing to make some changes to some of the proposed QoS standards and data reporting requirements both in response to some of these comments, as well as Covid-19 and changes to fault reporting practices since the January consultation. We have also taken this opportunity to fix minor typographical errors in the proposed Directions. These have been marked up in Annex 5.

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[4] January consultation, volume 3, pages 120 – 122.

Impact Assessment and Equality Impact Assessment

2.12   The further analysis presented in this document constitutes an impact assessment as defined in Section 7 of the Communications Act 2003. Impact assessments provide a valuable way of assessing the options for regulation and showing why the chosen option was preferred. They form part of best practice policymaking. This is reflected in section 7 of the Act, which means that, generally, we have to carry out impact assessments in cases where our conclusions would be likely to have a significant effect on businesses or the general public, or where there is a major change in Ofcom's 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.

2.13   We are required by statute to assess the potential impact of all our functions, policies, projects and practices on 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. Annex 10 of the January consultation sets out our EIA in relation to our proposals including quality of service remedies. We do not consider that our EIA is altered by the revised proposals set out in this consultation.

Structure of this further consultation

2.14   This further consultation is structured as follows:

Section 3: Ofcom's proposals relating to the impact of Covid-19 on QoS standards.

Section 4: A proposal regarding relaxing WLA First Available Date QoS standard.

Section 5: A proposed change to the Relevant Regions definition for WLA services, to align with Openreach's structural changes.

Section 6: A proposed change to the definition of a fault relating to the WLA Repair QoS standard.

Section 7: Ofcom's proposal for changing the design for the Ethernet Upper Percentile QoS standard.

Section 8: A proposed change to one of the Ethernet KPI reporting obligations.

Section 9: Legal tests

3. Ofcom's approach to QoS and Covid-19

Introduction

3.1   We recognise the impact that Covid-19 has had on all industries we regulate and each of our stakeholders will have been affected differently. The provision and repair of telecommunications services has been challenging and, as a result, Openreach's quality of service performance has been adversely affected in some areas.

3.2   It is not yet possible to forecast whether these challenges will remain into the upcoming WFTMR period and how this might impact the service Openreach is able to deliver. However, these challenges may give rise to unanticipated effects that could result in our QoS standards being unachievable for Openreach. That is why in this section we set out our approach to ensuring that our proposed QoS standards remain appropriate in light of the prevailing circumstances.

3.3   We propose to internally assess the impact of Covid-19 on Openreach's performance no later than six months into Year 1 of the WFTMR period (i.e. by October 2021). We will review whether the QoS standards remain appropriate and assess whether action is needed to ensure Openreach has not been set standards that are unachievable due to reasons beyond its control.

3.4   Covid-19 is also one of the factors we have taken into consideration in our proposal to change the First Available Date QoS standard. We discuss this in Section 4 below.

Openreach submission

3.5   As part of its response to the January consultation, Openreach raised the issue of Covid-19 and the significant and negative impact on its performance against the QoS standards.[5] Openreach said Covid-19 was likely to bring challenges including abnormal conditions and non-linear demand that would be difficult to forecast.

3.6   Openreach noted that it is possible that Covid-19 will affect QoS standards into the WFTMR period. It asked us to consider what QoS standards would be appropriate at the point in time when it is possible to forecast the exit from Covid-19 effects, and suggested Ofcom run a consultation at an appropriate future date.[6]

Covid-19 operational impacts

3.7   During discussions with Openreach, we have discussed the ways in which Covid-19 is impacting its operations, and therefore how this could impact compliance with any proposed QoS standards in the WFTMR period.

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[5] Openreach Response, paragraph 8.2.
[6] Openreach Response, paragraph 8.15.

WLA markets

3.8   During the initial lockdown period Openreach issued instructions to its engineers which restricted the instances when they could enter the homes of customers, for the safety of both Openreach staff and customers. This meant Openreach faced some challenges in providing new lines or repairing existing ones. Though lockdown restrictions have eased, challenges still remain when working on customer premises. Further lockdown restrictions could mean all but essential work must be carried out outside the customer premises, meaning challenges may remain.

3.9   As discussed in more detail in Section 4 below, Openreach has also suggested the changes to consumer working patterns as a result of Covid-19 has contributed to much higher volumes of repair work on consumer lines, which has created challenges in meeting the WLA Repair standards.

LLA and IEC markets

3.10   During the initial lockdown period, Openreach continued to work safely to install new leased line products where possible. However, as many offices and businesses shut down completely, it was often only possible to build the circuit to the curtilage. This left a number of orders suspended in Openreach's workstack which otherwise would have been closed. This increased the average age of orders in the workstack, affecting the MTTP and Upper Percentile QoS Standards. In addition, the iCDD standard was not met for many of these orders.

3.11   As restrictions were lifted Openreach was able to finish many of the jobs that had been suspended, although we understand that some suspended orders remain in the workstack, which will continue to have an impact on provision related QoS standards.

3.12   Openreach has suggested that further lockdowns, or new sector-specific restrictions could have a similar impact on its ability to meet QoS standards.

Ofcom proposal

Continue to impose QoS standards

3.13   We recognise that Covid-19 has given rise to unprecedented challenges for Openreach over the course of this year which have impacted its performance against the current QoS standards. Consequently, we have considered whether, as part of this consultation, it would be appropriate to consult on not imposing the QoS standards proposed in the January consultation for Year 1 of the WFTMR period (i.e. 2021/22). Such a proposal would involve using current Openreach performance data and exogenous factors to determine whether the QoS standards to be imposed from April 2021 remained appropriate.

3.14   We are of the view that there is currently not enough information to assess whether the QoS standards proposed in the January consultation are set at inappropriate levels given the external challenges Covid-19 presents. Nor do we believe it is likely that there will be

enough information available before the WFMTR Statement to make such an informed assessment. We therefore do not believe it would be in the interests of any stakeholder to not impose QoS standards and the protection they afford telecoms providers and consumers.

3.15   There is a risk that the impact of Covid-19 worsens between now and the WFTMR Statement in March to such an extent that it becomes obvious that the setting of QoS standards for Year 1 becomes wholly inappropriate. If this situation were to occur, we would consider how to deal with this at the time.

Mid-year assessment

3.16   Although for the reasons explained above, we consider that it is appropriate to impose QoS standards for Year 1, we are proposing to do this alongside an approach which anticipates the possibility of Covid-19 having a significant impact on Openreach during Year 1 of the WFTMR period. Specifically, we are proposing to conduct an internal assessment of whether the QoS standards remain appropriate during Year 1. This assessment will consider Openreach's performance as well as exogenous factors related to Covid-19.

3.17   Following the mid-year assessment, we are likely to consider the following three options:

1) Remove some or all QoS standards for Year 1 of the WFTMR period;

2) Apply some form of discount to the QoS standards in Year 1; or

3) Retain the QoS standards as set out in the final WFTMR Statement.

3.18   The removal of the QoS standards for Year 1 could apply to one, some, or all of the standards that we are proposing to impose as part of the WFTMR. This is because some elements of Openreach's operation may be more affected by Covid-19 than others.

3.19   Equally, it may be appropriate to apply a discount to some or all of the QoS standards, or apply a discount to a particular geographic region (for example if there have been local lockdown restrictions in place during Year 1).

3.20   Any removal of QoS standards would not involve the removal of the transparency requirements on Openreach. We would therefore continue to monitor Openreach's performance against the existing proposed metrics set out in the January consultation and elsewhere in this consultation.

3.21   We will inform stakeholders of the outcome of any mid-year assessment and may issue a further consultation if appropriate.

Considerations

3.22   There are two main areas of consideration we will take into account during our mid-year assessment: Openreach's most recent performance data and exogenous factors relating to Covid-19.

Openreach performance data

3.23   The performance data that could be reviewed as part of the mid-year assessment will depend on when it is conducted, but it is likely that data from at least the first quarter of Year 1 will be available.

3.24   Ofcom meets Openreach regularly to discuss QoS performance. In these meetings, Ofcom and Openreach have discussed the impact of Covid-19 on Openreach performance. We will continue regular engagement with Openreach throughout Year 1 about the ongoing impacts of Covid-19.

3.25   We will be using performance data and understanding gained from our ongoing dialogue with Openreach to assess whether it is likely that any impacts on Openreach's performance are serious enough to have a continued detrimental effect into the WFTMR period, to the point where meeting QoS standards in Year 1 appears to be unachievable.

3.26   We will engage with Openreach and its stakeholders to assess whether any impact on performance is attributable to other factors, including those inside Openreach's control. We would need to be satisfied that Openreach had taken all proportionate measures in its power to address any adverse impacts of Covid-19 and improve its service to its customers. Any decision to remove or relax standards because they appear to be unachievable would therefore not only be based on Openreach performance, but on exogenous factors (discussed below).

Exogenous factors

3.27   In addition to the latest Openreach performance data, we will take into account exogenous factors related to Covid-19. These may include:

a)   the latest advice from Government and public health bodies;

b)   any national or local restrictions on the movement of people or the operation of businesses;

c)   the latest trends in the rates of infection; and

d)   any other related information on the virus or its impact on the UK.

3.28   We will engage with Openreach about how each of these factors are likely to affect its processes going forward and its ability to continue to provide good levels of service for its customers. We will review whether the proposed QoS standards are likely to remain achievable given these external factors.

Setting specific indicators

3.29   We do not believe it would be appropriate to set out specific indicators that would lead to the removal of the QoS standards or the application of any discounts. Covid-19 and its impacts are unprecedented, making it difficult to set specific thresholds for specific actions.

3.30   In particular, it would be inappropriate to set out a level of Openreach performance at which we would commit to removing the QoS standards or applying discounts. Such thresholds would potentially create perverse incentives on Openreach.

3.31   Removing the QoS standards (either wholly, or in part) is a decision that needs careful consideration and one that would require a very clear indication that the standards for Year 1 of the WFTMR period were unachievable.

Ongoing impacts

3.32   Openreach has noted that the impacts of Covid-19 may continue for a number of years, well into the WFTMR period. Openreach asked Ofcom to take additional steps on an *ex-ante* basis to recognise Covid-19 and its likely impact on Openreach's ability to meet the QoS standards imposed. Specifically, Openreach asked that Ofcom make changes to the QoS remedies if needed.

