



Openreach quality of service – changes to proposals made as part of the Wholesale Fixed Telecoms Market Review

Response to Ofcom's consultation



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1 Executive summary

Openreach's poor and deteriorating service quality – particularly for its copper-based services – threatens to seriously harm consumers and the economy. These are the services that most consumers will be relying on for the next decade. Only a minority of customers will have access to FTTP during that period and, even among those, the most economically disadvantaged and vulnerable consumers may not be able to afford FTTP and may therefore not benefit from it at all. Others may never get access to FTTP, such as consumers in hard to reach rural areas or those with difficult and expensive access issues.

Ofcom said in its recently published proposed plan of work for 2021/22 that: *"[t]hroughout the pandemic, we have seen that high-quality, reliable communications services have been more important than ever to people's lives."*¹

Sky could not agree more. The number of people working from home is increasing. The economy is moving further online. The UK is facing the possibility of a prolonged COVID-induced recession. It has never been more important for broadband service quality to improve than right now; not just once FTTP has been adopted at scale, many years in the future.

Openreach's poor service directly harms consumers. It also reduces retail competition by suppressing switching and consumer engagement and creating unnecessary costs for retail businesses. This then depresses consumer confidence, ultimately threatening the transition to FTTP.

- Across all Sky broadband services, [X] new Sky customers will experience a failure within the first 28 days.
- Currently, [X] Sky customers with a fault has to call out a second engineer within 28 days of the first fault being purportedly repaired.
- Even on its 'flagship' FTTP product, which Openreach is currently deploying, quality of service is concerning, with long wait times for services to be installed and activated leading to [X] Sky customers cancelling their FTTP orders.

Against this backdrop, Sky considers that Ofcom's proposals are disappointing, difficult to reconcile with its duty to protect consumers and at odds with its numerous public statements on the importance of good quality, affordable broadband today.

Consumers would be better protected if Ofcom were to increase its regulatory pressure on Openreach to ensure that the quality of its service on its copper and FTTP networks is adequate.

Accordingly, Sky considers that Ofcom should:

¹ Section 1, Ofcom 'Ofcom's proposed plan of work 2021/22', December 2020, available [here](#).



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- strengthen Openreach's regulated minimum service levels (**MSLs**) for copper-based services;
 - introduce MSLs for FTTP that are at least as stringent as the copper MSLs; and
 - introduce new MSLs for all types of services requiring Openreach to keep (i) early life faults (i.e. faults arising in the first 28 days of life of a service) (**ELFs**) on its network and (ii) faults arising within 28 days of a previous fault having been repaired (**repeat faults**) on its network, below specified thresholds.

MSLs for copper-based services were first introduced in 2014, with a low starting point. They were subsequently increased, although not materially, in 2018. Ofcom anticipated that these minimum service levels would rise significantly over time and should cover new aspects of services that raised concerns.

It is neither necessary nor justified for Ofcom to:

- review wholesale local access (**WLA**) market MSLs six months into the next market review period. Rather, the appropriate MSLs for the full market review period should be established under normal circumstances based on proper evidence and applied throughout the period. Ofcom's current proposal risks disincentivising Openreach and does not appear to be supported by proper evidence; and
- change the first available date standard for MPF and FTTC provisioning from 10 to 12 working days.

Now is a crucial time for consumers and the economy, so Openreach's service quality needs to improve quickly. Given the excess profits that Openreach would make under Ofcom's proposed CPI-0% charge controls, Ofcom should be making sure that Openreach is resourcing-up and investing in its network to provide adequate quality not having those already low standards eroded further.



