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# Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26

Volume 5: Quality of Service

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**STATEMENT:**

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# 1. Introduction and summary

- 1.1 This Volume sets out our decisions on the quality of service (QoS) remedies for the physical infrastructure, wholesale local access, leased lines access and inter-exchange connectivity markets in which we have identified BT as having SMP, and for a transitional period the inter-exchange connectivity BT+2 market.

## Summary of decisions

- 1.2 We have decided to impose an SMP condition on BT to comply with any QoS standards and transparency requirements we may direct in relation to network access it provides in each of the following markets - physical infrastructure, wholesale local access (WLA) in Area 2 and Area 3, leased lines access (LL Access) in Area 2, Area 3 and the high network reach area (HNR Area), and inter-exchange connectivity (IEC) at BT Only, BT+1 exchanges, and for a transitional period discussed below, BT+2 exchanges (we refer to these markets collectively as the “relevant fixed telecoms markets”).

## QoS standards

- 1.3 Table 1.1 outlines the QoS standards we are imposing in relation to the WLA market. We are imposing lower QoS standards in the WLA market in Year 1 (2021/22) to account for the anticipated continuing impact of Covid-19.
- 1.4 Table 1.2 outlines the QoS standards we are imposing in relation to the LL Access and IEC markets.

**Table 1.1: WLA QoS Standards**

Standard	Level (Year 1)	Level (Years 2 – 5)
Repair within 2 working days (SML1) Repair within 1 working day (SML2)	83%	85%
Repair within 7 working days (SML1) Repair within 6 working days (SML2)	96%	97%
Installations to be completed by Committed Date	91%	94%
First Available Date (FAD) for installations requiring an engineer visit - working days within which first date offered for installation appointments	12 days	10 days
Quality standards in relation to the FAD - Frequency with which regulated installation appointment date must be offered	89%	89%

**Table 1.2: LL Access and IEC QoS Standards**

Standard	Level (Years 1 – 5)
MTTP (Mean time to provide) across orders	No more than 38 working days
Upper percentile limit for provisions	No more than 4.5% of orders older than 133 working days
Certainty: Percentage of orders completed on or before initial Contractual Delivery Date (iCDD)	86%
Certainty Cross-Link: Maximum mean period for the iCDD	No more than 53 working days
Faults repaired within the SLA	94%

### QoS Transparency Requirements

- 1.5 We are imposing an obligation on Openreach to report on a number of key performance indicators (KPIs) in the relevant fixed telecoms markets. These KPIs will allow us to monitor Openreach’s performance, both against the QoS standards we have outlined above and more generally.

## 2. Approach to QoS

- 2.1 This section sets out our overall approach to the QoS remedies for the relevant fixed telecoms markets.

### The need for QoS regulation

- 2.2 As explained in Volume 3 Section 1, our strategy is to promote investment and competition in gigabit-capable networks. Therefore, we consider that the best means through which to deliver QoS is through network competition and we believe that competing full-fibre networks will deliver vastly improved services in terms of speed and reliability.
- 2.3 However, while network competition should protect consumers in the long term, it will take time for this competition to become established. We have also identified areas of the UK where there is not, and there is unlikely to be potential for, material and sustainable competition to BT in the commercial deployment of competing networks. In each case there is a need to continue to promote competition based on access to Openreach's networks, at least in the short term.
- 2.4 We have found that BT has Significant Market Power (SMP).<sup>1</sup> One of the consequences of this SMP is that, absent regulation, Openreach may not receive market signals from switching and lacks incentives to innovate and deliver the QoS customers require. The negative effects on customers of inadequate QoS delivered by Openreach could include a greater number of faults, slow resolution of those faults and frustration resulting from long delays to the installation of fixed and voice services.
- 2.5 Inadequate Openreach QoS can also undermine the effective functioning of the network access remedies due to the negative impacts on downstream competition by, among other things, affecting switching behaviour. For example, long or uncertain waiting times for an installation or repair may discourage switching with consequent implications for retail competition. In addition, there is the potential for discrimination if Openreach were to provide BT's downstream divisions with better QoS than it provides to other telecoms providers.
- 2.6 We therefore consider that regulation is needed to deliver the QoS customers require and ensure that the network access remedies facilitate effective downstream competition.

### Our regulatory tools for service quality

- 2.7 We will continue using four tools to encourage Openreach to provide an appropriate level of QoS. These are: QoS standards, transparency measures, non-discrimination remedies,

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<sup>1</sup> As explained in Volume 2, we have found BT to have SMP in the physical infrastructure, WLA, LL Access and IEC markets. To address this SMP we are imposing remedies on BT. We refer to Openreach in this volume reflecting that BT's Openreach division, run by Openreach Limited, is responsible for providing services over the copper and fibre connections between BT's exchanges to homes and businesses and therefore responsible for the QoS of the network.

and SLAs/SLGs.<sup>2</sup> QoS standards provide a higher degree of certainty over the aggregate level of service that Openreach will achieve. Transparency measures, such as KPIs, make it easier to identify discrimination and monitor compliance with the standards and can also help us to identify emerging issues during the review period. Requiring Openreach to publish certain KPIs also provides an incentive for Openreach to avoid the reputational harm that could accompany poor QoS performance. Non-discrimination remedies ensure that Openreach ensures the good QoS it provides to BTs downstream division is also provided to other operators. SLAs/SLGs ensure that telecoms providers receive compensation for individual Openreach failures.

- 2.8 The QoS standards are intended to be a lower bound rather than a target for Openreach to achieve. Openreach faces an asymmetric risk – that is the risk of events causing a decline in quality but not a similar possibility of external events increasing quality. Hence to meet the standard Openreach will need to, on average, maintain quality above the standard in “business as usual” circumstances – otherwise it runs the risk of failing the overall standard. Equally, the penalties for non-compliance can be significant so we must ensure that the QoS standards are attainable. Openreach’s recent QoS performance indicates that the current QoS standards are achievable under business as usual conditions.
- 2.9 We also recognise that the telecoms providers that buy Openreach wholesale services and competing network providers have a role to play in ensuring that consumers experience a good service quality. We have taken steps to improve the incentives for telecoms providers to provide high service quality including the publication of the Comparing Service Quality report and by promoting the voluntary automatic compensation arrangements.

## QoS standards and transparency requirements

- 2.10 In our January 2020 Consultation, we proposed to impose an SMP condition which requires BT to comply with any QoS standards and reporting requirements as Ofcom may direct, in relation to each relevant fixed telecoms market. No stakeholders commented on this proposal.
- 2.11 We remain of the view that the requirement for BT to comply with any QoS standards and reporting requirements as Ofcom may direct is appropriate and proportionate in relation to BT’s market power in each of the relevant fixed telecoms markets. For the reasons given above, we have decided to impose this condition, as set out in SMP Condition 10 of Volume 7.
- 2.12 Following the update of our market analysis (as discussed in Volume 2 Section 8 and Annex 6), we have reclassified some BT exchanges, including the deregulation of some BT Only and BT+1 exchanges. For the reasons given in Volume 3 Sections 5 and 6 we have decided to require Openreach to continue the supply of (i) active leased lines from deregulated exchanges and (ii) Dark Fibre Inter-exchange (DFX) from reclassified exchanges, if they have been ordered or are already live by 18 March 2021, for a transitional period of one

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<sup>2</sup> We discuss SLAs and SLGs in more detail in Volume 3, Chapter 3.

year until 31 March 2022. We have also decided to set SMP Condition 10 in relation to the inter-exchange connectivity BT+2 market for a transitional period until 17 May 2022. We consider it is necessary for these requirements to be imposed for a transitional period to ensure that consumers still receive an appropriate level of QoS, and Ofcom and industry can continue to have visibility of the level of QoS being delivered, throughout the transition period. Otherwise, Openreach would, subject to its contractual obligations with telecoms providers, be able to lower its quality of service for these circuits.

- 2.13 Having decided this, we consider below whether it is appropriate and proportionate to direct BT to comply with specific QoS standards and transparency requirements in each market.

## 3. QoS in WLA markets

- 3.1 This section sets out our decisions and reasoning relating specifically to QoS in the WLA markets.
- 3.2 We first explain the decision to set QoS standards at 2019/20 levels for Year 1 of the review period, in response to the Covid-19 pandemic. We then go on to discuss the QoS standards for Years 2 – 5, which represent what Ofcom considers appropriate levels of performance under business-as-usual circumstances.
- 3.3 In this section we also discuss the changes we have made to the definition of a Fault, as well as responding to requests for changes to the way the repair standards are set and the introduction of new standards on specific faults. We provide our decision on the changes to the definition of Management Regions, including the related High-Level MBORC<sup>3</sup> allowance. Lastly, we set out the transparency requirements for the WLA markets.

### The level of QoS Standards

- 3.4 In the January 2020 Consultation we set out our view that the existing QoS standards were bringing Openreach's service quality to a good level and that standards stricter than the ones for 2020/21 could result in disproportionately high costs. This reflected broad agreement on this approach from stakeholders in response to our March 2019 Consultation.<sup>4</sup> While we proposed to broadly maintain the existing standards in each of the relevant fixed telecoms markets, there were some aspects of this regulation where we proposed minor alterations, we explain the reasons for these changes below.
- 3.5 We have seen a steady improvement and stabilisation in Openreach's delivery of QoS in the period to 2019/20, in-line with the QoS standards we imposed in the 2014 review and again in the 2018 review. In the 2018 review we set QoS standards that we believed both met consumer needs and were close to what we perceived to be at the upper operational limit for Openreach.
- 3.6 We therefore consider that requiring QoS standards to increase beyond the levels set out in the January 2020 Consultation is not appropriate, given that we would expect there to be limited benefits to consumers set against high product costs of further QoS improvements. In this regard, we note that as QoS standards increase and tend closer to and past operational limits, the additional cost of making small improvements can be disproportionately large.<sup>5</sup>
- 3.7 Openreach commented in its consultation response that the QoS standards in their current form only remain appropriate if the underlying assumptions about the markets they relate

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<sup>3</sup> Matters Beyond Our Reasonable Control.

<sup>4</sup> Ofcom, 2019. [Consultation: Promoting competition and investment in fibre networks – Initial proposals – Approach to remedies](#) (March 2019 Remedies consultation (initial proposals)) [accessed 13 November 2019].

<sup>5</sup> Ofcom, 2018. [Statement: Quality of Service for WLR, MPF and GEA](#). Section 5-7 for operational capabilities and Section 10 for Resourcing [accessed 12 December 2019].



to remain the same and that if market conditions change significantly the QoS standards should change to reflect this.<sup>6</sup>

- 3.8 We accept that changes to the market mean we may need to review the appropriateness of QoS standards during this market review period (2021/22 – 2025/26). There may also be unforeseen market developments that could prompt a review which is impossible to anticipate at this stage. We will continue to monitor QoS performance through our transparency requirements.
- 3.9 We have therefore decided to broadly maintain the QoS standards we proposed in the January 2020 Consultation. We consider that the standards we are imposing are appropriate and proportionate in relation to BT's market power in the WLA market.

## Covid-19 – Year 1

### Our proposals

- 3.10 In our January 2020 Consultation we proposed to impose the same QoS standards in the WLA markets for Year 1 for fault repair and installation, and appointment standards.
- 3.11 In our October 2020 Consultation – Quality of Service we recognised that Openreach's QoS performance has been adversely affected in some areas due to the impact of Covid-19. In light of this, we proposed to impose WLA QoS standards at the levels proposed in the January 2020 Consultation (i.e. standards we would expect Openreach to achieve in business-as-usual circumstances) but committed to assessing whether they remained appropriate no later than half way through Year 1 (2021/22) of the review period.
- 3.12 However, we acknowledged that there was a risk that the impact of Covid-19 could worsen, making it very difficult to set QoS standards for Year 1. We said if this situation were to occur, we would consider how to deal with it at the time.