3.33   TalkTalk Group also noted that Ofcom should properly consider whether and how its regulation should change to reflect potential negative impacts on the economy as a result of the pandemic.[7]

3.34   As mentioned throughout this section, we are not in a position to forecast the precise nature of the impacts of Covid-19. It would be inappropriate to attempt to amend any QoS standards without a clearer picture of the situation.

3.35   Our proposal above includes an assessment of the appropriateness of QoS standards during the market review period. Should we have the information to do so, it may be that we are able to assess impacts beyond Year 1 of the WFTMR period.

Consultation question

Question 3.1: Do you agree with Ofcom's proposal on how to deal with the potential impact of Covid-19 on Openreach's QoS performance?

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[7] TalkTalk Response, paragraph 1.30.

4. WLA First Available Date Standard

Introduction

4.1   Ofcom has imposed QoS standards on Openreach in relation to installation appointments for the provision of new circuits. Regarding MPF and GEA-FTTC services, Openreach is currently required to offer an appointment within 10 working days of an order being placed, on 89% of occasions. These two standards together (the number of days and frequency of availability) are known as First Available Date (FAD).

4.2   The number of working days for the FAD standard was first set at 10 working days for 2020/21, having been set at 12 working days in the previous three compliance periods. In the January consultation Ofcom proposed that the current FAD standard of 10 working days, on 89% of occasions, be retained. In view of stakeholder responses and Covid-19, we are now revising this proposal, and propose instead to relax the standard to require Openreach to offer an installation appointment within 12 working days of an order being placed, on 89% of occasions (the same standard that applied in the periods before 2020/21).

4.3   Ofcom does not believe that this change will have a negative impact on provision times for consumers. However, we welcome evidence from stakeholders about the relationship between appointment times and overall provision times for consumers.

4.4   We are proposing that the standard remains the same throughout the WFTMR period and therefore no glidepath back to 10 working days. We are proposing to introduce a KPI requirement for Openreach to report against the percentage of orders which are offered an appointment within 10 working days.

January consultation

4.5   In the January consultation we proposed that Openreach be required to offer appointments that are within 10 working days of an order being placed, and that this requirement be met in 89% of instances.

4.6   Our proposed FAD standard was based on retaining the same level as the last compliance period as set out in the 2018 WLA QoS Statement (2020/21). Some of the reasoning for our decision to set the target at this level, including the views of stakeholders at that time, is summarised below in our assessment. Please refer to the 2018 WLA QoS Statement for full details on the decision.[8]

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[8] Ofcom 2018 WLA QoS Statement.

Responses to the consultation

Openreach

4.7   Openreach disagreed with the FAD remedy proposed. It suggested that shorter lead times impact Openreach's ability to flex resource between provision and repair. Openreach also submitted that many telecoms providers do not select early appointment dates in practice.

Impact of offering shorter appointment times on repair resource

4.8   Openreach requested that, when considering whether to propose a 10-working day FAD standard, we did not review Openreach's proposal solely in relation to FAD performance. Openreach explained that there is a balance to be found between provision demand (to which the FAD standard relates) and repair demand.[9] In doing so, Openreach argued that we should take into account two major events that have impacted the volume of repairs in its workstack since the FAD standard was set at 10 working days: Proactive Repair and Covid-19.

4.9   Proactive Repair is the term used by Openreach to describe faults raised into Openreach that have not been initiated by an end-user contacting their telecoms provider to report a specific problem with their service but instead are submitted by telecoms providers using "algorithms and robotics".[10] We explore these impacts on Openreach's resource below.

Selection of early appointments by telecoms providers

4.10   Openreach explained that the majority of telecoms providers who purchase WLA services from Openreach choose not to take appointments before day five. When the FAD standard changed to 10 working days in April 2020, Openreach changed its processes to enable appointments to be offered from day three onwards. However, it said the earliest appointment times are not used in practice by the majority of telecoms providers.[11]

4.11   Openreach also noted that a 12-working day standard would be consistent with existing contractual arrangements.

Other stakeholders

4.12   No stakeholder responses to the January consultation specifically referred to the FAD QoS standard.

4.13   Sky suggested that QoS standard levels should not be kept static throughout the period and should be made more challenging, in order to protect consumers who have not migrated to full-fibre products. Sky stated that Openreach's quality of service, including the

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[9] Openreach Additional Response, paragraph 49.
[10] Openreach Response, paragraph 8.100.
[11] Openreach Response, paragraph 8.74.

quality and timeliness of provisioning, has improved since 2014 but that "there is still a long way to go before it reaches an acceptable level".[12]

4.14   TalkTalk suggested that the cost of providing the same levels of quality at the end of the WFTMR period may be less than at the beginning (because, for example, migration to FTTP would result in lower fault rates). If this were the case, it may be appropriate to set higher QoS standards because the cost / benefit calculation would have changed.[13]

Ofcom assessment

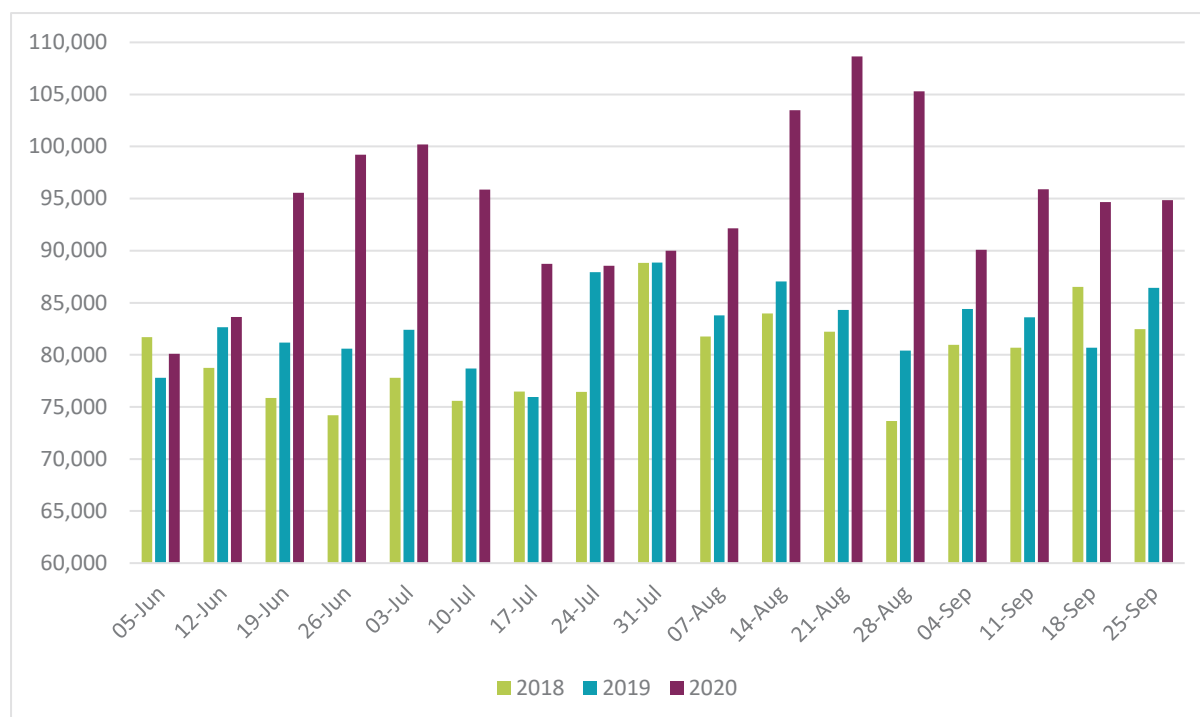## Impact of shorter appointment times on repair resource

4.15   The way in which Openreach is structured means that resource can be shared between provision and repair of WLA services. Openreach has suggested to Ofcom that the resource available for repair can be increased when Openreach has greater flexibility to offer later appointment dates.

4.16   Openreach has told us that engineering resource is allocated first to ensure that appointment dates for the installation of new services are available which allow them to meet the FAD standard Ofcom has set. Once this has been done, any additional resource can be allocated to repair (which has a different set of QoS standards associated with it). This means that relaxing the FAD standard frees up additional resource to deal with repair volumes.

4.17   We recognised the balance between provision and repair resource in our 2018 QoS Statement.[14] We also noted that reducing the standard to below 10 working days could restrict Openreach's operational flexibility, which would impact on costs.[15] We remain of the view that there is a balance to be struck between provision and repair resource and that getting this wrong can impact Openreach's flexibility and ultimately impact costs.

4.18   Openreach has submitted information to Ofcom about current challenges it faces as a result of increased fault intakes and therefore increased pressure on repair resources. It has provided information on the UK weekly fault intake for June – September in each of 2018, 2019 and 2020.

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[12] Sky Response, page 15.
[13] TalkTalk Response, paragraph 6.110.
[14] Ofcom 2018 QoS Statement, paragraph 7.77.
[15] Ofcom 2018 QoS Statement, paragraph 7.80.

Figure 4.1: Weekly UK fault intake for June – September in 2018, 2019 and 2020

Source: Openreach response dated 8 October 2020 to the s.135 notice dated 25 September 2020

4.19   Figure 4.1 demonstrates that, since June 2020, the weekly fault intake has been significantly higher than in 2018 and 2019. When comparing 2020 volumes with average volumes for 2018 and 2019, the data suggests a 13% year-on-year increase in the fault intake for June; 18% for July; 25% for August; and 13% for September.