2 Openreach's service quality is unacceptably low, deteriorating and could get worse

MSLs were initially introduced in 2014 because Openreach's service quality was very poor and existing regulation was not sufficient to ensure that Openreach's performance met a minimum quality threshold, or even remained static. MSLs were then increased in 2018 to ensure more effective competition and to drive improvements to Openreach's service delivery to better meet the needs of consumers and businesses. Throughout this period Ofcom anticipated that this trend would continue, noting in 2016 that "[o]ver time we expect to apply minimum standards that rise significantly".² Rising minimum standards would maintain pressure on Openreach to become more efficient, as it catches up from years of under-investment and inappropriate cost-cutting and beyond. There was also a specific intent that MSLs should also cover new aspects of service that raised concerns. More generally, the approach was intended to "mirror the incentives of companies in normal competitive markets to attract customers by setting themselves apart from competitors through exceptional service quality."³ Such companies would progressively become more efficient and spend more time and energy on improving service delivery to end customers through the effect of competition, or would risk losing their customers. So MSLs would be expected to become higher over time, considering CPs do not have suitable alternatives to Openreach.

Although some progress has been made since the introduction of MSLs, albeit from a very low starting point, Openreach still has some way to go before it reaches an acceptable level of service quality. And on some indicators, service delivery has actually deteriorated, [X].

Sky believes that Openreach has been under-investing in its copper network for many years and remains under-resourced. If unaddressed, the situation will worsen as Openreach ramps up further its FTTP roll-out programme, puts even more strain on the system and further abandons its copper network.

This section provides additional information on two areas in which Openreach's service quality is not satisfactory and has deteriorated: ELF and repeat faults.

2.1 Network cleared ELFs increased substantially in 2020

ELFs are a significant issue. They are disruptive for consumers and unnecessarily use resources. They also result in extremely poor customer experience – customers buy a service that does not work or only works for a very short period – which customers risk associating with the new CP providing the broadband service.

Across all Sky broadband services, [X] Sky customers will experience an ELF. As the charts below show, underlying Openreach network faults that drive these ELFs have increased by [X]% on MPF and WLR services since March 2019, and [X]% on fibre

² Paragraphs 5.46-5.51, Ofcom 'Making communications work for everyone – Initial conclusions from the Strategic Review of Digital Communications', February 2016, available [here](#).

³ Paragraphs 5.48, Ofcom 'Making communications work for everyone – Initial conclusions from the Strategic Review of Digital Communications', February 2016, available [here](#).



services (excluding FTTP) since June. In the meantime, the rate of faults in customer homes has [redacted] over the same period.

[redacted]

2.2 The rate of repeat faults is too high and has increased since 2018

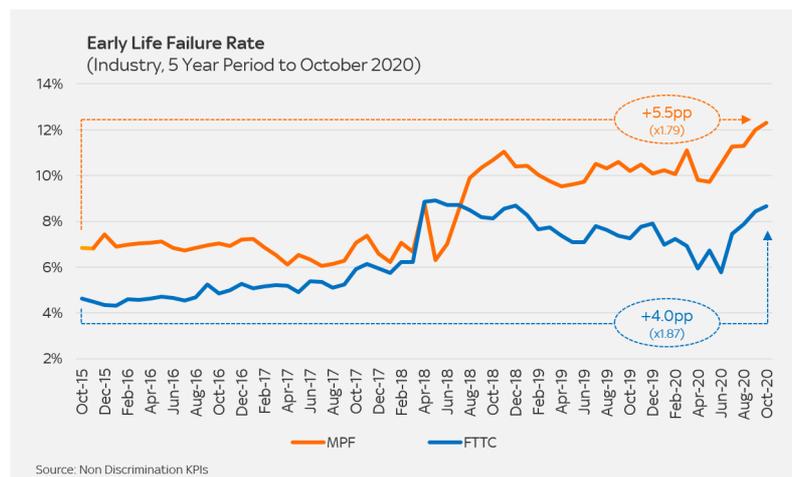
Similar to ELF, repeat faults are also extremely disruptive for customers and result in a very poor customer experience that risks being associated with the CP providing a broadband service.

Currently, [redacted] Sky customers with a fault has to call out a second engineer within 28 days of the first fault being purportedly repaired. In addition, as the chart below shows, the rate of such repeat faults has also increased in recent years.

[redacted]

2.3 Service quality is not a recent concern

Poor Openreach service quality is not a new problem. For example, as the chart below shows, ELF rates have been rising across industry for some time, and in the five years to October 2020, ELFs have increased by 80% for MPF services, and by 87% for FTTC services.





