



Quality of Service for WLR and MPF

Proposed Directions and Consents relating to the
minimum standards and KPIs imposed in the 2014 Fixed
Access Market Reviews

Non-confidential version

Consultation

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About this document

In the 2014 Fixed Access Market Reviews (FAMR), in order to address concerns of continued decline in Openreach's performance in provisioning and repairs, we imposed mandatory minimum quality of service (QoS) obligations on BT. Those minimum standards applied to the provisioning and repair of some of the wholesale products that communications providers (CPs) purchase from Openreach to offer broadband and telephony products to consumers and small businesses.

This document proposes a number of modifications to Openreach's existing obligations relating to the repair of certain wholesale broadband and telephony services. We consider that these changes are necessary to ensure that our current regulations continue to be effective in light of changes to the mix of wholesale products CPs purchase. The changes proposed are not intended to extend regulation, but simply to ensure that the current arrangements continue to address the same competition concerns identified in the FAMR.

We will consider potential changes to how we regulate the quality of Openreach's service delivery in the future later this year.

We are seeking the views of stakeholders on this consultation by 9 September 2016 and plan to issue a statement later that month.

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Section 1

Summary

- 1.1 We concluded our most recent reviews of the fixed access markets¹ in June 2014 (referred to as the “Fixed Access Market Reviews” or “FAMR”).² We determined, among other things, that there had been a gradual decline since 2009 in Openreach’s performance in the provision and repair of copper lines supporting voice and broadband services offered to consumers and small businesses and that this was a consequence of BT’s significant market power (SMP) in the relevant wholesale markets. Consequently, we imposed new SMP conditions on BT requiring it to meet defined minimum quality of service (QoS) standards for the provisioning and repair of the wholesale line rental (WLR) and metallic path facility (MPF) products.³
- 1.2 Communications Providers (CPs) offering retail telephony and broadband services can purchase WLR and MPF services from Openreach with different associated service maintenance levels (known as SMLs or care levels). These SMLs reflect the speed with which Openreach commits to repair faults in its contractual arrangements with wholesale customers.
- 1.3 The SMP conditions imposed by Ofcom for repair minimum standards currently apply to the SMLs which, as at publication of the 2014 FAMR statement, accounted for the majority of overall volumes for MPF and WLR, respectively.
- In the case of MPF, the minimum standard for 2016/17 requires Openreach to repair 77% of lines on time based on SML2 (i.e. a ‘one-day’ fix); and
 - In the case of WLR, the minimum standard for 2016/17 requires Openreach to repair 77% of lines on time based on SML1 (i.e. a ‘two-day’ fix).
- 1.4 We have been informed that some CPs have now decided to change the SMLs at which they rent WLR or MPF from Openreach. In practical terms this will result in the majority of MPF lines moving from SML2 to SML1 and the majority of WLR lines moving from SML1 to SML2. The effect of these changes, if they are followed through, is that a large proportion of total WLR and MPF lines purchased by CPs will fall outside of the on-time repair minimum standards, thereby reducing the effectiveness of our current regulation.
- 1.5 In order to address this issue, we are proposing to use our direction making powers under the relevant FAMR SMP conditions to extend the scope of the current repair minimum standards to cover WLR at SML2 and MPF at SML1. We are proposing a 12-month compliance year commencing in October 2016 for the new standards. The

¹ The supply of copper loop-based, cable-based and fibre-based wholesale local access at a fixed location; wholesale fixed analogue exchange line services; wholesale ISDN30 exchange line services; wholesale ISDN2 exchange line services; and retail ISDN2 exchange line services.

² Ofcom, FAMR, 26 June 2014, Volume 1: Statement on the markets, market power determinations and remedies: <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixed-access-market-reviews-2014/statement-june-2014/volume1.pdf>

³ The on-time repair minimum standards currently only apply to WLR at SML1 (fault clear by 23.59 day after next, Monday to Friday, excluding public and bank holidays) and to MPF at SL2 (fault clear by 23.59 next day, Monday to Saturday, excluding public and bank holidays): https://www.openreach.co.uk/orpg/home/products/serviceproducts/serviceharmonisation/serviceharmonisation/downloads/SML_fact_sheet_web_vers_phme_61163_2011_09.pdf

current minimum standards are on a 12-month compliance year running April to March.

- 1.6 We have engaged with Openreach on this approach and they have noted operational concerns with a minimum standard starting in October rather than April. They have proposed an alternative based on a modified target for the remainder of 2016/17 with subsequent compliance years running from April. We have set out this alternative approach but we do not consider that the derivation of the revised target is sufficiently robust and accordingly do not consider it is an adequate alternative to our proposal.
- 1.7 In addition, we are proposing to update the associated KPI reporting requirements on BT to ensure that we are able to undertake effective monitoring activity consistent with the proposed minimum standards. In order to avoid duplication of regulation, we are also proposing to grant BT a consent under FAMR conditions 12.1A and 12.1B to dis-apply the current repair minimum standards for WLR SML1 and MPF SML2. QoS for these services will be adequately captured by the new standards set out in our proposed directions.
- 1.8 Further, the provision and repair minimum standards applied an increasing 'glide path' to the minimum standards over the three-year, forward-look period of the 2014 FAMR. They are set to expire on 31 March 2017. As there is a risk of a delay in our finalisation of the next market reviews of supporting regulation for these products (the Narrowband and Wholesale Local Access (WLA) market reviews) we are proposing to use our direction making power under FAMR condition 12.4 to extend all of the minimum standards such that they continue to apply at the same level until replaced or removed by Ofcom. We are currently reviewing QoS regulation as part of our forward-looking programme of market reviews.
- 1.9 To ensure that appropriate minimum standards are in place at the earliest opportunity, we are setting a closing date for responses to this consultation of 9 September 2016.

Section 2

Background

- 2.1 In the 2014 FAMR, Ofcom undertook a review of matters relating to QoS delivered by BT (through Openreach) in the supply of regulated wholesale fixed access services. We determined that over many years (from 2009) there had been a gradual decline in Openreach's performance, in particular related to fault repairs and provisions for the core WLR and MPF services. We also concluded that the prevailing regulatory and contractual framework had not been sufficient to prevent material detriment to downstream competition in the fixed access markets arising out of BT's SMP.
- 2.2 As a result, we took a number of steps to incentivise better quality outcomes. In particular, we imposed a number of new SMP obligations on BT, including minimum service quality standards covering provisioning and repair. When assessing the case for, the level of, and the scope of the minimum standards, we were mindful of the potential for distorting behaviours and of the need to be cautious in introducing this new kind of SMP regulation. Our analysis highlighted particular areas of concern with the provisioning of new lines and fault repair of the copper-based access services, specifically for WLR and MPF. These were (and remain) the highest volume services and, therefore, have the greatest impact on competition and on the engineering resource levels maintained by Openreach.
- 2.3 The provision and repair minimum standards imposed applied an increasing 'glide path' to the minimum standards over the three-year, forward-look period of the 2014 FAMR as illustrated in Table 1.

Table 1: Openreach minimum service quality standards for WLR and MPF products⁴

Minimum standard	First Year	Second Year	Final Year
12-day provision appointment availability	54%	67%	79%
Provision appointment completion by appointment date	89%	89%	89%
Repair completion within SLA timescales	67%	72%	77%

Source: Ofcom

- 2.4 Our monitoring of Openreach's performance shows that it has met the three minimum standards for the first two years of the review period. In particular, the percentages of WLR and MPF repairs completed within service level agreement (SLA) timescales⁵ have improved compared to the low levels identified during the FAMR, thereby demonstrating the importance of our regulatory intervention in this area and of the minimum standards especially.

⁴ Exclusive of any allowances for force majeure or "MBORC" events.

⁵ I.e. repairs completed 'on time'.

