Monitoring compliance with the Open Internet Regulation

Annual report

Contents

1. Introduction

1.1   'Net neutrality', sometimes also referred to as the 'open internet', is the principle of ensuring that users of the internet can control what they see and do online – not the internet service provider (ISP) that connects them to the internet.

1.2   In 2016, a European Union (EU) Regulation containing rules aimed at protecting the principle of the 'open internet' came into force (the Regulation).[1] The aim of these rules is to "safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services (IASs) and related end-users' rights" and "guarantee the continued functioning of the internet ecosystem as an engine of innovation".[2] To secure these goals, the Regulation imposes measures dealing with the way ISPs manage data traffic on their networks. It also places obligations on ISPs about the terms and conditions of, as well as information contained in, customer contracts for the provision of IASs.

1.3   The UK left the EU on 31 January 2020, with a transition period until 31 December 2020. Following the end of this period, the EU rules on net neutrality became part of domestic UK law.[3] A number of small changes were subsequently made to the rules, so as to deal with minor issues arising from the UK's withdrawal from the EU.[4] For example, references to EU laws and national regulatory authorities (NRAs) were deleted or replaced with references to national laws and Ofcom, respectively.

1.4   Ofcom is responsible for monitoring and ensuring compliance with the net neutrality rules in the UK and is required to publish an annual report of its findings. The publishing of this report fulfils our duty in this regard.

1.5   In June 2020, BEREC published revised Guidelines on the Implementation of the Open Internet Access Regulation.[5] Since the UK left the EU, Ofcom is no longer required to have regard to BEREC's Guidelines. However, we may continue to have regard to them where we consider this to be appropriate.

Overview of report

1.6   This is Ofcom's fifth annual report since the relevant Regulation came into force and covers Ofcom's activities relating to enforcement of net neutrality provisions in the period May 2020 to October 2021. The report is divided into four sections and incorporates, where relevant, specific activities from the Covid-19 period:

- monitoring the quality of IASs;

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[1] Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012.
[2] EU Regulation 2015/2020, Recital (1).
[3] See https://www.legislation.gov.uk/eur/2015/2120/contents.
[4] See the Open Internet Access (Amendment etc.) (EU Exit) Regulations 2018 – made pursuant to section 8(1) of the EU Withdrawal Act 2018.
[5] BEREC, 2020. Guidelines on the implementation of the Open Internet Regulation.

- safeguarding open internet access and traffic management;

- transparency measures; and

- complaints and remedies.

1.7   This report shows that:

- fixed and mobile networks have continued to cope well given the increased demands during the pandemic;

- fixed download and upload speeds continue to increase, and we expect the user experience on mobile devices to continue to improve as the availability of 5G services increases; and

- our monitoring and reporting work in this period has continued to support ongoing ISP compliance with the Open Internet Regulation.

1.8   We will continue to monitor ISPs practices to ensure compliance with the Regulation; and we will make additional interventions where necessary to achieve that goal.

Our review of net neutrality

1.9   We have begun a review of the UK's net neutrality framework and published a call for evidence on 7 September 2021.[6] The document sets out the context, purpose and scope of the review, as well as the evidence we would welcome from stakeholders.

1.10   Our aim is to undertake a broad review of how the current net neutrality framework is functioning, and we intend to consider:

i)   what is working well and what is not working well with the current framework; and

ii)   whether there would be benefit in providing updated guidance on our interpretation and approach to assessing compliance with and enforcement of the framework.

1.11   One area we will be considering in the review is whether this annual monitoring report could be improved. Our call for evidence seeks stakeholder views on whether there are any changes we can make to the content of the report and/or how we communicate it. For this report, however, we have maintained the same structure and content as in previous reports.

1.12   Our call for evidence closes on 2 November and we expect to publish our initial findings in Spring 2022.

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[6] Ofcom, 2021. Net Neutrality Review – Call for evidence.