3 Openreach's poor service performance harms consumers, retail competition and the transition to FTTP

Openreach's service quality has been deteriorating markedly on its copper services. With the majority of Openreach end-users on copper-based services for the next decade, and some likely forever, this will continue to have a detrimental impact on consumers and retail competition, and slow down the transition to FTTP. Openreach and Ofcom cannot rely solely on FTTP roll-out to solve this service crisis; this would result in considerable harm to consumers, including the most vulnerable among them, and it is important that service quality for copper services continues to improve.

3.1 With the majority of consumers relying on MPF and FTTC for the next decade, FTTP is not the full solution

Even if the ambitious FTTP roll-out plans of Openreach and other network operators were successfully executed, the majority of end-users on Openreach's network would still be on copper-based services for at least a decade. This is why it is so important for Openreach's copper service quality to improve. Sky estimates that [30%] of its customers will still be on copper-based services in 2025. There is a significant risk that these proportions will be even higher if FTTP roll out does not match the current lofty ambitions. The Government has also recently scaled back its gigabit capable coverage objective⁴ and it is clear that network builders are far from being on track to meet even this reduced objective: "EY analysis shows the current average build rate for homes passed – the rate at which properties are enabled on gigabit-capable networks – would need to increase by 85%, equivalent to more than 10,000 per day, to even meet this reduced 2025 target".⁵

Even among the consumers who will be able to access FTTP, the most economically disadvantaged and vulnerable consumers may not be able to afford it and may therefore not benefit from FTTP.

Others may never get access to FTTP, such as consumers in hard-to-reach areas (e.g. rural areas) or those with difficult and expensive access issues. There, the Government is already delaying its funding by making available only £1.2 billion in this Parliament to subsidise the roll-out of gigabit-capable broadband, out of the £5 billion ear-marked to support roll-out to the hardest-to-reach areas of the UK.⁶

So, while FTTP offers the prospect of more reliable broadband in the long term if Openreach gets its delivery right – and early signs do not look promising – Openreach cannot take its eye off the ball by neglecting MPF and FTTC services while rolling out FTTP. It must deliver on both.

3.2 Poor service quality directly harms consumers

⁴ Page 31, HM Treasury 'National Infrastructure Strategy – Fairer, faster greener', November 2020, available [here](#).

⁵ EY 'Reset or level up. How can Gigabit Britain deliver for all?', 14 December 2020, available [here](#).

⁶ Page 34, HM Treasury 'Spending Review 2020', available [here](#).



With the COVID crisis and the economy shifting further online, reliable broadband that is provisioned and repaired efficiently and on time has never been more important for consumers. It is important for their economic activity, it is important if they are unemployed, it is important for their health and to access essential services and it is important for their connections to family and friends.

Openreach's poor performance is being felt directly by our customers. According to our survey data, while Sky net promoter scores (**NPS**) so far over H2 2020 for Sky TV and Sky broadband engineers are [3<] % and [3<] % respectively, Sky NPS after Openreach engineer visits in November are [3<] % for provision customers, and just [3<] % for repair customers. This is a substantial gap.

Ofcom agrees that poor service quality results in consumer harm. In this consultation it stated that "[h]omes and businesses rely on broadband and leased lines more than ever before. This means that when things go wrong it is not just frustrating and inconvenient – it can cause financial and non-financial harm."⁷

3.3 Poor service quality risks distorting retail competition, hampering the transition to FTTP and benefitting BT Consumer

High fault rates, slow provisioning and slow and ineffective repair clearly harm consumers, but they also have serious consequences for competition and the move to FTTP.

Ofcom reviewed its service quality rules this year and noted that "*Openreach's service quality can have a significant impact on retail providers and their performance and, ultimately, end-users' experience. Inadequate service quality provided by Openreach could undermine the actual or perceived reliability of telecoms providers, hampering their ability to compete and discouraging consumer switching.*"⁸

This poor and deteriorating service quality, combined with the UK's poor economic outlook (the OBR forecasts that 2.6m people will be unemployed next year⁹), will decrease consumer confidence further, reduce switching and depress demand for upgrades to FTTP services. This is in fact already happening. Currently, FTTP customers must wait, on average, around three weeks for their service to be activated. Sky data suggests that this is contributing to [3<] Sky customers cancelling their FTTP orders.