- 2.5 In the final year of the market review period (April 2016 to March 2017) BT (via Openreach) is required to:
- Offer an appointment for 79% (80% minus a fixed 1% local MBORC⁶ allowance) of new installations requiring an engineer visit within 12 working days;
 - Complete 89% (90% minus a fixed 1% local MBORC allowance) of new installations on the date agreed with the customer (the contract delivery date: CDD); and
 - Repair 77% (80% minus a fixed 3% local MBORC allowance) of faults on time (i.e. according to the relevant care level⁷).
- 2.6 Openreach must achieve these annual standards in each of its 10 geographic regions.⁸ Two of those regions may make use of what are referred to as ‘High Level MBORC’ declarations within the performance calculations.⁹ A failure to comply with the standards would represent a breach of the SMP conditions and may result in sanctions being imposed on BT, including fines.

Subsequent changes in service levels for WLR and MPF

- 2.7 At the time of the 2014 FAMR, the majority of WLR lines provided by Openreach were associated with an SML1 SLA (a ‘two-day’ repair), while the majority of MPF lines were provided at SML2 (a ‘one-day’ repair). We determined that these were the product/care level combinations about which there were particular QoS concerns and, consequently, applied the repair minimum standards to them.
- 2.8 We have been informed that certain retail CPs have now made decisions to amend their rental purchases of WLR and MPF services from Openreach. [X] have decided to transfer their purchases of MPF services at SML2 down to MPF at SML1.¹⁰ [X] has decided to switch its purchases of WLR from SML1 to SML2.¹¹
- 2.9 These decisions will mean that a large number of UK consumers will have their services migrated automatically to either a higher or a lower SML. [X] WLR lines [X] will be moving to a higher care level, while [X] MPF lines [X] are currently moving down a care level. In practical terms this should have no impact on the day-to-day operation of consumers’ broadband and telephone services.

⁶ “Matters Beyond Our (Openreach’s) Reasonable Control” means a force majeure event under the relevant Access Agreement, the occurrence of which releases Openreach from the liability to make any payment under the corresponding Service Level Guarantee (SLG).

⁷ The relevant care levels are SML1 for WLR and SML2 for MPF.

⁸ These 10 regions include Openreach’s nine General Manager (GM) areas plus Northern Ireland.

⁹ High Level MBORCs are typically force majeure events of significant magnitude for which no preparation by Openreach would be sufficient. For example, instances where over 2,000 lines or end-users are affected, incidents which are/are likely to become the subject of regional or national media interest, and anything likely to have a significant impact on the BT and/or Openreach brand.

¹⁰ At the time of the last FAMR, MPF at SML1 was not available from Openreach. [X]. MPF at SML1 is provided at a standard rental charge of £85.29 per annum (excluding VAT) – i.e. a discount of £2.36 per line, per annum compared to MPF SML2. See Local Loop Unbundling Pricing: <https://www.openreach.co.uk/orpg/home/products/pricing/loadPricingNotifications.do>

¹¹ There was also no indication at that the time of the FAMR that [X] was likely to change its demand for service of WLR.

- 2.10 As shown by the tables below, these SML movements will result in a much lower volume of total WLR lines and a much higher volume of total MPF lines being provided at the ‘two-day’ care level.

Table 2: WLR and MPF lines by care level (correct as of 26 February 2016)¹²

	SML1	SML2
WLR	[redacted]	[redacted]
MPF	[redacted]	[redacted]

Source: Openreach

Table 3: Expected WLR and MPF lines by care level (post CP migration, 31 August 2016)

	SML1	SML2	Change between SMLs
WLR	[redacted]	[redacted]	[redacted]
MPF	[redacted]	[redacted]	[redacted]

Source: Openreach

- 2.11 These movements mean that the 2014 FAMR minimum standards for fault repair will no longer apply to the bulk of the WLR and MPF lines. If we were to take no action at this stage Openreach would no longer be held to the minimum standards for fault repair for the vast majority of its WLR and MPF lines. Further, the much lower volumes of lines which would remain subject to a minimum repair standard will make it more difficult for Ofcom to assess whether success or failure against the minimum standards is an accurate reflection of Openreach’s overall performance. Absent active steps now to plug the resulting gap in our SMP regulation, we consider that there is a material risk of a negative effect on service quality provided by Openreach, the degree of competition between CPs, and the consumer experience as a whole.
- 2.12 Consequently, we are proposing to use our direction making power under section 49 of the Communications Act 2003 and FAMR condition 12.4 to ensure that appropriately targeted minimum standards will continue to apply in these important markets. Our proposals have the effect of replacing the previous focus on ‘on time repair’ of WLR to SML1 and MPF to SML2 with a set of minimum standards applying to all lines (WLR and/or MPF) on a given service level. This will address the changes we are observing now, including the risk of standards being applied to a very low volume of lines, and will also have the benefit of future-proofing our QoS regulation in the event of future shifts between care levels.
- 2.13 In addition, as more particularly set out in Section 3, we are proposing to use our regulatory powers to issue directions and consents under the SMP Conditions to do the following:

¹² [redacted].

- Update the key performance indicator (KPI) reporting requirements to require BT to report additional KPIs for MPF at SML1 and to extend the deadline for the reporting of KPIs relating to the volumes of installations and repairs impacted by MBORCs;
- Consent to the dis-application of the existing final year minimum standards for WLR and MPF, on the basis that these will no longer be necessary; and
- Extend the provision and repair minimum standards to ensure that these important regulatory safeguards remain in force until the next round of Narrowband and WLA market reviews are completed.

Future quality of service regulation

- 2.14 The proposals within this consultation are intended to be protective measures designed to ensure that our current QoS regulation continues to apply to the majority of WLR and MPF lines as originally intended in the 2014 FAMR. Therefore, we do not consider that it would be appropriate to propose an increase in the level of the minimum standards; it is our view that the minimum standards, which are based on the assessment we carried out in the 2014 FAMR and which we explicitly linked to the level of funding we considered necessary for Openreach during the April 2014-March 2017 period to achieve these, should be held at the same level as the existing standards for WLR SML1 and MPF SML2.
- 2.15 We will consider the future structure and level of minimum standards the extension of standards to other Openreach products, such as SMPF, FTTC, and/or FTTP¹³ in the context of our forthcoming WLA market review consultation.
- 2.16 The following section of this document sets out in more detail our proposals and related considerations. The draft text of the Directions and Consents can be found at Annex 4.

Impact assessment

- 2.17 The analysis presented in this consultation constitutes an impact assessment, as defined in section 7 of the Act. Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which sets out that we have to carry out impact assessments where the remedies we impose would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy, Ofcom is committed to carrying out impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, please see our guidelines.¹⁴

Equality impact assessment (EIA)

- 2.18 Ofcom is required by statute to assess the potential impact of all our functions, policies, projects, and practices on race, disability, and gender equality. EIAs also assist us in making sure that we are meeting our principle duty of furthering the

¹³ SMPF: Shared metallic path facility, FTTC: Fibre to the cabinet, FTTP: Fibre to the premise.

¹⁴ Ofcom, Better policy making: Ofcom's approach to impact assessment, 21 July 2005: http://stakeholders.ofcom.org.uk/binaries/consultations/ia_guidelines/summary/condoc.pdf

interests of citizens and consumers regardless of their background or identity. An EIA has already been undertaken in relation to our QoS regulation. This can be found at Annex 2 of the 2014 FAMR Statement.¹⁵

- 2.19 In summary, it is not apparent to us that the outcome of our consultation is likely to have any particular impact on race, disability and gender equality. Specifically, we do not envisage the impact of any outcome to be to the detriment of any group of society. Nor do we consider it necessary to carry out separate EIAs in relation to race or gender equality or equality schemes under the Northern Ireland and Disability Equality Schemes.

¹⁵ <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixed-access-market-reviews-2014/statement-june-2014/annexes.pdf>

Section 3

Proposals for the minimum standards

3.1 Our proposals to take effect from 1 October 2016¹⁶ are four-fold:

- a) To use our direction making power under section 49 of the 2003 Act and FAMR condition 12.4 to extend the range of the minimum standard obligations for on-time fault repairs imposed through the 2014 FAMR¹⁷ to ensure that all WLR and MPF lines at SML1 and SML2 are subject to the QoS obligations. Our proposal is to structure the standards so that compliance is measured across service maintenance level rather than product.