2. Monitoring the quality of IAS

> **Article 5(1) of the Regulation**
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> *National regulatory authorities…shall promote the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology.*

2.1   Our activities to fulfil Article 5(1) have included monitoring customer complaints, conducting market surveys and technical network monitoring. We measure various indicators, including broadband speeds for residential customers and web browsing performance.

2.2   Overall, we have found that the UK's fixed and mobile networks have generally continued to cope well with increased demands during and after the peak of the Covid-19 pandemic. Our research shows that networks had the capacity to meet these user demands and stayed within capacity limits.

Fixed broadband network IAS quality

2.3   Ofcom measures the availability of high-quality IASs on fixed broadband networks for residential customers through a programme of regular monitoring and reporting. We use two complementary methods to measure the quality of IASs on fixed networks:

a) we gather data from a range of fixed internet service providers (ISPs) on both their retail services and the services they provide to other ISPs as a wholesale service.[7] This includes analysis of broadband speeds which is based on the information provided by these ISPs regarding the 'sync speed' of each active line. This gives a measure of the maximum possible connection speed achievable between the ISP's access network and the customer's premises. The findings are published in the annual Connected Nations report.[8]

b) we also work with the broadband performance company, SamKnows Limited, to assess fixed-line residential broadband speeds.[9] SamKnows recruits a panel of UK residential broadband users and supplies test participants with monitoring units that are connected to their routers using an ethernet cable. The performance data is then collected and aggregated by SamKnows and analysed by Ofcom. We use this data collected to measure the performance of different services and assess how they vary by factors including technology, provider, package, where people live and when they use their services.[10]

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[7] Ofcom, 2020. Connected Nations 2020, Annex A: Methodology section.
[8] Ofcom, 2020. Connected Nations 2020: UK report.
[9] Ofcom, 2021. UK Home Broadband Performance: Technical Annex.
[10] Ofcom, 2021. UK Home Broadband Performance, The performance of fixed-line broadband delivered to UK residential consumers.

2.4   The UK's fixed broadband networks have seen significantly more demand, with average monthly data usage increasing almost 80% in two years. Our Connected Nations 2020 Report found that average monthly data usage stands at 429 GB per connection, up from 315 GB in 2019 (itself up from 241 GB in 2018).[11]

2.5   As well as an increase in traffic, the Covid-19 lockdown period demonstrated a shift in how people use their services. While peak broadband use is still in the evenings and has continued to grow, daytime traffic has increased significantly. Upload traffic has also increased, driven by more use of video calling for work and to keep in touch with friends and family.

2.6   Providers seek to plan their networks to have spare capacity to cope with year-on-year traffic growth and spikes associated with especially busy events. This has provided sufficient headroom to cope with any increased peak demand during the pandemic.

2.7   The data we collected for the UK Home Broadband Performance Report indicates that the average (median) actual download speed of UK residential fixed broadband services over a 24-hour period increased by 8.3 Mbit/s (20%) to 50.4 Mbit/s between November 2019 and March 2021.[12] The main driver of these higher average connections speeds was customers upgrading to faster packages rather than improvements in the performance of individual services.

2.8   The coverage of faster networks is increasing with gigabit-capable coverage at 40% (11.6m UK homes) and full fibre coverage at 24% (just under seven million homes) as at May 2021.[13] Almost 99.4% of UK premises have access to a decent broadband connection (and with 96% having access to a superfast broadband connection with speeds of at least 30 Mbit/s).[14]

2.9   We estimate that there remain 134,000 premises that do not have access to decent broadband service from a fixed network or a Fixed Wireless Access (FWA) network.[15] These premises will be eligible for the broadband universal service obligation (USO) if they are not expected to be covered by rollout by publicly funded schemes within the next twelve months, and where the cost of building to them does not exceed £3400.