One of Ofcom's expected outcomes of its 'investment in strong, secure networks' strategic priority is "[i]ncreased number of homes with more than one gigabit capable network available."¹⁰ The current service crisis could significantly undermine the roll-

⁷ Paragraph 2.1, Ofcom 'Wholesale Fixed Telecoms Market Review – Openreach Quality of Service Further consultation on proposed quality of service remedies', 23 October 2020.

⁸ Paragraph 2.6, Ofcom 'Improving broadband and landline standards: A review of how Ofcom's service quality rules have affected Openreach's service level performance' (May 2020), available [here](#).

⁹ Paragraph 2.66, Office for Budget Responsibility 'Economic and Fiscal Outlook' (November 2020), available [here](#).

¹⁰ Paragraph 4.3, Ofcom 'Ofcom's proposed plan of work 2021/22', December 2020, available [here](#).



out and take-up of FTTP services and therefore negatively impact Ofcom's strategic priority.

It also risks entrenching BT Consumer's position. While BT's retail divisions maintain high market shares, BT remains the biggest beneficiary of reduced competitive tension and low switching rates. Furthermore, since many consumers are aware that BT owns the access network, they may perceive that remaining with BT will avoid exposure to risks of poor provisioning and fault repair.



4 Minimum service levels on copper should be raised and extended to FTTP services

Ofcom has made many statements, including recently, about the importance of high-quality reliable broadband. Sky agrees with these but is concerned that Ofcom's policy proposals on service quality in the Wholesale Fixed Telecoms Market Review 2021-26 (**WFTMR**) fall short of this sentiment. Further, while its charge control proposals would result in high excess profits for Openreach, Ofcom is not currently minded to increase and widen Openreach's MSLs. This should be re-considered. Stricter MSLs should be imposed on Openreach in relation to copper services and MSLs should be widened to also cover ELFs, repeat faults and FTTP services. Openreach would clearly have the financial capacity to meet such stricter and wider MSLs.

4.1 Ofcom recognises the importance of high quality and reliable broadband

Ofcom has made numerous recent statements about the importance of high-quality reliable broadband. For example:

*"Throughout the pandemic, we have seen that **high-quality, reliable communications services have been more important than ever to people's lives.**"¹¹*

*"As efforts continue to overcome the pandemic, we will seek to provide sensible, supportive regulation – while **holding companies to account and ensuring they serve their customers and audiences to the best possible standard.**"¹²*

*"Our increasing dependency on communications services makes **it imperative that networks are reliable and secure.**"¹³*

*"We also know reliability has never been more important too. The **cost to homes and businesses when broadband doesn't work has never been higher.**"¹⁴*

*"Homes and businesses rely on broadband and leased lines more than ever before. This means that **when things go wrong it is not just frustrating and inconvenient – it can cause financial and non-financial harm.**"¹⁵*

(Emphasis added.)

¹¹ Section 1, Ofcom 'Ofcom's proposed plan of work 2021/22', December 2020, available [here](#).

¹² Ibid.

¹³ Ibid, paragraph 3.6.

¹⁴ Dame Melanie Dawes, 'Fibre must be a fair bet', 3 December 2020, available [here](#).

¹⁵ Paragraph 2.1, Ofcom 'Wholesale Fixed Telecoms Market Review – Openreach Quality of Service Further consultation on proposed quality of service remedies', 23 October 2020.



4.2 Openreach should re-invest its excess returns into improving service quality

Under Ofcom's proposals in the WFTMR Openreach would earn high excess profits on its copper services over the next five years: up to £930 million by Ofcom's own conservative estimates; up to £3.4 billion by Frontier Economics' estimates.¹⁶ Ofcom has also indicated that it would not expect to make significant regulatory changes for the following market review period.¹⁷

These high returns would be a regulatory by-product of Ofcom's policy to promote FTTP investment by altnets. Ofcom acknowledges that high returns are not necessary for Openreach's own FTTP investment and might in fact act as a disincentive on its own FTTP roll-out.