This will be implemented by adding new minimum standards to the WLA market which have the effect of requiring delivery of repairs at a given line's SML for both WLR and MPF. The standards will relate to the delivery of repairs at the relevant SML across both WLR and MPF;

- b) To consent, under section 49 of the 2003 Act and FAMR conditions 12.1A and 12.1B, to BT no longer applying the existing minimum standards for on-time repairs on MPF SML2 and WLR SML1. This is to ensure that there is no unnecessary duplication of regulation;
- c) To use our direction making power under section 49 of the 2003 Act and FAMR condition 11:
 - to modify the KPI reporting requirements for BT to ensure that we can effectively monitor repair performance with respect to MPF at SML1.
 - to change the reporting requirements for BT for KPIs relating to the volumes of installations and repairs impacted by MBORC declarations to allow for an additional month for provision of that KPI data; and
- d) To use our direction making power under section 49 of the 2003 Act and FAMR condition 12.4 to ensure that all of the provision and repair minimum standards remain in force until the publication of the next relevant market review statement.

3.2 Our proposals, if effected, would establish new minimum standards for the on-time repair for Openreach access lines delivered via the WLR and MPF products based on the service maintenance level rather than on an individual product and service level as present. That is, rather than the minimum standard applying to WLR SML1, it will apply to all WLR and MPF lines at SML1 and similarly there will be a standard applying to all WLR and MPF lines at SML2. We are proposing that we retain the current standard of 77% delivered to the contracted target.

3.3 Our proposed approach for measuring adherence to these standards is to commence a new compliance period running from October 2016 to September 2017.

¹⁶ This is contingent on timely stakeholder responses to the consultation as well as timely finalisation of the statement by Ofcom.

¹⁷ Ofcom, FAMR, 26 June 2014, Annex 29: Legal Instrument, Condition 12: Minimum standards for quality of service, page 148: http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixd-access-market-reviews-2014/statement-june-2014/Annex_29.pdf

- 3.4 However, Openreach is concerned about the impact of having some minimum standards operating on different timeframes from others (i.e. provisioning standards which operate from April to March). Openreach's alternative proposal for compliance measurement involves a new October 2016 to March 2017 minimum standard (either at the national or regional level) is derived for 2016/17 taking into account performance in the first part of this financial year. While we describe this in more detail below, for the reasons set out, we are concerned about the robustness of the derivation of the sub-year target and do not consider that we can support such an approach.
- 3.5 In this section, we set out the considerations we have made in coming to the above proposals. Our analysis is based on information obtained from Openreach and customers of Openreach who have signalled they are intending to change SMLs.¹⁸

Broadening the scope of the repair minimum standards

- 3.6 As noted earlier in this consultation, the on-time repair minimum standards currently relate only to WLR at SML1 and MPF at SML2.¹⁹ The result of the CPs' decisions is that a large proportion of consumers' lines will sit outside the reach of our minimum standard obligations, thereby reducing their effectiveness. Specifically, the number of WLR SML1 lines will fall by [§<] over the course of a number of months, while the number of MPF SML2 lines will fall by [§<].
- 3.7 Openreach would, therefore, not face the same requirements for on-time fault repair for the existing product/care level combinations. Also, given the lower volumes of lines which would remain subject to a standard it would become more challenging for Openreach to deliver to the minimum standards in each of its 10 geographic regions and would call into question the reasonableness of those standards.
- 3.8 The new balance of products at SML1 and SML2 makes it more difficult to set minimum standards on the basis of a product and service level combination as some of these combination now contain relatively few active lines compared to the number of lines used in the FAMR 2014 analysis of performance. Accordingly, we would be concerned that our confidence in setting targets for each region on the same basis as we did in the FAMR 2014 statement would be weak.
- 3.9 We also note that there remains the potential for further bulk movements between product service levels.
- 3.10 Accordingly, we consider that a more robust and future-proof approach would be to set the minimum standard on all products at a minimum service level rather than the product/SML pair. This will ensure that the number of lines are of sufficient volume that our assessment of a reasonable target remains valid and that potential future movements between SMLs by customers of Openreach do not give rise to a problem.
- 3.11 We have considered how this new target can be constructed and consider that we can impose minimum standards under the WLA market alone that can have the effect of binding performance for all products

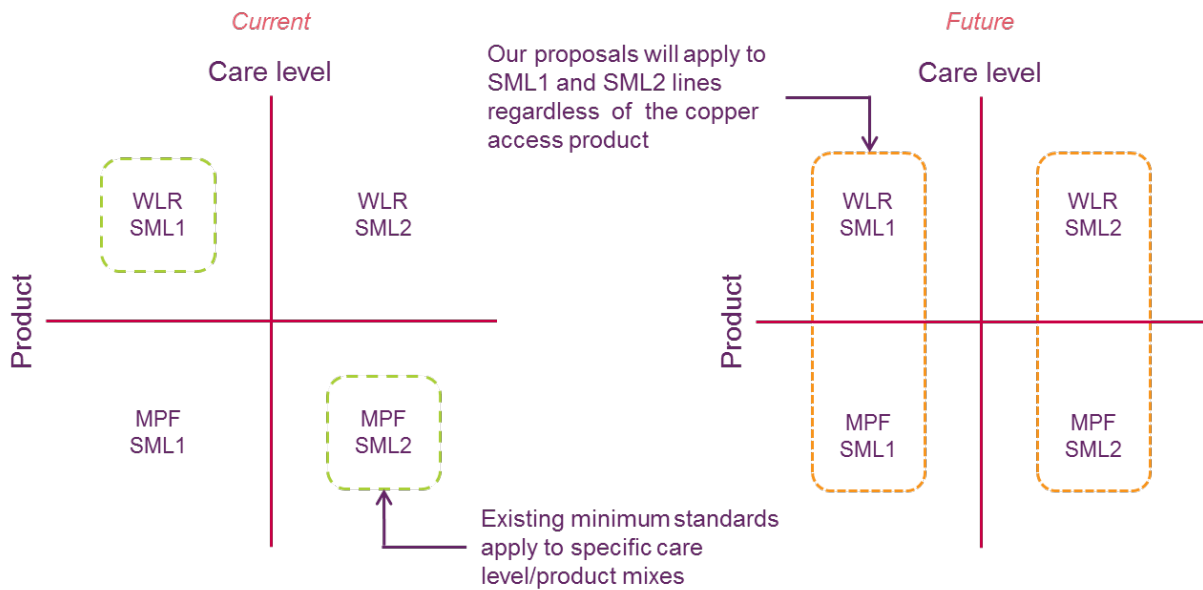
¹⁸ [§<].

¹⁹ These were the combinations of product and service level that accounted for the majority of lines during the 2014 FAMR.

- 3.12 We are therefore proposing to impose, by way of direction, the following minimum standards under the WLA market for each of Openreach's nine GM regions and Northern Ireland:
- For MPF SML1 lines Openreach must ensure that sufficient repairs are completed by the end of the second working day after the fault is reported to it such that the following formula is satisfied: The percentage of repairs completed by the end of the second Working Day after such Faults have been placed on the Equivalence Management Platform for MPF lines at Service Maintenance Level 1 and WLR lines at Service Maintenance Level 1 is greater than or equal to 77%.
 - We consider it is only necessary to impose this obligation in the WLA market to ensure the outcome for both WLR and MPF lines. We note that while this requirement is imposed directly on MPF, in order to meet its obligations, Openreach will have to adhere to this standard in respect of WLR lines at SML1.
 - For MPF SML2 lines Openreach must ensure that sufficient repairs are completed by the end of the next Level 2 Working Day²⁰ after the fault is reported to it such that the following formula is satisfied: The percentage of repairs completed by the end of the next Level 2 Working Day after such Faults have been placed on the Equivalence Management Platform for MPF lines at Service Maintenance Level 2 and WLR lines at Service Maintenance Level 2 is greater than or equal to 77%.
 - Similarly, we note that this requirement will also impact WLR lines at SML2.
- 3.13 We are aware that imposing a standard on repairs on all WLR and MPF lines to a given SML does not guarantee that the repairs to a given product meet the standard and that there would be some scope for discrimination by Openreach between the products. However, we consider that we have adequate non-discrimination measures in place to address any systematic discrimination, that the structure of Openreach's service structure does not readily lend itself to such discrimination, and that we have an active service monitoring programme (including monthly service KPIs) which would quickly identify such discrimination if it arose.
- 3.14 Compliance with the existing standards is based on a 12-month average, which was designed with a view to factoring in the potential for seasonal challenges to Openreach's operational activities. Accordingly, we propose to continue to measure compliance over a 12-month period on an on-going basis (see Openreach proposals for 2016/17).