Mobile broadband networks IAS quality

2.10   Ofcom monitors mobile coverage in the UK, and as part of this produces monthly maps of coverage based upon mobile network operators' (MNOs) coverage predictions. For data services, we base our definition of good coverage on the nearly all connections being able to deliver at least 2 Mbit/s. We apply certain thresholds to provide a view of where we believe good coverage is available, and the probability of receiving coverage indoors, right

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[11] Ofcom, 2020, Connected Nations 2020: UK report, p.3. We note that this covers residential customers plus a small proportion of very small businesses that purchase residential products.
[12] Ofcom, 2021. UK Home Broadband Performance, p.6.
[13] Ofcom, 2021. Connected Nations Update: Summer 2021, p.3.
[14] Ofcom, 2020. Connected Nations 2020: UK report, p.7-8.
[15] Ofcom, 2021. Connected Nations Update: Summer 2021, p.4.

across the UK, on a 100x100m basis.[16] The Connected Nations reports also provide an update on the use and availability of mobile services.

2.11   Ofcom also used data collected from a panel of mobile devices to better understand how people are using their mobile services, and the experience they receive. Our Mobile Matters 2021 report uses crowdsourced data collected between January and March 2021 from around 280,000 devices across the UK.[17] The report focuses on the share of connections across wireless technologies, the success rate for mobile connections, the response times for different mobile technologies and how people in the panel use voice and data services.[18]

2.12   People rely on being able to connect to the internet wherever they are, and these metrics are useful proxies for a users' experience of accessing the internet on their mobile device. We found that successful connection tests could be performed more than 95% of the time over 4G while the device screen was active, and more than 93% of the time over 3G. These numbers declined by two to three percentage points when device screens were inactive.[19]

2.13   This year, for the first time, we also reported on a new video streaming metric, in which industry benchmarking specialists, umlaut, used various filters to identify data sessions when the user was likely to be streaming video. This metric included a blended analysis of the throughputs experienced by users alongside latency measures to estimate the highest sustainable image resolution and start time to playout. We found the video streaming experience for 4G users to be either "Good" or "Excellent" for more than 70% of 4G users overall (with some users on one network receiving this experience for more than 80% of cases).[20]

2.14   Finally, we found latency had held up well when compared to 2020 data.[21] For connections made via mobile networks, on average 17% were to a 3G network, which had the slowest average response time.[22] Response times were better for more recent technologies (4G and 5G). We expect the coverage and take-up of 5G services to grow over the next five to ten years as network operators seek to make use of the new spectrum released earlier this year to help meet the expected future rise in traffic volume, and as more 5G-capable devices come onto the market. When combined with the fact that some mobile operators

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[16] See Ofcom's Mobile and broadband checker. Ofcom periodically undertakes drive testing to ensure that the coverage predictions provided by the MNOs are reasonable.

[17] The methodology uses a panel of UK smartphone users who have installed SDK-enabled apps on their Android device. The data collection framework is designed to collect anonymous information only and so we do not have visibility of the characteristics of the customer (e.g. if they are a residential or business customer). More information is available in Annex 1: Technical Methodology.

[18] Ofcom, 2021. Mobile Matters 2021: Using crowdsourced data to assess people's experience of using mobile networks.

[19] Ofcom, 2021. Mobile Matters 2021, p.9. See in particular Figure 6, where it details the breakdown by network, i.e. 93.2% (3G), 95.6% (4G), 92.7% (5G).

[20] Ofcom, 2021. Mobile Matters 2021, p.15.

[21] Ofcom, 2021. Mobile Matters 2021, p.16. In Figure 15 it details the average response time on 3G (61ms), 4G (42ms) and 5G (33ms). This is consistent with the average response times for 3G and 4G networks of 59ms and 44ms between January 2020 to March 2020. See Ofcom, 2020. Mobile matters: Researching people's experience of using Android mobile services, p.12.

[22] Ofcom, 2021. Mobile Matters 2021, p.5.

are planning to phase out 3G in the next few years,[23] we would expect average response times to fall in the UK as more customers spend more time on 4G and 5G networks.

