

4th December 2020

**CWU Response to Ofcom Wholesale Fixed Telecoms Market Review –
Openreach Quality of Service - Further consultation on proposed quality of
service remedies**

Introduction

1. The Communication Workers Union (CWU) is the largest union in the communications sector in the UK. We represent over 60,000 members in the telecommunications industry working in around twenty companies including BT, Openreach, Virgin Media, Sky and TalkTalk. We are the only trade union with formal recognition for non-management grades in BT and Openreach.
2. The CWU welcomes the opportunity to respond to Ofcom’s further consultation on proposed quality of service (QoS) remedies for Openreach.¹ As we said in our submission on the Wholesale Fixed Telecoms Market Review 2021-26 (WFTMR) in January, Ofcom must not set impossible tasks for Openreach when they are working tirelessly to keep the nation connected during the coronavirus pandemic.
3. Openreach employees are clearing record numbers of faults at this time, but Covid safe working practices and unprecedented demand for broadband are challenging Openreach’s capacity to meet all of its minimum service requirements. We call on Ofcom to continue to take a flexible approach to QoS regulation in light of these circumstances. Ofcom must account for the constraints involved in working safely during the pandemic, and it must prioritise the health and safety of workers and customers when setting minimum service requirements. The regulatory framework must also enable Openreach to make the necessary investment in its workforce to deliver QoS standards and improvements.

Openreach has improved service quality and delivered for customers

4. We welcome Ofcom’s recognition of the marked improvement in QoS provided by Openreach to its customers in recent years, as set out in the Openreach Monitoring Unit’s (OMU) latest annual report.² We also welcome its acknowledgement of

¹ Wholesale fixed telecoms market review – Openreach quality of service – Further consultation on proposed quality of service remedies, Ofcom, 23rd October 2020, accessed at:

https://www.ofcom.org.uk/_data/assets/pdf_file/0018/205245/gos-further-consultation.pdf

² Delivering a more independent Openreach, Annual Monitoring Report, Ofcom, 19 November 2020, accessed at: https://www.ofcom.org.uk/_data/assets/pdf_file/0022/207706/Openreach-Monitoring-Unit-Annual-Monitoring-Report.pdf

Openreach's action in maintaining existing – and delivering new – telecommunications infrastructure during the pandemic.³

5. The OMU report found that the metrics that were chosen specifically to monitor Openreach's efforts with regards to customer service have improved in recent years and appear stable. The report also found that Openreach achieved all of Ofcom's 42 QoS standards in 2019/20 for voice and broadband services, but that it narrowly missed three of its five ethernet targets.

The CWU supports Ofcom's decision to take account of Covid-19 in relation to QoS standards, but standards should not be imposed in Year 1

6. The CWU welcomes Ofcom's understanding of the challenges that Covid-19 has presented for Openreach regarding QoS standards, and the proposal to take account of the pandemic in relation to the appropriateness of these standards.
7. However, we do not believe that QoS standards should be imposed on Openreach in Year 1 of the WFTMR period. Before setting and imposing conditions on Openreach, Ofcom has a duty to assess whether these are proportionate to what they are intended to achieve.⁴ The ongoing challenges and uncertainties of Covid-19 make it impossible to know whether or not these conditions are achievable. We therefore consider that QoS standards should not be imposed for Year 1 of the control, but should be retained for Year 2 onwards. We believe that Openreach should still be expected to strive to meet the QoS Standards in Year 1, but that this should be on a best endeavours basis. This will avoid a situation where Openreach is unfairly found to be in breach of an SMP condition due to being unable to reasonably meet standards in Year 1 because of the pandemic.
8. The challenges posed by Covid-19 include in particular a huge uplift in faults due to the rise in home working, with around 100,000 faults raised some weeks. The sudden and substantial shift to working from home means that customers are less tolerant of faults and do not need to take time off to receive the engineer. Openreach employees are clearing record numbers of faults, but the unprecedented fault volumes at present means they are unable to keep up with demand.