4.20   Openreach has attributed some of this recent increase to two phenomena: Proactive Repair and Covid-19.
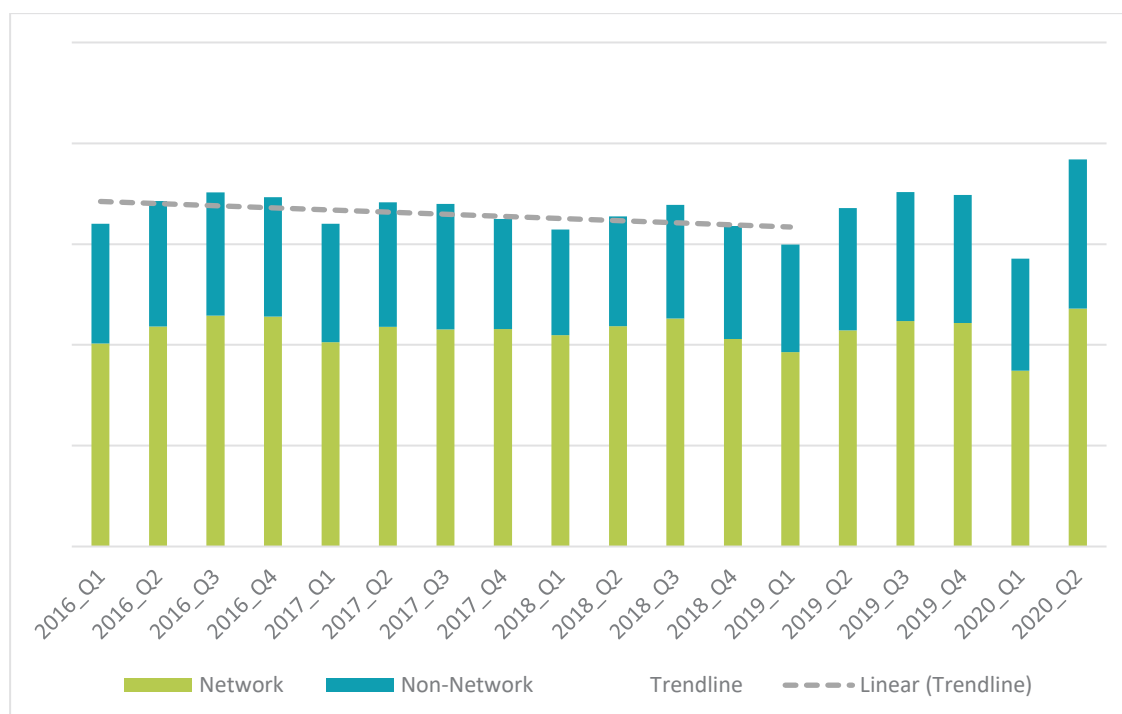
Proactive Repair

4.21   Openreach has suggested that Proactive Repair presents a challenge because:[16]

a) When investigating these reported faults, Openreach frequently finds that no remedial action is needed. Openreach has also seen instances of faults being reported where the line is operating with good speed and stability rating;

b) Openreach is unable to determine whether a fault has been submitted as a result of an end-customer complaint or as a result of proactive testing and so there is a risk that genuine customer faults suffer from a lower quality of service as a result of diversion of effort to faults which are not the result of any issue raised by consumers;

c) The increased volume of Proactive Repair faults is inconsistent and volatile, resulting in planning challenges; and

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[16] Openreach Response, paragraphs 8.98 – 8.122

d) Proactive Repair has added a higher volume of faults into the repair workstack which was not foreseen at the time of the 2018 WLAMR. This may require additional resource to be added, some of which could be wasted resource due to the nature of some faults.

4.22 Openreach suggested that Proactive Repair faults should not be included as part of the QoS standards, though it recognised that at present there was no way to identify and therefore remove these.[17] Openreach has asked Ofcom to make changes to the WLA Repair Standards to reflect recent industry engagement about the identification of Proactive Repair faults. This is discussed in Section 6 below.

4.23 Openreach has submitted data which demonstrates that total fault rates have been declining since 2016, but that from Q2 2019, when Proactive Repair began, until Q1 2020 the fault rate began to rise again.

Figure 4.2: Quarterly total fault rates

Source: Openreach response dated 8 October 2020 to the s.135 notice dated 25 September 2020

Covid-19

4.24 Ofcom has been in regular contact with Openreach throughout the Covid-19 pandemic. Among other things, we have discussed with them the increased volume of faults. One of the reasons suggested has been the increased reliance by customers on high-bandwidth applications such as video-conferencing software. In addition, millions of people working from home means that internet usage is sustained over a full day, rather than constrained

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[17] Openreach Response, paragraphs 8.124 – 8.133.

to evenings and weekends. This means customers' tolerance for faults may have decreased.

4.25   Openreach's further submissions on the impact of Covid-19 are covered in Section 3.

Selection of appointment dates by telecoms providers

4.26   The FAD standard was first set at 10 working days with the 2018 WLA QoS Statement. One of the comments made by Ofcom in the 2018 WLA QoS Statement was that we recognise that telecoms providers and their customers may sometimes choose later appointments for their own convenience. However, without appointments being available from Openreach, telecoms providers cannot offer customers fast installations if they want them. Shorter appointment lead times will be more aligned with customers' rising expectations for fast delivery and better service.[18]

4.27   As a result of Ofcom imposing a 10-working day FAD standard, Openreach's systems now offer appointments from day three. This allows providers who want to select earlier appointment dates the ability to do so. However, the data Openreach has provided suggests there has not been a significant change in demand.

4.28   Openreach provided information to Ofcom regarding the consumption of appointment days for the period between January and March 2020. This is set out in Table 4.1 below.

Table 4.1: Appointment availability and consumption

FAD	Gap (taken over offered)	Sum of FAD + Gap	% taken on day	% orders
1	14.2	15.2	1%	[✂]%
2	13.4	15.4	0%	[✂]%
3	14	17	2%	[✂]%
4	11.5	15.5	6%	[✂]%
5	7.1	12.1	31%	[✂]%
6	6.3	12.3	34%	[✂]%
7	5.8	12.8	40%	[✂]%
8	5.3	13.3	47%	[✂]%
9	5.5	14.5	48%	[✂]%
10	4.2	14.2	56%	[✂]%
11	3.3	14.3	72%	[✂]%
12	2.4	14.4	82%	[✂]%

Source: Openreach response dated 8 October 2020 to the s.135 notice dated 25 September 2020

4.29   The data shows that where the earliest dates are offered, (i.e. days one – four) very few of these are selected. For example, where Openreach offered a FAD of day four, only 6% of providers selected this date. Whereas when Openreach offered a FAD of day five, this rose to 31%.

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[18] [Ofcom 2018 WLA QoS Statement](#), paragraph 7.78.

4.30   Ofcom understands that, should the standard revert back to 12 working days as we are proposing, the ability for telecoms providers to select earlier dates would not change. This means that customers with higher expectations for fast delivery times would still benefit from the ability for telecoms operators to select shorter appointment dates.

Conclusion and proposal

4.31   From Figure 4.1 above it is clear that there has been a sustained increase in the weekly fault intake from June – September 2020 when compared with 2018 and 2019. Ofcom believe that Covid-19 and Proactive Repair may have contributed to these increases.

4.32   Whatever the underlying cause, it is clear that this volume of repair work presents a different situation to that in 2018, when Ofcom considered it appropriate to tighten the FAD standard to 10 working days, noting the balance between provision and repair resource.

4.33   Given the increased repair volumes that have been sustained from June – September 2020, it appears to us that continuing to propose a 10 working day standard could restrict Openreach's operational flexibility. This is because, as noted above, engineering resource is allocated first to ensure the FAD standard is met.

4.34   Our view is that Openreach would be better equipped to address the higher repair volumes (which are more unpredictable than provision volumes), if it had more flexibility in how it allocates resource to the provision of new circuits. We therefore believe it is appropriate to set the FAD standard back at 12 working days.

4.35   When considering the impact of this proposed change on consumers, we have considered the evidence provided by Openreach that earlier appointment times are not frequently consumed by telecoms providers. Openreach systems have now been amended such that those providers who do wish to select the earliest appointment dates can now do so. We therefore do not believe there will be an adverse impact on consumers as a result of this change.

4.36   We also note that Openreach already has good performance in relation to FAD. As of 2019/20, Openreach has met all its WLA QoS standards, including those related to installation appointments.

Glidepath

4.37   In previous market reviews Ofcom has set a glidepath, where the target level is tightened during the period because of anticipated changes in market conditions or an assumed improvement in Openreach's ability to deliver products and services. We have considered whether setting a glidepath is appropriate in this review, and propose that it is not, for the reasons set out in the following paragraphs.

4.38   It is currently not possible to determine whether the increased volume of repair work is as a result of changing consumer consumption patterns that may or may not be sustained; Proactive Repair faults; a combination of both; or another as-yet-unknown factor. This

means it is difficult to say whether the increase to repair volumes is likely to be sustained over the WFTMR period. There also may be changes to the way that telecoms providers consume appointments in the future, which could indicate changes are needed to the FAD standard over the WFMTR period.

Proactive Repair

4.39   As mentioned above, Proactive Repair may be a contributing factor to higher volumes of repair work. Elsewhere in this consultation, we note that there are ongoing discussions between Openreach and industry to resolve the challenges this new phenomenon poses. In Section 6 we propose changes to provide flexibility for such agreements.

4.40   We are not in a position to comment on the ongoing discussions. However, we understand that one outcome may be that Proactive Repair faults are excluded from the QoS standards and different SLAs and SLGs are agreed. This may provide Openreach with greater repair resourcing flexibility.

4.41   This flexibility may then suggest that a glidepath back to 10 working days for the FAD standard would be appropriate. However, it is too early at this stage to know whether an agreement will be reached; when such an agreement would be in place; and the nature of any agreements.

Covid-19

4.42   If a change in working habits as a result of Covid-19 has increased the reporting of faults, then one possibility is that repair volumes will fall again to the extent that people return to offices. If this were to happen, there is an argument that a glidepath back to 10 working days should be introduced, as Openreach will be better able to forecast volumes and manage resource.

4.43   However, there are some indications that working practices have been permanently altered as a result of the pandemic and many more people may choose to work from home on a regular basis.[19] This could result in a sustained increase in repair faults, even after the most immediate impacts of Covid-19 have subsided.

Consumption of early appointments

4.44   Openreach has suggested that the earliest appointment dates are not consumed by telecoms providers. The underlying reasons for this are not clear, but two factors could be end-consumer availability and operational or process constraints on telecoms providers (including the requirement to send new equipment to an end-customer).

4.45   It may be that any lasting changes to the working environment (i.e. increased home working) have an effect on end-customer availability, increasing the consumption of early

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[19] According to a July 2020 survey by the Chartered Institute of Personal Development (CIPD), employers expect that the proportion of people working from home on a regular basis once the crisis is over will increase to 37% compared to 18% before the pandemic. See: Home working increases CIPD press release.

appointments. Equally, now that Openreach has changed its systems to offer shorter appointment dates (as of April 2020), telecoms providers' processes may change to enable the greater consumption of earlier appointments going forward.

Glidepath conclusion and proposal

4.46 Ofcom welcomes stakeholder views on setting a glidepath back to 10 working days for the FAD standard. In particular regarding the three factors we have explored above.

4.47 Given the uncertainty of the three factors, we are not proposing to introduce a glidepath back to 10 working days. But we remain open to introducing a glidepath, either before the WFTMR Statement, should enough evidence be provided, or during the review period once the factors we have discussed above become clearer.