### Stakeholder responses

- 3.13 In response to the October 2020 Consultation – Quality of Service, Openreach requested that Ofcom should not impose QoS standards in Year 1. Openreach set out how the pandemic had impacted compliance with the QoS standards and argued that Ofcom was not in a position to determine what arrangements are proportionate in Year 1. Openreach also challenged whether it was justifiable to impose an *ex-ante* remedy and review the appropriateness of that remedy *ex-post*.<sup>7</sup> Openreach provided information about how the Covid-19 pandemic was impacting its ability to meet the WLA QoS standards for 2020/21.<sup>8</sup> These are broadly summarised as follows:
- significant increases in the intake of faults, which do not appear to be tied to weather-related incidents;
  - an increased demand for FTTP installations;

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<sup>6</sup> Openreach response to January 2020 Consultation, page 163.

<sup>7</sup> Openreach response to the October 2020 Consultation – Quality of Service, pages 1 – 3.

<sup>8</sup> Openreach response to the October 2020 Consultation – Quality of Service, pages 5 – 10.

- restrictions on entering customer premises;
  - increased absences due to Covid-19 or self-isolation; and
  - a greater reliance on contractors who do not have the same skills as Openreach’s direct labour force.
- 3.14 Openreach set out the steps it has taken to address these challenges which included:
- reallocating resource from the Fibre and Network Delivery arm (which deals with leased lines);
  - significantly reducing team meetings and upskilling training; and
  - implementing contractual overtime.<sup>9</sup>
- 3.15 On 7 January 2021 Openreach announced that some of its business practices had to change further as a result of the national lockdown announced on 4 January 2021.<sup>10</sup> Openreach told us that rates of Covid-19 significantly increased over the winter, leading to even greater levels of sickness and absence in Openreach’s workforce.<sup>11</sup>
- 3.16 The CWU supported the idea that QoS standard should not be imposed in Year 1.<sup>12</sup>
- 3.17 Against a backdrop of requesting stronger business-as-usual QoS standards for Openreach, Sky disagreed with Ofcom’s proposal to review standards in Year 1. Sky suggested standards be introduced for the entire review period *“subject to any necessary temporary relief available under existing mechanisms”*.<sup>13</sup>
- 3.18 TalkTalk stated that it did *“not consider that a relaxation of QoS standards could be justified in any plausible sequence of any future events.”* Instead, TalkTalk argued that Ofcom should consider increasing QoS standards given consumers’ lower tolerance for faults.<sup>14</sup>
- 3.19 Vodafone disagreed with our proposed approach, though appeared to suggest the proposal in our October 2020 Consultation – Quality of Service involved a reduction of standards across the entire period, which was not the case.<sup>15</sup> Verastar also disagreed with our proposals.<sup>16</sup>

## Our reasoning and decisions

### *Setting business-as-usual standards is not appropriate given the pandemic*

- 3.20 Since the October 2020 Consultation – Quality of Service, there have been promising developments regarding Covid-19 in the form of approved vaccines being made available and given to the UK population. However, new strains of Covid-19 have been identified and on 4 January 2021 a new national lockdown was announced for England, with similar

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<sup>9</sup> Openreach response to the October 2020 Consultation – Quality of Service.

<sup>10</sup> [MBORC declaration for appointment availability \(FAD\) for certain Openreach products](#), Openreach, 7 January 2021.

<sup>11</sup> Meetings between Ofcom and Openreach, December 2020 – January 2021.

<sup>12</sup> CWU response to the October 2020 Consultation – Quality of Service, page 2.

<sup>13</sup> Sky response to the October 2020 Consultation – Quality of Service, page 14.

<sup>14</sup> TalkTalk response to the October 2020 Consultation – Quality of Service, page 5.

<sup>15</sup> Vodafone response to the October 2020 Consultation – Quality of Service, page 8.

<sup>16</sup> Verastar response to the October 2020 Consultation – Quality of Service, page 1.

restrictions in place for Scotland, Wales and Northern Ireland. In light of these challenges, it appears to us that there is now a significant risk that Openreach's QoS performance in 2020/21 will have fallen below the required levels. Openreach has also indicated that this is likely to occur and that it would be as a result of the challenges above, despite the steps it has taken to mitigate this. The extent to which similar challenges continue into 2020/21 will impact Openreach's ability to achieve the standards we set for that year.

- 3.21 Our view is that the impact of Covid-19 is likely to continue into Year 1 of the WFTMR, including restrictions on working practices. While there are indications that restrictions may be lifted entirely from Summer 2021, this is by no means guaranteed and there remains high uncertainty, with some restrictions likely to remain in place in the early part of the year. We therefore do not feel it would be appropriate to impose QoS standards for Year 1 at the level set out in the January 2020 Consultation. While these were appropriate for business-as-usual circumstances, because of the uncertainty we are not confident those circumstances will fully return before April 2021 or that Openreach would be able to mitigate these effects in time.

*Setting standards around 2019/20 levels is appropriate, given Openreach year-to-date performance in 2020/21*

- 3.22 Given the above, we have considered what QoS requirements we should impose on Openreach in Year 1.
- 3.23 Openreach requested that Ofcom should not impose QoS standards in Year 1.<sup>17</sup> CWU also suggested that we should not impose QoS standards in Year 1.<sup>18</sup> TalkTalk and Vodafone both stated that QoS standards should be imposed for Year 1.<sup>19</sup>
- 3.24 We consider that some level of QoS standards are needed to deliver the QoS customers require and ensure that the network access remedy facilitates effective downstream competition. Moreover, we would expect that Openreach's performance during 2020/21 to provide evidence of what is reasonably achievable in Year 1 given the restrictions Openreach has been operating under.<sup>20</sup> The following paragraphs provide more detail on Openreach's performance against individual standards during 2020/21, which were higher than the 2019/20 standards:
- a) The "Repair within SLA" standards have been the most challenging for Openreach to meet during 2020/21. Year-To-Date performance as of December 2020 suggests that 13 of 20 "Repair within SLA" standards may be missed. For 12 of the 13 standards likely to be missed at that time, the degree by which Openreach was missing the standard was no more than 2%. It therefore appears that a reduction of this target by 2% for Year 1 should be achievable.

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<sup>17</sup> Openreach response to the October 2020 Consultation – Quality of Service, page 2.

<sup>18</sup> CWU response to the October 2020 Consultation – Quality of Service, page 4.

<sup>19</sup> TalkTalk response to the October 2020 Consultation – Quality of Service, page 2. Vodafone response to the October 2020 Consultation – Quality of Service, page 4.

<sup>20</sup> We note that our analysis does not include data for February and March 2021 and the final quarter of the year typically provides weather conditions that make meeting the standards more challenging.

- b) Year-To-Date performance as of December 2020 suggests that Openreach is on track to meet both “Repair by SLA + 5 days” standards.
- c) Year-To-Date performance as of December 2020 suggests that Openreach is on course to meet all 10 of its “% on time installation” standards, set at a target level of 94%.
- 3.25 In broad terms, Openreach’s performance during 2020/21 suggests that it can reasonably achieve the standards which existed during 2019/20 for Year 1 of WFTMR as constraints on Openreach’s working practises are reduced and it adjusts to any sustained changes in demand. The higher standards that will apply in Years 2-5 will provide an additional constraint on Openreach as it will need to improve performance throughout Year 1 to put itself in a better position to meet the standards in Years 2-5.
- 3.26 We recognise that there is a degree of substitutability between the standards to the extent to which the same resources can be used to address installations and repairs. In setting the standards we do not want to unduly shift the focus to or from installations and repairs and so give weight to applying a similar balance of standards (across installations and repairs) as we did for the standards in force for the 2019/20 period. We have therefore decided to set Year 1 standards at the levels that applied in 2019/20 for all standards rather than making separate changes to individual standards.
- 3.27 We believe that setting QoS standards broadly in line with those set (and achieved) in 2019/20 strikes the right balance between reflecting the challenges presented by the continued impact of Covid-19, addressing BT’s market power and providing customers with an acceptable level of service. Consequently, we have decided to impose the standards in Year 1 as set out in Table 3.1. The table also sets out in more detail Openreach’s year to date 2020/21 performance against the standards we are now setting for Year 1 (equivalent to the 2019/20 standards).

**Table 3.1: WLA QoS Standards for WFTMR Year 1**

Standard	WFTMR Y1 <sup>21</sup> (2019/20 Target)	WLA 2020/21 Target (WFTMR Y2 – 5)	YTD Performance <sup>22</sup>
Repair within SLA (SML1)	83%	85%	84.6%*

<sup>21</sup> Note that we have previously presented this as the level of the QoS standard prior to it being adjusted for Force Majeure. In this table we have only included the QoS standard once Force Majeure has been taken into account.

<sup>22</sup> Figures based on Openreach KPI data as of December 2020.

Standard	WFTMR Y1 <sup>21</sup> (2019/20 Target)	WLA 2020/21 Target (WFTMR Y2 – 5)	YTD Performance <sup>22</sup>
Repair within SLA (SML2)	83%	85%	84.7%*
Repair within SLA + 5 days (SML1)	96%	97%	97.0%
Repair within SLA + 5 days (SML2)	96%	97%	97.1%
% on time installations	91%	94%	94.8%*
FAD	12 days	10 days	N/A
FAD Frequency	89%	89%	92.5%*

\* performance for these standards represents an average across 10 geographic regions.

## Fault repair and installation standards – Years 2 to 5

### Our proposals

3.28 In our January 2020 Consultation, we proposed broadly to maintain the 2020/21 QoS fault repair and installation standards for Years 2-5.

### Stakeholder responses

3.29 TalkTalk and Sky both suggested that the QoS repair standards should not remain static and should instead be increased to reflect the increasing needs of consumers.<sup>23</sup>

<sup>23</sup> TalkTalk response to the October 2020 Consultation – Quality of Service, page 2. Sky response to the October 2020 Consultation – Quality of Service, page 3.

- 3.30 We also received comments from stakeholders with regards to the definition of a fault, we discuss these in more detail below.

### Our reasoning and decisions

- 3.31 We have decided to maintain the fault repair and installation QoS standards proposed in our January 2020 Consultation for Years 2-5 of the review.
- 3.32 As we note at the beginning of this section, we believe that the existing QoS standards will deliver the QoS that customers require and that standards stricter than the ones for 2020/21 could result in disproportionately high costs. Given that prior to the impacts of Covid-19 Openreach was on a trajectory to meet the 2020/21 QoS standards, we continue to consider these standards to be appropriate.
- 3.33 With regards to the ongoing impact of Covid-19, the prospect of Covid-19 work practice restrictions is diminishing, and in any case there ought to have been sufficient time for Openreach to adapt to longer term changes. Therefore, we consider that the standards set out below are appropriate from 2022/23.

**Table 3.2: WLA fault repair and installation standards Years 2 – 5**

WLA market: MPF and GEA-FTTC products	QoS Level Years 2 – 5
Repair within 2 working days (SML1) Repair within 1 working day (SML2)	85%
Repair within 7 working days (SML1) Repair within 6 working days (SML2)	97%
% of installations to be completed by Committed Date	94%

### First Available Date standard – Years 2 – 5

#### Our proposals

- 3.34 The First Available Date (FAD) standard requires Openreach to offer an installation appointment within a set number of days, at a particular frequency. In the 2018 WLA Statement we imposed an appointment standard of 12 working days, on 89% of occasions for the first and second years. This changed to 10 working days, on 89% of occasions, for the third year (2020/21).
- 3.35 In our January 2020 Consultation, we proposed to broadly maintain the 2020/21 QoS standards as part of this review, i.e. to set the standard at 10 working days, on 89% of occasions. Openreach was the only stakeholder who made specific comments. It said that a 10-working-day FAD standard could reduce its operational flexibility in the face of the increased repair volumes being experienced. Openreach attributed this increase to Proactive Testing and the impact of Covid-19. In view of Openreach's comments, in our October 2020 Consultation, we proposed changing the number of days element of the FAD

standard from 10 working days to 12 working days. Given the uncertainty around Proactive Testing and the impact of Covid-19, we proposed that the same FAD standard applies throughout the review period.

