

# Wholesale Fixed Telecommunications Market Review 2021: Openreach response to Ofcom's further consultation on Quality of Service remedies

8 December 2020

NON-CONFIDENTIAL VERSION

## Executive summary

1. In this response Openreach is providing comments on Ofcom's 23 October 2020 consultation on Quality of Service (QoS) remedies in the Wholesale Fixed Telecommunications Market Review (WFTMR) ("the consultation"). Openreach's response is provided in three sections:
  - **Section 1: Ofcom's approach to managing the impact of the COVID-19 pandemic on QoS Standards**, where we provide separate comments on Wholesale Local Access (WLA) and Leased Lines markets;
  - **Section 2: Comments on Ofcom's QoS proposals for WLA services**, including on the First Available Date (FAD) QoS Standard, fault definition and management regions; and
  - **Section 3: Comments on Ofcom's QoS proposals for Ethernet services**, covering the Upper Percentile QoS Standard and Key Performance Indicators (KPIs).

## Openreach's approach to managing the impact of the COVID-19 pandemic

2. Openreach is proud of its role in providing communication services to the UK, and delivering great service is central to Openreach's objectives and overall strategy. As noted in our response to Ofcom's January 2020 consultation, Openreach is pleased at the widespread acknowledgement of the good level of service quality delivered as well as our efforts to work collaboratively with industry to deliver the most optimal outcomes for end-customers.
3. During the COVID-19 pandemic Openreach has faced unprecedented challenges, with significant implications across the business for our people and operations. Despite these conditions Openreach has continued to maintain the UK communications network and keep our customers connected, as well as prioritising customers who have relied on our network the most<sup>1</sup>. Throughout this unpredictable period Openreach has continued to deliver strong levels of service. For example, in the face of rising fault levels for WLA services, Openreach has been delivering record levels of fault clears during 2020/21 with 18% more clears delivered in Q2 than in the same period a year ago. However, the complex and volatile nature of these conditions have and will continue to directly impact on Openreach's ability to meet the QoS Standard levels set and required by Ofcom. This is especially true for the WLA QoS Standards for the reasons set out below.

---

<sup>1</sup> For example, vulnerable customers and connectivity to Critical National Infrastructure sites.

4. Against this backdrop, Openreach has been working hard to deliver the best service it can, whilst ensuring best practice for the safety of its people and end customers<sup>2</sup>. Openreach is very concerned that the additional measures taken to improve performance against the QoS standards in the short-term are not sustainable and are building up other problems which in the long run will not support either the wellbeing of Openreach's engineers, nor the delivery of excellent service to end-customers. [3<]
5. Openreach has instead moved to an approach which we firmly believe is the right thing to do for our people and the business, as well as CPs and end-customers in the long term. We are in the process of implementing a new resourcing model which has been essential and as a direct result of the COVID-19 pandemic, to deal with the new environment. It is anticipated that the transition plan will unavoidably take around 18 months to be delivered because of the timescales involved in recruitment and training, and which reflects a significant change in the conditions that were faced prior to COVID-19.
6. Ofcom's proposals assume that the COVID-19 pandemic did not take place, which is simply the wrong approach. Instead, Openreach requests that Ofcom does not impose QoS Standards in 2021/22 given the impacts of COVID-19. In the absence of QoS Standards, Openreach will continue to provide good service to the market and we note that it would be counterproductive to allow service to deteriorate, given in particular we will need to enter the following compliance year on the right trajectory in order to meet the QoS Standards Ofcom is proposing to impose.

### Ofcom's approach

7. Ofcom has proposed to impose QoS Standards and to review these after 6 months to determine whether they are still appropriate<sup>3</sup>. While Openreach supports the policy of keeping QoS Standards at flat levels, to be proportionate Ofcom should defer imposing the WLA QoS Standards (which have been significantly impacted by the COVID-19 pandemic) until year 2 of the WFTMR.
8. Based on the conditions and the current environment, Openreach's position is that Ofcom's proposed approach to assessing the impact of the global pandemic on the setting of QoS Standards is flawed: Ofcom cannot rely on an *ex post* review to assess whether the remedies imposed in the statement are proportionate or not, particularly when Ofcom state themselves that their proposed approach "*anticipates the possibility of Covid-19 having a significant impact on Openreach during Year 1 of the WFTMR period*."<sup>4</sup>
9. Assessing remedies for proportionality must be conducted *ex ante*, i.e. in advance of adopting the remedies, and if Ofcom cannot make this assessment then the regulation cannot legally be imposed. Likewise, it cannot be objectively justifiable to impose a remedy *ex ante* in circumstances where Ofcom is unclear as to the effect of the pandemic and therefore wishes to reconsider it *ex post*.

---

<sup>2</sup> Including in relation to WLA QoS Standards, [3<].

<sup>3</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 3.3.

<sup>4</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 3.16.

10. Openreach does not believe that Ofcom have adequately considered other options available, including deferring the imposition of QoS Standards until Year 2 of the control, where a more certain position and necessary steps can be taken by Openreach to deal with the new operating environment that is materialising.
11. There is a substantial amount of evidence (as set out in detail below) that indicates that conditions for the UK will not return to what they were prior to the COVID-19 pandemic, particularly surrounding working from home patterns, which will significantly impact Openreach's operations and the regulation that is appropriate. Indeed, we note that Ofcom have also recognised that the balance of working time between homes and offices will not return to pre-COVID-19 levels and that there has been an accelerated demand for digital services<sup>5</sup>.
12. Further, there is still ongoing change to the pandemic status, including two significant UK Government announcements regarding lockdown arrangements since Ofcom published its consultation. With this in mind, we do not think that Ofcom are in a position to determine what arrangements are proportionate in year 1 of the WFTMR period.
13. Given the evidence of the ongoing change and the continued period of uncertainty faced, Openreach urges Ofcom to reconsider whether its proposals in year 1 are in fact appropriate, proportionate and objectively justifiable, and whether there are more suitable alternatives. This could include, for example, using the existing levels as a set of aspirational levels that Openreach is required to regularly report against<sup>6</sup> at the existing senior level meetings that are in place specifically to discuss the impact of COVID-19 on Openreach, which could continue into the next financial year.

### Proposals to update specific QoS Standards

14. Notwithstanding our position in relation to year 1 of the WFTMR period and the approach to managing the impact of COVID-19, Openreach is broadly supportive of Ofcom's other proposals that relate to specific and necessary updates to the QoS Standard regime:
  - Amending the **WLA FAD QoS Standard** to 12 working days. This will help provide Openreach with additional flexibility to manage provision and repair workstacks which has been made significantly more challenging over the last year, not only because the COVID-19 pandemic but also by the introduction of proactive testing by Communication Providers (CPs);
  - Changing the **WLA definition of a fault** so that it excludes proactively tested faults that are marked up by the CP. Openreach is pleased that Ofcom recognise that it is right that these faults should be treated separately and we hope to agree a way forward with industry after a period of significant disruption. Ofcom's proposals need to be sufficiently flexible, particularly when there has been extensive engagement with CPs and the OTA2 on finding a mutually acceptable way forward;

---

<sup>5</sup> <https://www.ofcom.org.uk/about-ofcom/latest/media/speeches/2020/full-fibre-must-be-a-fair-bet>

<sup>6</sup> Openreach notes that the transparency measures (i.e. KPIs) would continue to be in place even if Ofcom deferred imposing QoS Standards until 2022.

- Updating the **WLA management regions** that determine the QoS Standard structure. It is right that regulation reflects the current operating model; and
  - Improving the accuracy of the **Ethernet KPIs**.
15. Finally, Openreach is pleased that Ofcom is proposing to amend the **Ethernet Upper Percentile QoS Standard** given the problems with current remedy, which is not proportionate. However, we have a number of concerns with Ofcom's new proposal, and Ofcom need to make further adjustments to ensure that the remedy is proportionate. If Ofcom persists with a QoS standard for the most complex orders, it must allow Openreach to remove pending customer delay from the compliance assessment. If this is done, a target of no more than 4.5% to 5% of open orders that are older than 133 working days would be appropriate.

## Section 1: Ofcom's approach to managing the impact of the COVID-19 pandemic on QoS Standards

*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?*

16. Openreach is providing its response to Ofcom's proposed approach to dealing with COVID-19 in two sections, covering the approach on QoS remedies for leased lines and wholesale local access separately. As two completely separate markets, each have different complexities and impacts resulting from the global pandemic. Therefore, different approaches are warranted, as opposed to a blanket approach to QoS Standards as suggested by Ofcom.

### Wholesale Local Access markets

17. In this consultation, Ofcom is proposing to continue with the approach it outlined in the January 2020 consultation, i.e. to impose QoS Standards from April 2021 and to keep them flat at this year's levels.
18. Openreach welcomes the pragmatic approach Ofcom has taken so far in response to the global pandemic, in particular in recognising the significant impact on Openreach's operations. [§<]
19. It is evident that COVID-19 is having an impact on our ability to meet this year's QoS Standards. We believe it is equally evident and common sense to consider that it will have an impact on our ability to meet next year's standards too. Openreach does not believe that Ofcom has adequately considered the impact of COVID-19 in the most recent proposals as it is proposing to largely maintain the existing arrangements,<sup>7</sup> even though there have been significant and long lasting impacts on Openreach and its ability to operate, including, for example, the increase in fault rates. Ofcom has suggested that an internal review within 6 months (i.e. by October 2021) will be adequate to assess whether the QoS Standards imposed are appropriate and proportionate. We disagree and believe this approach to be legally unsound.

### Assessing today's position helps articulate the challenges of maintaining the existing QoS standards in 2021/22

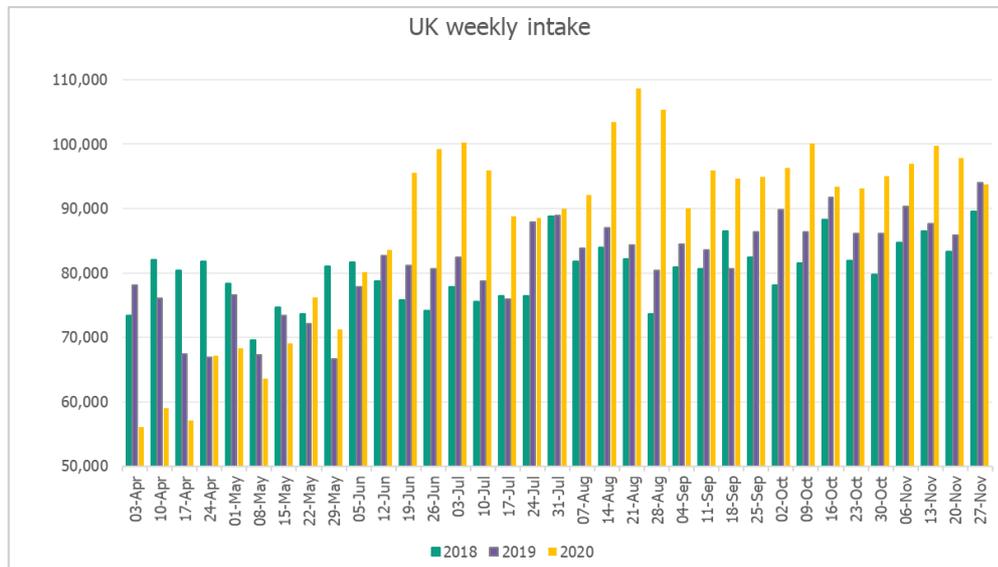
20. As a direct result of the pandemic, through no fault of its own and in a clearly unforecastable way, Openreach has faced a fundamental and sharp increase in demand for services as a result of more people working from home and heavily relying on its services. This has affected resource requirements for services covered by the QoS Standards (Figure 1 below shows the dramatic increase in faults received over the copper network<sup>8</sup>), and for Fibre to the Premises (FTTP).

---

<sup>7</sup> Openreach acknowledges Ofcom has proposed some key updates to the regime but these are not linked to the impact of the COVID-19 pandemic.

<sup>8</sup> Also see Figure 11.

Figure 1



21. The impact on the fault rate for broadband services in particular was not built into any long-term plans and was not foreseen in Ofcom’s 2018 WLA market review when the levels of the original QoS standards were set. Those standards were based on Ofcom’s view that the fault rate would continue on a *downward trend* as a result of Openreach’s investment in the network. In fact, the complete opposite has occurred because of factors external to Openreach. Openreach has provided evidence of these factors below, including the impact of changes to the patterns and behaviours of end-customers and the UK work force, and that this is not a temporary effect<sup>9</sup>.
22. Figure 2 illustrates the intake of faults typically caused by severe weather including high rainfall and lightning. Faults caused by these weather events typically cause “contact” faults which increase during periods of wet weather due to unwanted electrical paths caused by water. The chart demonstrates that even with a high number of named storms this year, weather driven faults are lower than last year. This shows that Openreach’s investment in protecting the network has been effective and therefore, that the additional volume of faults received over this period are related to CP and end-customer factors.