Introduction of an additional KPI

4.48 We are proposing to introduce an additional KPI to be reported on as part of the transparency requirements. Ofcom has already proposed to impose a KPI obligation on Openreach to report on the percentage of appointments offered corresponding to the FAD standard (which we are proposing to set at 12 working days). The additional KPI would require Openreach to report on the percentage of orders where Openreach was able to provide a FAD of 10 working days.

4.49 This will enable Ofcom to review Openreach's performance against the current QoS standard throughout the WFTMR period. Such information will assist Ofcom in determining whether, and when, a return to the 10-working day FAD standard would be appropriate.

Consultation questions

> **Question 4.1:** Do you agree with Ofcom's proposal to set the FAD standard to require Openreach to offer appointments that are within 12 working days of an order being placed, and that this requirement be met in 89% of instances? Please set out your reasons and supporting evidence for your response.
>
> **Question 4.2:** Do you agree with Ofcom's proposal not to introduce a glidepath to return to a tighter FAD QoS standard?
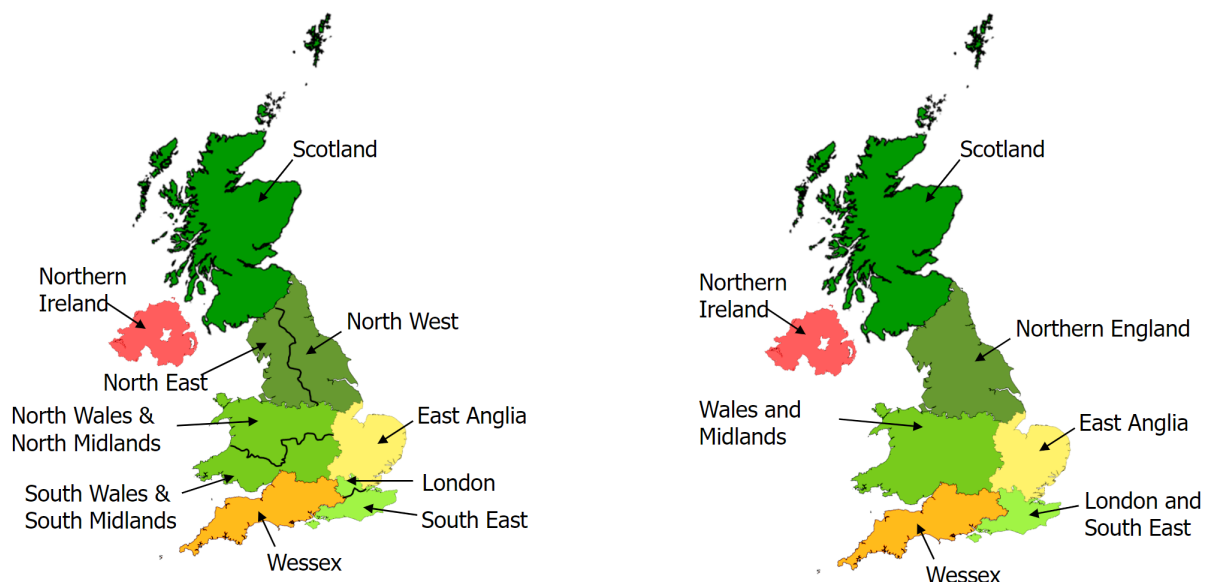
5. WLA Management Regions

Introduction

5.1   In April 2019 Openreach changed the way its Service Delivery arm is structured, which is the area responsible for delivering WLA and related products. Openreach reduced the number of Management Regions from ten to seven.

5.2   Some of the QoS standards and KPI reporting obligations that we are proposing to impose as part of the WFTMR are tied to these Management Regions. Openreach has asked us to make changes to the WLA QoS standards and KPI reporting obligations so that they mirror the new operational structure.

5.3   We are proposing to make changes to the definition of "Relevant Region" in each proposed direction relating to the WLA market, so that it aligns with Openreach's new structure of seven Management Regions, as opposed to referring to the old structure of ten.

Openreach changes

5.4   Openreach's Service Delivery arm is changing from having ten Management Regions to seven. Openreach provided the diagram below to illustrate the changes, with the old operational structure on the left and the new structure on the right.

Figure 5.1: Openreach Management Region changes

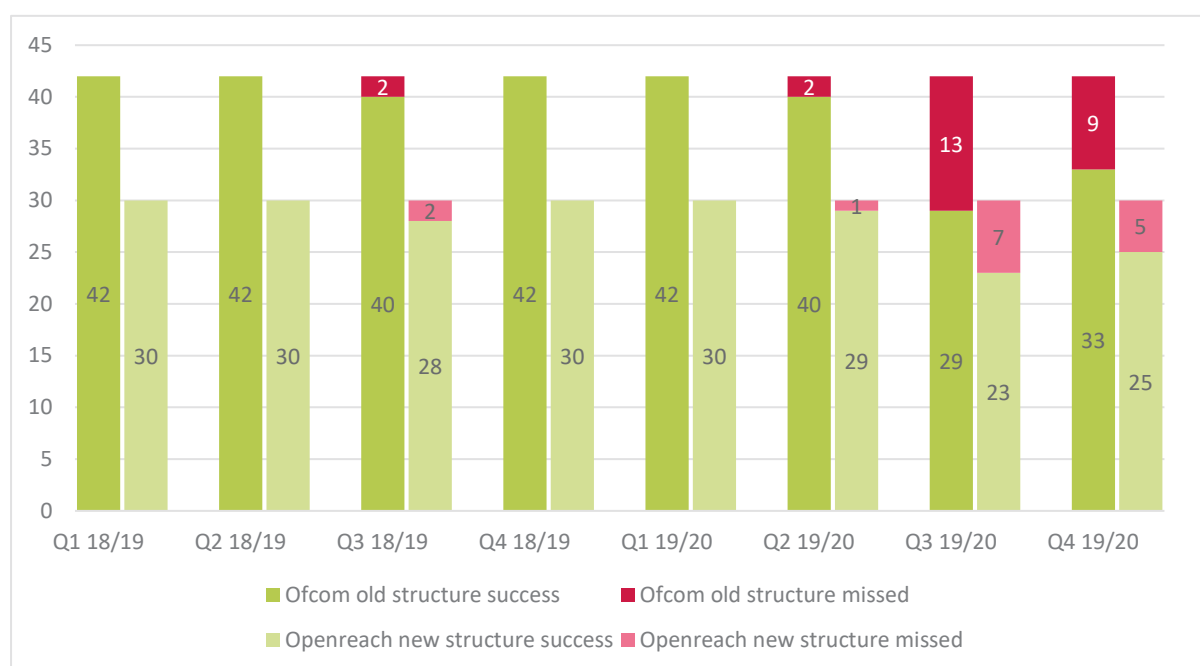*Source: Openreach submission to Ofcom dated 20 July 2020, page 3.*

5.5   Openreach has said that this change will help align objectives to the right teams and help reduce operational inefficiency and mixed incentives.

Ofcom assessment

Impact on QoS Standards

5.6   Openreach has provided some information about how these changes would impact the reporting of its performance against the QoS standards currently imposed on it.

5.7   A number of the WLA QoS standards are set with reference to the Management Regions. The changes Openreach are proposing would mean changing from having 42 separate QoS standards to having 30.[20]

5.8   Openreach suggests that the move to the new structure would improve the overall proportion of QoS standards met each quarter, but that there is likely to be a minimal impact on the overall QoS standards on an annual basis.

5.9   Taking the quarter with the biggest deviation as an example, in Q3 2019, Openreach would have met 29 of its 42 standards. Under the new structure, it would have met 23 of 30.

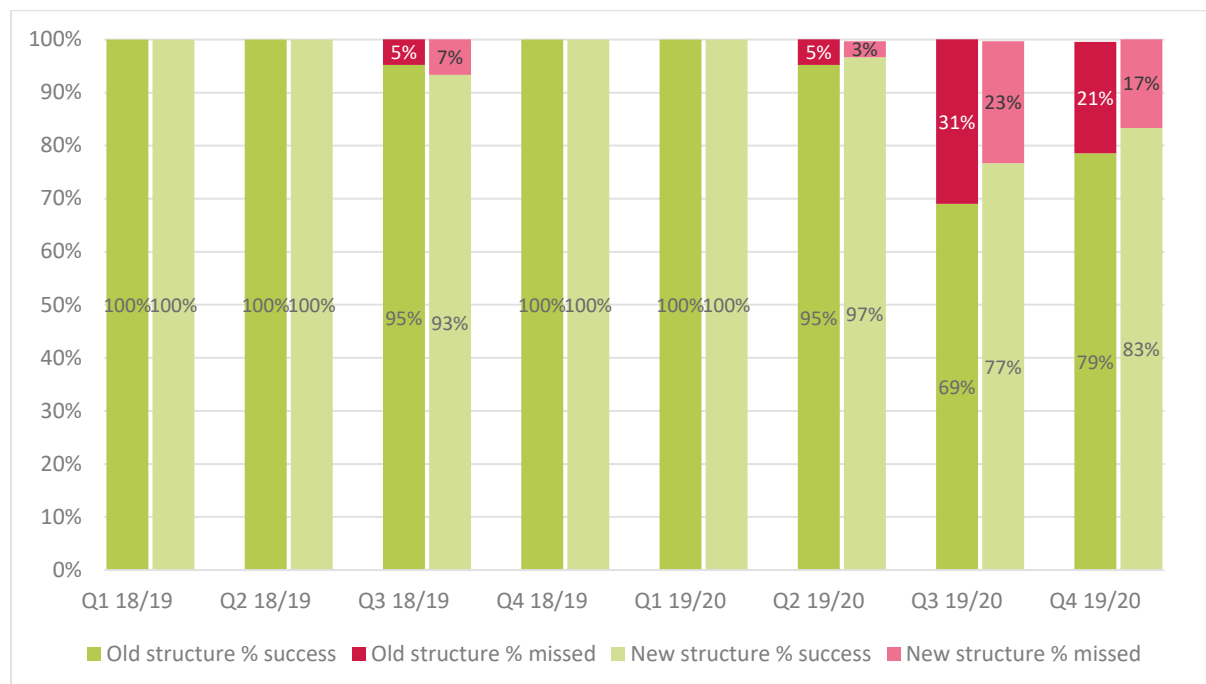**Figure 5.2: Comparison of QoS standards between old and new Openreach operational structure**

Source: Openreach response dated 8 October 2020 to the s.135 notice dated 25 September 2020

5.10   As a proportion of the standards met, in Q3 2019 Openreach would have met 69% of its standards under the old structure, against 74% of its standards under the new structure. As noted above, this is the biggest deviation in the data that Openreach provided.