²⁰ "Level 2 Working Day" means any day other than Sundays, public holidays, or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

Figure 1: Proposal for the WLR and MPF on-time repair minimum standards



Source: *Ofcom*

- 3.15 We note that extending the scope of the standards to cover all WLR and MPF lines at SML1 and SML2 will bring [3<] additional WLR lines under our QoS regulation. WLR SML2 on-time repair performance since August 2014 has typically been lower than SML1 and often below the backstop level.²¹ Hence, transposing the current minimum standards across to WLR SML2 will require Openreach to make some performance improvements for those lines. Nevertheless, we consider that setting the levels of minimum standards for one care level differently to another could create unwelcome distortions.
- 3.16 We therefore consider that subjecting these additional lines to minimum standard regulation will not result in a significant increase in costs to Openreach and, in any event, our proposals are the minimum necessary to ensure that the network access remedies imposed in the 2014 FAMR remain effective and that the majority of consumer and small business lines remain covered by the standards, and are consistent with our QoS policy aims.

Changing the scope of minimum standards should have no significant impact on Openreach’s revenue

- 3.17 As part of the assessment of the impact of our proposals we have considered the effects the aforementioned movements would have on Openreach’s revenue. Our analysis of Openreach’s income from WLR and MPF rental based on the volumes of lines in Tables 1 and 2 indicates an expected small decrease from [3<] to [3<] per annum (excluding VAT).

²¹ Repair within SLA performance for WLR SML2 was, on average, [3<] in 2015/16. The average for the first two months of 2016/17 was [3<].

- 3.18 Our calculations of the pre-migration and post-migration revenues are based on the current year MPF SML1 and SML2 rental charges²² and WLR SML1 and SML2 rental charges.^{23,24}
- 3.19 Table 1 sets out a full-year equivalent revenue based on pre-migration volumes and Table 2 sets out a full-year equivalent revenue based on the post-migration volume distribution.

Table 1: Openreach pre-migration revenue from WLR and MPF rental under the existing minimum standards

	SML	Volume of lines	Annual rental price	Annual revenue	Total annual revenue
WLR	1	[X]	£86.72	[X]	[X]
	2	[X]	£93.04	[X]	
MPF	1	[X]	£85.29	[X]	[X]
	2	[X]	£87.65	[X]	

Source: Openreach and Openreach price lists

Table 2: Openreach post-migration revenue from WLR and MPF rental under our proposed regime

	SML	Volume of lines	Annual rental price	Annual revenue	Total annual revenue
WLR	1	[X]	£86.72	[X]	[X]
	2	[X]	£93.04	[X]	
MPF	1	[X]	£85.29	[X]	[X]
	2	[X]	£87.65	[X]	

Source: Openreach and Openreach price lists

²² Openreach, Price list, LLU Pricing, Full MPF, Rental Charges:
<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8zj9r0QWsRm3Qpmu5FcPTOYIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D>

²³ Openreach, Price list, WLR Pricing, Line Rental Prices, Basic Line Rental:
<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=%2BBrBpMW3XM9acnyJyysVXIUueE80IBTIV7sFIBygiOy9UNeIS4WkJBRh6z%2FRUAlt8maxtgrEro1A7w5V8nzAZpQ%3D%3D>

²⁴ Openreach, Price list, Service Product Pricing, Repair Service Levels, Rental Product Options:
<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=to6u3F12FmH4GL92i3NosR9iCKrrD%2FZpzK1a%2FvJOccNZ6rNZujnCs99NbiKJZPD9hXYmiiixH6wrCQm97GZMyQ%3D%3D>

- 3.20 The above calculations show that the CPs' decisions result in a marginal decrease in annual revenue to Openreach of [3<]. While this shortfall may be further increased by the greater demands of supporting WLR at SML2²⁵ given Openreach currently enjoys pricing flexibility to enable it to increase its charges for WLR SML2 (subject to its other regulatory obligations) we do not consider that our proposed imposition of new repair minimum standards will impose a material financial burden on BT.
- 3.21 As such, it is our preliminary view that Openreach would be sufficiently funded to adhere to the proposed repair minimum standards. We would also note that, as neither MPF SML1 nor WLR SML2 has a charge control applied to it, Openreach would have scope to vary the charge should a funding shortfall arise (subject to compliance with its other regulatory obligations).

Consultation question 1: Do you agree with Ofcom's proposals set out above to amend the minimum service standards imposed through the 2014 FAMR? If not, please set out your reasons.

Measuring compliance against the minimum standards

- 3.22 Until now Openreach's performance against the FAMR minimum standards has been measured on a financial year basis, for example April 2015 to March 2016. However, given that the majority of these migrations between SMLs will take place over the summer of 2016, it is not possible to measure compliance against the proposed new minimum standards on a financial year basis for April 2016 to March 2017 as part of the period has already elapsed and the new minimum standards (which are broader in scope) would therefore be partly retrospective.
- 3.23 We therefore propose that the new period over which the repair minimum standards will apply is from October 2016 to September 2017 (and subsequent 12-month periods). We appreciate that this will mean that such standards will be out of step with the provisioning minimum standards (which will continue to apply April-March) and are also alive to the potential for our proposal to impose an additional planning burden on Openreach given its operations are currently structured on a financial year basis.
- 3.24 BT has a concern that there is too great a level of management burden in operating minimum standards with different compliance periods and a morale concern over starting a minimum standard in the most demanding service period of the year (i.e. autumn/winter). Consequently, Openreach has proposed an alternative approach to performance measurement under which it would be held to new standards measured across care level for the remainder of the year (October 2016 to March 2017).²⁶ Subsequent annual compliance would be calculated using an average of performance across 12 months.
- 3.25 In determining the new SML1 and SML2 standards for the second half of 2016/17, Openreach has proposed that we factor in performance already achieved up to two specific dates for each of MPF and WLR in order to take account of CP migrations between care levels. For WLR, Openreach has proposed 1 July 2016 given that

²⁵ We note that WLR lines typically exhibit a more rural distribution than MPF lines, such that delivering repairs to the higher service level may be relatively more challenging.

²⁶ WLR lines at SML1 for April 2016 to September 2016 would be mapped across to WLR and MPF lines at SML1 for October 2016 to March 2017 in order to create 12-month compliance period. MPF lines at SML2 would be mapped across to WLR and MPF at SML2.

migration between WLR care levels by [3<] was completed very shortly after this date. For MPF, BT has proposed 24 June 2016 as this is the mid-point of the ongoing MPF migrations. For the purposes of illustration we refer to these periods as 'Period A'.

- 3.26 Under this approach, recent performance under the existing repair minimum standards (i.e. performance during Period A) would be taken into account when setting the levels of the standards that need to be achieved over the October 2016 to March 2017 period ('Period B'). The objective is to ensure that by the end of the compliance year, had the existing standards not changed, BT must resolve at least 77% of faults within SLA for each of SML1 and SML2.
- 3.27 In assessing the target compliance level for Period B, BT has suggested that we construct this based on achievement in Period A. This means that to the extent that BT has overachieved in Period A, we would set a minimum standard for Period B at 77% minus the level achieved in Period A such that the overall average over the two periods is 77%.
- 3.28 However, as performance delivered between July and September 2016 has been significantly distorted by the migration of services between care levels at that time these months are excluded from Period A which is therefore the performance from April to June.
- 3.29 We have considered two options as to how the minimum service standard levels for Period B could be calculated. We could either derive a pair of standards for SML1 and SML2 based on the national average performance, which would then be applied to all regions equally, or we could calculate individual standards for each SML for each region. The alternative obligations Openreach has proposed are set out in the following tables.