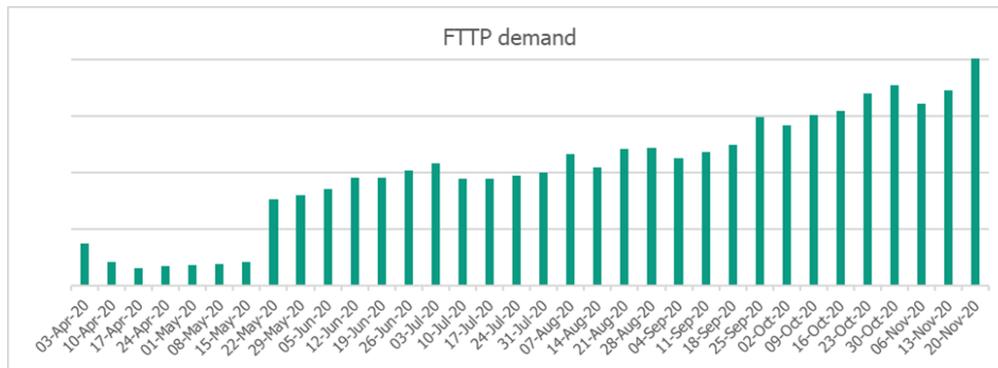
Figure 2

[X]

23. On top of this, as can be seen in Figure 3 below, demand for FTTP services has risen sharply because of a significant shift in end-customer needs for faster and more reliable connectivity. This is positive, but as FTTP provision is inherently more complex and much more labour intensive, this is a further operational challenge to deal with.

<sup>9</sup> [X]

Figure 3



24. This extent of this increase in demand was not foreseeable, with the COVID-19 pandemic contributing heavily towards the change in end-customer requirements for higher speed services at home. This has resulted in a clear resourcing gap which has, to date, been met through increased overtime and contractor resource at additional cost to the business.

**Impact on operational resource**

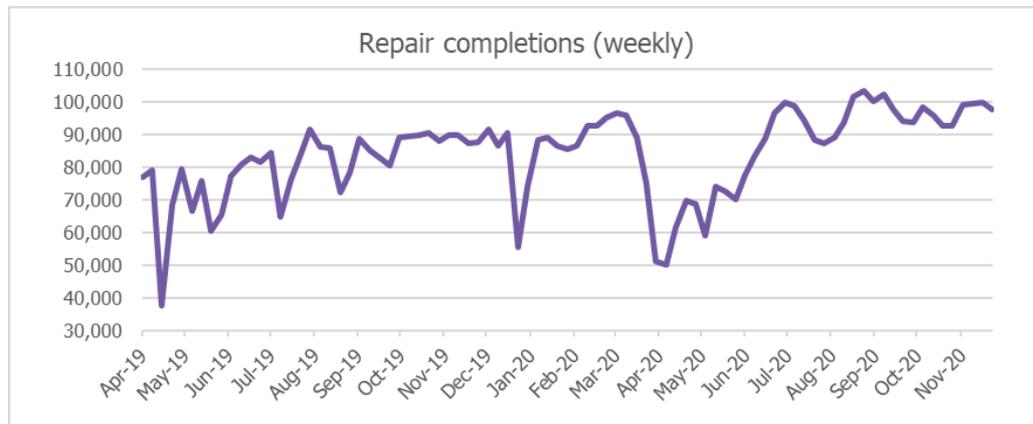
25. As a consequence of the changes observed, Openreach has directed much more of its resource onto repair activity than seen in recent years. Figure 4 shows that effective FTE (Full Time Equivalent) on repair activity across all products has risen to deal with the new challenges faced because of increasing repair volumes, demonstrating Openreach’s commitments (and incentives) to deliver against the QoS Standard levels. This is despite the significant resource challenges resulting from (i) increased absences (due to COVID-19 illness or self-isolation) (ii) restrictions on training and (iii) restrictions on entering customer premises.

Figure 4



26. We can observe the impact of this effort on the repair completions volumes in Figure 5, which shows record levels of completions and a significant increase year on year. When observing these levels in conjunction with Figure 1, this is a real achievement and demonstrates Openreach’s commitment to keeping the country connected and maintaining strong performance for these services.

Figure 5



27. Separately, Openreach has reallocated engineering resource around the business to focus on the areas that need it most. For example, our Fibre and Network Delivery (FND) and Chief Engineer organisations have loaned a number of engineers to Service Delivery, moving away from network “build” activities and onto service and provision activities where it is required to meet demand levels.
28. In order to boost capacity further and strive to deliver the QoS standards, [redacted]. We have already noted to Ofcom that measures such as these, driven by incentives to attempt to meet the QoS Standards, would not be sustainable as it would cause long-term harm.
29. Further, Openreach has had to use a higher proportion of contractors throughout this period. [redacted]<sup>10</sup>. This has been as a result of the challenges and delays in resourcing and training because of the implications of the pandemic. As a consequence, this can mean that provision work can take longer or that end-customers may experience what is known across industry as an “early life” fault (“ELF”) – a fault that occurs in the first 28 days of a provision order. However, reducing this level of resource would only result in worse overall service to customers through lower on-time delivery performance and increased missed appointments. It has been an extremely challenging time for Openreach engineers and the Service Delivery teams that allocate resource to the right areas.
30. On top of this, some CPs have increased the volume of repair work by proactively testing lines<sup>11</sup>, often submitting repair jobs on lines where the end-customer has not experienced an issue with their service and where the data suggests that in fact the line is healthy.
31. Given the significant and sharp changes experienced, third party resource has been the only option for Openreach in the short term, and whilst Openreach have plans to recruit to meet this higher demand for the long term, this comes with significant lead times (including recruitment, training and overall time to competency) which will continue well into next year with the majority of benefits being realised in H2.

<sup>10</sup> Contractors have also had their own resourcing issues as a result of the pandemic.

<sup>11</sup> [redacted]

32. However, in an effort to deliver the QoS standards this year and deliver the best possible service to end-customers, Openreach has incurred [X].
33. Fundamentally, the factual circumstances in which Ofcom's regulation was initially proposed have changed and the operating environment is completely different. Openreach expects this change to continue in the long-term (where it is also clear that Ofcom also expect long term changes<sup>12</sup>) and we have already set out to Ofcom that we intends to change our resource plan to be able to account for this change, which is expected to take place over the next 18 months. Whilst we are cautiously optimistic about this approach, the effects of this resource transition plan will not be immediate and no one, including Ofcom, should expect this will mean that conditions will resume to what they were prior to the COVID-19 pandemic. Openreach therefore requests that Ofcom consider the necessary time it will take to fully adjust to the changes in conditions that the pandemic has created, and allow for this in the timing of the implementation of the QoS Standards.
34. Openreach believes that the level of service that has been maintained through this pandemic has been excellent considering the circumstances and the challenges raised by proactive testing. However, maintaining QoS standards at levels unchanged since pre-COVID through a period for which a fundamental re-balancing of resource is required is not proportionate, and it sets expectations that Openreach will be able to deliver the same level of quality of service as before the pandemic.

### Ofcom's proposals are not proportionate and not objectively justified

35. In this section Openreach provides comments on whether Ofcom's proposals are proportionate, including:
- Ofcom's legal obligations;
  - The fact that Openreach is unlikely to be able to meet the proposed QoS Standards;
  - The impact that imposing disproportionate QoS Standards will have on service overall;
  - The evidence of the long-term impact of COVID-19 that Ofcom is ignoring; and
  - The negative consequences for resource allocation that imposing disproportionate QoS Standards will drive.

### Ofcom's legal obligations

36. Ofcom have said that "*there is not currently 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*<sup>13</sup>." If Ofcom do not know whether a remedy is inappropriate or appropriate, then it cannot legally impose it.

---

<sup>12</sup> <https://www.ofcom.org.uk/about-ofcom/latest/media/speeches/2020/full-fibre-must-be-a-fair-bet>

<sup>13</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 3.14.

37. Ofcom is required under Section 49 of the Communications Act to satisfy itself that a direction is proportionate to what it is intended to achieve and is objectively justifiable. Ofcom is therefore required to assess whether the standards it wishes to set, continue to be appropriate and achievable in the middle of a global pandemic. Ofcom is required to make such an assessment before imposing the obligations, rather than conducting a review 6 months after imposition to consider whether they are proportionate and remain appropriate and objectively justifiable.
38. Further, Ofcom cannot comply with its duty only to target remedies “at cases in which action is needed<sup>14</sup>” if Ofcom has not, or cannot properly, assess the relevant consequences of the global pandemic.
39. Ofcom have stated in the consultation that even the idea of a mid-year assessment “*anticipates the possibility of COVID-19 having a significant impact on Openreach during Year 1 of the WFTMR period*<sup>15</sup>.” Ofcom are anticipating this impact, yet ignoring it when proposing to set the remedies that will commence on 1 April 2021. Ofcom are therefore choosing to continue to require minimum standards of service that by its own admission may no longer reflect reasonable levels.
40. For the avoidance of doubt, Openreach does not disagree with Ofcom’s proposals to keep the QoS Standards at flat levels throughout the WFTMR period, but disagrees that Ofcom should impose these standards in year 1 where there is clearly evidence that this would not be proportionate. Instead, it would be proportionate for Ofcom to impose the same QoS Standards at a later stage, for example from year 2 (i.e. from 1 April 2022) when there is more certainty.

### **There is a real risk that Openreach cannot meet the proposed QoS Standards**

41. Just one week after Ofcom published this consultation a further national lockdown was announced, which demonstrates the uncertainty of the challenges that exist for the UK and the unpredictable nature of the circumstances, notwithstanding the operational implications for Openreach. Ofcom cannot ignore this uncertainty and decide to continue as if the pandemic had not happened; it must demonstrate that the evidence shows that its proposals for regulatory remedies are appropriate and proportionate under the new conditions, before imposing those remedies.
42. Further, even when the second national lockdown ended on 3 December, the circumstances that the UK has entered are very different from before it commenced on 5 November. There have been significant changes in the number of regions that have entered into each Tier, under the new system announced by the UK Government. As demonstrated by Figure 6 which shows the different regions in England according to their Tier allocation before and after the latest national lockdown, the proportion of England in the “High” / “Tier 2” category is now hugely different from previously. The tier system in England is shown here specifically to highlight the fundamental changes in the tier allocation from before and after the most recent national lockdown.

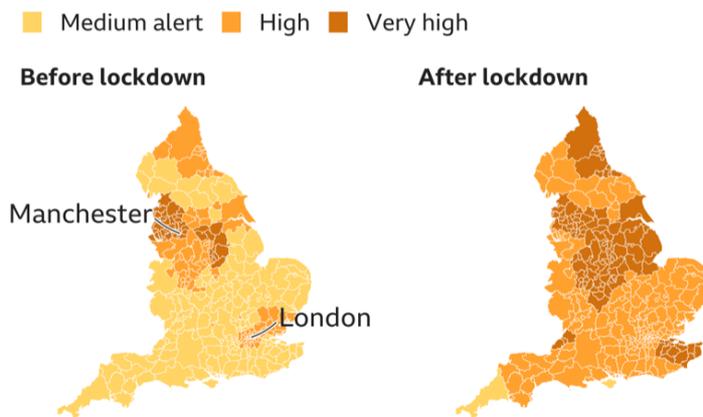
---

<sup>14</sup> Section 3(3)(a) of the Communications act 2003.

<sup>15</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 3.16.

43. Substantial parts of England have been moved into higher Tiers with stricter rules that will inevitably have an impact on Openreach’s operations, in similar ways to that which has already been observed such as an increased end-customer reliance on services resulting from being under restrictions and working from home. This is on top of the additional health and safety measures taken by engineers, for example in restrictions in entering customer premises. So far, there has been no confirmed end date to the regional tiered system, and it is currently expected to last at least until Easter<sup>16</sup>.

Figure 6



Source: Public Health England, Department of Health and Social Care **BBC**

44. It is therefore not appropriate that Ofcom impose policy on the service levels that Openreach is required to meet during this unpredictable and substantially challenging period.
45. Openreach’s performance against the current year is set out in Figure 7 below, where we are currently meeting 27/42 QoS Standards three-quarters of the way through the relevant period, whilst in all the preceding years, we met all the QoS Standards. This is even before we enter the winter period.