Openreach QoS improvements rely on greater investment in its workforce

9. As Ofcom says, service standards do not deal directly with the number or frequency of faults. However, the more faults there are, the more difficult it is for Openreach to meet the required standards. Consequently, Openreach is likely to miss some of its repair standards this year. Any reduction in repair standards will be detrimental for customers, especially as the Covid-19 pandemic means that there is greater reliance on good quality broadband and network quality matters now more than ever.
10. We agree that Openreach therefore has an incentive to invest in its network to reduce faults. However, Openreach's investment incentives also depend on a supportive regulatory environment. The transformation in quality of service since regulation was

³ Ibid, Ofcom, 19 Nov 2020, p.1

⁴ Communications Act 2003, Section 47 (2,C)

first introduced reflects the investment that has already been made by Openreach in jobs, skills and training. It is also testament to the hard work and commitment of Openreach employees, who operate in what is often a very challenging and stressful working environment. Placing excessive pressure on the Openreach workforce would be damaging for operational effectiveness and quality of service.

11. The regulatory framework must therefore encourage greater levels of investment in resources and training if we are to see ongoing improvements around service provision, quality, resilience and network security. Ofcom must ensure, through appropriate cost and pricing regulation, that Openreach is able to retain and build the workforce it needs with the skills, expertise and capacity to deliver the best possible quality of service for customers. This will rely on a workforce that is overwhelmingly directly employed, UK based, well trained, multi-skilled and on upper quartile rates of pay and conditions of work.

Cherry picking competition is a threat to investment in QoS improvements

12. The CWU is concerned about the prevalence of cherry picking competition and poor labour standards amongst alternative fibre network operators. We believe this poses a threat to service provision and quality generally. This is because cherry picking leads to network duplication in some areas whilst leaving other areas unserved. It also creates price competition which undermines the economics of universal service and threatens a race to the bottom on employment standards and QoS standards.
13. Labour standards and job security are a key consideration for the CWU, but they should also be key for Ofcom given the connection between job quality and service quality. It is well documented that providing really good customer service depends on treating workers well and offering good terms and conditions of employment. Unfortunately, price competition is contributing to a new move by Openreach to cut costs by shifting away from long standing agreements on job security and redundancy payments, and offshoring ever increasing numbers of fibre related desk based roles. The CWU is campaigning against these changes in Openreach and in BT more widely. We have no doubt that if the changes go ahead they will be detrimental to Openreach's ability to improve on QoS standards and deliver for its customers.
14. We are also concerned that alternative network operators are not investing sufficiently in skills and training, which will damage service standards and undermine QoS across the sector as a whole. Openreach will have less incentive to invest in fibre based training schools and accreditation if other operators are able to profit by targeting its well qualified employees for recruitment whilst minimising their own commitment to training.
15. We call on Ofcom to regulate against these damaging effects of cherry picking fibre network competition. In general, we believe there should be a shift away from price competition towards investment in universal provision and better service quality for the benefit of all stakeholders. This should involve regulatory mechanisms that prioritise incentives to invest in decent labour and service standards across the sector as a whole, thus preventing a race to the bottom.

Health and Safety regulation should be a top priority in the interests of QoS

16. We welcomed Ofcom's support of Openreach's decision not to do new provisions in the early stages of the Covid crisis to help stop the spread of the disease. Unfortunately, not all network operators put safety considerations before their own commercial interests in this way. The health and safety of workers and customers must be the top priority that comes before any service provision requirement. At the same time, we must recognise and pay tribute to the commitment of Openreach employees in very difficult circumstances, and the efforts they are making to maintain our critical communications infrastructure and keep the nation connected during this crisis.
17. We wish to repeat the call we have made numerous times in previous submissions, that with increased access to the Openreach network, Ofcom should make clear to all providers working on the network that health and safety is a top priority. We are aware that specified engineering rules and health and safety standards already exist that communications providers must comply with. However, it is evident that many providers are ignoring these requirements, with poor standards of maintenance by other CPs working on the Openreach network a real problem that is putting safety and lives at risk. Ofcom has not touched on these health and safety rules in its consultation. As we have consistently said, it is disappointing and a serious omission in our view that Ofcom does not address these health and safety rules in its consultations. We call on Ofcom to remind all operators of their responsibilities in this regard.
18. The CWU has long argued that transparency of maintenance standards, extending to minimum health and safety standards, should form part of Ofcom's regulation of Openreach and the other companies that use its network. This would help to ensure that the rules and safety standards are as robust as possible for the protection of all of those working on the network. It would also ensure that the network is consistently maintained to a high standard, thereby supporting Openreach and other communications providers in delivering a high quality service to all their customers.

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