Table 3: Openreach's proposals for the SML1 and SML2 minimum standards (UK level)

	Performance up to w/e 1 July 2016	Over-delivery against current minimum standard	Interim minimum standard for SML1
WLR SML1	82.9%	5.9%	71.1%
	Performance up to w/e 24 June 2016	Over-delivery against current minimum standard	Interim minimum standard for SML2
MPF SML2	81.1%	4.1%	73%

Source: Openreach

Table 4: Openreach proposals for the SML1 minimum standards (regional level)

Region	WLR SML1 performance up to w/e 1 July 2016	Over-delivery against current minimum standard	Interim minimum standard for SML1
North East	82.4%	5.4%	72%
North Wales & North Midlands	81.5%	4.5%	73%
North West	82.7%	5.7%	71%
Scotland	83.2%	6.2%	71%
East Anglia	79.9%	2.9%	74%
London	86.0%	9.0%	68%
South East	82.6%	5.6%	71%
South Wales & South Midlands	84.9%	7.9%	69%
Wessex	83.8%	6.8%	70%
Northern Ireland	84.4%	7.4%	70%

Source: Openreach

Table 5: Openreach proposals for the SML2 minimum standards (regional level)

Region	MPF SML2 performance up to w/e 24 June 2016	Over-delivery against current minimum standard	Interim minimum standard for SML2
North East	81.3%	4.3%	73%
North Wales & North Midlands	80.2%	3.2%	74%
North West	79.3%	2.3%	75%
Scotland	82.9%	5.9%	71%
East Anglia	78.6%	1.6%	75%
London	81.4%	4.4%	73%
South East	80.1%	3.1%	74%
South Wales & South Midlands	83.3%	6.3%	71%
Wessex	82.6%	5.6%	71%
Northern Ireland	84.6%	7.6%	69%

Source: Openreach

- 3.30 This approach maintains alignment of the repair and provisioning minimum standards and, according to Openreach, creates a balance in the positive and negative impacts of the CPs' migrations, and addresses the potential for reduced Openreach employee morale in the event of a compliance year beginning under challenging circumstances, such as adverse weather conditions.
- 3.31 As we can see, the proposed minimum standards for SML1 and SML2 in Period B may appear relatively low compared to the 77% yearly standard. This is not unexpected given the greater challenge of the Autumn/Winter period. However, we note that they are also low compared to actual performance for WLR at SML1 and MPF SML2 between October 2014 and March 2015 and between October 2015 and March 2016 were 74.64% and 75.68%, respectively.
- 3.32 While we consider our proposal and Openreach's proposal to be broadly equivalent, we consider that the latter presents difficulties in terms of the robustness of the compliance calculations. The proposed targets are not truly equivalent to the annual 77% standards as we cannot adequately weight the volume of faults in Period A in the calculation and the exclusion of the transition period (July-Sept) further distorts the results.
- 3.33 Accordingly, we do not consider that we can propose a minimum standard on this basis. We appreciate the concerns Openreach has but we do not consider that they are sufficient to justify the setting of a targets on this basis. That said, Openreach is free to continue to publicise its performance on a financial year basis and we will of course take account of the management challenges in any compliance assessment.

Consultation question 2: Do you agree with Ofcom's proposal for measuring compliance against the minimum standards set out above and on the Directions set out in Annex 5? If not, please set out your reasons.

Consent to dis-apply the existing repair minimum standards for 2016/17

- 3.34 In order that our regulation continues to encompass the majority of WLR and MPF lines, the proposals set out above will extend the range of our minimum standards, at their current levels, for on-time fault repairs such that they apply to both the WLR and MPF products at both SML1 and SML2.
- 3.35 Simply adding a new set of minimum standards would lead to an overlap in the compliance obligations between the existing and new repair minimum standards. While this is likely to be manageable on BT's part, we do not consider it is desirable to maintain duplication of regulation where it can be avoided.
- 3.36 Subject to our proposals to impose the directions described above, we are therefore proposing to consent to BT not applying the existing repair minimum standards for the year 2016/17.
- 3.37 We are conscious that this consultation effectively signals that Openreach will not be held to the existing standards for a full 2016/17 compliance year. Hence, there is the risk that Openreach is not incentivised to provide strong service delivery against its current minimum standard obligations in the period until our proposed new obligations take effect. However, Openreach remains under an obligation to meet these standards until such time as Ofcom consents otherwise. While at the moment it

would appear that Openreach is on track to meet its 2016/17 repair minimum standard obligations were they to be continued,²⁷ in the event we consider that Openreach's performance has deteriorated significantly, we may reconsider giving this consent.

Consultation question 3: Do you agree with Ofcom's proposal to consent to dis-apply the existing repair minimum standards for 2016/17? If not, please set out your reasons.

KPI reporting obligations

Extending KPI reporting obligations to MPF SML1

- 3.38 In the 2014 FAMR we imposed a set of KPI reporting obligations on BT to ensure that we can monitor Openreach's performance and respond if necessary to any trends. The KPIs imposed in the 2014 FAMR did not require Openreach to report KPIs relating to repair performance of MPF at SML1, not least because this product was not commercially available until November 2015. For example, Openreach currently does not have to report KPIs on the 'average time to restore service' or the 'percentage of faults restored on time' for MPF services subject to SML1.
- 3.39 Without these monthly KPIs we will be unable to effectively monitor Openreach's performance with respect to MPF SML1 on-time fault resolution, fault completions, or late repairs which fall into the 'tail' of orders beyond SLA. We are concerned that the inability to fully monitor Openreach could result in a decline in its performance against certain KPIs while also giving rise to the risk of discrimination as it is the competitors of BT's retail division who are the primary consumers of MPF. We therefore consider it appropriate that Openreach begins to report these KPIs in future and note that this makes the reporting requirements for MPF consistent with those in place for WLR.
- 3.40 This data should be provided in the same format and on the same date each month as the current suite of KPIs imposed via the 2014 FAMR statement. The deadline for receipt by Ofcom of the first expanded set of KPIs will be 18 November 2016.²⁸ A list of the new KPIs we expect BT to report is outlined in the Directions which can be found at Annex 5 of this consultation. In essence, every KPI currently reported for MPF SML2 should also be reported for SML1. The 2014 FAMR KPIs already include reporting obligations in relation to WLR SML1 and WLR SML2.
- 3.41 Furthermore, the new KPIs which should be made available on a publicly accessible website (without password access) are set out in the Directions. This level of visibility will allow the public to understand the underlying service that their provider is receiving and help avoid relative differences in service quality between CPs which rely on the same BT wholesale service.

²⁷ To the end of July 2016, year-to-date repair within SLA performance was [3<] for WLR SML1 and [3<] for MPF SML2.

²⁸ Consistent with the FAMR, KPIs must be submitted within 14 working days of the last working day of the previous month.

Consent to extending the reporting deadline for two KPIs

- 3.42 We have recently engaged with Openreach in relation to the reporting of KPI data for the volumes of installations and repairs impacted by MBORC declarations.²⁹ Openreach has undertaken a review of its reporting and has identified an issue with its ability to supply accurate reporting of these KPIs within the existing regulatory timeframe.
- 3.43 Openreach has informed us that, although the MBORC data reported to Ofcom under the existing KPIs is sourced directly from an automated system, this data is subject to a validation process which is ongoing at the time when the data is reported to Ofcom. Given that the results of this validation process has on occasion required Openreach to restate MBORC data provided to Ofcom, Openreach has requested that the timescales for reporting the MBORC data be extended until after completion of the validation process.
- 3.44 The 2014 FAMR requires KPI data to be submitted within 14 working days of the last working day of every month in respect of the previous month. To allow Openreach the time to validate the MBORC data we propose to extend the deadline for the reporting of the relevant KPIs to one month plus 14 working days of the last working day of every month (i.e. submitted with the next monthly KPI report). For example, numbers for October 2016 must be delivered to Ofcom on 20 December 2016.
- 3.45 We do not consider that this delay in reporting this KPI will materially impact on our monitoring of Openreach's overall performance. The most important factor from Ofcom's perspective is that the data provided is accurate.