### Stakeholder responses.

- 3.36 Openreach agreed with our proposal to change the FAD standard to 12 working days.<sup>24</sup> The other four stakeholders who responded to this proposal (Sky; TalkTalk; Verastar and Vodafone) disagreed.
- 3.37 Sky stated that Openreach has generally been meeting the FAD standard, including since April 2020 when it was tightened to 10 working days. Sky also suggested there is no certainty that the increased fault intake (which was part of the justification for our proposals) will be sustained over the market review period.<sup>25</sup>
- 3.38 In response to our comment that the 12 working day standard aligned with existing industry agreements, Sky said that “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.”<sup>26</sup>
- 3.39 TalkTalk said that much of the increase in fault volumes is likely to be temporary and that any permanent increase was probably related to underinvestment. TalkTalk also said that if there were a material permanent increase in fault volumes not related to underinvestment, Openreach can and should increase engineering capacity to meet the additional demand. As a result, TalkTalk disagreed with the proposal.<sup>27</sup>
- 3.40 Verastar also disagreed with our proposal and suggested the spike in fault volumes during June – September 2020 was as a result of under-reporting during the first lockdown and that, as such, it did not expect fault reporting “post-lockdown” to spike again in the same way. Verastar also did not agree that fault volumes had increased as a result of Proactive Testing.<sup>28</sup>
- 3.41 Vodafone did not agree with the proposal, citing concerns about having invested in processes to utilise the shorter FAD standard. It also questioned the interchangeableness of Openreach’s installation and repair resource, noting Openreach’s preference for using external contractors for installation work and direct labour for repair work. Vodafone suggested Openreach should be able to manage a 10-working day FAD standard under business as usual conditions.

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<sup>24</sup> Openreach response to the October 2020 Consultation – Quality of Service, pages 25 – 26.

<sup>25</sup> Sky QoS response to the October 2020 Consultation – Quality of Service, page 16.

<sup>26</sup> Sky QoS response to the October 2020 Consultation – Quality of Service, page 17.

<sup>27</sup> TalkTalk QoS response to the October 2020 Consultation – Quality of Service, page 12.

<sup>28</sup> Verastar response to the October 2020 Consultation – Quality of Service, page 2.

### Our reasoning and decisions

- 3.42 We have decided to revert back to the position we proposed in the January 2020 Consultation and set the FAD standard to 10 working days on 89% of occasions for Years 2-5.
- 3.43 In light of the evidence provided by stakeholders, particularly that Openreach was meeting the 10 working days QoS standard, we consider that 10 days strikes the right balance between ensuring customers receive appropriate QoS, whilst not being a burden on Openreach that could lead to disproportionately higher costs. We also consider that setting the standard at 10 days provides Openreach with a level of operational flexibility to shift resources between installation and repair whilst still maintaining a good level of QoS.
- 3.44 We consider that by Year 2, Covid-19 work practice restrictions are likely to have been reduced and there ought to have been sufficient time for Openreach to adapt to longer term changes.

**Table 3.3: WLA appointment standards**

WLA markets: MPF and GEA-FTTC products	QoS Level Years 2 - 5
QoS standards in relation to the FAD for installations requiring an engineer visit - working days within which first date offered for installation appointments	10
QoS standards in relation to the FAD for installations requiring an engineer visit - Frequency with which regulated installation appointment date must be offered	89%

## Changes to the definition of a Fault

### Our proposals

- 3.45 Proactive Testing is a term used by Openreach to describe faults raised with Openreach that have not been initiated by an end-user contacting their telecoms provider to report a specific problem with their service. These are instead submitted by telecoms providers using “algorithms and robotics”.<sup>29</sup> This was referred to as “Proactive Repair” in our October 2020 Consultation.
- 3.46 In response to the January 2020 Consultation, Openreach suggested that Proactive Testing presented a challenge because:
- a) When investigating these reported faults, Openreach frequently finds that no remedial action is needed. Openreach has also seen instances of faults being reported where the line is operating with good speed and stability rating;

<sup>29</sup> Openreach response to the October 2020 Consultation – Quality of Service, paragraph 8.100.



- b) Openreach is unable to determine whether a fault has been submitted as a result of an end-customer complaint or as a result of proactive testing and so there is a risk that genuine customer faults suffer from a lower QoS as a result of diversion of effort to faults which are not the result of any issue raised by consumers;
  - c) The increased volume of Proactive Testing faults is inconsistent and volatile, resulting in planning challenges; and
  - d) Proactive Testing has added a higher volume of faults into the repair workstack which was not foreseen at the time of the 2018 WLA review. This may require additional resource to be added, some of which could be wasted resource due to the nature of some faults.<sup>30</sup>
- 3.47 Openreach requested that the definition of a “Fault” in the context of WLA QoS standards be changed to exclude proactively tested submissions that have been labelled as such by the telecoms provider.<sup>31</sup> This was in the context of ongoing discussions with telecoms providers about the submission of such repair faults.
- 3.48 In the October 2020 Consultation – Quality of Service, we proposed amending the definition of a Fault in the WLA QoS standards to exclude those flagged and agreed by telecoms providers to be resolved under a separate process in the applicable SLA. This is set out in full 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.***

## Stakeholder responses

- 3.49 Sky said that Proactive Testing “is unambiguously hugely beneficial to consumers. In addition, proactive faults only represented c. 6% of all repair jobs raised by Sky with Openreach in the 12 months up to 28 November 2020.”<sup>32</sup>
- 3.50 Sky broadly agreed with the change we proposed but stated that any future exclusion of these types of faults should be subject to Openreach and that telecoms provider entering into an agreement, and that agreement being in effect at the relevant time.<sup>33</sup>
- 3.51 Verastar agreed with our proposal, stating “that proactively tested and initiated faults should be treated differently to faults reported by end customers and should be subject to different SLAs and under a different process.”<sup>34</sup>

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<sup>30</sup> Openreach response to January 2020 Consultation, paragraphs 8.98 – 8.122.

<sup>31</sup> Openreach Additional Response to the January 2020 Consultation, paragraph 35.

<sup>32</sup> Sky response to the October 2020 Consultation – Quality of Service, page 17.

<sup>33</sup> Sky response to the October 2020 Consultation – Quality of Service, page 18.

<sup>34</sup> Verastar response to the October 2020 Consultation – Quality of Service, page 3.

- 3.52 TalkTalk stated that the definition of a fault should only be changed with industry consent but that “there is no customer interest justification for removing QoS obligations from these repairs”.<sup>35</sup> TalkTalk also made comments about the number of proactively tested faults it submitted being low [X], and the instances of unnecessary Openreach engineer visits was small [X]%.<sup>36</sup>
- 3.53 Vodafone warned that this change would censure industry discussion and interrupt a live negotiation being mediated by the OTA. Vodafone stated there are charges levied by Openreach for faults not found and so incentives exist for telecoms providers to be careful with their diagnostics and reporting.<sup>37</sup>
- 3.54 Openreach noted in its response that industry discussions on this topic are progressing and that they hope to be able to agree a set of principles around Proactive Testing. Openreach suggested an amendment to the definition Ofcom proposed, so that rather than referring to “a separate process as set out in the applicable service level agreement”, it instead referenced “a separate process to be formally agreed between the Dominant Provider and the Third Party”. This was to provide further flexibility where changes agreed by the industry would not rely on the updating of the service level agreement.<sup>38</sup>

## Our reasoning and decisions

- 3.55 We recognise that there are ongoing negotiations between industry as to how Openreach deals with faults raised through Proactive Testing and it is not our intention to comment on or disrupt those negotiations.
- 3.56 We consider that it is important that the repair standards for faults raised through proactive testing are kept at a good level and therefore consider it appropriate to include these faults under our definition of Faults. However, we also consider that if industry is able to reach an agreement for the QoS of faults raised through proactive testing as part of the SLA process, it would not be appropriate for those faults to also be subject to our QoS standards.
- 3.57 We have therefore decided that to the extent that Openreach and third parties reach agreement as part of the SLA process, such faults should be excluded from our definition of a ‘fault’ and therefore the relevant fault repair standards. We have decided that our definition of a fault in the relevant legal instruments should be as follows:

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<sup>35</sup> TalkTalk response to the October 2020 Consultation – Quality of Service, page 11.

<sup>36</sup> TalkTalk response to the October 2020 Consultation – Quality of Service, page 7.

<sup>37</sup> Vodafone response to the October 2020 Consultation – Quality of Service, page 7.

<sup>38</sup> Openreach response to the October 2020 Consultation – Quality of Service, pages 163 – 164.

“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.***

- 3.58 We consider that this approach ensures that there is always an incentive for Openreach to deliver a good level of QoS for faults raised through proactive testing whilst also allowing for flexibility in whether this incentive is derived from our QoS standards or through industry agreement.
- 3.59 We considered the drafting amendments suggested by Openreach and Sky, but do not consider it appropriate to regulate QoS dependent on individual agreements as it may give rise to different outcomes for customers, and ultimately consumers.
- 3.60 The risk of detrimental impacts on Openreach customers is low as they will have the option to either reach industry agreement on how to treat such faults, or rely on our QoS standards to ensure a good level of QoS is maintained on faults raised through Proactive Testing. Further, we consider that the interests of Openreach customers is likely to be aligned with the interests of consumers in that they both want a good level of QoS. Therefore, the decisions made by Openreach customers should also be in the best interest of consumers.

## Setting repair standards by reference to the SLA

- 3.61 Ofcom sets QoS Standards for the repair of WLA services by reference to a fixed time period ranging from 1 working day to 7 working days depending on the service. This contrasts with the approach used in leased lines where repair standards are set in reference to the time period specified in the SLA.
- 3.62 Openreach asked Ofcom to consider also using timeframes referenced in the SLA between Openreach and its customers for WLA repairs.<sup>39</sup> It suggested that this would allow greater flexibility for Openreach and the industry to agree different repair timeframes. Openreach said this would be especially relevant given the challenges to repair, including Proactive Repair (discussed above). It also noted that the QoS standards for the repair of leased lines work well.
- 3.63 We have decided to not make any changes to the way in which QoS standards for the repair of WLA services are set. We recognise that Openreach’s suggestion would have allowed some degree of flexibility for Openreach. However, we also consider that our approach provides an appropriate degree of certainty, which we do not think would be achieved under Openreach’s proposal.

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<sup>39</sup> Openreach response to the January 2020 Consultation, paras 8.69 – 8.71.