Consumers would not be well-served by having to pay higher prices for services with poor and deteriorating service quality while Openreach earned excessive and unnecessary profits.

4.3 Consumers should be guaranteed a minimum appropriate level of service quality in exchange for the service uplift Ofcom allocates to FTTP

Ofcom argues that: (i) it is not in a position at this time to determine what service standards it could set on FTTP; and (ii) in any event, existing FTTC standards may not be an appropriate measure of quality. This is disappointing given that Ofcom considers that FTTP offers significantly improved performance (for example, lower fault rates) and it has even attempted to quantify that 'service uplift' (by proposing that Openreach can charge a £1.50 to £1.85 per month pricing uplift to reflect FTTP's higher quality). Given that Ofcom expects consumers to pay for FTTP's premium service quality, Ofcom should stand behind that and regulate the minimum level that FTTP service quality should be. Such minimum level should be at least as good as the quality of service Openreach must provide on copper-based services.

4.4 Minimum service levels on copper should be raised and extended to FTTP services

Against this backdrop, Sky considers that consumers and businesses would be better served by increasing and widening MSLs.

In particular, it would be appropriate for Ofcom to:

- strengthen its existing MSLs for copper-based services to drive material improvement in performance and better protect consumers;
- introduce MSLs for all fibre-based services that are at least as stringent as the MSLs for copper-based services; and

¹⁶ Page 8, Frontier Economics 'Pricing Wholesale Local Access Services - A Report for Vodafone' (September 2020), available [here](#).

¹⁷ Dame Melanie Dawes, 'Fibre must be a fair bet', 3 December 2020, available [here](#).



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- introduce new MSLs for all types of services requiring Openreach to keep (i) ELFs on its network; and (ii) repeat faults on its network, below specified thresholds.



5 It is not necessary to review minimum service levels six months into the next market review period

Establishing the appropriate regulation for a market review period is inherently uncertain and the appropriate MSLs for the full market review period should be established as they would under normal circumstances. As explained above, Sky feels strongly that MSLs for copper-based services need to be higher than currently envisaged and that MSLs for FTTP services should be introduced. Quality of service is crucial, is currently declining and Ofcom needs to maintain regulatory pressure on Openreach to ensure that the quality of its service delivery on its copper and FTTP networks is adequate.

These MSLs should then be applied throughout the market review period, subject to any necessary temporary relief available under existing mechanisms.

Introducing a review mechanism now will only disincentivise Openreach from aiming to meet these standards between April and October 2021. It also risks displacing the burden of establishing the need for MSL adjustments away from Openreach.

Sky is further concerned that COVID is being used in some instances as a blanket excuse to justify lower service standards. The limited evidence available to justify the review does little to alleviate this concern. In particular:

- There is limited evidence in the consultation document on the difficulties that Openreach is and will be facing outside of periods with lockdown restrictions. The consultation states that *‘[t]hough lockdown restrictions have eased, challenges still remain when working on customer premises.’*¹⁸ There is however no description of what those difficulties are. If this refers to social distancing, for example, then Sky is strongly opposed to this being used as proper evidence to justify such a review exercise. Social distancing rules are now part of our everyday lives and a large and mature operator like Openreach should be expected to adapt. Not the other way around. Especially when all retail operators – including a large CP like Sky, with a large customer-facing field force and customer base – must adapt and are not in a position to force their customers to accommodate this.
- The majority of Openreach customer-facing activities can be conducted without any physical interaction with customers and should only be minimally impacted by COVID. Sky understands that two thirds of non-FTTP provisioning, all upgrades from ADSL to FTTC and the majority of faults can be dealt with without engineers entering customer premises.