Consultation question 4: Do you agree with Ofcom's proposals relating to the KPI reporting obligations set out above, and do you agree with the Directions we propose to issue as set out in Annex 5? If not, please set out your reasons.

Continuation of the minimum standard obligations

- 3.46 The minimum standards imposed through the latest FAMR decision entered into force on 1 July 2014 and will expire at the end of March 2017, having increased on a yearly 'glide path' over that time. A review of the extent to which these standards (as well as our other QoS measures) remain fit for purpose for the 2017-20 period is being undertaken in the context of the Narrowband and WLA market reviews.
- 3.47 However, as the Narrowband and WLA statements will not be published before 31 March 2017, without intervention the minimum standards will lapse before any revised regulatory obligations are imposed through the next market reviews. Given the evidence of the deterioration in Openreach's performance that we identified in the 2014 FAMR we consider that allowing the standards to fall away would pose a risk to competition and have the potential to result in negative outcomes for consumers in terms the lead times given for the provision of new lines and the time taken to repair faults. We are therefore proposing to require that the minimum standards remain in

²⁹ Within "Part 2: Volumes" of the FAMR Legal Instruments the relevant KPI for the volume of installations impacted by MBORC declarations is KPI(v) for WLR, MPF, VULA (FTTC and FTTP), ISDN2, and ISDN30. There is no corresponding KPI for Shared Access. The relevant KPI for the volume of repairs impacted by MBORC declarations is KPI(vi) for WLR, MPF, VULA (FTTC and FTTP), ISDN2, and ISDN30, and KPI(v) for Shared Access.

force at their current level for future 12-month periods until they are revoked or superseded by any new remedies imposed in a market review.

Consultation question 5: Do you agree with Ofcom's proposal to continue the existing minimum standards, and do you agree with the Directions we propose to issue set out in Annex 5? If not, please set out your reasons.

Legal tests

Legal tests for the minimum standards

3.48 For the reasons set out below, we are satisfied that making the Directions and Consents proposed in this consultation is consistent with our duties under the Act and the legal tests set out in the Act are satisfied.

Section 49 tests

3.49 We consider that our proposed Directions and Consents are:

- objectively justifiable, in that their purpose is to ensure mandatory minimum standards in relation to key services supporting network access set in the 2014 FAMR remain effective. We consider that the level of the minimum standards set in the 2014 FAMR remains the most appropriate means of securing the minimum standard of service necessary to ensure effective network access. In our view our proposal to extend the life of the current requirements is justified based on the need to avoid the risks caused by a large proportion of total WLR and MPF lines falling outside of minimum standards as discussed above. The 2014 FAMR determined that the prevailing regulatory and contractual framework (i.e. the SLA/SLG regime) had been insufficient in ensuring that BT delivered an adequate level of QoS, which in turn had negatively impacted competition between retail CPs. Our interventions through this market review have resulted in improvements in QoS which would be at risk if the standards were to lapse at the end of 2016/17;
- not unduly discriminatory, in that while the proposed minimum service levels will only apply to BT, we have identified BT as the only CP having SMP in the relevant markets in the UK, excluding the Hull Area;
- proportionate, since our minimum standards continue to be targeted specifically at those areas for which regulation is required and go no further than is required to addressing the competition issues identified. Further, we are of the view that, without intervention, the level of service achieved by Openreach could decline, thereby impacting the vast majority of WLR and MPF lines in operation. The proposed Consents also ensure there is no unnecessary overlap in the compliance obligations; and
- transparent, in that it is clear that the intention of the proposals is to ensure that BT maintains a minimum level of QoS in relation to a number of key factors of importance to CPs that purchase these wholesale inputs. This intention has not changed since the 2014 FAMR Statement.

Sections 3 and 4 of the Act

- 3.50 We have considered our duties under section 3 of the Act. We consider that, by ensuring that BT adheres to prescribed minimum service standards in relation to the provisioning and the repair of faults, our proposals will further the interests of citizens in relation to communications matters and further the interests of consumers in relevant markets by promoting competition.
- 3.51 We have considered the Community requirements set out in section 4 of the Act. We consider that our proposals will promote competition in relation to the provision of electronic communications networks and encourage the provision of network access for the purposes of securing efficient and sustainable competition in the markets for electronic communications networks and services.

Legal tests relating to the KPI Directions

- 3.52 For the reasons set out below, we are satisfied that the KPI Directions that we are proposing meet our duties under the Act, including our general duties under section 3, and all the Community requirements set out in section 4, of the Act and also meet the requirements in section 49 of the Act. We consider that the proposed directions are:
- objectively justifiable, in that we consider it necessary for BT to report specific additional KPIs to ensure that we can monitor compliance with the proposed minimum standards;
 - not unduly discriminatory, in that they only apply to BT and it is only BT that is subject to the SMP transparency condition;
 - proportionate, in that BT is only required to publish specific KPI data related to key business processes and, as BT is already supplying similar data, already has systems and procedures in place; and
 - transparent, in that it is clear from the directions as to what information would be required to be published and supplied by BT.
- 3.53 We consider that making the Directions and Consents proposed in this consultation are not of EU significance as in our opinion would not affect trade between Member States. We therefore do not intend to notify the proposals to the European Commission, BEREC or the other NRAs prior to implementation.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 9 September 2016**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/wlr-mpf-quality>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email james.robinson@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- James Robinson
4th Floor
Competition Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact James Robinson on 020 7981 3872.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in September 2016.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Steve Gettings, Secretary to the Corporation, who is Ofcom's consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Steve.Gettings@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

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

DECLARATION

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

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

Name

Signed (if hard copy)

Annex 4

Consultation questions

A4.1 Set out below are the questions contained within this consultation to which we are seeking stakeholder responses:

Consultation question 1: Do you agree with Ofcom's proposals set out above to amend the minimum service standards imposed through the 2014 FAMR? If not, please set out your reasons.

Consultation question 2: Do you agree with Ofcom's proposal for measuring compliance against the minimum standards set out above and on the Directions set out in Annex 5? If not, please set out your reasons.

Consultation question 3: Do you agree with Ofcom's proposal to consent to dis-apply the existing repair minimum standards for 2016/17? If not, please set out your reasons.

Consultation question 4: Do you agree with Ofcom's proposals relating to the KPI reporting obligations set out above, and do you agree with the Directions we propose to issue as set out in Annex 5? If not, please set out your reasons.

Consultation question 5: Do you agree with Ofcom's proposal to continue the existing minimum standards, and do you agree with the Directions we propose to issue set out in Annex 5? If not, please set out your reasons.

Annex 5

Notice of proposed Directions

NOTIFICATION UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003 AND CONDITION 12.4 RELATING TO REQUIREMENTS CONCERNING MINIMUM STANDARDS OF QUALITY OF SERVICE PROPOSED TO BE IMPOSED ON BT IN RESPECT OF THE PROVISION OF NETWORK ACCESS TO METALIC PATH FACILITIES

Background

On 26 June 2014 OFCOM published the “Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 Statement on the markets, market power determinations and remedies” (the “FAMR Statement”).

Under SMP services condition 12 of the Legal Instrument at annex 29 to the FAMR statement (the “Legal Instrument”), BT must comply with minimum standards in relation to the provision of network access for Metallic Path Facilities (“MPF”) and Wholesale Analogue Line Rental (“WLR”).

Paragraph 12.4 of condition 12 requires BT to any such further minimum standards as OFCOM may direct from time to time.

For the reasons set out in the explanatory document attached to this Notification, this Notification relates to proposals pursuant to SMP services condition 12.4 to specify further minimum standards in relation to the provision of network access for MPF.