Figure 7 – WLA QoS Standards, Year to date performance week ending 27 November 2020

	Year to date performance					
	(RAG 2020/21 MSLs)					
Ofcom MSL Performance	FAD 10 days	L2C On-Time	T2R SML1	T2R SML2	T2R SML1 in 5wd	T2R SML2 in 5wd
UK	95.0	94.8	84.5	84.6	96.9	97.0
2020-21 MSL Hits	10	10	3	3	0	1
2020-21 MSLs	89.0	94.0	85.0	85.0	97.0	97.0

*5wd is a UK wide MSL*

<sup>16</sup> <https://www.gov.uk/government/speeches/prime-ministers-statement-on-coronavirus-covid-19-23-november-2020>

46. Ofcom state that “there is a risk that the impact of Covid-19 worsens... to such an extent that it becomes obvious<sup>17</sup>” that the QoS Standards are unachievable in the WFTMR period. It is already obvious now that the conditions are not normal or stable and it should not be expected by anyone that conditions will return to pre-COVID-19 levels in advance of the Statement. It is therefore wrong to assume that the same QoS Standards that are currently unachievable today will become achievable<sup>18</sup>.
47. Importantly, Openreach (and Ofcom) do not know when it will become clear whether the QoS Standards are achievable or not, or at what proportion of the way through a compliance period it will be known (e.g. 3 months, halfway). In Q1 of the current period, even with the first full national lockdown, measured performance against the QoS Standards looked strong, and it could have been initially perceived that the QoS Standards may have been achievable<sup>19</sup>. This view changed as new patterns of end-customer and CP behaviour emerged over the subsequent periods, so it may not be obvious until a later stage, depending on the circumstances and further trends that may emerge.
48. Whilst some standards are not being met this quarter (see Figure 8), despite the significant increase in repair volumes, Openreach is making progress and has delivered the strongest Q3 repair performance at a UK level. This Q3 to date position is 2% higher than what was delivered last year, but highlights the substantial challenge faced with achieving these targets under the current circumstances. Usually at this stage of the year, strong Year to Date (YTD) performance has been recorded during better weather quarters (drier and longer daylight), but achieving the higher performance levels across Q2 has not been possible.

Figure 8 – Quarter to date performance, week ending 27 November 2020

Quarter to date MSL performance						
(RAG 2020/21 MSLs)						
Ofcom MSL Performance	FAD 10 days	L2C On-Time	T2R SML1	T2R SML2	T2R SML1 in 5wd	T2R SML2 in 5wd
UK	96.6	94.3	84.0	84.6	96.7	97.2
5wd is a UK wide MSL						
2020-21 MSL Hits	10	5	5	6	0	1
2020-21 MSLs	89.0	94.0	85.0	85.0	97.0	97.0

<sup>17</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 3.15.

<sup>18</sup> Ofcom should not assume that a strong performance on provision means that resource can be simply diverted on to repair because of the different skill sets required. Whilst Openreach attempts to balance service measures as much as possible (e.g. between Provision and Repair), it’s not as simple as substituting resource between both activities. This is due to differences to both timing of when an activity is required, and the skillset of the resources to do this. For timings, when provision orders are received, they are largely appointed 2 weeks in advance, whereas to deliver repair SLAs when a fault is received this activity is required in a matter of days (and in some cases hours). If repair volumes come in higher than expected there may not be enough resource to complete all the activity required on any given day with a certain geography. This dynamic becomes more difficult to balance at low levels of geography (weather incidents can be specific), and also the skill requirement within that geography. For example, there may not be enough repair skilled direct labour (DL) resource available to do all the repair tasks but more than enough other DL and contractor resource to complete all the provision commitments.

<sup>19</sup> [3<]

## Imposing disproportionate QoS Standards will impact service overall

49. Openreach has already provided significant information to Ofcom on the impact of COVID-19 on its ability to meet the QoS Standards, including but not limited to<sup>2021</sup>:
- the significant and persistent increase in fault intake levels as more people work from home and place greater demands on their domestic broadband;
  - the disruption associated with lockdowns (local and national) including Openreach having to temporarily reduce the scope of the work it performs in order to ensure the safety of its engineers and end-customers;
  - the disruption to Openreach's ability to do 'lodge loans' where we move engineering resources around on a temporary basis and through this support geographic patches that are under the greatest pressure;
  - the disruption to Openreach training – with more limited capacity in training centres due to health and safety considerations; and
  - the disruption to the Openreach workforce and its supply relationships associated with illness, school closures, impacts on relatives, self-isolation and other dislocating effects of the pandemic.
50. In addition to the QoS Standards required, there are also other service quality metrics that are important to us and our customers. Openreach is trying to balance the provision of good service across all of these areas, but given the additional complexities created by the pandemic, imposing disproportionate QoS Standards is also likely to detrimentally impact other measures of quality.
51. For example, and a direct result of the pandemic, we have experienced unfortunate and consequential impact on other non QoS Standard service measures such as ELFs and Repeats<sup>22</sup>. Whilst Openreach are not satisfied with the current level of some of our quality measures and is taking steps to mitigate, these have simply been unavoidable, and the approach that Openreach's has taken has meant we have been able to serve as many customers as possible during this time.
- **Early life failures (ELFs)** – Due to the significant increase in repair demand ([X]<sup>23</sup>), as noted above Openreach has had to utilise a greater proportion of third party resource in order to maintain provision lead times at the same time as delivering a solid level of repair performance. Whilst this resource is a vital part of Openreach's workforce, there are a number of provision tasks which are found to require additional skills which our third-party suppliers do not have. Additionally, due to COVID-19, these suppliers also lost a proportion of their own staff due to furlough and a significant number of resources

---

<sup>20</sup> [X]

<sup>21</sup> [X]

<sup>22</sup> These measures are also impacted by the direct consequences of the restrictions, for example working restrictions and limitations on training, as well as absences from engineers having to self-isolate.

<sup>23</sup> [X]

are new and on their own time to competency journey. These factors have contributed to a greater level of early life failures than was seen before the first national lockdown.

- **Repeats** – As a result of the pandemic, Openreach introduced a number of process changes for health and safety reasons. Where and when severe restrictions have been in place, Openreach engineers have been instructed to only enter the customer premise where there is total loss of service (TLOS). For many intermittent or speed related broadband faults, it is not possible to fully address customer issues such as internal wiring issues, and many of these resulted in a repeat fault. Over these restricted periods, the repeat fault rate increased significantly.

52. Openreach anticipates that performance against these measures will improve as restrictions ease, particularly for repeats where being unable to enter the customer premises in some cases will heavily contribute to issues. In the case of early life faults and service more generally, Openreach expects that as we implement our 18-month transition plan to deal with the long-term impacts arising from the global pandemic we will see improvements across these areas. There is no overnight quick fix.

### **Ofcom is ignoring the evidence that the resulting impact of the COVID-19 pandemic will be experienced in the long term**

53. The impact of COVID-19 is likely to be experienced far beyond any easing of restrictions and it would be short-sighted of Ofcom to assume that operating conditions will resume to what they were prior to the pandemic. Even when the UK starts to move back to a “normal” way of life, this does not mean that the effects of the pandemic will fully go away.
54. Openreach has already set out to Ofcom that there is evidence of a shift in behaviour of broadband users resulting from the way in which people use communications services for work and home use<sup>24</sup>. These changes have materialised very quickly and as a consequence of the pandemic.
55. It is highly likely that a proportion of the UK workforce will continue to work from home (rather than their employer’s office) at least more often than previously<sup>25,26</sup>, and this means that broadband users will engage with their service providers in a different way than prior to the pandemic. There is a wealth of evidence that suggests that there will be substantial changes in working patterns and end-customer behaviours<sup>27</sup>; it is unclear why Ofcom are ignoring that the market is fundamentally shifting.
56. There is no doubt that these changes will impact Openreach and the service it provides. For example, if working from home, an end-user is more likely to experience an intermittent broadband issue that may

---

<sup>24</sup> [Redacted]

<sup>25</sup> The UK Government’s new Tier system states that “Everyone who can work from home should do so,” <https://www.gov.uk/guidance/local-restriction-tiers-what-you-need-to-know>

<sup>26</sup> [Redacted]

<sup>27</sup> For example, <https://www.mckinsey.com/business-functions/organization/our-insights/reimagining-the-office-and-work-life-after-covid-19#>, <https://yougov.co.uk/topics/economy/articles-reports/2020/09/22/most-workers-want-work-home-after-covid-19>, <https://www.iod.com/news-campaigns/press-office/details/Home-working-here-to-stay-new-IoD-figures-suggest>

have not previously been noticed and coupled with this, end-customers will be less tolerant of lower level issues if demands on the service are much greater than previously. [REDACTED]<sup>28</sup>, which will mean more faults and greater demands on Openreach resources ([REDACTED]).

*Figure 9*

[REDACTED]

57. We can also see that over the course of 2020, the total volume of traffic over the Openreach network has significantly increased, where we have observed record levels during the latest lockdown<sup>29</sup>. Figure 10 below shows a stark difference in volume over different times during the day in January and February in comparison to the subsequent months of the COVID-19 pandemic. The “peak” observed in the evening is consistent with end-customer usage of video streaming services or gaming outside of the typical working day hours, which often require more traffic than email or web-conferencing software. Even so, the volume of traffic observed in the middle portion of the day is significantly higher than previously.
58. This increased traffic demonstrates the greater usage and reliance of services provided over the Openreach network, which will lead to the changes in end-customer reporting behaviour noted above. It would be short-sighted to assume that pre-COVID-19 conditions will resume to what they were previously. Openreach fully expects some of the changes observed to be permanent and has already set out to Ofcom that it is making long term resourcing plan changes to account for this. Ofcom should not ignore this.

*Figure 10*

[REDACTED]

59. Openreach has already shared Figure 11 below with Ofcom which shows the difference in the fault rate between 2018, 2019 and 2020. There is a clear increasing trend in the volume of faults being raised which has reversed the long term decreasing fault rate trend shown in Figure 12 and we believe that there has been a fundamental change in end-customer and CP reporting behaviours as a result of COVID-19.

---

<sup>28</sup> [REDACTED]

<sup>29</sup> <https://www.ft.com/content/2cc39ae4-2569-4887-ae4a-e772c2e4ea3d>

Figure 11

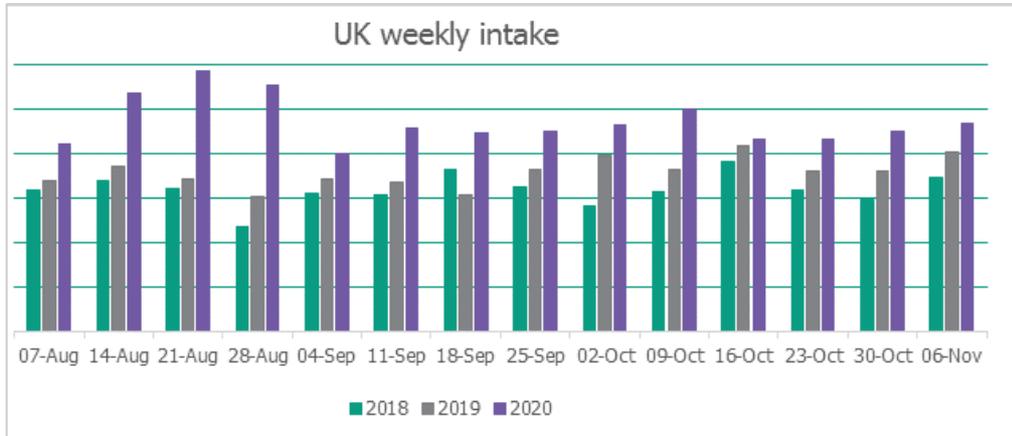
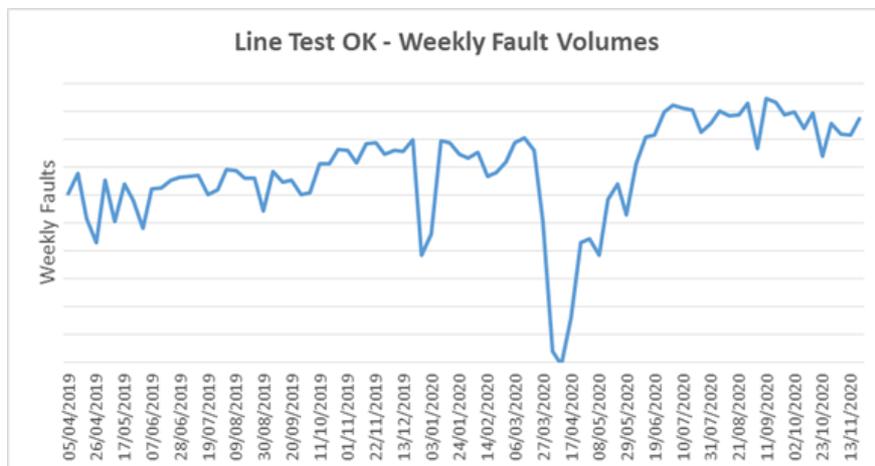


Figure 12

[X]

- 60. To compound this effect, as end-customers are at home more often than previously they are more available for an engineering appointment. Previously, end-customers would have had to arrange for an appointment on a date that was suitable for them which may have involved taking a day off or arranging to work from home. It could be assumed that the issue being experienced would have had to have been significant enough for the end-customer to make an appointment, whereas now there is a much lower burden on the end-customer to raise a fault as they are at home much more of the time. This can be observed in Figure 13 where the volume of Line Test OK (“LTOK”) faults has increased over the last year, particularly since the summer of 2020 (LTOK faults typically require an end-customer appointment). This was initially assumed to be an impact resulting from the lockdown easing but has persisted at the higher rate.