2.15   Based on Ofcom's most recently collected and published data from September 2020, 5G was carried on around 3,000 mobile base stations (around a ten-fold increase in base stations reported to us in the previous year).[24] At this point, 4G still carried the majority (91%) of overall data traffic, with 5G carrying around 1% of the total mobile data traffic in 2020.[25] Take up remained a relatively small proportion of overall users, with about 800,000 active 5G devices across all mobile operator networks in the UK (as of early September 2020). This represents just over 1% of all active devices.[26] However, as above, we expect this share to increase as new services emerge, and as more 5G handsets become available.

Consumer complaints, satisfaction surveys and codes of practice

2.16   Ofcom monitors consumer complaints to our Consumer Contact Team to evaluate consumer satisfaction. This helps us to identify relevant complaints about the quality of IASs, including the speeds that customers are getting and the information provided to them. Our website also contains practical tips for improving broadband speeds.[27]

2.17   In addition to the above, Ofcom publishes, on an annual basis, how service levels compare across the telecoms industry with the intention of helping people make informed decisions about which provider is best for them. For example, our latest report shows that on average 80% of (fixed) broadband customers were satisfied with their service overall, and that 79% were satisfied with the speed of service.[28] However, as in 2019, the most common reason for customers who did complain about their fixed broadband was a service issue (76%), such as slow broadband speeds or an intermittent or total loss of service.[29] For mobile, 90% of customers reported being happy with their service overall. Of those who were dissatisfied, poor reception or coverage was a key driver. One of the intentions of the report is to act as an incentive for providers to improve their customer service on the back of our findings.

2.18   Ofcom's Broadband Speeds Code of Practice represents the voluntary commitments of internet service providers to provide customers (residential and business) with transparent and realistic information on the speeds of their broadband service, so that they can make informed choices about their services before buying, and to help customers manage speed-related problems after buying and to provide a right to exit without penalty if their speed falls below a minimum guaranteed level.[30]

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[23] Reuters, Britain's BT to phase out 3G in next two years as it ramps 5G, Last Accessed 14 October 2021
[24] Ofcom, 2020. Connected Nations 2020: UK report, p.3.
[25] Ofcom, 2020. Connected Nations 2020: UK report, p.46.
[26] Ofcom, 2020. Connected Nations 2020: UK report, p.35.
[27] See Ofcom's Practical tips for improving your broadband speed.
[28] Ofcom, 2021. Comparing customer service: mobile, home broadband and landline, p.13.
[29] Ofcom, 2021. Comparing customer service: mobile, home broadband and landline, p.14.
[30] See Ofcom's Codes of practice.

3. Safeguarding open internet access

3.1 Article 3 of the Open Internet Regulation sets out the rights of end-users and ISPs' obligations (other than those relating to transparency, which are set out in Article 4).

3.2 To fulfil our oversight responsibilities during this reporting period we have continued to monitor complaints and publicly available information about ISPs zero-rating and traffic management policies and engaged with relevant ISPs on issues of concern where necessary. In particular this has included:

- engagement with a mobile operator in relation to an instance where there may have been a restriction in use of certain terminal equipment; and
- consideration of the zero-rating of a mix of health and educational resources during the Covid-19 pandemic.

3.3 A summary of our work and findings in this reporting period is set out below.

Using terminal equipment

Article 3(1) of the Regulation

End-users shall have the right to access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the information, content, application or service, via their internet access service.

3.4 The above provision makes clear that end users shall have the right to access the internet using "*terminal equipment of their choice*". In 2021, Ofcom was alerted to a mobile network's 'Fair Usage Policy' that appeared to restrict the use of a mobile SIM card in fixed routers. We contacted the network operator in question and outlined concerns regarding placing restrictions on the use of terminal equipment of the consumer's choosing.

3.5 This is an issue we intend to consider as part of our ongoing review of the net neutrality framework. In the meantime, we will continue to monitor ISP's policies in this area, and we encourage all ISPs to ensure they are not placing unnecessary restrictions on their customer's choice of terminal equipment.