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[20] QoS standards 1 and 2, concerning provision, apply to each Relevant Region. QoS standards 3 and 5, concerning repairs within an agreed SLA, also apply to each Relevant Region. QoS Standards 4 and 6, concerning repairs within an agreed SLA + 5 working days apply to the UK as a whole.

Figure 5.3: Comparison of QoS standards (%) between old and new Openreach operational structure

Source: Openreach response dated 8 October 2020 to the s.135 notice dated 25 September 2020

5.11   From the data Ofcom has seen, it appears that changing the Management Regions may result in a marginal improvement when reporting against QoS standards. However, we have seen no evidence to suggest that this change was driven by a desire to mask any poor performance, as Openreach has met its QoS standards in each relevant period since their introduction.

High-Level MBORC allowance

5.12   Another quality of service issue impacted by this proposed change to the definition of "Relevant Region" is the High-Level MBORC allowance.

5.13   Openreach can declare MBORC (Matters Beyond Our Reasonable Control) in specific circumstances where its normal operational abilities are affected by *force majeure* events. Declarations of MBORC mean that installations and repairs covered by the declaration are excluded from the QoS standards. MBORC declarations also release Openreach from the liability to make payments under the corresponding Service Level Guarantee (SLG).

5.14   High-Level MBORCs include incidents affecting over 2,000 lines; incidents which are/are likely to become the subject of regional or national media interest; and anything likely to impact on the BT and/or Openreach brand.

5.15   In the 2018 WLA QoS Statement, we limited Openreach's ability to declare High-Level MBORC events in up to two regions each year, subject to a limit of eight weeks per declaration.

Impact of the changes

5.16   Openreach's reduction of the Management Regions from ten to seven, mean that declarations of MBORC could affect a larger area of Openreach's network, thereby impacting more telecoms providers.

5.17   For example, Openreach may be required to declare MBORC in the 'Northern England' and 'Midlands and Wales' Management Regions during a compliance period. In a purely geographical sense, this would be comparable to Openreach having declared four High-Level MBORCs in one compliance period under the old structure.[21]

5.18   However, this is the most extreme example. Should Openreach declare High-Level MBORCs in 'Wessex' and 'East Anglia', the regions covered would remain exactly as they would have under the old structure.

5.19   Given the potential for MBORC declarations to now affect a greater area of Openreach's network, Ofcom therefore considered whether it would be appropriate to reduce Openreach's High-Level MBORC allowance to only one region per year.

5.20   We recognise that severe weather events can occur at multiple points during the year across different regions. In addition, the Covid-19 pandemic has highlighted the need for regulatory and operational flexibility from Ofcom and Openreach respectively.

5.21   We do not believe that reducing Openreach's High-Level MBORC allowance to only one region per year would allow Openreach the flexibility to deal with severe weather or other unforeseen events. We therefore propose to retain the allowance of two regions per year, with a maximum of eight weeks per region.

5.22   However, we recognise the risk that MBORC declarations may now affect a larger part of the network. We welcome views from stakeholders about the High-Level MBORC allowance. In particular, we would be interested in hearing any alternative solutions that provide Openreach with operational flexibility, while ensuring the risk of MBORC misuse and the impact on telecoms providers is minimised.

Impact on KPIs

5.23   In the January consultation Ofcom proposed to impose transparency requirements on Openreach which include the publication of KPIs. As was the case for previous compliance periods, we are proposing to require some of these to be split by reference to "Relevant Region", which reflect Openreach's Management Regions in the first instance.

5.24   Openreach has asked Ofcom to reflect the changes to its new operational structure in these proposed transparency obligations.

5.25   We anticipate no positive or negative impacts of this change on the transparency requirements.

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[21] The four regions under the old Management Structure would be: North West; North East; North Wales & North Midlands; and South Wales & South Midlands.

Ofcom proposal

5.26   We are proposing to amend the definition of "Relevant Region" in Directions 3 and 4 of the January consultation so that it reads as follows:

"Relevant Region" mean the following seven regions, as defined by the Dominant Provider:

- *East Anglia;*

- *London and South East;*

- *Northern England;*

- *Northern Ireland;*

- *Scotland;*

- *Wales and Midlands; and*

- *Wessex*

a)   or other such regions as OFCOM may agree with the Dominant Provider or direct from time to time under Condition 10 of the Wholesale Fixed Telecoms Market Review SMP Conditions, but which cumulatively at all times cover the wholesale local access market in the UK, as applicable, excluding the Hull Area;

Consultation questions

Question 5.1: Do you agree with Ofcom's proposal to change the definition of Relevant Region in Directions 3 and 4, to align with Openreach's new operational structure?

Question 5.2: Do you agree with Ofcom's proposal to keep the High-Level MBORC allowance at two regions per year, with a maximum of eight weeks per region?

6. WLA Fault Definition

Introduction

6.1 WLA QoS standards include requirements to repair faults within a set timeframe. Openreach has requested that the definition of a fault be amended to exclude proactively tested faults flagged as such by telecoms providers. This is in response to ongoing discussions with telecoms providers about the submission of such repair faults. We are proposing to agree to an amended definition of faults to allow flexibility.

Openreach submission

6.2 Openreach has requested that the definition of a "Fault" in the context of WLA QoS standards be changed to exclude proactively tested submissions that have been labelled as such by the telecoms provider.[22]

6.3 Openreach's suggested text for the definition of a fault is included below, with additions in underline italics:

> "Fault" means a degradation or problem with MPF, SOTAP or GEA-FTTC services (as applicable) that is identified by the Dominant Provider or a Third Party and which is registered on the Dominant Provider's operational support system, _excluding those faults which were flagged and agreed by the Third Party to be resolved under a separate process._

Ofcom assessment and proposal

6.4 We recognise that the proposed change would support an industry-agreed solution to the issues Openreach has raised regarding Proactive Repair.

6.5 The proposed wording requires an agreement to have been reached between industry and Openreach. We believe there should be a specific reference to any such agreement to make it clear that it does not capture in scope any ad hoc or informal arrangements and as such we are proposing a further addition to the amended text, as set out in bold underline below:

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[22] Openreach Additional Response, paragraph 35.

> "Fault" means a degradation or problem with MPF, SOTAP or GEA-FTTC services (as applicable) that is identified by the Dominant Provider or a Third Party and which is registered on the Dominant Provider's operational support system, *excluding those faults which were flagged and agreed by the Third Party to be resolved under a separate process* **as set out in the applicable service level agreement.**

Transparency requirements

6.6   Openreach has not asked us to amend the definition of 'Fault' for the purposes of its transparency requirements and so we are only proposing to amend the definition for the purposes of the QoS standards.

6.7   We recognise that industry agreements on the subject of amending service levels for particular faults may result in the need for amended transparency requirements. We believe it would be premature to suggest any changes before industry discussions have concluded. However, we welcome stakeholder views on this.

Consultation question

> **Question 6.1:** Do you agree with Ofcom's proposal to amend the definition of a fault, allowing the exclusion of those flagged and agreed by telecoms providers to be resolved under a separate process as set out in the applicable service level agreement?

7. Ethernet Upper Percentile Standard

Introduction

7.1   The Upper Percentile QoS standard is intended to protect customers with complex orders from excessively long lead times, by attempting to limit the number of orders experiencing such lead times. The standard was originally set in 2016, limiting the number of orders that take over 159 working days to complete, to no more than 3% of Openreach's workstack.

7.2   At that time Openreach's performance regarding complex orders was extremely poor. When introducing the QoS standards, we noted that deterioration in Openreach's Ethernet provisioning performance at the wholesale level had a detrimental effect downstream, i.e. on consumers and citizens.[23]

7.3   Therefore in 2016 the purpose of this standard was to set a path to improvement. As discussed below, Openreach's Ethernet provisioning performance has improved since 2016, though the Upper Percentile standard remains difficult for Openreach to achieve.

7.4   We believe it is still important to protect customers whose orders fall into the tail of complex orders, but the intention of this standard has changed since 2016, away from a push to drastically improve Openreach performance and towards maintaining a decent level of service for those customers with complex orders.

7.5   In the January consultation we proposed to maintain the current Upper Percentile standard but invited views on possible alternative options. After considering submissions on the Upper Percentile standard, we are proposing to change the design of the proposed standard so that it focusses on open orders, rather than closed orders. We are also proposing to set the target level of the standard based on Openreach performance over the last two years.

January consultation

7.6   Our starting position in the January consultation was to maintain the Year 2 Upper Percentile standard imposed in the 2019 BCMR into the new review period.[24] This was set at no more than 3% of provision orders completed in more than 133 working days.

7.7   We noted in the January consultation that we would be willing to consider alternative options, due to Openreach's previous difficulty in meeting the standard, coupled with challenges in setting an appropriate target. More detail on the possible alternative options can be found in the January consultation. Briefly they included:

a)   Relaxing the standard, either in its design or level.

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[23] BCMR 2016 Statement, Volume 1, paragraph 13.170.
[24] WFTMR 2021-26 Volume 3: Non-pricing remedies, paragraph 7.25.

b) Replacing the standard with a target outcome that triggers an obligation for Openreach to provide an explanatory report to Ofcom if the target is not met.

c) Disaggregating the standard to better account for challenges such as wayleaves and traffic management.

d) Removing the standard entirely and relying on existing transparency requirements.

Responses to the consultation

Openreach response

7.8   Only Openreach responded to the January consultation with specific points related to the Upper Percentile standard.[25] Since submitting its response to the January consultation, Openreach has also submitted additional information to us which has been considered as part of this further consultation.

Issues with the Upper Percentile standard

7.9   Openreach raised a number of issues with the level of the Upper Percentile standard.[26]

a) The standard deals with a small percentage of what is already a relatively small number of circuits (e.g. compared to the volumes covered by the QoS standards for GEA-FTTC and MPF).

b) The circuits that fall within the standard tend to be those with the most complex delivery attributes, including contributing factors that are not fully within Openreach's ability to control, such as traffic management and wayleaves.

c) These attributes mean in practice that this measure is very susceptible to market fluctuations such as demand volatility, or changes in the incidence of root causes of delay such as traffic management.

d) The targets that Ofcom has imposed over time have tended to be set at or beyond "stretch" rather than "good backstop" performance levels.