Figure 13



61. This can also be observed in Figure 14 which shows the total number of faults which required an appointment to be made with the end-customer, as well as those which were non-appointed. The chart shows that, with the exception of the beginning of the first lockdown period, the non-appointed volumes are broadly flat year on year, showing that the increase in appointed faults (shown by the orange line) is largely incremental and not substitutive (i.e. there has not been a swap).

Figure 14



62. These charts demonstrate a number of underlying changes to fault reporting and measurement; end-customers' perception and awareness of faults has changed with a higher likelihood of a fault being reported and subsequently appointments being made.

### Ofcom's proposed remedies are likely to have negative consequences as they will drive inefficient allocation of resource

63. In proposing that QoS Standards remain unchanged in year 1, Ofcom's proposed remedies could create unrealistic expectations of achievable service to the market and lead to an inefficient allocation of resources.

#### Inefficient allocation of resource

64. Ofcom must assess whether the measures it imposes are objectively justifiable *in advance* to prevent risking long-term damaging impacts as a result of pushing Openreach to an inefficient level of operation. Openreach has informed Ofcom that attempting to meet the QoS Standards in the current year has led to a number of unintended consequences created by the presence of incentives that arise due to SMP conditions being in place, [X].
65. [X]
66. Continuing to impose QoS Standards as if the pandemic had not happened will work against this approach, where Openreach has already indicated to Ofcom that the new resourcing model is likely to evolve over the

next 18 months. Openreach is working to transition to a new way of delivering service that recognises the changes in trends that have become apparent. Leaving the QoS Standards unchanged will drive the wrong behaviours that will impact end-customers in the long term. Therefore, Ofcom should implement a regulatory framework that works with this plan, not against it. This is more likely to result in better outcomes for end-customers in the long term, as well as Openreach's people.

#### Opportunity cost of investing in the future

67. Ofcom should also note that by requiring Openreach to meet unrealistic levels of service, Openreach is less able to invest in new innovative solutions and initiatives for the future because it is driving resource and cost into trying to meet the same level of service under more challenging conditions. The pandemic has already stifled innovation and developments in many aspects, for example the Garden of Eden initiative that was driving a cultural change and focussing on end-customer outcomes has had to be paused because of the high levels of engagement it involved. This programme has been an important industry collaboration, and it is important that regulation does not inhibit long term developments that will be for the good of the industry and eventually end-users.

#### Unrealistic expectations of service signalled to the market

68. By obliging Openreach to deliver service to the same standards that were in place prior to the pandemic, Ofcom would not only be causing Openreach to operate in an unsustainable way, it would create misleading perceptions as to the expected levels of service able to be achieved. This would create a view to the market that Openreach should:
- 1) Be delivering the service levels set under the QoS Standards which would be unrealistic; and
  - 2) Be able to deliver beyond the existing service standards at a future point when conditions are more stable.
69. The occurrence or impact of the COVID-19 pandemic could not be predicted and its total impact cannot be fully forecast. It would therefore be unreasonable to expect service to continue in exactly the same way as previously. When also combined with other service impacting issues such as the decision from CPs to start robotically testing lines, there are some serious challenges to contend with.
70. Openreach is taking long term decisions to be able to account for the new environment but it won't be resolved overnight. Openreach would expect Ofcom to encourage all of industry to be realistic and pragmatic in the current environment.

#### Ofcom's approach of assessing the impact of COVID-19 in 2020-21 has been helpful and pragmatic

71. Openreach acknowledges Ofcom's statement<sup>30</sup> that it will take a pragmatic approach to enforcement during the period that COVID-19 is present and welcomes Ofcom's intentions. However, when setting regulatory

---

<sup>30</sup> <https://www.ofcom.org.uk/about-ofcom/policies-and-guidelines/coronavirus-information>

remedies, Ofcom should not rely on an *ex post* approach to enforcement as a means of justifying measures that may have not been proportionate to begin with.

72. [X].<sup>31</sup>

73. Given the frequent changes to restrictions and other COVID-19 related policies, plus the ongoing uncertainty, it can be expected that the impact of the pandemic will continue into year 1 of the WFTMR at least<sup>32</sup> and even after the lockdown restrictions are eased. Unless Ofcom are confident that from 1 April 2021 there will be no impact (which it is not) then it would be wrong to propose that the same QoS Standards that applied in 2020/21, which were set on the basis of an assessment conducted prior to the pandemic.

### Even in the absence of QoS Standards in year 1, Openreach will continue to focus on delivering good service in 2021/22

74. Ofcom have said in its consultation that due to the uncertainty surrounding the COVID-19 pandemic it would be in the best interest of stakeholders to keep the QoS Standards as they are<sup>33</sup>. We note Ofcom haven't provided any evidence to support this, however Openreach is committed to continue focusing on delivering good service as we navigate through the current challenging conditions and would need to ensure that service does not deteriorate in the event that QoS Standards were deferred until year 2 of the WFTMR.

75. Openreach has been subject to the relevant QoS Standards since their introduction in the 2014 Fixed Access Market Review. The standards have been made more challenging each year from 2014/15 to 2020/2021. In the compliance periods that have been in place since their introduction, Openreach has met or exceeded all obligations, totalling over 300 QoS Standards. Whilst regulation has been effective in encouraging this result, Openreach as an organisation has service quality as a key pillar of its strategy and has made significant steps forward to be an industry leader in providing high quality communication services.

76. Importantly, it would not be in Openreach's interest to allow service to materially deteriorate in the absence of QoS Standards during year 1 if QoS Standards were to be re-introduced from year 2, and we do not believe that Ofcom have considered this. Were the QoS standards imposed from 1 April 2022 instead, Openreach would need to be in a strong exit position ahead of the new compliance year. In addition to this, Openreach would expect significant pressure to be maintained by our CP customers to ensure good service and would be cognisant of the reputational impact if service standards were to drop. As Ofcom is aware, the existence of an SMP condition requiring Openreach to comply with specific directions has strong incentive effects. If Ofcom were to re-introduce QoS Standards only from Year 2, although it is our expectation that the next 18 months will be particularly challenging for delivering service, Openreach will be

---

<sup>31</sup> [X]

<sup>32</sup> <https://www.gov.uk/government/speeches/pm-statement-on-covid-19-winter-plan-23-november-2020>

<sup>33</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 3.14.

strongly incentivised to maintain a strong a position as possible. We note that if the COVID-19 worsened such that Openreach's year 2 performance was impacted we would expect Ofcom to take this into account.

77. Openreach and Ofcom have frequent senior level meetings to discuss the impact of COVID-19 in particular, alongside regular meetings to discuss service. We would expect that performance levels would be scrutinised at these sessions, providing additional assurance to Ofcom if required.

### It would be inappropriate for Ofcom to increase the level or scope of the existing obligations

78. Openreach acknowledges Ofcom's objectives to protect consumers and ensure consistently good quality of service and we have supported this approach throughout the WFTMR period. Delivering high levels of service for our CP customers and end-customers remains a top priority for us. However, Ofcom must recognise that the factual basis on which Ofcom set the QoS Standards has fundamentally changed.
79. This means that achieving the same levels of service is much more operationally challenging and it costs more. Current conditions are highly uncertain and volatile, and we are trying to do the right thing for all our customers in these difficult times, alongside making sure that we are not making long term sacrifices for short term improvements.
80. Openreach therefore considers that increasing the levels of the existing QoS Standards or expanding the scope of the standards to other products or metrics would be highly inappropriate at this time, given this changed factual position. It is Openreach's ambition to deliver the QoS Standard levels proposed, however the impact of COVID-19 has meant that, for year 1 in particular, this will be a bigger challenge that Ofcom need to consider.

### Leased lines markets

81. COVID-19 has also had an impact on Openreach's FND organisation, and on its ability to meet the QoS standards imposed. For example, during the period of the first lockdown, Openreach was only able to build 'to the curtilage' for many orders because there was no access to the end-customer sites, while the number of customer "suspends" has also increased due to effects of the pandemic, thereby reducing order fluidity.
82. So far, FND has not been *as* severely impacted by COVID-19 as the Openreach Service Delivery (SD) team, which looks after the WLA QoS standards. A reason for this is that, following the first lockdown, FND has been able to carry out most of its work in a relatively 'normal' way as Government restrictions eased and businesses were encouraged to reopen, whereas SD has been far more affected by changes arising from more people working from home and from the need to regularly amend working practices to ensure health and safety for engineers and end-customers.
83. At time of writing, FND is exceeding 4/5 of the 2020/21 QoS standards, with the Upper Percentile standard, which we consider is flawed in any event (as discussed in this response), being narrowly missed.

84. If conditions remain similar to those that presently exist, Openreach envisages that maintaining the MTTP, certainty, crosslink and repair QoS standards in their 20/21 form into the WFTMR will be appropriate.
85. Of course, COVID-19 may change this. For example, the economic impacts of the pandemic remain highly uncertain at this point and could have a major impact on Openreach's ability to meet QoS standards in the future by, for example, dramatically impacting demand levels. It is right in this context that Ofcom standards stands ready to amend the remedies imposed, should changing conditions mean this is necessary.
86. In any event, in re-imposing QoS standards in the WFTMR, Ofcom needs to set standards that are proportionate on a forward-looking basis, based on the best evidence available. This applies equally to the leased lines and WLA QoS standards.

## Section 2: Comments on Ofcom's QoS proposals for WLA services

87. In this section Openreach provides comments on Ofcom's proposals for the necessary updates to the WLA QoS Standards, notwithstanding our comments provided above in Section 1. Our responses provided below would be relevant even if the COVID-19 pandemic not occurred.

### The First Available Date (FAD) QoS Standard

*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?*

88. Openreach supports the proposal to set the FAD QoS Standard at 89% at 12 working days<sup>34</sup>. Doing so will help provide additional flexibility between provision and repair work during peak periods (e.g. during fault intake spikes following a storm).
89. This particular amendment to the regime alone will not "resolve" the issue of increasing repair volumes, as Ofcom appear to be suggesting, but will enable engineering resource to be reprioritised during periods of particularly high fault / order intakes. To optimally balance provision and repair activity is a challenging process, and even more so during the current circumstances, and therefore it is important that Ofcom do not set an overly stringent provision measure that will detrimentally impact repair performance in consequence.
90. Openreach would like to clarify a point Ofcom have raised in the consultation, where Ofcom have incorrectly stated that Openreach allocates engineering resource first to provision work and that any additional resource is then allocated to repair<sup>35</sup>. This is not the case, and in fact during periods where the fault intake has risen Openreach typically prioritises repair over provision.
91. Provision volumes generally tend to be more stable than repair where intake can be volatile, so focus will need to change depending on where demand is greater. In order to maintain lead times within the applicable Service Level Agreement (SLA) and QoS Standards, provision appointments are scheduled between one - two weeks in advance. When this takes place, it is not always possible to know what the repair intake is going to be (for example whether there is going to be severe weather). However, when the repair work stack is particularly high, it is helpful to be able to specifically allocate resource to repair to ensure that we can recover service for customers when needed. This is why it is important to have the flexibility to extent provision lead times during these periods to give us greater contingency levels.

---

<sup>34</sup> Subject to our comments in Part 1 of this response.

<sup>35</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 4.16.

92. Amending the QoS Standard to 12 days will help with the additional flexibility required when repair intakes rise sharply, and a period of workstack recovery is needed.
93. Openreach also agrees with Ofcom's proposal not to include a glidepath back to a tighter QoS Standard. As Ofcom rightly point out<sup>36</sup>, the situation is clearly very different to 2018 when Ofcom decided to change the QoS standard for compliance year 20/21 in the WLA and it would therefore be inappropriate to try and forecast if and when a tighter measure would be feasible. We also agree with Ofcom's assessment that performance against the FAD measure is good<sup>37</sup>, and this amendment will not dilute Openreach's commitment to delivering good service in this area.