Zero-rating offers

> **Article 3(2) of the Regulation**
>
> *Agreements between providers of internet access services and end-users on commercial and technical conditions and the characteristics of internet access services such as price, data volumes or speed, and any commercial practices conducted by providers of internet access services, shall not limit the exercise of the rights of end-users laid down in paragraph 1.*

3.6   "Zero-rating" offers are types of agreements between ISPs and end-users that relate to data and price. Under these offers, access to specific services does not count towards any general data cap that may otherwise be an element of a particular tariff. An example is where an ISP applies no charge for consumption of data traffic associated with a specific application (e.g. Facebook) or category of applications (e.g. social media).

3.7   Ofcom has assessed a number of zero-rating offers in recent years, as detailed in our previous annual monitoring reports. Building on that experience, we published our framework for reviewing zero-rated offers in May 2019.[31]

3.8   In this reporting period, Ofcom has not conducted any reviews of commercial zero-rating offers. To our knowledge, no new commercial zero-rating offers have come to market in the UK which would require our assessment.

Zero rating during the Covid-19 pandemic

Health and domestic abuse support and information

3.9   As we noted in last year's report, in March 2020, a number of MNOs announced they would give their customers free online access to the latest NHS health information about coronavirus. These sites included: nhs.uk, 111.nhs.uk, wales.nhs.uk, nhsinform.scot, indirect.gov.uk and publichealth.hscni.net.[32]

3.10   In June 2020, the government announced that MNOs had agreed to remove data charges for people accessing websites providing support to victims of domestic and sexual abuse. EE, Vodafone, O2, Three, Sky Mobile, Virgin Media, Tesco Mobile and Giffgaff all agreed to remove charges for accessing the sites, until at least 31 October 2020.[33]

3.11   In both of these instances we did not conduct a detailed review of the zero-rating offers in question. This is because both offers were clearly aimed at supporting consumers during challenging periods and there appeared to be little to no risk of the offers limiting the rights of end-users under Article 3 (1).

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[31] Ofcom, 2019. Ofcom's approach to assessing compliance with the net neutrality rules.

[32] https://www.gov.uk/government/news/mobile-networks-remove-data-charges-for-online-nhs-coronavirus-advice.

[33] https://www.gov.uk/government/news/data-charges-removed-for-websites-supporting-victims-of-crime.

Educational resources

3.12   We noted in last year's report that, early on during the pandemic, there had also been some initial consideration of zero-rating educational resources but ultimately these plans were not pursued.[34] We are aware, however, that at least one network continued to look at how to zero-rate educational resources. For some of its offerings, when customers ran out of general-purpose data, access to educational sites was still possible, while other sites were blocked. We considered whether this would be a breach of Article 3(3) and whether to open an investigation into the matter.[35]

3.13   We decided that no further action was appropriate in this case, due to the limited impact on customers the potential breach of Article 3(3) was likely to have. We advised the network to ensure that other providers of educational resources were able to join the offer.

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[34] Ofcom, 2020. Monitoring compliance with the EU Open Internet Regulation, paragraphs 3.21-3.22.
[35] In doing so, we had regard to the judgment of the Court of Justice of the European Union in Joined Cases C-807/18 and C-39/19 *Telenor Magyarország Zrt. v Nemzeti Média- és Hírközlési Hatóság Elnöke* (ECLI ref: ECLI:EU:C:2020:708).

Traffic Management

> **Article 3(3) of the Regulation**
>
> *Providers of internet access services shall treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.*
>
> *The first subparagraph shall not prevent providers of internet access services from implementing reasonable traffic management measures. In order to be deemed to be reasonable, such measures shall be transparent, non-discriminatory and proportionate, and shall not be based on commercial considerations but on objectively different technical quality of service requirements of specific categories of traffic. Such measures shall not monitor the specific content and shall not be maintained for longer than necessary.*
>
> *Providers of internet access services shall not engage in traffic management measures going beyond those set out in the second subparagraph, and in particular shall not block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof, except as necessary, and only for as long as necessary, in order to:*
>
> *a) comply with Union legislative acts, or national legislation that complies with Union law, to which the provider of internet access services is subject, or with measures that comply with Union law giving effect to such Union legislative acts or national legislation, including with orders by courts or public authorities vested with relevant powers;*
>
> *b) preserve the integrity and security of the network, of services provided via that network, and of the terminal equipment of end-users;*
>
> *c) prevent impending network congestion and mitigate the effects of exceptional or temporary network congestion, provided that equivalent categories of traffic are treated equally.*