7.10   Openreach also raised concerns with the design of the Upper Percentile standard. It said there is a perverse feature of the standard as a result of it focussing on closed orders. This means Openreach could meet the standard if it deliberately chose not to close orders after a certain threshold. Openreach noted it has elected not to do this as it would not have been the right thing to do for customers.[27]

7.11   Openreach has also noted that, given the issues noted above, it is difficult to specify the right target level for this standard.[28]

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[25] Openreach Response, paragraphs 8.239 – 8.262.
[26] Openreach Response, paragraphs 8.239 – 8.245.
[27] Openreach Response, paragraph 8.249.
[28] Openreach Response, paragraph 8.258.

Openreach proposal

7.12   Openreach's recommendation was a version of the 'target outcome' proposal we had referred to in the January consultation. The proposal was that the Upper Percentile would be removed as a formal QoS standard. Instead Openreach would be tracked against a threshold level of performance that would be visible to stakeholders as a KPI under the transparency requirements.

7.13   Openreach proposed that the threshold be set at no more than 5.5% of completed orders taking more than 133 working days. Openreach said this was based on historical performance, with an allowance made for market volatility.

7.14   Openreach proposed that a formal performance review against the threshold level would take place every six months. In addition, should Openreach's performance fall below this threshold on average over any six-month period, it would trigger the following actions:

a)   a requirement for executive members of Openreach to meet with a senior Ofcom team, where Openreach set out the rationale for the performance levels together with plans to address any shortfall; and

b)   a requirement for Openreach to write to Ofcom covering the same matters (with the option of making this available to stakeholders).

7.15   Under Openreach's proposal, these requirements would remain in place until Openreach six-monthly performance was within the required threshold levels.

7.16   Openreach also noted that existing transparency measures would remain in place, including the six-monthly tails report which Openreach submits to Ofcom.

Other stakeholders

7.17   No other stakeholder responses to the January consultation specifically referred to the Upper Percentile QoS standard. However, as noted above some stakeholders made general comments about Openreach's QoS standards.

7.18   Sky suggested that QoS standard levels should not be kept static throughout the period and should be made more challenging, in order to protect consumers on legacy products. Sky stated that Openreach's quality of service, including the quality and timeliness of provisioning, has improved since 2014 but that "there is still a long way to go before it reaches an acceptable level".[29]

7.19   TalkTalk suggested that the cost of providing the same levels of quality at the end of the WFTMR period may be less than at the beginning (because, for example, migration to FTTP would result in lower fault rates). If this were the case, it may be appropriate to set higher QoS standards because the cost / benefit calculation would have changed.[30]

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[29] Sky Response, page 15.
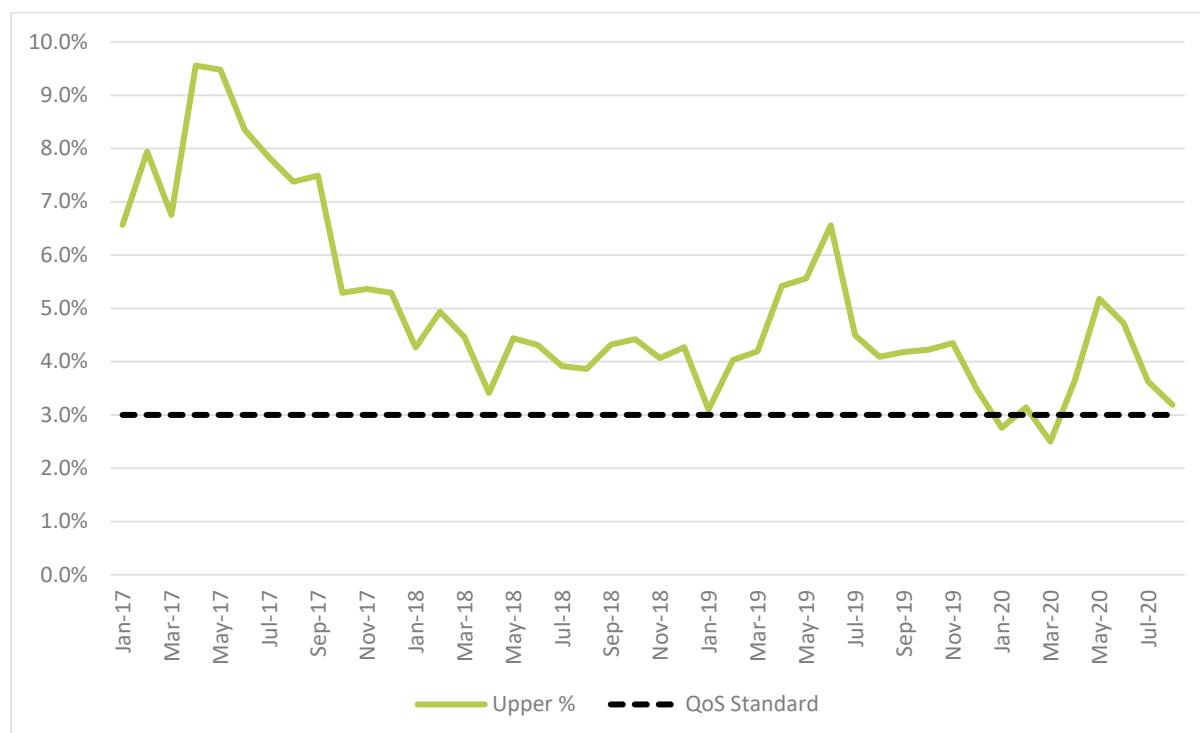[30] TalkTalk Response, paragraph 6.110.

Ofcom assessment

Openreach performance

7.20   In general, we have seen an improvement in Openreach's Ethernet provision performance, which has been reflected in the provision of the most complex orders.

7.21   Despite this general improvement in performance, Openreach has consistently struggled to meet the Upper Percentile QoS standard.

Figure 7.1: Percentage of Openreach orders in the tail[31]

Source: Ofcom analysis of Openreach Ethernet KPI reports.

7.22   Openreach failed to meet the Upper Percentile standard of 3% of completed orders taking no more than 159 days in the first compliance period (2016/17) by 0.18%.[32] We opened an investigation, found Openreach in breach of its SMP Condition but issued no penalty because of: the narrow miss; the improvement from Openreach's previous performance across all other QoS standards (it met five of six standards); and information from telecoms providers that outcomes were improving.[33]

7.23   Openreach also failed to meet the Upper Percentile standard of 3% of completed orders taking no more than 118 days in the second compliance period (Dec 2017 – March 2019) by 1.19%. We decided not to take enforcement action against Openreach on

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[31] This graph covers different compliance periods where the "tail" is defined as: 159 days; 118 days; 138 days; and 133 days.

[32] This included an 80% discount applied to the age of all orders submitted prior to 1 April 2016

[33] Ofcom 2016/17 Ethernet QoS Decision

administrative priority grounds, and we note that the levels Openreach did achieve represented an improvement on the previous period.

7.24 Openreach confirmed it failed to meet the Upper Percentile Standard of 3% of completed orders taking no more than 138 days for the third compliance period (2019/20) by 0.71%. We are currently considering whether to take enforcement action.

Options considered

7.25 Given stakeholder submissions and Openreach's historical performance against the Upper Percentile, we have considered four options:

1) Retain the current design and target level of the Upper Percentile standard;

2) Disaggregate the standard to better account for challenges such as wayleaves and traffic management;

3) Openreach's proposal of removing the standard entirely but requiring certain obligations should performance fall below an agreed threshold; or

4) Change the design of the standard to focus on open orders and set a level according to historical performance.

7.26 We are proposing to change the design of the proposed standard to focus on open orders and to set the target level of the new standard based on Openreach's performance since January 2018 (Option 4 above). Below we briefly summarise why we believe the other options are not appropriate.

Retain the same design and target level of the Upper Percentile standard

7.27 We do not consider it appropriate to retain the same design and target level of the Standard.

7.28 We agree with Openreach that the Upper Percentile as proposed creates a perverse incentive as a result of it focussing on closed orders. This means Openreach could meet the standard if it deliberately chose not to close orders after a certain threshold. Although it does not appear Openreach has ever attempted to exploit this incentive, we consider it appropriate to avoid any such risk.

7.29 We also agree that the target for the standard is susceptible to market fluctuations given the small number of orders and their complex nature.

7.30 Further, it is clear from Openreach's historical performance, including the latest compliance year (2019/20), that it remains difficult to meet this standard in its current form, despite an overall improvement in the performance of Ethernet provision. We recognise there is little value to stakeholders and to Ofcom in a standard that is routinely failed by the regulated provider. And there appears to be little evidence that this continued failure is as a result of systemic inefficiencies or a lack of investment on Openreach's part.

Disaggregating the standard to better account for challenges such as wayleaves and traffic management

7.31   We do not believe it would be appropriate to disaggregate the standard to take better account for challenges such as wayleaves and traffic management.

7.32   We recognise that wayleaves and traffic management can cause delays to the provision of Ethernet orders and that this can be more pronounced for complex orders. We also understand that delays associated with wayleaves and traffic management can often be outside of Openreach's full control.

7.33   In the January consultation we suggested it might be possible to disaggregate the Upper Percentile standard across different elements of the tail orders process to better account for these challenges and focus on elements of the process we have significant concerns.[34]

7.34   During discussions with Openreach it was agreed that this approach would be complex to administer and that setting the right targets would be challenging. As such we did not take the proposal further in our considerations.

Openreach proposal

7.35   We do not believe it would be appropriate to remove the Upper Percentile standard entirely and replace it with Openreach's proposal.

7.36   The removal of the Upper Percentile as a formal standard creates risks to the quality of service for Openreach's customers. Should Openreach's performance regarding its most complex orders deteriorate during the upcoming review period, we would be unable to take enforcement action in the absence of a breach of any other QoS standards.

7.37   We generally agree with Openreach that it is challenging to ascertain what a reasonable target should be for the Upper Percentile. Specifically, we understand that market fluctuations can affect the performance at the Upper Percentile. However, this is true of all the QoS Standards to some degree, because of the nature of the Ethernet product and the way that it is provisioned. That is why allowances for market fluctuations are built into the standards and Ofcom has reflected the difficulty of setting a reasonable target by amending the Upper Percentile standard through the years. Openreach itself appears to have determined an achievable level of performance in setting the threshold level as part of its own proposal. Therefore, we do not believe these concerns are a strong enough justification for removing the Upper Percentile standard entirely.