Proposal to give directions

OFCOM is proposing to give the directions set out in the Schedule to this Notification requiring BT to comply with the minimum standards set out therein.

The effects of, and the reasons for proposing to give, the directions are set out in the accompanying consultation document.

OFCOM’s duties and legal tests

OFCOM considers that the proposed directions comply with the requirements of section 49(2) of the Communications Act 2003 (“Act”).

In making the proposals OFCOM has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act. OFCOM does not consider that the proposals are of EU significance.

Making representations

Representations may be made to OFCOM about the proposals set out in this Notification and the accompanying consultation by no later than 5pm on 9 September 2016.

In accordance with section 49C(1)(a) of the Act, a copy of the Notification, together with the Schedule, has been sent to the Secretary of State.

Interpretation

For the purposes of interpreting the Schedule the following definitions shall apply:

“Faults Compliance Year” means a period of 12 months beginning on [x] October and ending on xx September, with the first such year starting on [x] October 2016.

“Further MPF Minimum Standards” has the meaning given to it in paragraph 1 of the Schedule.

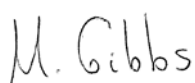
“Provisions Compliance Year” means a period of 12 months beginning on 1 April and ending on 31 March, with the first such year starting on 1 April 2017.

“Service Maintenance Level 1” means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of the Relevant Wholesale Service to Third Parties;

“Service Maintenance Level 2” means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of the Relevant Wholesale Service to Third Parties;

For the purposes of interpreting this Notification and Schedule to this Notification, except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Legal Instrument and otherwise any word or expression shall have the same meaning as it has in the Act.

Signed



Marina Gibbs

Competition Policy Director, OFCOM

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

5 August 2016

Schedule

[Proposed] Direction under section 49 of the Communications Act 2003 and Condition 12.4 requiring BT to comply with minimum standards in relation to the provision of network access to Metallic Path Facilities.

1. In relation to the provision of network access to Metallic Path Facilities under conditions 1 and 2 of the Legal Instrument, the following shall be Further MPF Minimum Standards:

Provisions

That the Dominant Provider in each Provisions Compliance Year following the Third Relevant Year —

- a) offer an appointment where required for that provision that is within 12 Working Days of the corresponding Order being placed on the Equivalence Management Platform by a Third Party in at least 79% of such instances;
- b) complete that provision on the Committed Date in at least 89% of such instances;

Repairs

That the Dominant Provider in each Faults Compliance Year —

- c) complete the repair of MPF Faults that are subject to Service Maintenance Level 1 by the end of the second Working Day after such Faults have been placed on the Equivalence Management Platform such that the following formula is satisfied:
 - i. The percentage of repairs completed by the end of the second Working Day after such Faults have been placed on the Equivalence Management Platform for MPF lines at Service Maintenance Level 1 and WLR lines at Service Maintenance Level 1 is greater than or equal to 77%.
 - d) complete the repair of MPF Faults that are subject to Service Maintenance Level 2 by the end of the next Level 2 Working Day after such Faults have been placed on the Equivalence Management Platform such that the following formula is satisfied:
 - i. The percentage of repairs completed by the end of the next Level 2 Working Day after such Faults have been placed on the Equivalence Management Platform for MPF lines at Service Maintenance Level 2 and WLR lines at Service Maintenance Level 2 is greater than or equal to 77%.
2. In each Provisions Compliance Year and Faults Compliance Year:

- a) in eight of the ten Relevant Regions the Dominant Provider must comply with each of the applicable Further MPF Minimum Standards; and
 - b) in the remaining two Relevant Regions the Dominant Provider must comply with each of the applicable Further MPF Minimum Standards except that in calculating the number of instances in which the Dominant Provider did not meet the relevant obligations instances of failure occurring within an area that was subject to a High Level MBORC Declaration within eight weeks of the Dominant Provider making that High Level MBORC Declaration and the Fault or Order (as applicable) shall be excluded.
3. The Dominant Provider must record, maintain and supply to OFCOM in writing, no later than three months after the end of each Provisions Compliance Year and Faults Compliance Year the data necessary for OFCOM to monitor compliance by the Dominant Provider with the requirements set out in this direction.

Notice of proposed modification of KPIs Directions

NOTIFICATION OF PROPOSALS UNDER SECTIONS 49 OF THE COMMUNICATIONS ACT 2003 AND CONDITION 11 TO MODIFY THE DIRECTIONS OF 26 JUNE 2014 REQUIRING THE PUBLICATION OF KPIs BY BT FOR SPECIFIED VIRTUAL UNBUNDLED LOCAL ACCESS, METALIC PATH FACILITIES, SHARED ACCESS SERVICES, WHOLESALE LINE RENTAL SERVICES, ISDN2 EXCHANGE LINES SERVICES, AND ISDN30 EXCHANGE LINES SERVICES

Background

1. On 26 June 2014 OFCOM published the “Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 Statement on the markets, market power determinations and remedies” (the “FAMR Statement”).
2. Under SMP services condition 11 of the Legal Instrument at annex 29 to the FAMR statement (the “Legal Instrument”), BT must publish all such information as to the quality of service in relation to network access provided by it pursuant to conditions 1 and 2 (as applicable) in such manner and form, and including such content, as OFCOM may from time to time direct.
3. On 26 of July 2014 OFCOM issued a series of directions titled:
 - (i) “Direction under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Virtual Unbundled Local Access, Metallic Path Facilities and Shared Access services”;
 - (ii) “Direction under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Wholesale Line Rental Services”;
 - (iii) “Direction under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified ISDN2 Exchange Line Services”;
 - (iv) “Direction under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified ISDN30 Exchange Line Services”,

setting requirements in relation to the publication by BT of certain Key performance Indicators (“KPIs”) (together “the 26 July 2014 Directions”)
4. This Notification relates to proposals pursuant to SMP services condition 11 to modify the 26 July 2014 Directions.

Modification of the 26 July 2014 Directions

5. OFCOM is proposing to modify the 26 July Directions as set out in Schedules 1 to 4 to this Notification.
6. The effect of, and the reasons for, the proposed modifications to the 26 July 2014 Directions are set out in the accompanying consultation document.

OFCOM's duties and legal tests

7. OFCOM considers that the proposal to modify the 26 July 2014 Directions complies with the requirements of section 49(2) of the Communications Act 2003 ("Act").
8. In making the proposals OFCOM has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act. OFCOM does not consider that the proposals are of EU significance.

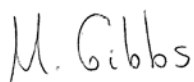
Making representations

9. Representations may be made to OFCOM about the proposals set out in this Notification and the accompanying consultation by no later than 9 September 2016.
10. In accordance with section 49C(1)(a) of the Act, a copy of the Notification, together with the Schedules, has been sent to the Secretary of State.

Interpretation

11. For the purposes of interpreting this Notification and the Schedules, except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Legal Instrument and 26 July 2014 Direction and otherwise any word or expression shall have the same meaning as it has in the Act.

Signed



Marina Gibbs

Competition Policy Director, OFCOM

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

5 August 2016

SCHEDULE 1 – Wholesale Local Access

[Proposed] Modification of the Direction of 26 July 2014 made under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Virtual Unbundled Local Access, Metallic Path Facilities and Shared Access services.