## Regional QoS Standards

*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?*

### Relevant Regions

94. Openreach agrees with Ofcom's proposal to change the definition of "Relevant Region" to align with the geographic structure that the Openreach Service Delivery organisation operates under. As Ofcom note, Openreach have been operating under this new structure since April 2019 and therefore it is appropriate that the regions are updated from the start of the new regulated period.
95. Not updating the regions would mean that Openreach would be held to account for a geographic structure which is out of date and would continue to create inefficiencies and confused incentives between operational teams and management as well as significant levels of duplication in reporting.
96. We note and agree with Ofcom's analysis in the consultation<sup>38</sup> demonstrating that changing the management regions will not result in any material improvement when reporting against QoS Standards<sup>39</sup>. Changing the management regions will therefore not result in any change to Openreach's commitment to delivering good service.

### High Level MBORC

97. Openreach agrees with Ofcom's position to maintain the High Level MBORC<sup>40</sup> allowance to two regions per year. Reducing the allowance to only one region per year would significantly reduce the amount of flexibility

---

<sup>36</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 4.32.

<sup>37</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 4.36.

<sup>38</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 5.11.

<sup>39</sup> It is important to remember that this is a quarterly snapshot and QoS Standards are measured on an annual basis.

<sup>40</sup> "Matters Beyond Our Reasonable Control"

currently afforded and Openreach should not be penalised<sup>41</sup> for updating the way in which it organises its engineers. Ofcom also rightly point out the need for “regulatory and operational flexibility<sup>42</sup>” particularly during the COVID-19 pandemic and therefore reducing the High-Level MBORC allowance to one area, even though it may cover a larger area, could cause greater risk for Openreach than exists today.

98. Openreach notes Ofcom’s comments that the High Level MBORC allowance could impact a greater number of telecoms providers. However, we believe that this is unlikely to result in any material impact to the service that telecoms providers and their customers receive because:

- Openreach will always try and exceed all of the QoS Standards and assumes no allowance for operational planning purposes;
- The High Level MBORC allowance is only applied at the end of the compliance period, i.e. Openreach does not necessarily know the areas covered by the allowance throughout the year;
- Openreach must supply a compliance report to Ofcom each year showing its performance against each of the QoS Standard, including any use and impact of the High Level MBORC allowance; and
- The MBORC process itself is a contractual mechanism with considerable oversight from the OTA2.

99. In the event that significant and founded concerns were raised by stakeholders, Openreach would be open to discussing an alternative structure to the High Level MBORC process. For example, by updating the structure of the allowance so that it is by reference to a Senior Area Manager (SAM) area, which is the next geographic level down in Openreach’s SD organisation.

100. SAM areas cover a much smaller geographic operational area and there are currently 38 SAMs in the organisational structure. If Ofcom wanted to move away from the existing model (by reference to *two* regional High Level MBORCs for each applicable QoS Standard), our alternative recommendation would be to allow Openreach to exclude High Level MBORC declarations in *seven* SAM areas per each applicable QoS Standard. This would mean that, as a percentage, the exclusions would impact a much lower overall proportion of the UK and be more focussed on impacted areas. However, for the avoidance of doubt, Openreach supports Ofcom’s current proposal as it is.

101. Separately, there are a small number of clarificatory points we would like to point out in Ofcom’s consultation, which don’t describe the High Level MBORC processes accurately:

- In paragraph 5.15 Ofcom state that they have limited Openreach’s ability to declare High Level MBORC declarations to two regions per year<sup>43</sup>. Openreach is in fact able to make contractual MBORC declarations whenever the specific circumstances occur, and this is not limited. In a contractual sense, there is no difference between a High Level MBORC declaration and any other MBORC declarations. For the purposes of QoS Standard measurement, Ofcom have defined instances of “High Level MBORC declarations” which are able to be excluded from the compliance assessment at the end of the year.

---

<sup>41</sup> By reducing the allowances in place under the existing structure.

<sup>42</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 5.20.

<sup>43</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 5.15.

- Paragraph 5.21 and Question 5.2 refer to maintaining the High Level MBORC allowance at two regions per year with a maximum of *eight weeks per region*. This is not correct. The High Level MBORC allowance permits a maximum of eight weeks per MBORC event (i.e. declaration), not per region<sup>44</sup>.

## Proactive repair and fault definition

*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?*

### Definition of a fault

102. Openreach agrees that the definition of a fault for QoS Standard purposes needs to be updated. We welcome Ofcom's recognition of the impact of proactive testing on our ability to meet the QoS Standards and that proactive faults should be dealt with by a separate process to be agreed with industry.
103. The QoS Standards were originally specified and set during the 2014 Fixed Access Market Review, with analysis likely conducted by Ofcom as early as 2013. The standards were set originally to cover Openreach's copper products, WLR and MPF, and expanded to cover FTTC in the 2018 Wholesale Local Access. As we have described to Ofcom previously, the service test for GEA-FTTC, which determines whether a "fault" exists is very different to the copper SIN349 test; it is much more sensitive, designed to "search" for an issue that may be impacting the experience of a user, and includes both "performance" faults (i.e. impairments impacting the performance of the service) as well as faults that mean that the service does not work (i.e. Total Loss of Service (TLOS)).
104. Performance / impairment faults are significantly more challenging to manage. They can be dependent on the individual tolerance level of the specific user experiencing the impairment (and in some cases might not be impacting the user's experience of the service at all), can be intermittent and there are multiple different types and variations. These are some of the reasons why proactive testing on FTTC in particular can be so problematic – when robotics are used to test the line they can pick up issues that are not actually impacting the service, which results in significant inefficiencies in the process as Openreach try to resolve such issues.
105. It is therefore appropriate that such faults are excluded from the QoS Standards; if the CP wishes for additional work to be conducted outside of the usual and existing processes (on which the contracts and QoS Standards were originally set) then this should be conducted under a separate mechanism.
106. Industry discussions on this topic are progressing and we hope to be able to agree a set of principles around proactive testing that will ensure that it does not result in wasted visits and will focus on the right areas. To this effect, we are emphasising to industry the importance of CPs conducting their own proper fault qualification *before* they send faults into Openreach – this should apply to both faults raised

---

<sup>44</sup> Ofcom Fixed Access Market Review Statement, 26 June 2014, Volume 1, paragraph 11.250.

proactively by the CP and as a result of the end-customer reporting an issue. Openreach and industry are currently discussing the introduction of a Proof of Concept (PoC) which would test how proactive fault reporting on specific products could take place. This is anticipated to commence in the new year and run for a period of 6 months<sup>45</sup>.

107. It is therefore important that Ofcom update the regulation to support these discussions and to enable a process of industry collaboration to be effective. Openreach agrees that the definition of a fault should exclude faults that were proactively raised. For practical reasons, Openreach itself suggested that these proactive faults need to be flagged by the CP as only the individual CP knows which lines it has proactively tested. Any industry agreement will require CPs to agree to mark each and every proactive fault submitted, and failure to do this completely would be in breach of any such arrangement. CPs have indicated to Openreach they are happy to mark their proactive faults accordingly and therefore those CPs that conduct proactive testing should not be averse to this update to the fault definition. Those CPs that don't conduct proactive testing would not be impacted by the change.
108. In the consultation, Ofcom have proposed that the definition of a fault excludes faults that have been proactively marked by the CP and agreed to be treated under a separate process but that this is by reference to the "applicable SLA<sup>46</sup>." Openreach is concerned that this proposal is too narrow, given that Openreach and industry are still discussing the mechanics of the PoC and how any formal arrangements are implemented, should the PoC be successful. It is our current expectation that an agreement on proactive repair will be enacted by a formal agreement to be signed by the relevant individual parties, but not necessarily a change to the contract itself. These are details that are still being discussed with industry. Ofcom's proposal would therefore be too restrictive and may impede the development of the industry scheme if implemented in this way.
109. The industry agreed scheme looks to initially trial new processes and solutions, including over a specific and limited time frame. The CP may still be able to formally agree to a new process without having to amend the contract. Therefore, to capture Ofcom's argument that there should be a "specific reference to any such agreement" and that "ad hoc or informal arrangements" are not in scope<sup>47</sup>, the definition should be updated to state that (alternative text in underlined italics):
110. "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 to be formally agreed between the Dominant Provider and the Third Party as set out in the applicable service level agreement.
111. We believe that this adequately and fairly resolves both concerns.

---

<sup>45</sup> The details of the PoC are still under review and subject to Openreach governance

<sup>46</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 6.5.

<sup>47</sup> Ofcom Further consultation on proposed quality of service remedies, WFTMR, 23 October 2020, para 6.5.

## Industry agreement to exclude SLG payments for proactive faults

112. Separately, a further aspect to the industry scheme under discussion relates to the exclusion of SLG payments on faults that were raised proactively. [redacted]<sup>48</sup>.

## Updating the QoS Standard specification by reference to the applicable SLA

113. Ofcom should also update the specification of the repair QoS Standards so that they are by reference to the “applicable SLA” and not to a prescribed number of days (e.g. the next working day). We have previously set this out to Ofcom<sup>49</sup>. By requiring the QoS Standards to be set by reference to a number of days and not the specific arrangements between Openreach and industry, Ofcom is preventing new ways of working to be developed on repair.

114. It is likely that over the period of the WFTMR alternative working practices may be developed and updating this specific text reduces the risk of the regulation stifling innovation in industry and becoming out of date. In the context of proactive repair specifically, it could help Openreach and industry to reach different agreements on proactive testing, depending on the specific types of faults, for example.

115. The current specification also impedes Openreach and industry trialling different solutions due to the barriers in place of having a regulated standard which could fall out of line with new processes, i.e. because the QoS Standard requires a repair within a particular number of days, there are disincentives to agreeing alternative solutions. We would like Ofcom to update the wording of the repair QoS Standards to be by reference to the “applicable SLA.” This results in no consequence to CPs unless a contractual change is agreed between all relevant parties, therefore it should be supported by Ofcom.

---

<sup>48</sup> [redacted].

<sup>49</sup> Further Openreach comments on Ofcom’s Quality of Service proposals 4 September 2020, paragraph 35 and Openreach responses to Ofcom clarifications on WFTMR consultation response (provided on 15 May 2020).

## Section 3: Comments on Ofcom’s QoS proposals for Ethernet services

### The Upper Percentile QoS Standard

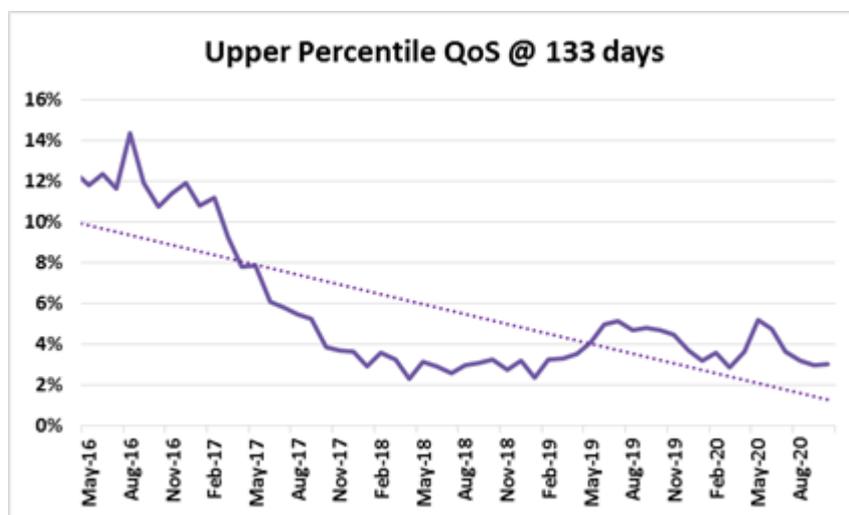
*Question 7.1: Do you agree with the change of the design of the standard to focus on open orders? Please set out your reasons and supporting evidence for your response.*

*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.*

#### Summary

116. The Upper Percentile QoS standard deals with leased line circuits that have the most complex delivery requirements and that are consequently the most difficult and time consuming to deliver. The existing QoS Standard (for compliance year 2020/21) is that no more than 3% of circuits should be completed in greater than 133 working days<sup>50</sup>. As shown in Figure 15 below, Openreach has dramatically improved its provision performance for this type of circuit and has also successfully maintained generally good levels of performance since 2017.

Figure 15 - Upper Percentile QoS standard performance (set against 133 working days)



117. Openreach remains committed to delivering good provision performance for the most complex circuits, and there are a number of ongoing improvement initiatives such as the civils avoidance programme and improved wayleave processes that will underpin this.

<sup>50</sup> The standard for 2019/20 was no more than 3% of circuits should be completed in greater than 138 working days.