7.38   For the same reasons, we also do not consider it appropriate to replace the standard with a target outcome that triggers an obligation for Openreach to provide an explanatory report to Ofcom if the target is not met.

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[34] January consultation, Volume 3, paragraph 7.30

Revised proposal

7.39   We are proposing to change the proposed design of the Upper Percentile standard to focus on open orders, as opposed to the existing design which focusses on closed orders. For the purposes of this document we will refer to this changed QoS standard as the "Open Order Upper Percentile".

7.40   This standard would require Openreach to have, as an average over each compliance period, no more than 5% of its open orders older than 133 working days on the last calendar day of each month in the compliance period.

7.41   Below we explain the new standard in more detail, how we have chosen the proposed design of the standard and then how we have arrived at our proposed target.

7.42   We are also proposing to make minor amendments to the level of detail provided by Openreach regarding two relevant KPIs. As per the 2019 BCMR, Openreach is required to submit data for KPI (e) (which is the equivalent KPI to the current Upper Percentile standard) split by: region; product; HNR areas; and Provision Category. Openreach is also required to provide the numerator and denominator for KPI (e).[35]

7.43   We are proposing to remove the requirement on Openreach to provide KPI (e) split by region; product; HNR areas; and Provision Category. The requirement to provide the numerator and denominator will remain.

7.44   We are proposing that KPI (h) (both paragraphs (i) and (ii)) are provided split by region; product; HNR areas and Provision Category. The numerator and denominator for KPI (h) (i) and (ii) will also need to be provided.

Setting the appropriate design of the Standard

7.45   We propose that the Open Orders Upper Percentile Standard be designed in a similar way to the existing KPI (h) Monitoring the tail (open work stack), paragraph (i) that Openreach reports on as part of its transparency requirements set under the 2019 BCMR.

7.46   This KPI currently requires Openreach to report the percentage of Open Orders that are more than 133 days old on the last day of each month.

7.47   As part of the proposed Open Orders Upper Percentile Standard, Openreach would be required to have, as an average over each compliance period, no more than 5% of its open orders older than 133 working days on the last calendar day of each month in the compliance period.

7.48   The main benefit of this change is that it removes the perverse incentive present in the existing Upper Percentile standard. Currently, once Openreach has closed a certain number of orders older than 133 days it has three options:

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[35] See Table 15.16 of the 2019 BCMR, Volume 2

a) Continue closing older orders during the compliance period and essentially worsen its performance against the Upper Percentile;

b) Stop closing older orders until the next compliance period; and/or

c) Attempt to close more orders that are less than 133 working days old.

7.49 Under the proposed Open Order Upper Percentile standard, Openreach will be incentivised to continue to close its oldest and most complex orders throughout the compliance period, as each closed order will improve its performance against the Open Order Upper Percentile standard.

Customer delay

7.50 We note that currently, the Upper Percentile standard removes customer caused delay. The proposed design of the Open Order Upper Percentile standard would also remove any delays which have been attributed to customers.[36]

7.51 We recognise that pending delay may have an impact on the figures provided. We welcome submissions on this impact and how to manage it.
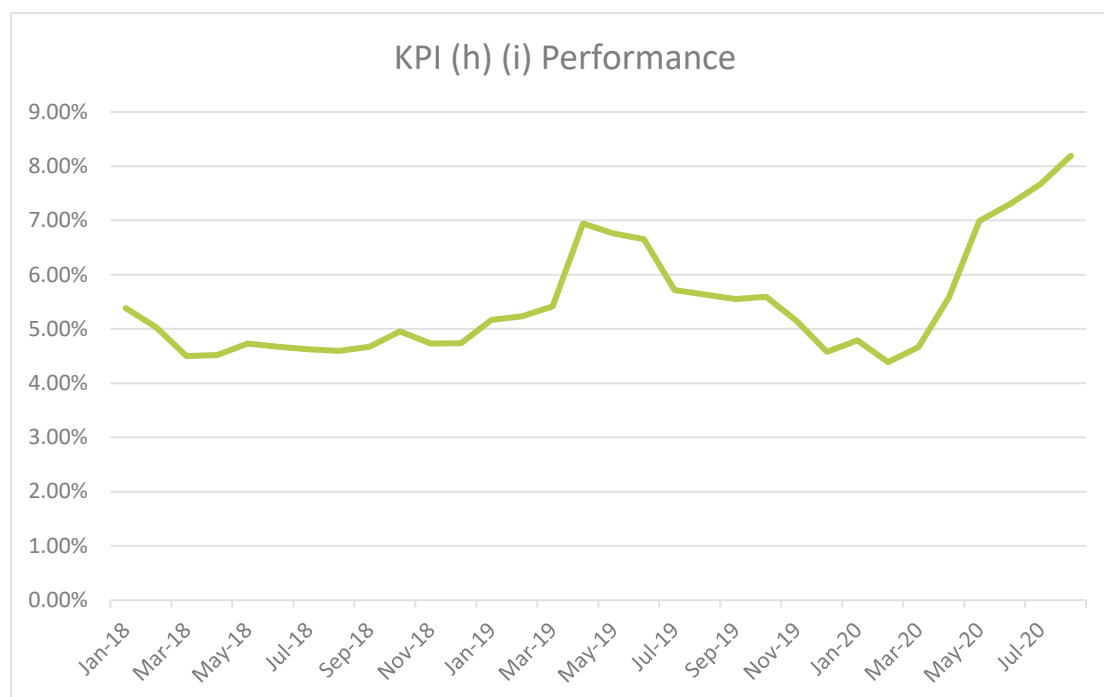
Setting the appropriate target for the Standard

Methodology

7.52 When setting new standards Ofcom has traditionally performed detailed econometric analysis of Openreach performance data. For this standard we are proposing to adopt a simpler approach whereby we use our regulatory judgement, taking into account all factors, including Openreach's previous performance against the KPI that this new standard will be based on.

7.53 As mentioned above, using detailed econometric analysis of data to determine this target does not remove the risk that external factors render the target inappropriate during the market review period, especially given the susceptibility to volatility of these standards.

Openreach performance

7.54 Since July 2019 Openreach has been reporting on the percentage of open orders older than 133 days, as part of its transparency requirements in the 2019 BCMR. Openreach has been submitting this performance to Ofcom under the name "KPI (h) (i)".

7.55 As part of our considerations for this further consultation we asked Openreach to provide performance against this KPI from an earlier date. Figure 7.2 below shows the performance against KPI (h) (i) from January 2018 – August 2020.

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[36] See the proposed amendments to the definitions of Customer Caused Delay in Directions 1 and 2 of Annex 5 to reflect how these definitions relate to other definitions, standards and KPIs which already exclude customer caused delays.

Figure 7.2: Openreach performance against KPI (h) (i) between January 2018 – August 2020

Source: Openreach response dated 8 October 2020 to the s.135 notice dated 25 September 2020

7.56   Average performance against KPI (h) (i) during the period January 2018 – August 2020, adjusted for the age of the tail being 133 days, was 5.50%.

7.57   We recognise that Covid-19 has impacted Openreach's ability to close orders and as a result, when determining an appropriate level, we have disregarded Openreach's performance for April – August 2020 (where average performance was 7.12%). Openreach's average performance between January 2018 and March 2020 was 5.20%

7.58   Openreach has noted that the period between November 2017 – October 2018 is considered as its period of best performance for Ethernet provision.[37] The data for KPI (h) (i) shows that between January 2018 – October 2018, Openreach's average performance was 4.77%, with a range from 4.50% - 5.38%.

7.59   Our proposal would involve the Open Orders Upper Percentile standard being set as an average percentage over each Relevant Period, from April to March. When looking at Openreach's performance against KPI (h) (i) in this manner we can see that average performance for April 2018 – March 2019 would have been 4.86%. Average performance for April 2019 – March 2020 would have been 5.54%.

7.60   Therefore, disregarding the impact of Covid-19 and reviewing performance figures without other context, it appears the target level should be set somewhere between the range of 4.5% - 5.5%.

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[37] Openreach Response, paragraph 8.244

2018 demand shock and system migration

7.61   In September 2018 Openreach experienced an unexpected increase in demand for Ethernet provision. This, coupled with the migration to a new system during 2018, contributed to a deterioration in performance across Openreach QoS standards, resulting in it missing three of its five standards in 2019/20.

7.62   These issues had an adverse impact on the number of open orders in Openreach's tail workstack. This can be seen from the spike in April 2019 in Figure 7.2 above, where performance against this KPI was almost 7%.

7.63   We recognise that volatile demand is one of the features of Ethernet provisioning. We anticipate that demand shocks may be a feature of the market during the upcoming review period, though we expect Openreach to be able to stabilise its performance promptly after such shocks. We also understand Openreach and its customers are working together to better anticipate demand for Ethernet products.

7.64   We also note that the other contributing factor to this deterioration in performance was a migration to a new system, which we do not anticipate being a regular disrupting feature of Ethernet provision.

Proposed target level

7.65   Taking all of the above into consideration, we consider that a target level of no more than 5% of open orders to be older than 133 days on the last day of the month is appropriate.[38] However, as part of this consultation we welcome submissions on whether a different level within the range of 4.5% - 5.5% would be appropriate.

7.66   We are proposing to keep the number of days considered as the 'tail' at 133 days. Although volatility exists in Ethernet provision, Openreach's provision process is now largely stable, with accepted average lead times depending on the type of work required. We believe the definition of the tail has therefore stabilised and does not need to be revised unless there is evidence that the mix of orders Openreach receives has changed significantly.

Consultation questions

> **Question 7.1:** Do you agree with the change of the design of the standard to focus on open orders? Please set out your reasons and supporting evidence for your response.
>
> **Question 7.2:** Do you have any views on the level of the Open Orders Upper Percentile standard? Please set out your reasons and supporting evidence for your response.

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[38] Reported as a 12-month average at the end of each compliance period.

8. Ethernet KPI (k) Changes

Introduction

8.1   Openreach is required to provide to Ofcom a set of Key Performance Indicators (KPIs) about the provision and repair of some of its products. This is part of the transparency remedies aimed at monitoring performance; potential discrimination; and instances of extended delays, which we consider are appropriate, proportionate, and necessary to complement our quality of service standards.