## Request to introduce standards for Early Life Faults and Repeat Faults

- 3.64 In its response to the January 2020 Consultation, Sky suggested that Ofcom should introduce QoS standards for Early Life Faults. Sky said that “‘Dead on Arrivals’ (where a fault develops within 8 days of activation), ‘Early Life Faults’ (where a fault develops within 28 days of service activation) and repeat faults cause significant harm to Sky and its customers.”<sup>40</sup>
- 3.65 Sky provided information which suggested a significant proportion of the [X] new customers it takes on each year, or [X]% of the total, are either Dead on Arrival (DOAs) or experience Early Life Faults (ELFs). Sky noted that a similarly significant proportion [X]% of customers experience repeat faults, with that number trending upwards over the last 18 months. Sky repeated these requests in its response to the October 2020 Consultation – Quality of Service.<sup>41</sup>
- 3.66 We recognise that faults of this nature can be frustrating for both telecoms providers and end-users. This is why we impose QoS standards on fault repairs as set out above and require Openreach to provide KPI data on the specific faults Sky referred to in its submission.
- 3.67 In considering Sky’s submission, we reviewed Openreach’s KPI data about ELFs, DOAs and repeat faults. Between August 2018 and May 2020 ELFs, DOAs and repeat faults for FTTC, MPF and WLR products have remained broadly stable. After this date, fault rates appear to be affected by the impact of Covid-19. This impact is discussed above. The rates of ELFs, DOAs and repeat faults reported by Sky in its submission appear to be broadly similar to those reported by Openreach.
- 3.68 We therefore have not seen evidence of a trend of rising ELF, DOA or repeat faults (outside of the impact of Covid-19). Nor have we seen evidence that Sky is being unduly impacted by these faults, over and above other telecoms providers. Further, it is not possible to separate out the current impact of Covid-19 on ELFs and Repeat Faults.
- 3.69 As a result, we do not think it would be appropriate to introduce QoS standards for ELF, DOA or repeat faults. Instead, Ofcom will rely on the Fault Repair QoS standards and KPI data about ELFs, DOAs and repeat faults to ensure that telecoms providers and broadband users continue to receive an appropriate level of service from Openreach.
- 3.70 While we recognise concerns about current levels, we do not consider it appropriate to introduce further, more narrowly scoped, QoS standards, given the volatility that comes with this approach. If performance in this area remains concerning after the impacts of Covid-19 have dissipated, we will consider whether further intervention is necessary as part of our monitoring.

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<sup>40</sup> Sky response to the October 2020 Consultation – Quality of Service, page 4.

<sup>41</sup> Sky response to the January 2020 Consultation, page 16.

## Management Regions

### Our proposals

#### Management regions

- 3.71 In April 2019 Openreach changed the way its Service Delivery arm is structured, which is the part of Openreach responsible for delivering WLA and related products. Openreach reduced the number of Management Regions from ten to seven.
- 3.72 Some of the current QoS standards and KPI transparency obligations are tied to these Management Regions. Openreach asked us to make changes to the WLA QoS standards and KPI transparency obligations so that they mirror the new operational structure.<sup>42</sup>
- 3.73 In our October 2020 Consultation – Quality of Service, we proposed to make changes to the definition of “Relevant Region” in each proposed direction relating to the WLA markets, so that it aligns with Openreach’s new structure of seven Management Regions, as opposed to referring to the old structure of ten.
- 3.74 From the data Ofcom requested, it appears that changing the Management Regions may result in a marginal improvement when reporting against QoS standards. However, we had seen no evidence to suggest that this change was driven by a desire to mask any poor performance, as Openreach had, at that time, met its QoS standards in each relevant period since their introduction.

#### High-Level MBORC allowance

- 3.75 Another QoS issue impacted by this proposed change to the definition of “Relevant Region” was the High-Level MBORC allowance.
- 3.76 Openreach can declare MBORC (Matters Beyond Our Reasonable Control) in specific circumstances where its normal operational abilities are affected by force majeure events. Declarations of MBORC mean that installations and repairs covered by the declaration are excluded from the QoS standards.
- 3.77 The High-Level MBORC allowance is applied across an entire Management Region and is intended to take account of events affecting over 2,000 lines; incidents which are/are likely to become the subject of regional or national media interest; and anything likely to impact on the BT and/or Openreach brand. High-Level MBORCs are applied at the end of the compliance period. SLA and SLG payments are not impacted by this allowance.
- 3.78 For the purposes of QoS compliance, in the 2018 WLA Statement, Ofcom allowed High-Level MBORC exemptions in up to two regions per year, for up to eight weeks per event.
- 3.79 We recognised that changing the definition of “Relevant Region” to match the changes Openreach had made to its Management Regions meant that the High-Level MBORC allowance could affect a larger area of Openreach’s network. Given this potential impact,

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<sup>42</sup> Openreach response to the January 2020 Consultation, paras 8.89 – 8.93.

we considered whether it would be appropriate to reduce Openreach's High-Level MBORC allowance to only one region per year. However, our analysis suggested that this would not allow Openreach the flexibility to deal with severe weather or other unforeseen events.

- 3.80 We therefore proposed in the October 2020 Consultation – Quality of Service to retain the allowance of two regions per year but invited stakeholder responses on the matter and welcomed alternative solutions.

## Stakeholder responses

- 3.81 Sky noted that the proposal to change the definition of “Relevant Region” and align with Openreach's structure will improve Openreach's performance against QoS standards, even if only marginally. Sky suggested that by increasing the size of the regions, Openreach will have more flexibility to offset poor performance in some areas, with good performance in others. Sky noted the proposal to retain the High-Level MBORC allowance at two also provided greater flexibility and suggested this should support increasing the QoS standards.<sup>43</sup>
- 3.82 TalkTalk agreed with the broad proposal to change the definition of “Relevant Region” and align with Openreach's structure. However, TalkTalk noted that three new regions were very large and that there was a risk of Openreach being “able to evade QoS regulation for most of the winter in over half the premises in England.” TalkTalk considered that the allowance of two High-Level MBORCs per year was excessive.
- 3.83 TalkTalk proposed that Ofcom allow Openreach an allowance of two MBORCs per year, but a maximum of seven MBORCs over the next five-year regulatory period. TalkTalk said “this preserves the ability for Openreach to declare high-level MBORCs in two regions in a year but reduces incentives for gaming where Openreach seeks to use up its two MBORC allowance in a year, and so reduce its costs of SLA / SLG payments”.<sup>44</sup>
- 3.84 Verastar did not agree with the proposal. It noted that it could have a significant impact on a larger proportion of services when situations that allow for QoS standards to be suspended are considered. “For example, a high-level MBORC issue affecting 2,000 services in North Wales would now result in the suspension of service levels for the entirety of Wales and the Midlands.”<sup>45</sup>
- 3.85 Vodafone stated that Openreach had struggled to provide reasoning and evidence to industry in 2019 when changing its operational structure and did not understand the rationale. Vodafone did not agree with the proposal regarding the High-Level MBORC allowance. It noted that “Whilst, for several regions there is no impact to the proposed change, the merging of North East and North West regions and the same for the North Wales & North Midlands and South Wales & South Midlands regions is significant. Should Openreach declare MBORC across these regions, this covers approximately half the UK

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<sup>43</sup> Sky response to the October 2020 Consultation – Quality of Service, page 14.

<sup>44</sup> TalkTalk response to the October 2020 Consultation – Quality of Service, page 14.

<sup>45</sup> Verastar response to the October 2020 Consultation – Quality of Service, page 3.

landmass. With Ofcom’s proposal to retain the allowance of 2 regions per year, this could have a significant impact.”

- 3.86 Further, Vodafone suggested that 16 weeks’ worth of High-Level MBORC across an average fault regime could result in significant reduction in the target obligation. Vodafone said, “If we assume an equal distribution of faults and assume that [High-Level] MBORC was applied to the new largest region for 16 weeks, this could possibly result in the national performance falling to 72% in real experience terms.”
- 3.87 Vodafone recommended that Openreach should publicly report on performance adjusted for MBORC declarations. Vodafone also suggested that Ofcom should make clear the impact this allowance may have in best- and worst-case scenarios to enable properly informed consideration of this proposal.<sup>46</sup>
- 3.88 Openreach agreed with the proposal to change the definition of “Relevant Regions” and also to retain the High-Level MBORC allowance at two regions per year, because reducing to one region per year would significantly reduce flexibility for Openreach.
- 3.89 Openreach noted our concerns about the allowance potentially impacting a greater number of telecoms providers and suggested some mitigations to this. These included the fact the MBORC process has considerable oversight from the OTA2 and the compliance report Openreach supplies to Ofcom annually, showing performance against QoS standards including any use and impact of the High-Level MBORC allowance.
- 3.90 Openreach also suggested that it would be open to discussing an alternative structure to the High-Level MBORC process, by setting the allowance with reference to the Senior Area Manager (SAM) areas. SAM areas cover a much smaller geographic operational area and there are currently 38 SAMs in Openreach’s organisational structure. If such a structure were adopted, Openreach proposed having an allowance of seven SAM areas per each applicable QoS standard per year.<sup>47</sup>

## Our reasoning and decisions

### Management regions

- 3.91 We consider that it is appropriate for Ofcom’s definitions to be aligned with Openreach’s own operational structure, for administrative simplicity and regulatory certainty. Openreach customers will be better able to understand QoS performance submitted to and reported by Ofcom, set against the Management Regions being used by Openreach.
- 3.92 We do not consider that the marginal improvements to QoS performance as a result of this change are material enough to raise concerns and note that improving performance against QoS standards does not seem to be an underlying reason for this change, given Openreach’s performance against WLA QoS standards up to 2019/20. We also do not have

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<sup>46</sup> Vodafone response to the October 2020 Consultation – Quality of Service, page 6.

<sup>47</sup> Openreach response to the October 2020 Consultation – Quality of Service, pages 26 – 28.

evidence that Openreach offsets poor performance in some areas with good performance in others.

- 3.93 We have therefore decided to amend the definition of “Relevant Region” in both the WLA QoS standards and transparency Directions to mean the seven regions corresponding to Openreach’s management regions.

### High-Level MBORC allowance

- 3.94 We remain of the view that a reduction of the High-Level MBORC allowance to only one region per year would not allow Openreach the operational flexibility to meet challenges presented by *force majeure* events.
- 3.95 We recognise stakeholders’ concerns about the broadening of the area this allowance can be applied to, given the change to the definition of Relevant Region.
- 3.96 We note Openreach’s use of the High-Level MBORC allowance in 2018/19 involved two declarations, one lasting for five days and another lasting for seven days. These were both in response to severe weather. In 2019/20, the two High-level MBORC allowances Openreach applied in response to severe weather lasted for 33 days. In each of these years the declaration of MBORC was appropriate, and an allowance of just one region per year would have been insufficient.<sup>48</sup>
- 3.97 Therefore, we have decided to allow High-Level MBORC exemptions in up to two regions per year, for up to eight weeks per event.
- 3.98 We recognise that there is scope for alternative approaches to this, including the proposal put forward by Openreach regarding setting this allowance by reference to SAM area. We will monitor Openreach’s use of the High-Level MBORC allowance during the review period and consider further intervention if concerns arise.

## Application of QoS to FTTP products

### Our proposals

- 3.99 In our January 2020 Consultation we set out our provisional view that in the longer term it is likely to be appropriate to set standards in relation to FTTP, but that we are not in a position at this time to determine what such standards should be.<sup>49</sup> We proposed to include FTTP within the scope of the transparency requirements, which will enable us to consider the need for, and nature of, specific quality standards on FTTP in the future.

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<sup>48</sup> Openreach also applied an allowance to both regions for Covid-19 from 23 – 31 March.

<sup>49</sup> In response to the March 2019 Consultation both TalkTalk and Sky suggested that Ofcom should impose standards on the FTTP anchor product in addition to FTTC standards.



## Stakeholder responses

- 3.100 In response to the January 2020 Consultation, TalkTalk suggested that Ofcom impose a ‘safety net’ of QoS standards for FTTP (set at MPF/ FTTC levels), commit to reviewing FTTP QoS before the end of 2022 and commit to setting a QoS standard for FTTP 40/10.<sup>50</sup>
- 3.101 Sky also said that Ofcom should impose QoS standards for FTTP to reflect Ofcom’s statement that FTTP is of a higher quality and that Openreach is able to charge a premium for it. Sky suggested that as a starting point Ofcom should adopt the minimum service levels already in place for FTTC.<sup>51</sup>

## Our reasoning and decision

- 3.102 We expect FTTP to deliver better service quality on the whole – both in terms of the reliability of the connection speed and in its lower propensity for faults. The speed and assurance of installation and repairs covered by the current QoS standards are only part of service quality experienced by consumers, for whom a large proportion of apparent faults lie outside of Openreach’s (or the competitor network’s) responsibility.
- 3.103 We expect competition between networks to deliver a quality of service that better reflects customer needs, but until that competition emerges and in areas where Openreach has deployed FTTP and has a stop-sell applied to copper (or has no copper services), there is a strong case for QoS standards on FTTP.
- 3.104 However, we consider that it still too early to impose QoS standards on FTTP. Although there are promising signs that fault rates are significantly lower on FTTP than on copper services<sup>52</sup>, volumes are still relatively small<sup>53</sup> and recent installation and repair performance may have been compromised by the working practice restrictions associated with Covid-19. It would also not be appropriate to simply apply the same standards as for copper services, as the nature of FTTP installations and faults are likely to be very different.
- 3.105 We have decided to impose transparency requirements on BT in relation to FTTP. We will continue to monitor Openreach’s QoS performance and consider using direction making powers for FTTP QoS standards, taking account of the growing body evidence of the level of appropriate standards and the growing need for standards as take-up of Openreach FTTP services increases.