In accordance with section 49(1) of the Act, OFCOM hereby modifies the Direction of 26 July 2014 under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Virtual Unbundled Local Access, Metallic Path Facilities and Shared Access services as follows:

1. In paragraph 16 after “within 14 Working Days of the last Working Day of every month in respect of the previous month” insert “, with the exception of KPIs (v) and (vi) in Annex A, Part 2 and Annex B, Part 2 and KPI (v) in Annex C, Part 2 which must be provided within 14 Working Days of the last Working Day of every month in respect of the month preceding the previous month.”
2. After paragraph 20(gg) the following is inserted:

“hh1. **“Service Maintenance Level 1”** means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of the Relevant Wholesale Service to Third Parties;”
3. In Annex B, Part 1: Indicators
 - a) Paragraph 6 is replaced with:

“The Dominant Provider must publish information derived from the information required in KPIs (iii), (vi) to (viii), (x)(a) to (b), (xA) and (xi) on a publicly accessible website, which for the avoidance of doubt should not require password access.”
 - b) **KPI(x) - Average time to restore service** is replaced with:

“KPI(x) - Average time to restore service
the average time (in working hours) during the relevant month for the Dominant Provider to achieve Restored Service after a Fault has been registered in relation to each of:
(a) Service Maintenance Level 1

(b) Service Maintenance Level 2; and

(c) Service Maintenance Level 3;”
 - c) After **KPI(x) - Average time to restore service** the following is inserted:

“KPI(xA) – Percentage of faults restored on time for services subject to Service Maintenance Level 1

for services subject to Service Maintenance Level 1, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 1;”

4. In Annex B, Part 2: Volumes

- a) **KPI(iv) – Volume of completed faults** is replaced with:

“KPI(iv) - Volume of completed faults

the number of Faults where the Dominant Provider subsequently achieves Restored Service during the relevant month in relation to each of:

- (a) Service Maintenance Level 1;
- (a) Service Maintenance Level 2; and
- (c) Service Maintenance Level 3;”

- b) **KPI(vi) – Volume of repairs impacted by MBORC declarations** is replaced with:

“KPI(vi) – Volume of repairs impacted by MBORC declarations

the total number of Faults during the relevant month that were not completed within either Service Maintenance Level 1, Service Maintenance Level 2 or Service Maintenance Level 3 contracted repair times (as applicable) that were subject to an MBORC Declaration by the Dominant Provider.”

5. In Annex B, Part 3: Late fault repair and provisions

- a) **KPI(i) – Timing of fault repairs** is replaced with:

“KPI(i) – Timing of fault repairs

the average daily number of Faults in the relevant month for which the Dominant Provider has not provided a Restored Service when the Relevant Commitment has been passed by:

- (a) for services subject to Service Maintenance Level 1:

- (i) 1 calendar day or more;
- (ii) 5 calendar days or more;
- (iii) 11 calendar days or more;
- (iv) 31 calendar days or more.

- (b) for services subject to Service Maintenance Level 2:

- (i) 1 calendar day or more;
- (ii) 5 calendar days or more;
- (iii) 11 calendar days or more;
- (iv) 31 calendar days or more.

“Relevant Commitment” means –

- (a) for services subject to Service Maintenance Level 1, the requirement for the Dominant Provider to complete repairs of Faults by the end of the second Working Day; and
- (b) for services subject to Service Maintenance Level 2, the requirement for the Dominant Provider to complete repairs of Faults by the end of the next Level 2 Working Day after such Faults have been placed on the Equivalence Management Platform, where **“Level 2 Working Day”** means any day other than Sundays, public holidays or bank holidays in England and Wales, Scotland and Northern Ireland (as applicable).”

SCHEDULE 2 – Wholesale Line Rental Services

[Proposed] Modification of the Direction of 26 July 2014 made under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Wholesale Line Rental Services.

In accordance with section 49(1) of the Act, OFCOM hereby modifies the Direction of 26 July 2014 under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Wholesale Line Rental Services as follows:

1. In paragraph 16 replace after “within 14 Working Days of the last Working Day of every month in respect of the previous month” insert “, with the exception of KPIs (v) and (vi) in Annex A, Part 2, which must be provided within 14 Working Days of the last Working Day of every month in respect of the month preceding the previous month.”

SCHEDULE 3 – ISDN2 Exchange Line Services

[Proposed] Modification of the Direction of 26 July 2014 made under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified ISDN2 Exchange Line Services.

In accordance with section 49(1) of the Act, OFCOM hereby modifies the Direction of 26 July 2014 under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified ISDN2 Exchange Line Services as follows:

1. In paragraph 15 after “within 14 Working Days of the last Working Day of every month in respect of the previous month” insert “, with the exception of KPI (v) and (vi) in Part 2 of Annex A which must be provided within 14 Working Days of the last Working Day of every month in respect of the month preceding the previous month.”

SCHEDULE 4 – ISDN30 Exchange Line Services

[Proposed] Modification of the Direction of 26 July 2014 made under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified ISDN30 Exchange Line Services.

In accordance with section 49(1) of the Act, OFCOM hereby modifies the Direction of 26 July 2014 under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified ISDN30 Exchange Line Services as follows:

1. In paragraph 15 after “within 14 Working Days of the last Working Day of every month in respect of the previous month” insert “with the exception of KPIs (v) and (vi) in Annex A, Part 2, which must be provided within 14 Working Days of the last Working Day of every month in respect of the month preceding the previous month.”

Notice of proposed Consents

NOTIFICATION UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003 AND CONDITIONS 12.1A AND 12.2B OF PROPOSED CONSENTS RELATING TO REQUIREMENTS CONCERNING MINIMUM STANDARDS OF QUALITY OF SERVICE IMPOSED ON BT IN RESPECT OF THE PROVISION OF NETWORK ACCESS TO METALIC PATH FACILITIES AND WHOLESALE ANALOGUE LINE RENTAL

Background

1. On 26 June 2014 OFCOM published the “Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 Statement on the markets, market power determinations and remedies” (the “FAMR Statement”).
2. Under SMP services condition 12 of the Legal Instrument at annex 29 to the FAMR statement (the “Legal Instrument”), BT must comply with minimum standards in relation to the provision of network access for Metallic Path Facilities (“MPF”) and Wholesale Analogue Line Rental (“WLR”).
3. As more fully described in the consultation document published on today’s date, OFCOM is proposing to give a direction pursuant to paragraphs 12.4 of Condition 12 requiring BT to comply with new minimum standards relating to the repair of Faults for certain MPF services.

Proposal to give consents to minimum standards for quality of service ceasing to apply

4. Subject to the direction described in paragraph 3 being given, OFCOM is proposing to give consent to the minimum standards for Faults in SMP conditions 12.1A(c)(iii) and 12.1B(c)(iii) ceasing to apply in accordance with Schedules 1 and 2 to this Notification.
5. The effects of, and the reasons for proposing to give, the consents are set out in the accompanying consultation document.

OFCOM’s duties and legal tests

6. OFCOM considers that the proposed consents comply with the requirements of section 49(2) of the Communications Act 2003 (“Act”).
7. In making the proposals OFCOM has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act.

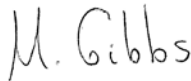
Making representations

8. Representations may be made to OFCOM about the proposals set out in this Notification and the accompanying consultation by no later than 5pm on 9 September 2016.
9. In accordance with section 49C(1)(a) of the Act, a copy of the Notification, together with the Schedules, has been sent to the Secretary of State. OFCOM does not consider that the proposals are of EU significance.

Interpretation

10. For the purposes of interpreting this Notification and Schedules 1 and 2 to this Notification, except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Legal Instrument and otherwise any word or expression shall have the same meaning as it has in the Act.

Signed

A handwritten signature in black ink that reads "M. Gibbs". The signature is written in a cursive, slightly slanted style.

Marina Gibbs

Competition Policy Director, OFCOM

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

5 August 2016

Schedule 1 – Wholesale Local Access

[Proposed] Consent under section 49 of the Communications Act 2003 and Condition 12.1A in relation to the minimum standards for quality of service in relation to the provision of network access to Metallic Path Facilities

In relation to the provision of network access to Metallic Path Facilities under conditions 1 and 2 of the Legal Instrument, the MPF Minimum Standards in condition 12.1A(c)(iii) (on time fault repair in the Third Relevant Year) shall no longer apply from [x] October 2016.

Schedule 2 – Wholesale Analogue Fixed Exchange Lines

[Proposed] Consent under section 49 of the Communications Act 2003 and Condition 12.1B in relation to the minimum standards for quality of service in relation to the provision of network access to Wholesale Analogue Line Rental

In relation to the provision of network access to Wholesale Analogue Line Rental under conditions 1 and 2 of the Legal Instrument the WLR Minimum Standards in condition 12.1B(c)(iii) (on time fault repair in the Third Relevant Year) shall no longer apply October 2016.