3.14   We have not identified any new cases of concern regarding ISPs' traffic management practices under this Article of the Regulation.

3.15   In 2019, Ofcom published a framework document setting out our approach to assessing compliance with aspects of the Regulation, including a Traffic Management Framework.[36] We believe this framework has continued to help ISPs in self-assessing any current or future traffic management measures that they may be considering. We encourage ISPs, as well as content and applications providers, to proactively self-assess their compliance with the net neutrality rules and discuss any queries they may have with Ofcom.

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[36] Ofcom, 2019. Ofcom's approach to assessing compliance with net neutrality rules: Frameworks for assessing zero rating offers and traffic management measures for compliance with the Open Internet Regulation.

Traffic management in times of Covid-19

3.16   The Regulation requires ISPs to treat all traffic equally when providing IASs but permits ISPs to employ what are referred to in the Regulation as "*reasonable*" traffic management measures. In order to qualify as reasonable, those measures must be transparent, non-discriminatory and proportionate, based on technical quality of service requirements (rather than commercial considerations), and be in place no longer than necessary.[37] In addition, the Regulation permits certain other limited exceptional measures which go beyond those deemed to be reasonable, including temporary measures necessary to prevent impending network congestion and to mitigate the effects of exceptional or temporary network congestion.[38]

3.17   As indicated in our previous report, there has been a large increase in usage of the UK's fixed access networks during the Covid-19 pandemic. In particular the shift to people being at home during the day, home working and home schooling drove significant increases in daytime traffic.

3.18   We liaised with ISPs to ensure that any measures put in place to manage and mitigate any network congestion due to these increases met the traffic management requirements in the Regulation. The actions taken by many across industry helped mitigate the impact of increased demand, and traffic remained within manageable levels.[39]

Specialised Services

Article 3(5) of the Regulation

Providers of electronic communications to the public, including providers of internet access services, and providers of content, applications and services shall be free to offer services other than internet access services which are optimised for specific content, applications or services, or a combination thereof, where the optimisation is necessary in order to meet requirements of the content, applications or services for a specific level of quality.
Providers of electronic communications to the public, including providers of internet access services, may offer or facilitate such services only if the network capacity is sufficient to provide them in addition to any internet access services provided. Such services shall not be usable or offered as a replacement for internet access services, and shall not be to the detriment of the availability or general quality of internet access services for end-users.

3.19   This provision of the Regulation allows for services that are optimised for specific content, also known as 'specialised services' to be provided. There are important technical developments that could lead to the emergence of new and innovative specialised services. In our previous annual reports, we noted the emergence of 5G, network slicing and edge

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[37] See Article 3(3), first and second subparagraphs, of the Regulation.
[38] See Article 3(3), third subparagraph, of the Regulation.
[39] Ofcom, 2020. Connected Nations 2020: UK report, p.11.

computing as important areas for us to monitor closely given the potential impact on the application of the existing net neutrality rules.

3.20   As set out in our net neutrality review call for evidence, we intend to look at whether there is scope to provide more clarity and certainty as to what constitutes a specialised service.[40] We are seeking views specifically on whether it would be beneficial to provide further UK specific guidance in this area.

3.21   As part of our review, we have also engaged with mobile operators to better understand the practical applications of 5G network slicing and how these may evolve into the future. We intend to continue these dialogues over the course of the review.

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[40] As laid out in the existing rules and guidance.