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<sup>50</sup> TalkTalk response to the January 2020 Consultation, page 122.

<sup>51</sup> Sky response to the January 2020 Consultation, page 17.

<sup>52</sup> In 2019/20, the % of FTTP connections with a fault was [3<] whereas the % of FTTC+MPF connections with a fault was [3<]. Openreach QoS KPIs

<sup>53</sup> In 2019/20, average FTTP connection volumes were [3<] whereas average FTTC connection volumes were [3<]. Openreach QoS KPIs.

## Transparency requirements for the WLA markets

### Our proposals

- 3.106 The existing broadband transparency framework broadly covers<sup>54</sup>:
- the time it takes for Openreach to complete orders;
  - fault repair performance;
  - Openreach's ability to meet its committed delivery date (and the timing of this date); and
  - monitoring of more complex and delayed orders (including specific in-depth reporting on a less frequent basis).
- 3.107 Openreach is required to provide this information to Ofcom on a regular basis and publish a subset of this data on its website.
- 3.108 In the January 2020 Consultation we proposed to continue to require BT to provide the comprehensive set of QoS performance statistics in the WLA markets (Area 2 and Area 3). We said we considered that this regime has been largely successful, providing information on key quality metrics which informs our analysis.
- 3.109 However, we also proposed some minor changes to the existing information transparency requirements:
- To change the WLA Tail Order transparency requirement from a quarterly to a six-monthly submission.
  - For the monthly reporting to Ofcom, the monthly snapshot reporting and the quarterly public publication, to require BT to make the KPIs available within 15 working days of the end of the reporting period and for the Tail Order transparency requirements to be reported within 30 working days of the end of the reporting period.

### Stakeholder responses

- 3.110 We did not receive any comments from stakeholders on the transparency requirements in the WLA markets.

### Our decision

- 3.111 We have decided to impose a requirement on BT to provide a comprehensive set of QoS performance statistics in the WLA markets (Area 2 and Area 3). In Annex 10 we list all of the KPIs that will apply to BT in relation to WLA QoS. We consider that the transparency requirements we are imposing are appropriate and proportionate in relation to BT's market power in the WLA market. We implement these requirements by making a direction under SMP Condition 10 (see Volume 7).

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<sup>54</sup> For the full list of KPI reporting information, see Annex 14.

- 3.112 We consider that it remains necessary to continue to require KPIs to be broken down such that we can monitor and compare trends in Openreach's performance for individual network access services. In turn, this enables us to identify:
- emerging issues particular to certain services (for example between existing copper-based services and newer fibre-based services);
  - potential discriminatory conduct where certain telecoms providers or groups of telecoms providers (for example between BT divisions and rival providers) consume particular Openreach wholesale inputs; and
  - Openreach's performance at individual product levels, given the potential differences in the complexity for orders across their product portfolio.
- 3.113 For the WLA markets, although we are imposing transparency requirements in each respective geographic market (i.e. Area 2 and Area 3), we are requiring the reporting to be provided in aggregate for each product market (i.e. combining the geographic markets).
- 3.114 In relation to each of the KPI requirements we are imposing, we have decided to require BT to make the KPI information available within 15 working days of the end of the reporting period (i.e. within 15 working days of the end of that month (for the Monthly Snapshot) or quarter (for the quarterly public publication))<sup>55</sup>. We note that the WLA and BCMR reporting had previously been unaligned (with WLA KPIs being reported within 14 working days and BCMR KPIs being reported within 15 working days) and this brings alignment to these processes.
- 3.115 We note that the WLA Tail Orders reporting was previously reported on a quarterly basis. Given the volumes and the time it takes for Openreach to resolve tail orders, we think that it is proportionate to alter this transparency requirement to a six-monthly report to align with the BCMR Tail orders transparency requirement (with a requirement to provide it within one month and 30 working days of the six month period).

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<sup>55</sup> An exception to this is KPIs (ix) and (xiii) (Orders and Repairs affects by MBORC), which we have decided should be reported within one month and 15 working days in respect of the previous month.

## 4. QoS in LL Access and IEC markets

- 4.1 This section sets out our decisions relating specifically to QoS in the LL Access and IEC markets.
- 4.2 We first set out the QoS standards that we are imposing on BT for the LL Access and IEC markets and discuss specific points raised by stakeholders in response to both our January and October 2020 Consultations. We then outline the transparency requirements we are imposing on Openreach.
- 4.3 Overall, our approach is broadly consistent with the QoS obligations we imposed in the BCMR 2019 with the exception of a change to the 'Upper Percentile' standard and the transparency requirement KPI(k). We outline these changes in more detail below.
- 4.4 Unlike for the WLA markets, we have not set different QoS standards for LL Access and IEC for Year 1 and Years 2 to 5 to account for the impact of Covid-19 on QoS. This is because Covid-19 has not had such an adverse effect on Openreach's performance in these markets to the point where we would consider that amendments are necessary.

### The level of QoS standards

- 4.5 In the January 2020 Consultation we set out our view that the existing QoS standards were bringing Openreach's service quality to a good level and that standards stricter than the ones for 2020/21 could result in disproportionately high costs. This reflected broad agreement on this approach from stakeholders in response to our March 2019 Consultation.<sup>56</sup>
- 4.6 We have seen a significant improvement in Openreach's Ethernet installation performance since we first imposed QoS standards in the 2016 BCMR.<sup>57</sup> This has been reflected in the changing attitudes of Openreach's leased line customers who support our view that the level of performance has improved.<sup>58</sup> Therefore, in the BCMR 2019 Statement, we proposed broadly the same form of remedies for QoS as those in the 2016 BCMR and the Temporary Conditions statement, though requiring further incremental improvement in performance in some cases.
- 4.7 It is too early to tell if a different approach will be required for products in the IEC markets. However, given the similarities with the leased line product set, we would expect a similar outcome.
- 4.8 For the reasons set out below, we have decided to broadly maintain the QoS standards we proposed in the January 2020 Consultation. We consider that the standards we are

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<sup>56</sup> Ofcom, 2019. [\*Consultation: Promoting competition and investment in fibre networks – Initial proposals – Approach to remedies\*](#) (March 2019 Remedies consultation (initial proposals)) [accessed 13 November 2019].

<sup>57</sup> 2019 BCMR, 15.22.

<sup>58</sup> 2019 BCMR, 15.22.

imposing are appropriate and proportionate in relation to BT’s market power in each of the LL Access and IEC markets.

## Mean Time to Provide

### Our proposals

- 4.9 In the January 2020 Consultation we proposed to require the Mean Time To Provide (MTTP) to be at no more than 38 working days for the LL Access and IEC markets.

### Stakeholder responses

- 4.10 We did not receive any comments from stakeholders in relation to MTTP in response to either the January 2020 Consultation or the October 2020 Consultation – Quality of Service.

### Our reasoning and decision

- 4.11 We consider it appropriate to maintain the QoS standards proposed in the January 2020 Consultation relating to MTTP, in line with the standards we imposed in the 2019 BCMR.
- 4.12 Our rationale for setting MTTP at no more than 38 working days in the 2019 BCMR reflected what level we considered to be challenging, but ultimately achievable, and Openreach’s current performance indicates that it is able to achieve the MTTP QoS standard. Given the relatively short time since the 2019 BCMR standards came into effect, we have no reason to believe that the 2019 BCMR standards are no longer appropriate.

**Table 4.1: MTTP QoS Standard**

EAD, EBD, Cablelink: LL Access Areas 2 and 3, IEC <sup>59</sup> (BT Only and BT+1) Dark fibre: LL Access Area 3 and IEC BT Only	QoS Level Years 1 - 5
MTTP (Mean time to provide across orders)	No more than 38 working days

## Upper Percentile Standard

- 4.13 The Upper Percentile QoS standard is intended to protect customers with complex orders from excessively long lead times, by attempting to limit the number of orders experiencing such lead times. The standard was originally set in 2016, limiting the number of orders that take over 159 working days to complete, to no more than 3% of Openreach’s workstack.
- 4.14 At that time Openreach’s performance regarding complex orders was extremely poor. When introducing the QoS standards, we noted that deterioration in Openreach’s Ethernet installation performance at the wholesale level had a detrimental effect downstream, i.e. on consumers and citizens.<sup>60</sup>

<sup>59</sup> These standards will also be applied to IEC BT + 2 during the transitional period.

<sup>60</sup> [BCMR 2016 Statement, Volume 1](#), paragraph 13.170.

- 4.15 Therefore in 2016 the purpose of this standard was to set a path to improvement. As discussed below, Openreach's Ethernet installation performance has improved since 2016, though the Upper Percentile standard has remained difficult for Openreach to achieve.
- 4.16 We believe it is still important to protect customers whose orders fall into the tail of complex orders, but the intention of this standard has changed since 2016, away from a push to drastically improve Openreach performance and towards maintaining an appropriate level of service for those customers with complex orders.

### Our proposals

- 4.17 In our January 2020 Consultation we proposed to maintain the current Upper Percentile standard but invited views on possible alternative options.
- 4.18 In response to the January 2020 WFTMR Consultation, Openreach raised a number of issues about the Upper Percentile standard.<sup>61</sup>
- The standard deals with a small percentage of what is already a relatively small number of circuits (e.g. compared to the volumes covered by the QoS standards for GEA-FTTC and MPF).
  - The circuits that fall within the standard tend to be those with the most complex delivery attributes, including contributing factors that are not fully within Openreach's ability to control, such as traffic management and wayleaves.
  - These attributes mean in practice that this measure is very susceptible to market fluctuations such as demand volatility, or changes in the incidence of root causes of delay such as traffic management.
  - The targets that Ofcom has imposed over time have tended to be set at or beyond "stretch" rather than "good backstop" performance levels.
- 4.19 Openreach also raised concerns with the design of the Upper Percentile standard. It said there is a perverse feature of the standard as a result of it focusing on closed orders. This means Openreach could meet the standard if it deliberately chose not to close orders after a certain threshold. Openreach noted it has elected not to do this as it would not have been the right thing to do for customers.<sup>62</sup>
- 4.20 Openreach also noted that, given the above issues, it is difficult to specify the right target level for this standard.<sup>63</sup>
- 4.21 In the October 2020 Consultation – Quality of Service, we considered the issues raised by Openreach, along with assessing Openreach's historical performance against the standard.<sup>64</sup> We noted that, while Openreach's Ethernet installation performance had improved over time, Openreach had consistently struggled to meet the Upper Percentile QoS standard.

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<sup>61</sup> Openreach response to the October 2020 Consultation – Quality of Service, paras 8.239 – 8.242.

<sup>62</sup> Openreach response to the January 2020 Consultation, paragraph 8.249.

<sup>63</sup> Openreach response to the January 2020 Consultation, paragraph 8.258.

<sup>64</sup> October 2020 Consultation – Quality of Service, pages 29 – 31.