118. The Upper Percentile QoS standard as currently specified is not a proportionate remedy. In particular, the target imposed by Ofcom is too tough, and makes insufficient allowance for the degree to which the standard is impacted by forces that are not within Openreach's ability to control<sup>51</sup>. In consequence, Openreach has routinely missed the target for this standard even when it is providing good levels of service and when customers are showing high levels of satisfaction.
119. In this context, Openreach welcomes Ofcom's recognition in its further consultation that the existing standard is subject to a number of underlying problems, including in relation to the target level and the degree to which the standard is impacted by market forces, and that in consequence the existing arrangements should be changed<sup>52</sup>.
120. However, Openreach is concerned that Ofcom's preferred approach, which is to replace the current standard based on limiting the percentage of closed orders over a particular number of days with one based on limiting the percentage of open orders over a particular number of days, will be subject to many of the same problems that beset the existing arrangements. In particular, an open order based standard will still be subject to significant influence from forces outside of Openreach's control (that Ofcom has recognised is a problem for the existing measure) and could in practice be just as difficult to meet as the current measure unless the target specified made sufficient allowance for such factors.
121. Openreach continues to believe that a remedy based on an enhanced set of reporting obligations would work well here, noting that Ofcom would have the power to intervene in the future if circumstances warranted this<sup>53</sup>, and also that Openreach has good incentives already to minimise the number of complex orders in the workstack given the significant influence of such orders on its ability to comply with the Mean Time to Provide ('MTTP') QoS standard.
122. If, however, Ofcom does persist with its proposal to introduce an open order based Upper Percentile QoS standard, in order for that standard to be proportionate, it is imperative that (i) 'pending customer delay' can be removed as part of the compliance assessment and; (ii) the target set (i.e. the percentage level) includes a reasonable allowance to help mitigate the continued susceptibility of the standard to forces that are not within Openreach's control. Openreach considers that a target of no more than 4.5% to 5% circuits open at more than 133 working days (with the ability to remove customer delay and pending customer delay) would be appropriate.
123. Openreach sets out further detail in relation to these points below.

## Openreach performance

124. As shown in Figure 15, above, Openreach has greatly improved performance against the Upper Percentile QoS standard since it was first imposed by Ofcom in 2016<sup>54</sup>, and has also stabilised performance levels.

---

<sup>51</sup> This is notwithstanding that Ofcom has tweaked the target for the Upper Percentile QoS standard over time.

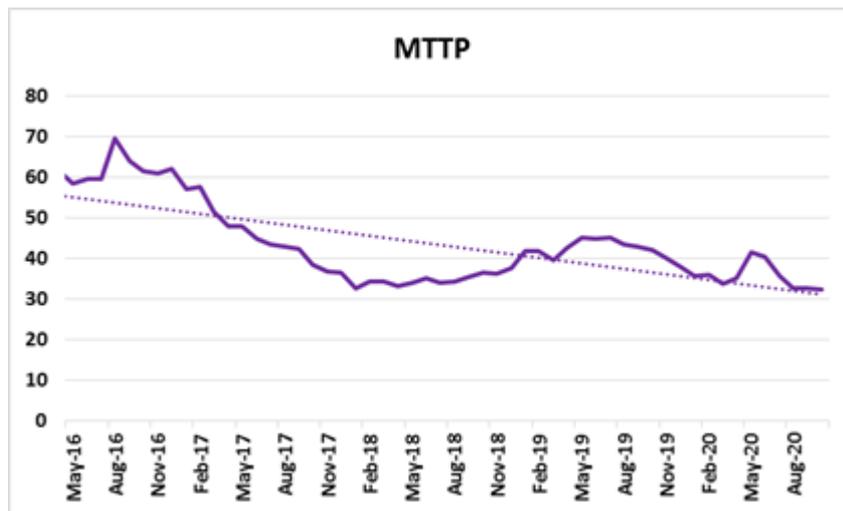
<sup>52</sup> See Ofcom further consultation October 2020, paragraph 7.39.

<sup>53</sup> See Sections 49 and 49A of the Communications Act.

<sup>54</sup> Ofcom Business Connectivity Market Review April 2016.

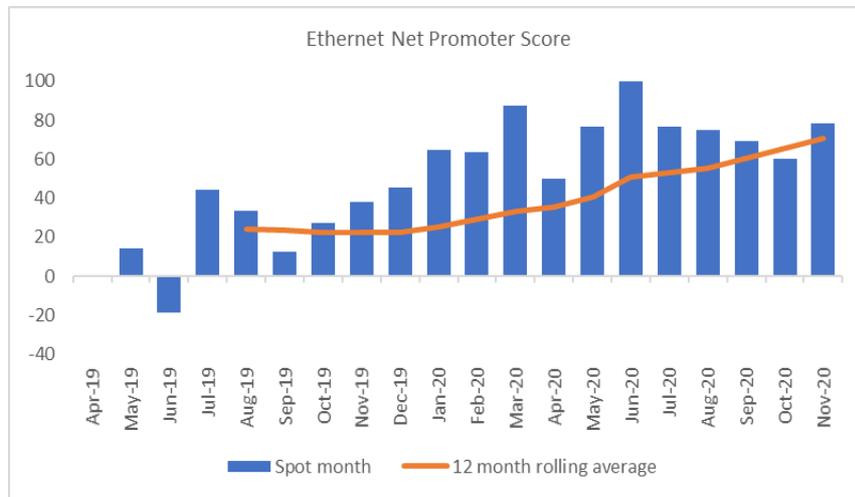
Openreach’s improved performance in relation to the most complex circuits has also played a crucial role in enabling the improvement that has been delivered to overall MTTP. Figure 16, below, shows that Openreach has significantly improved MTTP since 2016, and has generally maintained good levels of performance since 2017.

Figure 16 - Overall MTTP



- 125. The detailed customer satisfaction surveys that Openreach runs periodically also clearly show that Openreach’s customers are currently very satisfied with the levels of service that Openreach is providing for Ethernet.
- 126. As shown in Figure 17, below, the net promoter score (‘NPS’) that Openreach is receiving in relation to Ethernet services continues to be at very strong levels, with the 12 month rolling average in November 2020 in excess of +70, which is excellent, and the performance over the last year at consistently strong levels.
- 127. We have modelled the relationship between NPS and its key drivers, and this has highlighted that provision, repair and customer engagement are the three drivers with the highest correlation to NPS. In other words, improvement in these areas have had the most significant impact to the very good NPS levels observed. Within the surveys, service performance specifically comes out as a highlight. This shows that the service Openreach is already providing, including in relation to the most complex circuits, is at good levels, and is being well received by CP stakeholders.

Figure 17 - Openreach customer satisfaction for Ethernet Services



128. Going forward, Openreach will continue to focus on delivering excellent levels of service for the most complex circuits and, as noted above, ongoing improvement initiatives such as those relating to civils avoidance and wayleaves will be part of that.

### Characteristics of circuits covered by the Upper Percentile QoS standard

129. As set out in Openreach’s May 2020 WFTMR consultation response, circuits covered by the Upper Percentile QoS standard tend to be those with the most complex delivery requirements that are, in consequence, the hardest to deliver. These circuits are also small in volume, relative to the size of the overall number of orders, and are more prone (than the average from the overall circuit population) to delay from causes that are not fully within Openreach’s ability to control such as demand variability, traffic management and wayleaves. Ofcom rightly observes that such delays are not always within Openreach’s ability to control, saying that “*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*”<sup>55</sup>

130. Table 1 below uses data from the 2019/20 compliance period<sup>56</sup> and juxtaposes some of the features of the circuits that were covered by the Upper Percentile standard (defined as circuits that took more than 138 working days to deliver per the QoS standard that applied in 2019/20) versus the overall circuit population<sup>57</sup>.

<sup>55</sup> See Ofcom further consultation October 2020, paragraph 7.32.

<sup>56</sup> Please note that the 2019/20 compliance period ran from July 2019 to March 2020 inclusive due the timing of the Ofcom statement.

<sup>57</sup> The overall circuit population is the total completed orders in the compliance period that were covered by QoS standard obligations. This includes circuits delivered in greater than 138 working days.

Table 1 - Features of circuits covered by the 2019/20 QoS standards (July 2019 – March 2020 incl.)

	Upper percentile circuits	All circuits
<b>Number</b>	[<del>]	[<del>]
<b>MTTP (excluding customer delay)</b>	[<del>]	[<del>]
<b>% subject to traffic management</b>	[<del>]	[<del>]
<b>% subject to wayleaves</b>	[<del>]	[<del>]
<b>Average instances of delay<sup>58</sup></b>	[<del>]	[<del>]

131. As shown in the table, circuits covered by the Upper Percentile standard are, relatively speaking, small in number, and are far more (between about 9 and 11 times) likely to be subject to delay due to traffic management or wayleaves, which are not fully within Openreach's ability to control. The far greater MTTP and average instances of delay are also reflective of the significantly higher average delivery complexity for these orders.

132. The 6 monthly tails reports that Openreach provides to Ofcom (as part of Openreach's existing transparency obligations which form an important part of the overall QoS remedies), contain additional relevant information about the profile of tails orders. For example, those reports consistently and clearly show that a common feature of complex circuits is that they contain significant amounts of delay (which counts towards the compliance assessment of the circuit) where that delay is not fully within Openreach's ability to control<sup>59</sup>.

### Setting a regulatory remedy for the most complex circuits

133. In order to be effective, and to be proportionate, the regulatory remedy imposed by Ofcom in relation to the most complex orders needs to recognise the characteristics of those orders. Ofcom also needs to recognise the potential pitfalls arising and specify a remedy design that either avoids or adequately mitigates those pitfalls.

134. In the further consultation of October 2020, Ofcom recognises a number of fundamental problems with the existing Upper Percentile QoS standard:

- (1) Ofcom notes the perverse incentive associated with the closed order metric, saying: "*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*

<sup>58</sup> This would include all instances of delay, irrespective of whether the CCD had been moved (e.g. where there were parallel delays running).

<sup>59</sup> This is because delay associated with traffic management and wayleaves is currently counted as 'non-customer delay', and so is 100% on Openreach's clock, whether Openreach is able to control the delay or not.

*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.<sup>60</sup>*

- (2) Ofcom agrees that the target is vulnerable to distortion, saying: *"We also agree that the target for the standard is susceptible to market fluctuations given the small number of orders and their complex nature.<sup>61</sup>"*
- (3) Ofcom also recognises that the target has been, in practice, difficult to hit, and not due to lack of operational efficiency or investment on Openreach's part, saying that: *"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<sup>62</sup>".*

135. Openreach agrees with Ofcom's summary assessment. In fact, Openreach considers that there is strong evidence showing that the current Upper Percentile QoS standard is not proportionate. As Ofcom is aware, it is required by law to ensure that the forward-looking remedies it imposes are proportionate.

136. In particular, Ofcom is required under Section 49 of the Communications Act to ensure that any direction it wishes to implement is objectively justifiable and proportionate to what it is intended to achieve. This requirement is recognised by Ofcom itself in Section 9 of the Consultation. However, in Section 8 of the Consultation, Ofcom fails to conduct a proper proportionality assessment. On this basis, we are concerned that, without change, Openreach will likely fail the proposed updated remedy despite continued good performance.

137. Specifically, Openreach is concerned that Ofcom's current recommendation – i.e. to replace a closed order measure with an open order measure, deals with problem number (1) as outlined above (by removing the possibility for Openreach to meet the target by not completing orders), but it does not adequately deal with problems number (2) and (3). Further, it has been problems (2) and (3) that have caused the existing QoS standard to be disproportionate and have led Openreach to routinely miss the target even when it is delivering good levels of service.

138. In order to make the new remedy imposed proportionate, Ofcom should either move away from a target based QoS standard entirely given the inherent risks identified with designing a remedy to deal with the most complex orders, or it should make further adjustments to the specification of the QoS standard to ensure that problems (2) and (3) are adequately addressed.

139. As discussed further below this would mean in practice either (i) moving away from a QoS standard entirely and adopting the recommended approach (or a variant thereof) set out by Openreach in its May 2020

---

<sup>60</sup> See Ofcom further consultation October 2020 paragraph 7.28.

<sup>61</sup> See Ofcom further consultation October 2020 paragraph 7.29.

<sup>62</sup> See Ofcom further consultation October 2020 paragraph 7.30.

consultation response, i.e. a remedy based on enhanced transparency arrangements; or (ii) having a QoS standard based on open orders but where Openreach is able to remove pending customer delay from the compliance assessment and where the target is in the range of no more than 4.5% to 5% of orders being delivered in more than 133 working days.