4. Transparency measures

> **Article 4(1) of the Regulation**
>
> *1. Providers of internet access services shall ensure that any contract which includes internet access services specifies at least the following:*
>
> *a) information on how traffic management measures applied by that provider could impact on the quality of the internet access services, on the privacy of end-users and on the protection of their personal data;*
>
> *b) a clear and comprehensible explanation as to how any volume limitation, speed and other quality of service parameters may in practice have an impact on internet access services, and in particular on the use of content, applications and services;*
>
> *c) a clear and comprehensible explanation of how any services referred to in Article 3(5) to which the end-user subscribes might in practice have an impact on the internet access services provided to that end-user;*
>
> *d) a clear and comprehensible explanation of the minimum, normally available, maximum and advertised download and upload speed of the internet access services in the case of fixed networks, or of the estimated maximum and advertised download and upload speed of the internet access services in the case of mobile networks, and how significant deviations from the respective advertised download and upload speeds could impact the exercise of the end-users' rights laid down in Article 3(1);*
>
> *e) a clear and comprehensible explanation of the remedies available to the consumer in accordance with national law in the event of any continuous or regularly recurring discrepancy between the actual performance of the internet access service regarding speed or other quality of service parameters and the performance indicated in accordance with points (a) to (d). […]*

4.1   For ISPs to be compliant with the above Article, information contained in customer contracts should be accessible, clear and comprehensible. The BEREC guidelines[41] on implementation of the Regulation set out that the information should:

- be easily accessible and identifiable for what it is;
- be accurate and up to date;
- be meaningful to end-users, i.e. relevant, unambiguous and presented in a useful manner;
- not create an incorrect perception of the service provided to the end-user; and
- be comparable at least between different offers, but preferably also between different ISPs, so that end-users are able to compare the offers (including the

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[41] The UK has now left the EU, and Ofcom is no longer required to take utmost account of the BEREC Guidelines. However, as noted above, we will continue to reference the guidance where we consider this to be appropriate.

contractual terms used by different ISPs) and ISPs in such a way that the comparison can show differences and similarities.

4.2   To fulfil our oversight responsibilities in this area during this reporting period we have continued to monitor the information included in consumer contracts by ISPs and consumer complaints related to this received via our customer contact centre.

4.3   In October 2020, as part of the implementation of the end-user rights protections in the European Electronic Communications Code (EECC), we confirmed that from 17 June 2022, the requirements for ISPs to include the information set out in Article 4(1) of the Regulation will be incorporated into our General Conditions on contract requirements.[42] Under these new General Conditions, providers will be required to provide customers with relevant contract information, in writing, and in a clear and comprehensive manner, before the customer agrees to enter into that contract. In addition, ISPs will also be required to provide a summary of this information in a new, short (1-3 page), contract summary document. We have published guidance on how we expect this contract information and contract summary should be provided to customers in order to comply with these new rules.[43]

4.4   We have been engaging with providers on their plans to implement these new EECC requirements and will continue to monitor this area as part of our usual monitoring work. We explained in our net neutrality call for evidence that this area is not within scope of our review as we do not consider it appropriate to consider further changes to the internet access contract requirements before the new contract information and summary rules come into force.

4.5   We also continue to monitor the implementation of our voluntary 'Broadband Speed Codes of Practice' for residential and business customers.[44] The Codes are consistent with the mandatory requirements set out in the Regulation. They include provisions stating that contracts should include "*a clear and comprehensible explanation of the minimum, normally available, maximum and advertised download and upload speed of the IAS in the case of fixed networks*". They further require signatories to offer customers minimum guaranteed speeds at the point of sale and the right to exit their contract without penalty if they cannot access these, among other provisions.

4.6   We have not issued any new guidance on the Broadband Speeds Codes during the reporting period. A compliance report, which will assess how providers have implemented the latest version of the Codes, is scheduled for publication later this year.