- 4.22 We also agreed with some of Openreach’s concerns about the design of the Upper Percentile standard. In particular, we accepted the concerns regarding the perverse incentive. Under the Upper Percentile standard as designed previously, once Openreach has closed a certain number of orders older than 133 days it had three options:
- Continue closing older orders during the compliance period and essentially worsen its performance against the Upper Percentile (because only orders that are closed in the period contribute to the measurement of performance against the standard).
  - Stop closing older orders until the next compliance period; and/or
  - Attempt to close more orders that are less than 133 working days old.
- 4.23 We proposed to change the design of the Upper Percentile standard to focus on open orders (“Open Orders Upper Percentile” standard). More specifically, we proposed that the Open Orders Upper Percentile standard be designed in a similar way to the KPI (h) Monitoring the tail (open work stack), paragraph (i) that Openreach reported on as part of its transparency requirements set under the 2019 BCMR (“KPI (h) (i)”). This KPI required Openreach to report the percentage of Open Orders that are more than 133 days old on the last day of each month.
- 4.24 We proposed to set the target level at 5%, noting that a range between 4.5% - 5.5% would be appropriate, based on historical performance against this KPI, although this data did not remove Pending Customer Delay (see below). We also proposed to make minor amendments to the level of detail provided by Openreach regarding two relevant KPIs.
- 4.25 The previous design of the Upper Percentile standard removed customer caused delay and in our October 2020 Consultation – Quality of Service we proposed to do the same for the Open Order Upper Percentile standard. We set out our view that this would better reflect the underlying performance of Openreach.

### Stakeholder responses

- 4.26 Openreach responded to the October 2020 Consultation – Quality of Service outlining the preference for the Upper Percentile standard to be removed entirely, as per Openreach’s proposal in response to the January 2020 Consultation.<sup>65</sup>
- 4.27 Openreach agreed that, if Ofcom were to impose the Open Orders Upper Percentile standard, Pending Customer Delay should be removed. Openreach stated that “failure to remove pending delay from the measure would mean that orders might be counted as tails, even though they would not be over 133 working days in age after all the customer delay had been removed. This would make the calculation inaccurate, and completely undermine the whole purpose of the measure”.<sup>66</sup>
- 4.28 TalkTalk and Vodafone also responded to our proposal on the Upper Percentile in the October 2020 Consultation – Quality of Service and were supportive of the change, though raised some concerns. TalkTalk strongly supported our statement that it would be

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<sup>65</sup> Openreach response to the October 2020 Consultation – Quality of Service, paragraph 140 – 146.

<sup>66</sup> Openreach response to the October 2020 Consultation – Quality of Service, paragraph 166.

inappropriate to remove the standard and replace it with Openreach's proposal, but did raise concerns around the target level and removing Pending Customer Delay (see below).<sup>67</sup> Vodafone supported the change of design of the standard. Vodafone noted a potential for Openreach to game the measure, but recognised this was unlikely given this would affect performance against other measures.<sup>68</sup>

- 4.29 TalkTalk raised concerns about Openreach being the primary determiner of where there have been customer delays and said it would have strong incentives to attempt to game the regulatory system by allocating problems within Openreach's control as customer delays. TalkTalk referenced previous issues with the application of Deemed Consent where Openreach were found to have abused this process.<sup>69</sup>

### **Our reasoning and decisions**

- 4.30 We have decided to impose the Open Orders Upper Percentile standard we proposed in the October 2020 Consultation – Quality of Service. We have decided to set the target level of the standard at 4.5% for the WFTMR period, based on historical performance. We set out our reasoning below.

#### *The new Upper Percentile standard will focus on open orders*

- 4.31 We disagree with Openreach that there should be no Upper Percentile standard. For the reasons set out in our October 2020 Consultation – Quality of Service, we still do not believe that removing the standard is appropriate. These include the fact that the removal of the Upper Percentile as a formal standard creates risks to the QoS for Openreach's customers and that, should Openreach's performance regarding its most complex orders deteriorate during the upcoming review period, we would be unable to take enforcement action in the absence of a breach of any other QoS standards. Further, we do not believe that Openreach's concerns about the challenges of setting a reasonable target level, or the fact market fluctuations can affect performance against it, were reason enough to remove the standard entirely.
- 4.32 We have decided that the Upper Percentile standard should be amended to focus on open orders. We discuss the level of the standard below.
- 4.33 The main benefit of this change is that it removes the perverse incentive which existed in the old Upper Percentile standard, discussed at 4.22 above. Under the Open Order Upper Percentile standard, Openreach will be incentivised to continue to close its oldest and most complex orders throughout the compliance period, as each closed order will improve its performance against the Open Order Upper Percentile standard.

#### *The new standard will remove Pending Customer Delay*

- 4.34 Where a delay occurs on an Ethernet order, this can be either attributed to Openreach or attributed to the customer. This is done using different Deemed Consent codes. Once the

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<sup>67</sup> TalkTalk response to the October 2020 Consultation – Quality of Service, page 14.

<sup>68</sup> Vodafone response to October 2020 Consultation – Quality of Service, page 8.

<sup>69</sup> TalkTalk response to October 2020 Consultation – Quality of Service, page 14.



delay has finished and work resumes, if it has been attributed to the customer, the customer has the opportunity to challenge this. Where Openreach has attributed a delay to a customer, but the delay has not yet finished, this is known as “Pending Customer Delay”.

- 4.35 We accept there is a risk that delays are incorrectly attributed to customers, which would in turn improve Openreach’s performance against this standard. We also recognise that the incentive exists for Openreach to deliberately attribute delays incorrectly to customers.
- 4.36 We note that Ofcom previously fined Openreach £42m for the misuse of the Deemed Consent process and that the deliberate incorrect application of Deemed Consent codes was a feature of this investigation.<sup>70</sup> We think the risk of a second investigation into this area (with the possibility of a higher penalty) acts as a counterincentive for Openreach.
- 4.37 In order to combat the risk of delays being mistakenly attributed to customers, Ofcom will require Openreach to re-submit figures to us, removing any Pending Customer Delay which was found to have been incorrectly attributed. Openreach regularly re-submits updated figures to Ofcom as part of the standard process around transparency reporting.
- 4.38 We also note that, as a result of the Deemed Consent investigation mentioned above, Openreach now has a dedicated team reviewing the applications of Deemed Consent and we understand the process for customers to challenge its application to be sufficiently robust. This should allow for incorrect applications to be identified in a reasonable timeframe with a good degree of accuracy.

*The target level will be set at 4.5% based on historical performance*

- 4.39 In the October 2020 Consultation – Quality of Service we explained that our approach for setting the appropriate target for the standard would involve using our regulatory judgement, taking into account factors including Openreach’s previous performance against the KPI that this new standard is based on, KPI (h) (i).
- 4.40 We assessed the data for KPI (h) (i) available to us at the time of the October 2020 Consultation – Quality of Service, which was from January 2018 – August 2020. We looked at the data for different periods, based on different factors. However, this data did not remove Pending Customer Delay (PCD) so we asked Openreach to re-submit the data removing PCD as part of its response to the October 2020 Consultation – Quality of Service.<sup>71</sup>

**Table 4.2: Openreach performance against KPI (h) (i) with and without Pending Customer Delay**

Period	With Pending Customer Delay	Pending Customer Delay Removed
Total Data Period (Jan 18 – Sep 20)	5.59%	3.63%
Data Period minus Covid-19 (Jan 18 – Mar 20)	5.16%	3.58%

<sup>70</sup> [Ofcom Deemed Consent Investigation Confirmation Decision.](#)

<sup>71</sup> The data also included updated figures up to September 2020

Best Performance <sup>72</sup> (Jan 18 – Oct 18)	4.77%	3.31%
FY 2018/19	4.84%	3.24%
FY 2019/20	5.54%	3.93%

- 4.41 Openreach suggested that performance for financial year 2019/20 (3.93%) would be a good baseline level of performance for this standard as it represents a full 12 month regulatory period, contains some operational challenges, was largely unaffected by Covid-19 impacts and was a period with strong customer satisfaction.<sup>73</sup>
- 4.42 Openreach also suggested that a contingency should be built into the target level on top of the baseline level of performance, to deal with market volatility, and that this target should be set at “good back-stop” rather than at “stretch” levels. Openreach therefore proposed a target level of 4.5%.
- 4.43 We agree that the installation of Ethernet circuits, in particular those most complex orders which this standard refers to, contains market volatility such as resulting from differences in volumes and types of circuit over time. As noted above, we are of the view that the intention of this standard has changed and is now primarily about maintaining an appropriate level of service for those customers with complex orders, rather than pushing Openreach to go further.
- 4.44 In the October 2020 Consultation – Quality of Service we proposed to set the Upper Percentile standard at no more than 5% from a range between 4.5% - 5.5% based on data provided by Openreach, with both the standard and the data provided without PCD removed. However, taking account of the new data with PCD removed and our judgement that it is appropriate to set the standard at a level that considers baseline performance and the potential effect of volatility, we have decided to set the Upper Percentile standard at 4.5%.
- 4.45 As a result of our decision regarding the Upper Percentile standard, we have made changes to the transparency requirements, which are set out below at 4.83 – 4.85.

## **Certainty: % of orders completed on or before initial Contractual Delivery Date (iCDD)**

### **Our proposals**

- 4.46 In our January 2020 Consultation we proposed to set the standard ‘Percentage of orders completed on or before iCDD’ at 86%.

<sup>72</sup> Openreach has noted that the period between November 2017 – October 2018 is considered as its period of best performance for Ethernet installation. See Openreach response to the January 2020 Consultation, paragraph 8.244

<sup>73</sup> Openreach response to October 2020 Consultation – Quality of Service, paragraph 175

### Stakeholder responses

- 4.47 Vodafone suggested that Ofcom should increase the ‘Percentage of orders completed on or before iCDD’ standard requiring 86% of orders to be completed on or before the initial Contractual Delivery Date to 88%. Vodafone argued that this would ensure sufficient focus on this aspect of service delivery and, Vodafone believes, is achievable.<sup>74</sup>

### Our decision

- 4.48 We have decided to impose the QoS standards we proposed in the January 2020 Consultation and to keep the level of the standard at 86%. This is because we consider that this standard delivers the quality of service that consumers require. We do not consider that it would be appropriate to increase the level of the standard to 88% as suggested by Vodafone as we do not consider that the increase would be justified when the additional costs that Openreach would need to incur are considered.

**Table 4.3: Percentage of orders completed on or before iCDD**

EAD, EBD, Cablelink: LL Access Areas 2 and 3, IEC (BT Only and BT+1) <sup>75</sup> Dark fibre: LL Access Area 3 and IEC BT Only	QoS Level Years 1 - 5
Certainty: Percentage of orders completed on or before initial Contractual Delivery Date (iCDD)	86%

### Certainty Cross-Link: Maximum mean period for the iCDD

#### Our proposals

- 4.49 In our January 2020 Consultation we proposed to set the standard ‘Certainty Cross-Link: Maximum mean period for the iCDD’ at no more than 53 working days.<sup>76</sup>

### Stakeholder responses

- 4.50 Openreach suggested that Ofcom should consider changing the Ethernet Certainty Cross-Link requirement from a standard to a KPI as the purpose of this requirement is to prevent gaming, rather than to ensure a particular outcome (such as speed or certainty). Openreach suggested that this could be changed to a KPI in the interest of simplifying regulation and in light of Openreach having consistently met this requirement.<sup>77</sup>

<sup>74</sup> Vodafone response to the January 2020 Consultation, part 2, page 77 – 78.

<sup>75</sup> These standards will also be applied to IEC BT + 2 during the transitional period.

<sup>76</sup> The ‘Maximum mean period for the iCDD’ is the standard for the average time between the order validation date and the initial contractual delivery date (iCDD) given to the customer (excluding customer delay which occurred before the iCDD issue date). It is based on orders where the iCDD was provided in the relevant month. When Openreach issues the initial CDD of an order, it sets the customer’s initial expectation of the date on which the order will be completed. The purpose of the Certainty Cross-link standard is to prevent Openreach from setting excessively long delivery dates (to ensure that they comply with the Certainty standard).