140. In its May 2020 consultation response, Openreach set out that, given the inherent problems associated with setting a target based QoS standard for complex orders (many of which Ofcom appears to recognise in its further consultation as discussed above), it would be sensible to remove the QoS standard entirely and instead to move to a remedy based on an enhanced set of transparency measures where certain actions would be triggered in circumstances where Openreach performance fell below specified backstop levels<sup>63</sup>.
141. In its further consultation of October 2020 Ofcom pushes back on the Openreach proposal to remove the Upper Percentile QoS standard and replace it with enhanced transparency arrangements on the grounds that (i) this would risk QoS generally because Ofcom would be unable to take enforcement action in circumstances where Openreach's performance declined to unacceptable levels<sup>64</sup>; and (ii) while Ofcom recognised the difficulties associated with setting a target for the Upper Percentile QoS standard, it did not consider these concerns to be strong enough to merit removal of the standard entirely<sup>65</sup>.
142. On the first point, Openreach questions the likelihood of such an eventuality arising. In particular, Ofcom should take greater note of the design of the Openreach May 2020 proposal, given that it includes features / interventions that are specifically designed to prevent performance falling below acceptable levels. Ofcom should also acknowledge that, even in the absence of an Upper Percentile QoS standard, the MTTP QoS standard (which is set to continue through the period of the WFTMR) already places (and will continue to place) strong incentives on Openreach to minimise the time it takes to complete delivery of the most complex orders. For example, in compliance period 2019/20, the orders that were covered by the Upper Percentile QoS standard (i.e. that took more than 138 working days to deliver), contributed [X] towards the MTTP denominator for all orders, despite forming less than [X] of the overall circuit completion numbers<sup>66</sup>. Openreach also notes that Ofcom retains the ability under the existing framework to impose, at short notice, changes to the remedies imposed, should that be justified by circumstances<sup>67</sup>. This could include, for example, re-imposing a QoS standard in the (unlikely in our view) circumstances that this was required.
143. On the second point, while it is right to say that there are some difficulties setting the right targets for Ethernet orders in general, the real issue with the Upper Percentile measure is that these problems are significantly amplified due to the characteristics of the most complex orders as described above i.e. the relatively tiny numbers being dealt with and the extent to which those orders are subject to delay types that

---

<sup>63</sup> See Openreach May 2020 consultation response paragraphs 8.239 to 8.262.

<sup>64</sup> See Ofcom further consultation October 2020 paragraph 7.36.

<sup>65</sup> See Ofcom further consultation October 2020 paragraph 7.37.

<sup>66</sup> Openreach also notes that in the 2019 BCMR Ofcom removed the Lower Percentile QoS standard, and one of the justifications it provided for doing this was that Openreach was already incentivised to deliver the least complex circuits as well as it could because doing that would assist in meeting the MTTP QoS standard compliance. The same justification exists here. See BCMR statement June 2019 paragraph 15.58.

<sup>67</sup> As foreseen under Sections 49 and 49A of the Communications Act.

are not fully within Openreach's control. The degree to which these problems exist for complex orders does make them distinctive and presents particular problems for the Upper Percentile standard that do not exist to the same extent for the other QoS standards, which deal with the entire circuit population (which include both complex and non-complex orders) rather than with a small and highly variable subset of that population.

144. Based on these considerations, we request that Ofcom further consider the suitability of the Openreach May 2020 proposal based on enhanced transparency measures, and which could be readily amended to additionally track open as well as closed orders.
145. If Ofcom continues with its current proposal – to replace the current closed order metric with one based on open orders, it needs to make some further amendments to the QoS standard to ensure that the remedy imposed is proportionate and workable. At present, we do not believe that Ofcom has sufficiently established the justification for adopting such a remedy<sup>68</sup>.
146. Openreach sets out below further commentary on the challenges faced and the steps required for setting a proportionate open order based Upper Percentile QoS standard.

### Setting a proportionate open order based Upper Percentile QoS standard

147. If Ofcom persists with the open order based Upper Percentile measure, it needs to ensure that the measurement methodology is appropriate, and that the target imposed is achievable and proportionate.
148. Firstly, pending customer delay must be removed as part of the compliance calculation<sup>69</sup>. With the current closed order based QoS standard, all customer delay is removed to ensure that it better reflects true underlying Openreach performance (and because the order is closed, all and any customer delay can be captured). This approach is right, and uncontroversial. Exactly the same logic applies for a QoS standard based on open orders, where the concept of pending customer delay (in addition to capturing any fully completed customer delay) will be a factor.
149. Failure to specify that pending customer delay should be removed from the measure would mean that orders might be counted as "tails" (and would fall into the Upper Percentile standard), even though they would not be over 133 working days in age if all the relevant customer delay was removed from the order. In such a scenario Openreach's compliance assessment would be polluted by delay that it was not responsible for. This would make the compliance calculation inaccurate and would clearly be unfair as a measure of Openreach's performance (in some ways this would be worse than the arrangements with the current flawed Upper Percentile standard, in fact). This issue would be particularly exacerbated during times of abnormally high customer delay – for example, during the first COVID-19 lockdown period in Q1/Q2

---

<sup>68</sup> As required under Section 49(2)(a).

<sup>69</sup> Pending customer delay is where an order is currently in delay, but that time has not yet been removed from the order as the delay has not "finished." This type of delay will arise when an open order based measure is employed.

2020/21 when it was not possible to gain access to many end-customer sites. This topic is discussed further below.

150. Secondly, the target imposed must be set at the right level. This should be at a level that reflects a backstop level consistent with good (but not stretch) levels of service performance, and that takes account of the particular characteristics of the most complex circuits. The current (and earlier) Upper Percentile QoS standards meant that Openreach had failed the regulated target routinely even during periods of strong Openreach performance and good customer satisfaction. Openreach strongly believes this shows that the target set was too tough, not a fair test for Openreach, and in consequence created a QoS standard that was not proportionate. This issue has to be addressed.
151. A key problem is that hitherto Ofcom has tended to set the targets for the Upper Percentile QoS standards by choosing periods of extremely good or 'best' performance as the baseline for future performance, which Openreach then needs to exceed if it is to be confident of complying with the QoS standard. This approach has afforded no real contingency for variability in factors that in reality have a big influence on Openreach's ability to meet the standard, in particular:
- Changes to Traffic Management or Wayleave legislation<sup>70</sup>, or other factors affecting the incidence of these delay reasons;
  - Changes to market factors outside Openreach's control such as demand volatility (where both higher or lower than expected demand can impact the ability to meet the QoS standard); and
  - The degree to which the metric will be impacted given the tiny number of circuits involved (e.g. compared to the volumes covered by other QoS standards).
152. This has led to Openreach routinely missing the standard whilst delivering good service, which is wrong. This earlier approach has failed, and Ofcom needs to adopt a different approach, which takes account of these factors.
153. Whilst difficult to wrap into the target formulation, Openreach also notes further effects that could impact our ability to meet the QoS standard in future, including:
- Unforeseen further impacts from COVID-19 such as changes to demand associated with the scale of the economic impact and subsequent recovery, both of which are difficult to predict; and
  - Other unforeseen events that may arise during the 5 years of the WFTMR, such as CP behaviour or end-customer ordering patterns.

---

<sup>70</sup> For example, the move from noticing to permit based traffic management.

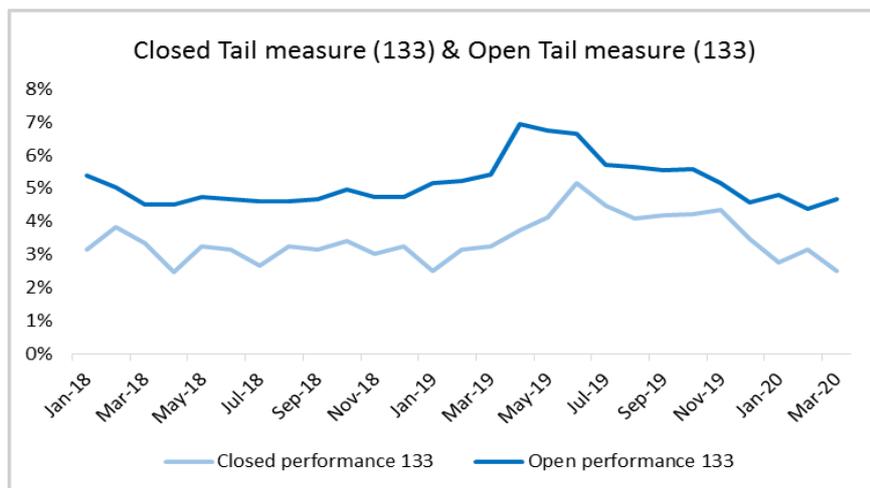
**Commonality of issues affecting the Upper Percentile QoS Standard whether based on open or closed order metrics**

154. As noted above, while we support moving away from the current QoS standard, it will be a bad outcome for all parties if Ofcom replace an existing standard that is not proportionate with another one that is also not proportionate.

155. To avoid this Ofcom needs to recognise that an open order based measure will be just as subject to some of the issues that afflict the closed order measure. In particular, an open order metric remains just as vulnerable to factors not within Openreach’s control such as wayleaves, traffic management and demand volatility.

156. As shown in Figure 18 below, there is a strong historical correlation between a closed tail measure and an open tail workstack measure. This indicates that both measures are affected by the common factors.

Figure 18 - Comparison of closed and open tail measures



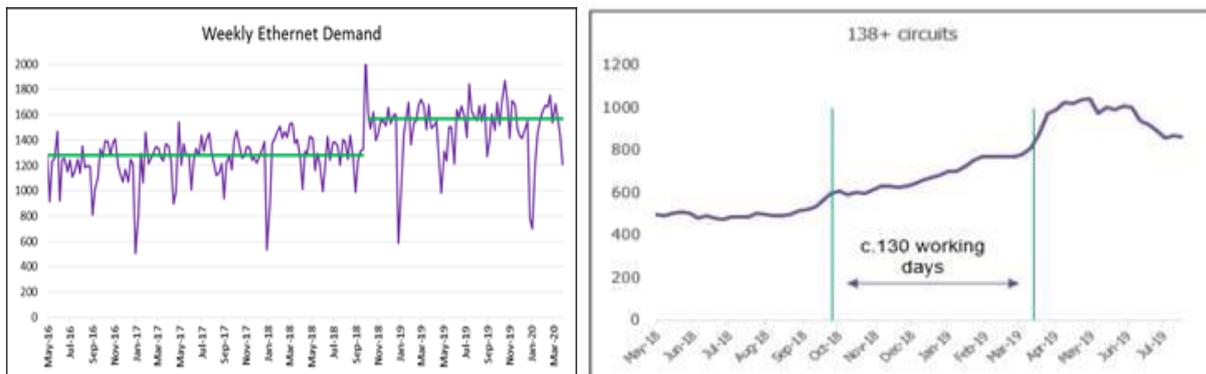
157. While the correlation between two measures indicates that an open tail workstack metric will perform in a similar way to a closed order metric (in that it will reflect Openreach’s performance in completing or reducing aged orders), it does also mean that an outside influence impacting one measure, such as volatile demand, is extremely likely to impact the other measure.

158. Given this, Ofcom needs to ensure that any new standard is not set at a level of unachievable stretch performance (as per the existing standard), but rather at a level which allows a reasonable level of contingency to deal with market variability outside of Openreach’s control.

159. Openreach has previously demonstrated ([§<]<sup>71</sup>) the impact of volatile industry demand on a tail measure. Openreach firmly believe that such impacts would also affect an open tails measure in the same way.

160. Ethernet demand, over time, has been shown to be volatile (as shown in Figure 19 below). It has also been shown that un-forecast demand spikes, such as that seen in September 2018, have a pronounced impact on the tail workstack. In the case shown below that was from February 2019 (i.e. c.130 working days later).

Figure 19 - Demand volatility and lag effect on tail circuits



161. While Openreach will continue to work with industry to try and improve demand forecasting, getting accurate forecasts – particularly at specific points in time or in specific geographies, both of which are highly relevant to delivery performance, is in practice difficult to do for all stakeholders involved.

162. It is therefore highly likely that some degree of demand volatility will continue to be a feature of the Ethernet market during the WFTMR period. Factors which are likely to impact Ethernet demand include:

- i. Continuation of 'BAU' challenges – for example, where CPs are not able to accurately forecast the profile of demand spikes in the short-medium term due to the inherent challenges posed in doing this.
- ii. Macro-economic factors in the UK due to the impact of COVID-19 which is likely to cause some businesses to fail in the future. The shape of the subsequent future economic recovery is also highly uncertain at this stage.
- iii. Changes in the regulated product set such as nationally available Physical Infrastructure Access ('PIA') and Dark Fibre Access ('DFA') in Area 3 which will cannibalise some of the existing Ethernet demand.

163. Ofcom should recognise the reality, which is that the challenges of getting accurate demand forecasts will, in all likelihood, persist in the period covered by the WFTMR and will continue to impact the service that Openreach provides. These effects will be particularly pronounced for the most complex circuits, and the

<sup>71</sup> [§<]

remedy that caters for them should take this into consideration. This is equally relevant to an open as a closed order based QoS standard.