4.7   The Committee of Advertising Practice (CAP) also produces advertising guidelines for broadband speeds, and the Advertising Standards Authority (ASA) is responsible for enforcing the guidelines. CAP guidelines on the advertising of broadband speeds require that any speeds used in broadband advertising should reflect actual package performance and

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[42] Ofcom, 2020. Fair treatment and easier switching for broadband and mobile customers: Implementation of the new European Electronic Communications Code. In particular see Section 5, and General Conditions C1.3-C1.7.
[43] Ofcom, 2020. Guidance on the Contract Information and Contract Summary.
[44] Ofcom, 2018. Statement: Better Broadband Speeds Information – Voluntary Codes of Practice.

should be based on the download speed available to at least 50% of customers at peak times. [45]

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[45] See ASA website: https://www.asa.org.uk/resource/broadband-speed-claims-guidance.html.

5. Complaints and remedies

5.1   In addition to setting out transparency requirements, Article 4 of the Regulation also requires ISPs to have procedures to manage complaints about consumers' core rights under the Regulation, and addresses consumers remedies.

Complaints procedures

> **Article 4(2) of the Regulation**
>
> *Providers of internet access services shall put in place transparent, simple and efficient procedures to address complaints of end-users relating to the rights and obligations laid down in Article 3 and paragraph 1 of this Article.*

5.2   Under our complaints handling rules,[46] ISPs are required to inform customers how their complaint will be handled, how long it will take, and that they have the right to use alternative dispute resolute if, for instance, their complaint is not resolved to their satisfaction.

5.3   We closely monitor ISPs compliance with these requirements, and each year as part of our reporting on service levels across the telecoms industry we report on customer satisfaction with how their complaints were handled. In this year's report we found that around half (52%) of broadband customers who complained were satisfied with how their complaint was handled. A slightly higher proportion (57%) of mobile customers reported being satisfied. These findings were broadly in line with 2019 levels.[47]

Remedies and Redress

> **Article 4(4) of the Regulation**
>
> *Any significant discrepancy, continuous or regularly recurring, between the actual performance of the internet access service regarding speed or other quality of service parameters and the performance indicated by the provider of internet access services in accordance with points (a) to (d) of paragraph 1 shall, where the relevant facts are established by a monitoring mechanism certified by the national regulatory authority, be deemed to constitute non-conformity of performance for the purposes of triggering the remedies available to the consumer in accordance with national law.*

5.4   This Article gives end-users the right to invoke remedies through national law (e.g. consumer or contract law) if there are continuous or regular discrepancies between ISPs' performance relating to speed or other quality of service measures, and a certified monitoring mechanism established by the NRA.

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[46] See General Condition C4.

[47] Ofcom, 2021. Comparing customer service: mobile, home broadband and landline, pp.9 & 13.

5.5   In addition to these rights, under our Broadband Speeds Codes of Practice, customers of ISP signatories have the right to exit the contract without penalty if their speeds fall below the minimum guaranteed level for a sustained period of time. Under the Codes, ISPs are required to make information about this right to exit in after-sale information more prominent and to link it more clearly to the minimum guaranteed speed so that customers understand what triggers this process.

5.6   In addition, under our voluntary automatic compensation scheme, signatories are required to pay residential landline and broadband customers automatic compensation for delayed installations, delayed repairs following a total loss of service and for missed appointments.[48] We report on the scheme as part of our comparing service quality report. In May 2021, we reported that 89% of broadband and 85% of landline customers were covered by the scheme. In 2020, over £27.5m was paid in automatic compensation, with around 726,000 incidents for which a customer received automatic compensation.[49] Our report noted that, because of the challenging circumstances presented by the pandemic, fewer automatic compensation payments were made over 2020 compared to 2019. We expect that this year, barring any improvement in service quality, the amount of automatic compensation paid will return to closer to 2019 levels, as processes for operating during the pandemic have been established, and restrictions have eased.

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[48] See Ofcom's, Automatic compensation: What you need to know.
[49] Ofcom 2021, Comparing customer service: mobile, home broadband and landline, pp.25-26.