In addition, if implemented, Ofcom’s proposed change to the definition of ‘Relevant Region’ in the relevant proposed Directions will improve Openreach’s performance against MSLs, even if only marginally. By increasing the size of the regions against which Openreach must meet the MSLs, Openreach will also have more flexibility to offset poor performance in some areas, with good performance in others. This should also help them meet MSLs. Ofcom’s proposal to maintain the allowance for

¹⁸ Paragraph 3.8.



high-level MBORCs as it currently stands will allow Openreach to make such declarations over a wider part of the UK, which will also provide it with greater flexibility if implemented. These effects need to be considered alongside other proposals in this consultation, including this one, and support an increase – not a decrease – of MSLs.

Any accommodation of Openreach's obligation places an increased burden on CPs which are already facing similar difficulties to Openreach. This should also be taken into account.



6 The relevant time period for the WLA first available date standard should not be changed

Sky disagrees with Ofcom's proposal to amend the relevant time period for the WLA first available data standard from 10 to 12 working days of an order being placed for MPF and GEA-FTTC services.¹⁹ The current 10 working day requirement has only been in place since April 2020 and there is limited evidence supporting this proposal.

Openreach should not be allowed to decrease quality of service standards for the network on which the majority of consumers will continue to rely. Now is a crucial time for the economy and consumers, and MSLs should not be reduced. They should be increased. Investing to improve service quality should be within Openreach's gift given that under Ofcom's proposed regulation for the next market review period, and most likely the next decade, Openreach would be earning significant excess profits.

Openreach has [redacted] been meeting the first available date standard, including since April 2020 when it moved to 10, rather than 12, working days. The chart below tracks this over the past 21 months. Openreach did miss their targets on [redacted]: [redacted] on copper in [redacted] due to Openreach-imposed restrictions on when appointments could be booked; and [redacted] on FTTC in [redacted] due to delays in sourcing skilled engineers. However, these instances appear to be the result of isolated circumstances rather than an underlying trend. They do not justify relaxing the requirement.

[redacted]

Sky disagrees with some of the arguments advanced in support of this proposal:

- An increase in the rate of faults does not, by itself, justify giving Openreach more flexibility with provisioning. Considering the current rate of ELF and repeat faults (see 2.1 and 2.2 above) there is clearly scope for Openreach to reduce directly the burden placed on its resources by providing higher quality provisioning and repair services, without requiring a reduction of current MSLs. Stricter requirements should therefore be placed on the quality of Openreach's provisioning and repair work. In any case, there is no certainty that this higher rate of faults will be sustained over the next market review period.
- Proactive fault reporting is unambiguously hugely beneficial to consumers. In addition, proactive faults only represented [redacted]% of all repair jobs raised by Sky with Openreach in the 12 months up to 28 November 2020. In any case, proactive faults may end up being dealt with contractually and excluded from the definition of 'faults' for the purposes of MSLs (we address this proposal in section 7 below).
- The only reason contractual arrangements are currently set at 12 (rather than 10) working days is because Openreach has refused industry requests to match the requirements set by Ofcom.

¹⁹

As those terms are defined in Annex 5 of the consultation document.



Recent operational changes and Ofcom's proposals in relation to the definition of 'Relevant Region' in the relevant proposed Directions and Openreach's high-level MBORC allowance will, if implemented, give Openreach greater flexibility and support an increase – not a decrease – of MSLs.

On the basis of the above, Sky considers that it would not be appropriate for Ofcom to implement its proposal to amend the relevant time period for the first available date standard for MPF and GEA-FTTC services²⁰.

²⁰

As those terms are defined in Annex 5 of the consultation document.



7 Ofcom's proposal to allow certain faults to be excluded from minimum service levels should be strictly limited, if allowed at all

Ofcom is proposing to update the definition of fault for the purposes of MSLs applicable to MPF, SOTAP and GEA-FTTC services.²¹ It is proposing to add the wording in bold below:

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

If this is implemented, Sky wants to make clear that the future exclusion of any faults from MSLs in relation to the services provided by Openreach to a given CP as a result of this change should be subject to:

- Openreach and that CP (and not just Openreach and other CPs) entering into an agreement to that effect; and
- that agreement being in full force and effect at the relevant time.

²¹ As those services are defined in Annex 5 of the consultation document.