### **Pending customer delay must be removed from the open metric**

164. It is imperative that an open order QoS standard seeks to reflect Openreach's 'true' underlying performance. To do this, pending customer delay needs to be removed from the measure as part of the compliance assessment.
165. Pending customer delay is where an order is currently in delay, but that time has not yet been removed from the order as the delay has not "finished." For example, if Openreach are waiting for a customer to confirm a suitable date for access to their premise then the order is placed into a status of 'pending' delay.
166. Failure to remove pending delay from the measure would mean that orders might be counted as tails, even though they would not be over 133 working days in age after all the customer delay had been removed. This would make the calculation inaccurate, and completely undermine the whole purpose of the measure – which simply would not work in consequence.
167. This would be particularly exacerbated during times of abnormally high customer delay – for example, during the first COVID-19 'lockdown' period in Q1/Q2 2020/21 where Openreach was unable to complete end to end work for a large number of circuits because it was not able to gain access to the end-customer site. This effect is clearly shown in Figure 20 below where there has been a significant increase in pending customer delay post March 2020. This change has nothing to do with deterioration in Openreach performance (which has actually been at good levels so far in 2020/21, despite COVID-19) – it was a consequence of COVID-19 and the delivery conditions presented.

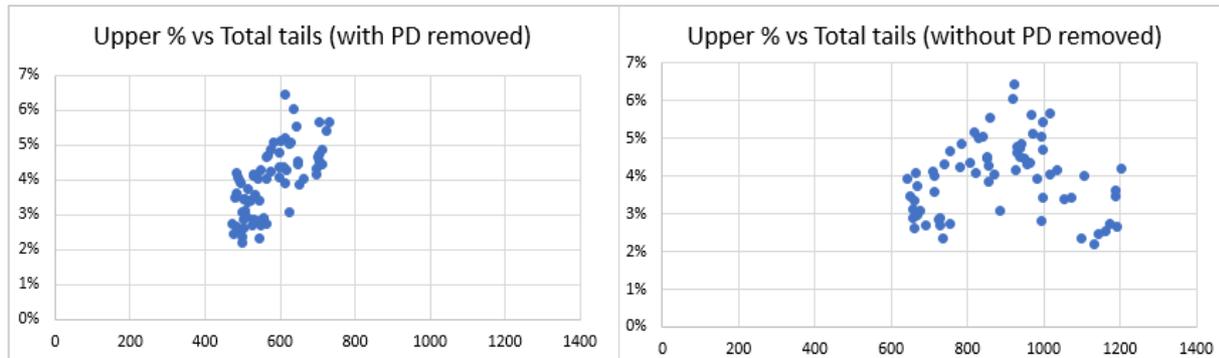
*Figure 20 - Open tails measure with and without pending delay removed*

[X]

168. Figure 20 also demonstrates the correlation between an open order measure with and without pending delay. Prior to the COVID-19 period the difference between the 2 measures was [X] varying [X] during COVID-19 this increased to a maximum (so far) of [X]. This is clearly shown in the divergence between the two lines since April 2020.
169. Another way of demonstrating the requirement for pending delay to be removed is to examine the relationship between the existing closed order Upper Percentile metrics, and the proposed open order metric with and without pending delay. This can be seen in Figure 21 below.
170. Figure 21 shows a scatter plot of the weekly performance of the open and closed measures. This allows us to determine if the metrics are broadly comparable to the existing closed-order upper percentile metric (i.e. that they drive the same type of operational behaviour), by seeing if they have a strongly correlated relationship. A strong relationship is illustrated if the scatter plot is more tightly compressed (which shows there is less residual variation). There is a much closer, and less variable, relationship between the current upper percentile closed order measure and the proposed open order measure when pending delay is

removed from the open workstack. This confirms that remove pending delay results is a more appropriate measurement methodology as it better reflects the desired outcome of completing tail orders.

Figure 21 - Relationship between Upper Percentile and proposed open order – with and without pending delay (PD)



### Reviewing Ofcom's proposed target for the open order QoS standard

171. From the data provided in Figure 7.1, paragraph 7.21 of the Ofcom further consultation, it can be seen that Openreach has not met the Upper Percentile QoS standard despite some changes to target levels over time. This includes periods when Openreach has been delivering good underlying levels of performance and where customer satisfaction has been strong. As noted, Openreach considers that this indicates that the target for the QoS standard has been set at incorrect levels.
172. As already noted, Openreach believes this is because Ofcom has tended to choose periods of best / extremely good performance, which was unaffected (or less affected) than other periods by customer demand and other relevant influences, to set the benchmark for future performance. Openreach then needs to exceed that benchmark in order to be confident of meeting the standard. This approach hasn't worked and needs to change.
173. Openreach acknowledges that it is important to use historical data to set appropriate targets, but it is imperative to do this using a sensible benchmark. This should not be based on 'best' performance, but on a period that included challenge (which is quite normal for this market, particularly in relation to the most complex circuits). The time period should also be long enough to be meaningful, but not from so long ago that operational delivery processes and behaviours could have changed so as to render the benchmark less relevant.
174. Target setting also needs to allow for changes in market dynamics (such as changes in customer demand), that will affect Openreach's ability to meet the standard. As noted, this is important given the particular susceptibility of the Upper Percentile standard to such influences. Openreach is concerned that the current approach being taken by Ofcom to set the target repeats some of the mistakes made in the past and could lead to the same outcome.

175. With these considerations in mind, Openreach proposes that, based on currently available information, using financial year 2019/20 would be a good period to baseline performance against, given that:

- It is a full 12-month period (April 2019 to March 2020);
- It contains some challenging conditions (in the form of demand volatility) which is 'typical' for the most complex circuits;
- The period was, for the most part, unaffected by the impacts from the COVID-19 pandemic (apart from a few weeks at the end of March 2020);
- It has been a period in which Openreach has delivered good (as opposed to the best) service, with very strong customer satisfaction evident. But nor was this a period of bad / sub-optimal performance.

176. In Table 2 below, Openreach sets out some of the relevant data points, with scenarios where pending customer delay is removed and isn't removed. In the table, we have provided the periods Ofcom discussed in the consultation, and we have added two further data points, covering calendar year 2019, and H1 of financial year 2019/20 as part of our evaluation. To note, just as Openreach does not consider it is right to base targets on the best levels of performance, nor is it right to pick targets based on the worst levels of performance.

Table 2 - Different periods and scenarios that could be used for target setting purposes

KPI (h)	Pending customer delay removed	Period	Notes
[X]	No	Jan 2018 - Aug 2020	Total data period
[X]	No	Jan 2018 - Mar 2020	Data period excluding COVID-19
[X]	No	Apr 2018 – Mar 2019	Data period of Ofcom proposal
[X]	No	Apr 2019 - Mar 2020	Data period FY 19-20
[X]	No	Jan 2019 - Dec 2019	Calendar Year 2019
[X]	No	Apr 2019 - Sep 2019	H1 FY 19-20
[X]	Yes	Jan 2018 - Aug 2020	Total data period
[X]	Yes	Jan 2018 - Mar 2020	Data period excluding COVID-19
[X]	Yes	Apr 2018 – Mar 2019	Data period of Ofcom proposal
[X]	Yes	Apr 2019 - Mar 2020	Data period FY 19-20. Recommended

[X]	Yes	Jan 2019 - Dec 2019	Calendar Year 2019
[X]	Yes	Apr 2019 - Sep 2019	H1 FY 19-20

177. The table shows a range of:

- i. [X] with pending customer delay not removed ([X]).
- ii. [X] with pending customer delay removed ([X]).

### **It is important that reasonable contingency is built into the QoS standard**

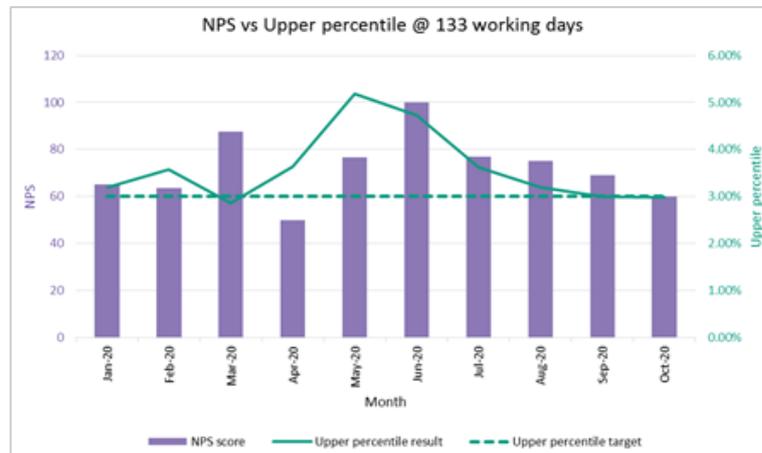
178. As noted above, Openreach agrees with Ofcom's observations about the susceptibility of the standard to market fluctuations, and the need to move away from a target that is routinely failed (see paragraphs 7.29 and 7.30 in the further Ofcom consultation).

179. Therefore, in addition to picking a sensible benchmark, as discussed above, any new standard should also include a reasonable level of contingency to deal with market variability, such as arising from factors such as wayleaves, traffic management, demand volatility and other impacts that may arise during the period covered by the WFTMR.

180. The target should be a 'back-stop' to ensure that good performance is maintained for the WFTMR period, but not set at 'stretch' target levels that will quickly become unachievable unless delivery conditions are optimal, which they typically aren't.

181. Customers perceive that they are already receiving a good level of service – and this is reflected within Openreach's Ethernet NPS scores. To apply a more stretching target, based on periods of best performance, would be inappropriate and create another QoS standard that is not proportionate. Figure 22 below shows that even when Openreach has been outside of the QoS standard target in 2020/21, NPS has been at very strong levels suggesting satisfied customers.

Figure 22 - NPS versus Upper Percentile performance



## Recommendation

182. If Ofcom elect for KPI (H) (i) to become a QoS standard in the WFTMR then as stated above Openreach strongly believe that pending customer delay must be removed from the measure calculation.
183. Openreach would recommend using average performance levels from April 2019 to March 2020 (3.93% - with pending delay removed) but this should include an additional and appropriate level of contingency to allow for all the factors detailed above.
184. Openreach would propose the QoS standard to be set at between **4.5% and 5% in more than 133 working days (excluding customer delay and pending customer delay)**. This would include up to around 1% contingency to recognise the particular problems associated with this standard, as discussed in detail above.
185. This level would ensure that the new standard is set as a good 'back-stop' to level maintain good performance, rather than set as a stretching standard that is routinely missed.

## Measure calculation

186. Under the BCMR 2019, the specification of KPI (H) (i) is made up of two main components: a) the open workstack and b) the volume of open tail orders. The calculation for KPI (H) (i) involves taking a 'snapshot' of the two main components on the last day of each month.
187. Taking a 'snapshot' at a single point of time is not an ideal statistical metric and could produce misleading results if a sharp change occurred to either of the two main components. One way to increase the consistency would be to increase the regularity of these snapshots by perhaps taking them weekly instead of monthly, thus creating 52 data points instead of 12. This would provide a more accurate trend.
188. The downside to adjusting this metric to capture weekly data is that it would need to be the same day every week, for example a Saturday, but not every Saturday will fall on the last day of each month.

189. In practice, the difference between a weekly snapshot and a monthly snapshot would see marginal changes to an annual result, but this is one issue of using an open metric, and a point which Ofcom need to consider for the overall measure calculation. Openreach would recommend using a monthly snapshot, potentially supplemented by a further end to end review at the end of the compliance period as the most administratively efficient way forward.
190. For the annual result calculation, irrespective of the number of data points throughout the year, it will be important to total-up the overall sum of each data point numerator and divide this into the overall sum of each data point of the denominator. This will be more accurate than simply taking an average of each data point.
191. Openreach confirm that the removal of pending delay from the measure calculation is possible. This could be done on a weekly or monthly basis (with monthly recommended above) and is something that is already calculated for internal Openreach operational reports. The removal of pending delay does have a limitation due to it being a snapshot at any given time, whereby not all pending delay converts into actual delay.
192. Openreach intends to be fully transparent in the measure calculation and would welcome further discussion with Ofcom on this point such that the assessment developed has the requisite transparency and rigour, with any limitations clearly understood.

## Updates to Key Performance Indicators

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

193. Openreach agrees with the proposed change to exclude customer delay from KPI (k), as Ofcom state in the consultation under section 8.7; KPI (k) and (l) are linked and measure the same element of the provisioning process and that this was a misalignment that should be rectified.
194. Separately, Openreach recommend that Ofcom make it clear in the legal instrument that only KPI (h) (i) is promoted to a QoS standard and that KPI (h) (ii) remains a KPI.
195. Openreach have no further comments on the remaining BCMR KPIs and agree that these will continue to promote a good quality of service.