8.2   KPI (k) is related to Openreach's leased line products. Its full title is "KPI (k) – Mean time to issue initial contractual delivery dates". KPI (k) tracks the average time between Openreach accepting an order and issuing the customer with an Initial Contractual Delivery Date (iCDD). Currently KPI (k) does not exclude delays caused by Openreach customers.

8.3   KPI (l) is an associated KPI which tracks the percentage of iCDDs which Openreach issued within the timescale set out in the applicable service level agreement. Currently KPI (l) does exclude delays caused by Openreach customers.

8.4   In the January consultation we proposed to reimpose KPIs (k) and (l). We are revising our approach, proposing to amend KPI (k) so that it excludes customer caused delays, aligning it with its associated KPI (l).

Openreach submission

8.5   As part of its consultation response, Openreach proposed that KPI (k) should be changed so that it excludes customer caused delay, making it align with KPI (l).[39]

8.6   Openreach further noted that currently, KPI (k) does not remove the impact of customer caused delay and therefore does not accurately show Openreach's performance.

Ofcom assessment

8.7   KPIs (k) and (l) are linked, as they both measure the same element of the Openreach provisioning process. It was always our intention to ensure that the two KPIs measured this element in the same way and the misalignment therefore should be rectified.

8.8   We note that by removing customer caused delay from KPI (k), Openreach's performance is likely to appear as having improved compared to the previous review period. However, the measurement was always intended to exclude customer caused delay and Ofcom believes that this will be a more accurate reflection of Openreach's true performance in this area.

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[39] Openreach Response, paragraph 8.291

Ofcom proposal

8.9   We are proposing to remove customer caused delay from KPI (k). The original wording from the January consultation is below, followed by the proposed new wording added in underlined italics.

> In relation to all Orders in respect of which an Initial Contractual Delivery Date was issued in the relevant month, the mean number of Working Days that elapsed between the Order becoming an Accepted Order and the issue of an Initial Contractual Delivery Date *but excluding Working Days attributable to Customer Caused Delay which occurred after the Order becoming an Accepted Order but before the Initial Contractual Delivery Date was issued.*

Consultation question

> **Question 8.1:** Do you agree with the proposed change to KPI (k)?

9. Legal tests

9.1   Our regulatory framework for undertaking market reviews and setting SMP conditions is set out in Annex 5 of the January consultation.

9.2   To give effect to the proposals set out in the January consultation and above, we propose to set SMP condition 10 set out in Volume 5 of the January consultation, requiring BT to comply with any QoS standard and reporting requirement we may direct in relation to network access it provides in each of the following product markets – physical infrastructure, wholesale local access (Areas 2 and 3), leased lines access (HNR, Areas 2 and 3) and inter-exchange connectivity (BT Only exchanges and BT+1 exchanges). We are proposing to make the QoS directions proposed in the January consultation, as amended by the proposals in this consultation as set out at Annex 5 pursuant to proposed SMP condition 10 in the markets for wholesale local access (Areas 2 and 3), leased lines access (Areas 2 and 3) and inter-exchange connectivity (BT Only exchanges and BT+1 exchanges).

9.3   Section 87(3) of the Communications Act (the "Act") authorises the setting of SMP services conditions in relation to the provision of network access. Section 87(5) of the Act provides that such conditions may include provision for securing fairness and reasonableness in the way in which requests for network access are made and responded to and for securing that the obligations contained in the conditions are complied with within the periods and at the times required by or under the conditions. In this regard we note Article 12(1) of the Access Directive, which provides that national regulatory authorities may attach to conditions relating to network access obligations covering fairness, reasonableness and timeliness. Section 87(6)(b) of the Act also specifically authorises the setting of SMP services conditions which require a dominant provider to publish, in such a manner as Ofcom may direct, all such information for the purposes of securing transparency. For the reasons set out below, we are satisfied that the proposed QoS Directions amended pursuant to our proposals in this Consultation (as notified at Annex 5) meet the relevant tests set out in the Act.

Section 49 tests

9.4   We consider that the QoS Directions we are proposing satisfy the tests set out in section 49(2) of the Act, namely that in each case the proposed Direction is:

- objectively justifiable in relation to the networks, services or facilities to which it relates;
- not such as to discriminate unduly against particular persons or against a particular description of persons;
- proportionate to what it is intended to achieve; and
- transparent in relation to what it is intended to achieve.

9.5   In particular, they are:

- Objectively justifiable, in that they aim to ensure that BT provides adequate levels of quality of service in relation to the installation and maintenance of the network access on which telecoms providers and their customers rely. For the reasons set out in Section 7 of the January consultation and above, we consider that, to achieve this level of quality of service, it is appropriate to continue imposing quality standards and to set these at the levels we are proposing. We are proposing KPIs on the delivery of specified services to provide transparency around quality of service.

- Not unduly discriminatory, in that the Directions apply only to BT, which is the only operator to have SMP in the markets in which the Directions will apply.

- Proportionate, in that the Directions are targeted specifically to those areas for which regulation is required. We consider that the directions are a proportionate means of achieving the objective of ensuring an appropriate level of service in the delivery of key aspects of network access, taking into account our assessment of BT's operational capabilities and potential costs to customers and telecoms providers. Further, the requirements are structured to take into account the impact of events outside BT's control on its ability to meet the standards. The KPI Directions are targeted at only those services where we consider that transparency is necessary.

- Transparent, in that it is clear in its requirements and intention, as explained in Section 7 of the January consultation and in this document and the text of the proposed Directions are set out at Annex 5.

Consistency with EC Recommendation and the BEREC Common Position

9.6   We note the BEREC Common Positions[40] in particular identifies as best practice that NRAs should require SMP operators to provide a reasonable defined level of service (BP22/BP32) to address the concern that access services may not be of reasonable quality and service levels may not be comparable with those provided by the SMP operators to their own downstream businesses. We also note the objective of transparency (BP16/BP26 and 17/27) and reasonable quality of access product (BP24/BP34). In particular, we note that BP17/BP27 states that NRAs should require SMP operators to make certain information including KPIs publicly available and BP24/BP34 supports the imposition of KPIs as a means of monitoring SMP operators' compliance with non-discrimination obligations. We have taken utmost account of the BEREC Common Positions, and particularly have reflected the aforementioned elements.

Ofcom's duties

9.7   The changes we are proposing to the QoS Directions proposed in the January consultation have not changed our provisional view set out in that consultation that our proposed

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[40] BEREC, 2012. BEREC Common Position on best practice in remedies imposed as a consequence of a position of significant market power in the relevant markets for wholesale leased lines (BoR (12) 126); and BEREC, 2012. BEREC Common Position on best practice in remedies on the market for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location imposed as a consequence of significant market power in the relevant market (BoR (12) 127).

package of draft SMP conditions and Directions both individually and together meet our duties in sections 3 and 4 of the Act. In particular, the proposed directions are aimed at promoting competition and securing efficient and sustainable competition for the maximum benefit of consumers by ensuring that Openreach provides an improved level of performance in key areas of importance to its customers and to consumers.

A1. Responding to this consultation

How to respond

A1.1   Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 4 December 2020.

A1.2   You can download a response form from https://www.ofcom.org.uk/consultations-and-statements/category-2/revised-quality-of-service-proposals. You can return this by email to the address provided in the response form.

A1.3   If your response is a large file, or has supporting charts, tables or other data, please email it to WFTMRQoS@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet. This email address is for this consultation only and will not be valid after 4 December 2020.

A1.4   We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:

- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
- Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.

A1.5   We will publish a transcript of any audio or video responses we receive (unless your response is confidential).

A1.6   We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.

A1.7   You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.

A1.8   It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

A1.9   If you want to discuss the issues and questions raised in this consultation, please contact Joe Woolmer by email to joe.woolmer@ofcom.org.uk

Confidentiality

A1.10   Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that

everyone who is interested in an issue can see other respondents' views, we usually publish all responses on the Ofcom website as soon as we receive them.

A1.11   If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.

A1.12   If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.

A1.13   Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our Terms of Use.

Next steps

A1.14   Following this consultation period, Ofcom plans to publish a statement in March 2021.

A1.15   If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

Ofcom's consultation processes

A1.16   Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.

A1.17   If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.

A1.18   If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

A2.1   Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

A2.2   We will be clear about whom we are consulting, why, on what questions and for how long.

A2.3   We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.

A2.4   We will consult for up to ten weeks, depending on the potential impact of our proposals.

A2.5   A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.

A2.6   If we are not able to follow any of these seven principles, we will explain why.

After the consultation

A2.7   We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website shortly after we have received them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing   ☐

Name/contact details/job title   ☐

Whole response   ☐

Organisation   ☐

Part of the response   ☐

If there is no separate annex, which parts?   _____

_____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name   Signed (if hard copy)

A4. Consultation questions

Question 3.1: Do you agree with Ofcom's proposal on how to deal with the potential impact of Covid-19 on Openreach's QoS performance?

Question 4.1: Do you agree with Ofcom's proposal to set the FAD standard to require Openreach to offer appointments that are within 12 working days of an order being placed, and that this requirement be met in 89% of instances? Please set out your reasons and supporting evidence for your response.

Question 4.2: Do you agree with Ofcom's proposal not to introduce a glidepath to return to a tighter FAD QoS standard?

Question 5.1: Do you agree with Ofcom's proposal to change the definition of Relevant Region in Directions 3 and 4, to align with Openreach's new operational structure?

Question 5.2: Do you agree with Ofcom's proposal to keep the High-Level MBORC allowance at two regions per year, with a maximum of eight weeks per region?

Question 6.1: Do you agree with Ofcom's proposal to amend the definition of a fault, allowing the exclusion of those flagged and agreed by telecoms providers to be resolved under a separate process as set out in the applicable service level agreement?

Question 7.1: Do you agree with the change of the design of the standard to focus on open orders? Please set out your reasons and supporting evidence for your response.

Question 7.2: Do you have any views on the level of the Open Orders Upper Percentile standard? Please set out your reasons and supporting evidence for your response.

Question 8.1: Do you agree with the proposed change to KPI (k)?

A5. Draft Legal Instruments

A5.1   We have published the draft legal instrument the consultation, with our proposed additions underlined and highlighted. However, the draft legal instrument may not be fully accessible, including to those with screen readers. We have therefore published a second, clean version – incorporating the proposed changes without these being marked up – on the webpage for this consultation.