<sup>77</sup> Openreach response to January 2020 Consultation, page 211.

## Our decision

- 4.51 We consider that it is necessary to continue to impose the Ethernet Certainty Cross-Link standard on Openreach. The standard is important in ensuring that Openreach has the incentive to keep the period of the iCDD short and prevents Openreach being able to game the above certainty standard by setting all iCDDs at a high number of days and therefore being able to complete orders before the iCDD in all cases. Whilst we acknowledge that the risk of gaming is potentially low, we do not consider it appropriate to remove the standard as the risk still exists.

**Table 4.4: Cross-link certainty QoS standard**

EAD, EBD, Cablelink: LL access Areas 2 and 3, IEC (BT Only and BT+1) <sup>78</sup> Dark fibre: LL Access Area 3 and IEC BT Only	QoS Level Years 1 - 5
Certainty Cross-Link: Maximum mean period for the iCDD	No more than 53 working days

## % of faults repaired within the SLA

### Our proposals

- 4.52 In our January 2020 Consultation we proposed to set the 'Percentage of faults repaired within the SLA' standard at 94%.

### Stakeholder responses

- 4.53 Openreach questioned why Ofcom has not made any allowance for MBORC in its leased lines and IEC Repair QoS standards, in contrast to broadband Repair QoS standards. Openreach argued that when MBORC occurs, it negatively impacts Openreach's performance against this QoS standard.<sup>79</sup>
- 4.54 Openreach stated that it is not appropriate for Openreach to have to justify its (potential lack of) performance against the QoS standards due to MBORC as a mitigation in the context of an investigation. Openreach stated that this is because:
- MBORC events can have major consequences on the delivery of Ethernet.
  - The quality of Openreach's service is partly assessed against the QoS standards and to rely on orders affected by MBORC events in the assessment of Openreach's performance does not give an accurate reflection of Openreach performance; and
  - An investigation triggers bad publicity, industry involvement and work for Ofcom and Openreach which would be avoided if orders affected by MBORC were excluded for the QoS standard calculation.

<sup>78</sup> These standards will also be applied to IEC BT + 2 during the transitional period.

<sup>79</sup> Openreach response to January 2020 Consultation, page 212.

## Our decision

- 4.55 We have decided to impose the faults repair standards on Openreach set at 94% as we proposed in the January 2020 Consultation.
- 4.56 We consider that this standard and the level at which it is set are important to ensure consumers receive the level of quality of service that they require. We do not consider it appropriate to increase the level of the standard as we do not consider the additional costs that Openreach may incur as a result of any increase, to be proportionate.
- 4.57 We have also decided not to introduce an allowance for MBORC events in LL Access markets. We consider that the QoS standards we have set are achievable under ‘business as usual’ years and note that Openreach’s failure to achieve this standard in the past has been due to it facing significant unexpected challenges in that year. We have not seen any evidence to suggest that MBORC events for Ethernet will increase and hence, consider that there is no substantive basis of a “cautionary” MBORC allowance.
- 4.58 In response to Openreach’s concerns about such matters not being considered as part of enforcement activity, we would point Openreach to Ofcom’s Enforcement Guidelines and note that, before taking any formal enforcement action, we will first carry out an initial assessment of the issue.<sup>80</sup>

**Table 4.5: Fault repair standard**

EAD, EBD, Cablelink: LL access Areas 2 and 3, IEC (BT Only and BT+1) <sup>81</sup> Dark fibre: LL Access Area 3 and IEC BT Only	QoS Level Years 1 - 5
% of faults repaired within the SLA	94%

## QoS for Dark Fibre Access and Dark Fibre Inter-exchange

### Our proposals

- 4.59 In the January 2020 Consultation, we proposed:
- to include Dark Fibre Access (DFA) within the scope of the QoS standards that would apply to Openreach’s leased lines and to assess compliance by pooling together the performance data for DFA and the relevant Ethernet services;
  - to continue including DFX within the scope of the QoS standards that would apply to Openreach’s leased lines and to assess compliance by pooling together the performance data for DFX and the relevant Ethernet services; and
  - that Openreach is required to report certain KPIs in relation to DFA and DFX.

<sup>80</sup> [Ofcom’s Enforcement Guidelines](#) are available on our website.

<sup>81</sup> These standards will also be applied to IEC BT + 2 during the transitional period.

## Stakeholder responses

- 4.60 Most stakeholders that responded to our dark fibre (DFA and DFX together) and QoS proposals did not object to our proposal to apply the QoS standards and transparency requirements.
- 4.61 Openreach agreed with the inclusion of DFA in the scope of the QoS requirements. It also agreed with our proposed approach to compliance assessment (i.e. pooling together DFA and Ethernet data to assess compliance with the standards) and said this will reduce the risk of DFA compliance results being distorted by very small sample sizes.<sup>82</sup>
- 4.62 TalkTalk said there should be separate QoS targets for DFA and Ethernet products. Openreach would otherwise have the ability and incentive to discriminate between the products by, for instance, degrading the quality on DFA in order to prevent deeper competition on its network.<sup>83</sup>

## Our decision

- 4.63 We remain of the view that imposing QoS standards and transparency requirements in relation to dark fibre is an appropriate and proportionate *ex ante* measure to complement the DFA and DFX network access requirements. The DFA and DFX remedies are interventions we consider necessary to address our competition concerns in their respective markets. Absent QoS standards for these circuits, Openreach would have the ability and incentive to offer poor service levels for installation and fault repairs.
- 4.64 We believe that the technical, operational (installation and repair) and commercial aspects of Openreach's current offer of EAD and EAD LA circuits, should be used as a benchmark for dark fibre. We have decided to apply the Ethernet QoS standards for installation and repair to DFA and DFX.
- 4.65 We have set the QoS standards for the installation of DFA and DFX circuits at the same levels as those for active circuits. It would be difficult to determine achievable lower levels for DFA and DFX installation at this stage, particularly in the case of DFA given that the product has not yet become available. However, we do not think dark fibre should be harder on average to deliver than active circuits,<sup>84</sup> so the QoS standards we are setting for active circuit levels will provide a reasonable backstop.
- 4.66 In relation to the Repair QoS standard, we have decided that the performance level for each of DFA and DFX should be determined by the SLA, as is the case for active Ethernet circuits. The SLA for DFX is 18 hours, and we anticipate the SLA for DFA (which will be published no later than 1 June 2022) to set an appropriate time limit, to reflect the

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<sup>82</sup> Openreach response to January 2020 Consultation, paragraphs 8.211-8.214.

<sup>83</sup> TalkTalk response to January 2020 Consultation, paragraph 7.177.

<sup>84</sup> The installation process for DFA is broadly identical to that for Ethernet, but differs in the final connection of the active equipment.

different profile of DFA repairs relative to Ethernet (for which a limit of five hours applies).<sup>85</sup>

- 4.67 When assessing compliance against the installation and repair QoS standards, we have decided to aggregate DFA, DFX and Ethernet performance data. The DFA product has not been launched yet and, while we expect over time DFA to become the primary access remedy in Area 3 of the LL Access market, volumes are likely to increase gradually over the course of this review period (see Annex 9) resulting in performance volatility. Therefore, it would be premature to assess Openreach's compliance with the DFA QoS standards on their own (i.e. without aggregating them with Ethernet performance data).
- 4.68 We have also decided to require Openreach to report KPI data for DFA and DFX separately from its Ethernet circuits.
- 4.69 We acknowledge TalkTalk's concern that Openreach could degrade the quality on DFA in order to prevent deeper competition on its network. We require Openreach to report KPI data for DFA separately from its Ethernet circuits. This will allow Ofcom and stakeholders to monitor closely Openreach's QoS performance while DFA take-up increases.
- 4.70 The QoS transparency requirements we are imposing on dark fibre will apply from 1 April 2021. The QoS standards will apply from 1 April 2021 on DFX and from 1 June 2022 for DFA. The decision to introduce the QoS standards from 1 June 2022 is to align with the full launch of the DFA product. We explain this in more detail in Volume 3, Section 6.

## QoS standards for reclassified BT exchanges during the transitional period

- 4.71 Following the update of our market analysis (as discussed in Volume 2 Section 8 and Annex 6), we have reclassified some BT exchanges, including the deregulation of some BT Only and BT+1 exchanges. For the reasons given in Volume 3 Sections 5 and 6 we have decided to require Openreach to continue the supply of (i) active leased lines from deregulated exchanges and (ii) DFX from reclassified exchanges, if they have been ordered or are already live by 18 March 2021, for a transitional period of one year until 31 March 2022. We have also decided in that transitional period to impose the QoS standards set out above. We consider it is necessary for these requirements to be imposed for a transitional period to ensure that consumers still receive an appropriate level of QoS during the transition period. Otherwise, Openreach would, subject to its contractual obligations with telecoms providers, be able to lower its quality of service for these circuits.

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<sup>85</sup> See [Openreach DFX Contract Schedule 4, 3.2](#) [accessed 5 January 2021] and [Openreach Contract for Connectivity Services Schedule 4 SLA, 2.1](#) [accessed 5 January 2021].

## Transparency requirements for LL Access and IEC markets

### Our proposals

- 4.72 In the January 2020 Consultation we proposed to continue to require BT to provide the comprehensive set of QoS performance statistics in the LL Access (Areas 2 and 3) and IEC markets (BT+1 and BT Only). The existing transparency framework for these markets broadly covers:
- the time it takes for Openreach to complete orders;
  - fault repair performance;
  - Openreach’s ability to meet its committed delivery date (and the timing of this date); and
  - monitoring of more complex and delayed orders (including specific in-depth reporting on a less frequent basis).
- 4.73 Openreach is required to provide this information to Ofcom on a regular basis and publish a subset of this data on their website.
- 4.74 We also proposed some minor changes to the existing transparency requirements:
- For Openreach to no longer need to split KPI data between different geographic markets (however, there is a split for the HNR Area).
  - For the monthly reporting to Ofcom, the monthly snapshot reporting and the quarterly public publication, to require BT to make the KPIs available within 15 working days of the end of the reporting period and for the Tail Order transparency requirements to be reported within 30 working days of the end of the reporting period.
- 4.75 In our October 2020 Consultation – Quality of Service, we proposed to make an additional adjustment to LL Access and IEC KPIs on the basis of Openreach’s response to our January 2020 Consultation. We provisionally agreed with Openreach that ‘customer caused delay’ should be removed from the KPI (k) to align with other KPIs and more accurately reflect Openreach’s QoS performance.
- 4.76 As part of the proposal in our October 2020 Consultation – Quality of Service to change the design of the Upper Percentile standard, we also proposed to make minor amendments to the level of detail provided by Openreach regarding two relevant KPIs.

### Stakeholder responses

- 4.77 We did not receive any other comments from stakeholders on our approach to KPIs.

### Our reasoning and decisions

- 4.78 We consider that the transparency requirements we are imposing are appropriate and proportionate in relation to BT’s market power in the LL Access and IEC markets.



- 4.79 We consider that it remains necessary to continue to require KPIs to be broken down such that we can monitor and compare trends in Openreach's performance for individual network access services. In turn, this enables us to identify:
- emerging issues particular to certain services;
  - potential discriminatory conduct where certain telecoms providers or groups of telecoms providers (for example between BT divisions and rival providers) consume particular Openreach wholesale inputs; and
  - Openreach's performance at individual product levels, given the potential differences in the complexity for orders across their product portfolio.
- 4.80 We consider that the KPIs we are proposing are appropriate, proportionate and necessary to complement our QoS standards. We consider they will ensure that the network access we require BT to provide is timely and effective, and will address the competition concerns we have about quality arising out of our findings that BT holds SMP in the LL Access and IEC markets.
- 4.81 For the LL Access and IEC markets, although we are imposing transparency requirements in Area 2 and Area 3, we have decided that the reporting should be provided in aggregate for each product market given that in each case we are applying the same QoS standards across both geographic markets. Since the current regional splits used for reporting are based on Openreach's existing internal processes (which are not aligned to our geographic market delineations) and considering the potential for our geographic markets to change in the next review period, it is disproportionate to require Openreach to mirror their organisational structures to our changing market definitions.
- 4.82 For the HNR areas, we have decided that this information should be reported separately. This is because HNR areas are not subject to QoS standards and therefore the split is required to provide additional protections to Openreach's customers and inform them or us of any potential competition concerns.
- 4.83 We have also decided to amend the wording of KPI (k) in line with our proposal in the October 2020 Consultation – Quality of Service so that 'customer caused delays' are no longer included within the KPI.
- 4.84 As a result of the changes to the Upper Percentile (see 4.13 – 4.45) we have made changes to some transparency requirements. The previous design of the Upper Percentile standard corresponded to KPI (e), whereas the current Upper Percentile standard more closely corresponds to KPI (h) (i).
- 4.85 Since KPI (h) now corresponds to the new Upper Percentile standard, we have decided that a greater level of transparency is appropriate in line with other KPIs that correspond to QoS standards. We have decided that KPI (h) (both paragraphs (i) and (ii)) are to be provided split by region; product; HNR areas and Provision Category. The numerator and

denominator for KPI (h) (i) and (ii) will also need to be provided. We have also decided to require Openreach to publish KPI (h) (i) on a quarterly basis.<sup>86</sup>

- 4.86 Under the 2019 BCMR, Openreach was required to submit data for KPI (e) (which is the equivalent KPI to the previous Upper Percentile standard) split by: region; product; HNR areas; and Provision Category. Openreach was also required to provide the numerator and denominator for KPI (e).<sup>87</sup> Since KPI (e) no longer corresponds to a QoS standard, we have decided to remove the requirement on Openreach to provide KPI (e) split by region; product; HNR areas; and Provision Category, and to publicly publish KPI (e). The requirement to provide the numerator and denominator will remain.

#### **When Openreach is required to report information**

- 4.87 In relation to each of the KPI requirements we are imposing, we have decided to require Openreach to make the KPI information available within 15 working days of the end of the reporting period for the Monthly Snapshot and quarterly public publication, and within 30 working days for the six monthly Tails report. We note that the WLA and BCMR reporting had previously been unaligned (with WLA KPIs being reported within 14 working days and BCMR KPIs being reported within 15 working days) and this brings alignment to these processes. We have also decided to bring the Monthly Snapshot reporting into alignment and that this should be reported within 15 working days of the end of the relevant month.
- 4.88 In Annex 10 we list all of the KPIs that will apply to BT in relation to leased lines QoS.

### **Transparency requirements for the reclassified exchanges during the transitional period**

- 4.89 Following the update of our market analysis (as discussed in Volume 2 Section 8 and Annex 6), we have reclassified some BT exchanges, including the deregulation of some BT Only and BT+1 exchanges. For the reasons given in Volume 3 Sections 5 and 6 we have decided to require Openreach to continue the supply of (i) active leased lines from deregulated exchanges and (ii) DFX from reclassified exchanges, if they have been ordered or are already live by 18 March 2021, for a transitional period of one year until 31 March 2022. We have also decided in that transitional period (and for 30 working days after to allow for reporting deadlines to be observed) to impose the transparency requirements set out above. We consider it is necessary for these requirements to be imposed for a transitional period to ensure that Ofcom and industry can continue to have visibility of the level of QoS being delivered throughout the transition period.

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<sup>86</sup> The requirement to publish KPI(d) in the quarterly public reporting, split by region was included in error at consultation. The requirement was only intended to capture those KPIs that are standards, which are now KPIs(a) to (c) and (h)(i).

<sup>87</sup> See Table 15.16 of the [2019 BCMR, Volume 2](#).

## 5. QoS in the physical infrastructure market

### QoS Standards and transparency requirements

#### Our proposals

- 5.1 In the January 2020 Consultation, we proposed not to impose any specific QoS standards in the physical infrastructure market as we considered that a period of time was needed to understand if QoS standards are required. We also proposed not to impose transparency requirements on Openreach in relation to the physical infrastructure market.

#### Stakeholder responses

- 5.2 Only BUUK commented on our January 2020 Consultation proposals. BUUK said that it was ‘disappointed that the decision has been taken not to implement QoS as part of the proposed approach to PIA’<sup>88</sup>.

#### Our decisions

- 5.3 We have decided not to impose any specific QoS standards or transparency requirements on BT in the physical infrastructure market. Whilst the PIA product has been available for a while, we have made a number of recent regulatory decisions that are expected to lead to both improvements to the product and also to an increase in the take-up of PIA. Due to both the nature and take-up of the product still changing, we do not consider it possible to effectively assess whether QoS standards or transparency requirements are necessary or what the appropriate QoS standard should be. We will, however, continue to monitor Openreach’s performance.
- 5.4 Since the commercial launch of PIA on 1 April 2019, the industry has defined and implemented a set of KPIs to provide the necessary transparency between PIA and Openreach’s deployment of its own full-fibre network. Openreach now publishes quarterly KPIs relating to network build (specifically network adjustments to facilitate network build). Work is continuing to define a broader set of KPIs that cover both network build and in-life performance of the duct and pole infrastructure. Refinement of these KPIs is expected to continue as PIA customers deploy networks at scale. Consequently, while the current SMP conditions allow us to impose non-discrimination KPIs in the physical infrastructure market, we consider that at this stage it is unnecessary and consider that the voluntary KPIs already agreed within industry are sufficient to allow for transparency in relation to PIA.

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<sup>88</sup> BUUK response to January 2020 Consultation, page 8.

## 6. Legal tests

- 6.1 Our regulatory framework for undertaking market reviews and setting SMP conditions is set out in Annex 1.
- 6.2 In this volume we set out our decision to require BT to comply with any QoS standard and reporting requirement we may direct in relation to network access it provides in each of the following product markets – physical infrastructure, wholesale local access (Areas 2 and 3), leased lines access (HNR, Areas 2 and 3) and inter-exchange connectivity (BT Only exchanges and BT+1 exchanges, and for a transitional period BT+2 exchanges).
- 6.3 In order to give regulatory effect to our decision we have decided to set SMP Condition 10 set out in Volume 7. Section 87(3) of the Act authorises the setting of SMP services conditions in relation to the provision of network access. Section 87(5) of the Act provides that such conditions may include provision for securing fairness and reasonableness in the way in which requests for network access are made and responded to and for securing that the obligations contained in the conditions are complied with within the periods and at the times required by or under the conditions. Section 87(6)(b) of the Act also specifically authorises the setting of SMP services conditions which require a dominant provider to publish, in such a manner as Ofcom may direct, all such information for the purposes of securing transparency.
- 6.4 As set out below, we consider that SMP Condition 10 satisfies the tests set out in section 47 of the Act, namely that the obligation is:
- objectively justifiable in relation to the networks, services or facilities to which it relates;
  - not such as to discriminate unduly against particular persons or against a particular description of persons;
  - proportionate to what the condition or modification is intended to achieve; and
  - transparent in relation to what it is intended to achieve.

### Directions in relation to QoS

- 6.5 We also set out above our decision to set QoS Directions pursuant to SMP Condition 10 in the markets for wholesale local access (Areas 2 and 3), leased lines access (Areas 2 and 3) and inter-exchange connectivity (BT Only exchanges and BT+1 exchanges, and for a transitional period BT+2 exchanges).
- 6.6 We consider that the QoS Directions meet the tests set out in the Act.

## Section 47 tests

### Objectively justified

- 6.7 We consider that SMP Condition 10 is objectively justifiable. It is designed to address the competition concerns that we have identified in our market analysis (see Volume 2). As explained in Volume 3 Section 1, our market analysis has found, among other things, that BT has the ability and incentive to not maintain an adequate level of service quality in the installation and repair of wholesale services or to discriminate in the quality of provision.
- 6.8 Therefore, in the absence of a requirement to comply with any QoS standards and transparency requirements directed, BT could degrade its QoS below an adequate level, or it could provide access seekers a worse QoS compared to that obtained by its own downstream businesses.
- 6.9 We explain above why we consider that obligation is objectively justified in the context of the markets we have reviewed.

### Not such as to discriminate unduly

- 6.10 We consider that SMP Condition 10 does not discriminate unduly against BT. We have decided that it is the only telecoms provider to hold SMP in the markets that we have identified (or can be treated as such under s.46(8A) of the Act regarding the inter-exchange connectivity BT+2 market) and the conditions seek to address that market position.

### Proportionate

- 6.11 We consider that SMP Condition 10 is proportionate to what it is intended to achieve. We are imposing an obligation on BT that: is effective to achieve our aim; is no more onerous than is required to achieve that aim; and does not produce adverse effects which are disproportionate to our aim. We explain above why we consider it is proportionate in the context of the markets we are reviewing.

### Transparent

- 6.12 We consider that SMP Condition 10 is transparent in relation to what is intended to be achieved. The text of the SMP conditions is published in Volume 7 and the operation of it is aided by our explanations in the statement, which sets out our analysis of responses to the consultation and the basis for the final decision.

## Section 46 tests

- 6.13 In sections 2 and 4 we are imposing SMP Condition 10 and QoS Directions pursuant to that Condition to apply to deregulated BT exchanges for a transitional period of 12 months (and for the transparency requirements, a further 30 working days after the 12 month transitional period). We consider this is consistent with section 46(8A) of the Act which

provides that we can continue to treat a person (here BT) previously determined as having SMP in a given market, who we determine no longer has SMP in that market, as continuing to have SMP in that market for so long as we consider necessary to ensure a sustainable transition for those benefitting from the obligations imposed as a result of the previous SMP determination.

- 6.14 For the reasons set out in sections 2 and 4 we consider that the 12 month period (and further 30 working days for the transparency requirements) is necessary for a sustainable transition for telecoms providers from Openreach's active leased lines to alternative services. We consider 12 months (and a further 30 working days for the transparency requirements) is no longer than is necessary to achieve this aim.

## Section 49 tests

- 6.15 We consider that the QoS Directions satisfy the tests set out in section 49(2) of the Act, namely that in each case the Direction is:

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

- 6.16 In particular, the QoS Directions are:

- Objectively justifiable, in that they aim to ensure that BT provides adequate levels of QoS in relation to the installation and maintenance of the network access on which telecoms providers and their customers rely. For the reasons set out above, we consider that, to achieve this level of QoS, it is appropriate to continue imposing quality standards at the levels we have decided to set. We are imposing transparency KPIs on the delivery of specified services to provide transparency around QoS.
- Not unduly discriminatory, in that the Directions apply only to BT, which is the only operator to have SMP in the markets (or can be treated as such under s.46(8A) of the Act regarding the inter-exchange connectivity BT+2 market) in which the Directions will apply.
- Proportionate, in that the Directions are targeted specifically to those areas and services for which regulation is required. We consider that the Directions are a proportionate means of achieving the objective of ensuring an appropriate level of service in the delivery of key aspects of network access, taking into account our assessment of BT's operational capabilities and potential costs to customers and telecoms providers. Further, the requirements are structured to take into account the impact of events outside BT's control on its ability to meet the standards including in particular the impact of Covid-19. The transparency Directions are targeted at only those services where we consider that transparency is necessary. We also consider that

the Directions are no more onerous than is required to achieve our aim; and do not produce adverse effects which are disproportionate to our aim.

- Transparent, in that it is clear in its requirements and intention, as explained above, and the text of the proposed Directions are set out at Volume 7. This statement sets out our analysis of responses to the consultations and the basis for the final decision.

## Ofcom's duties

- 6.17 As set out in Volume 1, we consider the package of SMP conditions both individually and together meet our duties in sections 3 and 4 of the Act.