Openreach's response to Ofcom's Call for Inputs on the Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30

Quality of Service – Questions 10.1 to 10.4

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Introduction

This document contains Openreach's response to Ofcom's questions on Openreach's Quality of Service (QoS) contained in Section 10 of the Fixed Access Market Review (FAMR) Call for Inputs published on 9 November 2012.

For the avoidance of doubt, Openreach's views in this document pertain only to services covered by the FAMR.

This separate submission supplements the BT Group response to the Call for Inputs.

Executive summary

We set out below Openreach's response to Ofcom's questions on Openreach's Quality of Service (QoS) contained in the Fixed Access Market Review (FAMR) Call for Inputs. We would stress the following:

- QoS is an equation comprising demand and the resources we are able to provide to meet this - we do all we can to deliver efficiencies and improve our processes but will not always be able to meet unforeseen demand (such as the number of faults driven by the exceptional weather) in a timely manner.

- The current service issues, driven by the extreme weather in 2012, must be set in the context of the significant improvements in Openreach service delivery over recent years.

- Nevertheless, there are some important underlying factors which are putting our network and operations under increasing pressure, with technology pushing the network harder than ever and increasing customer expectations.

- The level of funding available through the MPF and WLR charge control settlement is crucial: unless there is funding for contingency resourcing, there will always be a need for service 'trade-offs' and not all current Service Level Agreements (SLAs) for repair and provision can be delivered 100%.

- Ofcom should recognise the breadth and generosity of our current SLAs and Service Level Guarantees (SLGs) before considering imposing additional, tighter targets; the current industry-led approach will always be preferable to SMP regulation given, in particular, this allows responsibility to be shared throughout the value chain.

- There need to be incentives for our customers, as well as for Openreach, to take actions that can improve service levels – for example, improved forecasting; adopting standard approaches to testing and diagnostics; and taking steps to reduce cancelled appointments.

Response to Ofcom's questions

Question 10.1 What is your experience of the quality of Openreach's access services delivery? If there are quality and timeliness concerns, how do these affect your activities/customers? Please provide reasons to support your views.

1. Quality of Service is an equation

QoS is at the heart of the products that Openreach provides to the wholesale market and therefore it is appropriate for the FAMR to properly consider what regulatory approach is best suited to incentivise and support positive outcomes for end-users and all other parties involved in the value-chain. The drivers of QoS and the best means to regulate QoS are complex and Ofcom's review will to need to carefully explore the underlying factors before setting out a regulatory approach. This will help to avoid unforeseen consequences and create an environment that is fair and contains the right incentives for Openreach and its customers for the benefit of end-users.

We view QoS as an "equation," comprising the following elements:

- the demand for both provision and repair, recognising the different demands of product sets and the change in product mix over time;
- the level of funding available to Openreach to resource and invest in service delivery, dictated by the charge control settlements for MPF and WLR;
- how Openreach engineering resource is deployed, in terms of both the overall level and skill mix, and how that resource is deployed between repair and provision, including efficiencies that can be made; and
- how CP activity within the value chain impacts on the service delivered.

In setting the right regulatory framework for delivering QoS, Ofcom needs to understand how this equation functions, and recognise that Openreach is not solely accountable for delivering outcomes. Delivering consistently good QoS is down to Openreach *and* Communication Providers (CPs); and even then can be subject to external factors that nobody can control directly. In order to create the strongest framework for delivering QoS improvements, Ofcom need to account for the full basket of complex factors that drive QoS.

We believe there are two underlying issues that need to be addressed:

- how to ensure service continues to meet growing customer expectations; and
- how to deal with unexpected demand significantly above what could be reasonably forecast - as particularly evidenced by the impact of the extreme weather in 2012.

Openreach has demonstrated over recent years that we can improve our processes, achieve efficiencies and invest in additional resources where needed to improve customer outcomes. In the four years to March 2013 we will have invested around £276m in improving the network and infrastructure upgrades, including water-proofing our underground network.[1] It is important to stress the continuing improvement in service delivery over the last three years. Between provision and repair we are now completing around 145,000 engineering activities a week versus 90,000 only three years ago. In addition around 43% of repair is now carried out the next day versus some 26% three years ago. This reflects our proactive investment in service and process improvements, such as the R10k

[1] This is over and above Ofcom's volume-related investment.

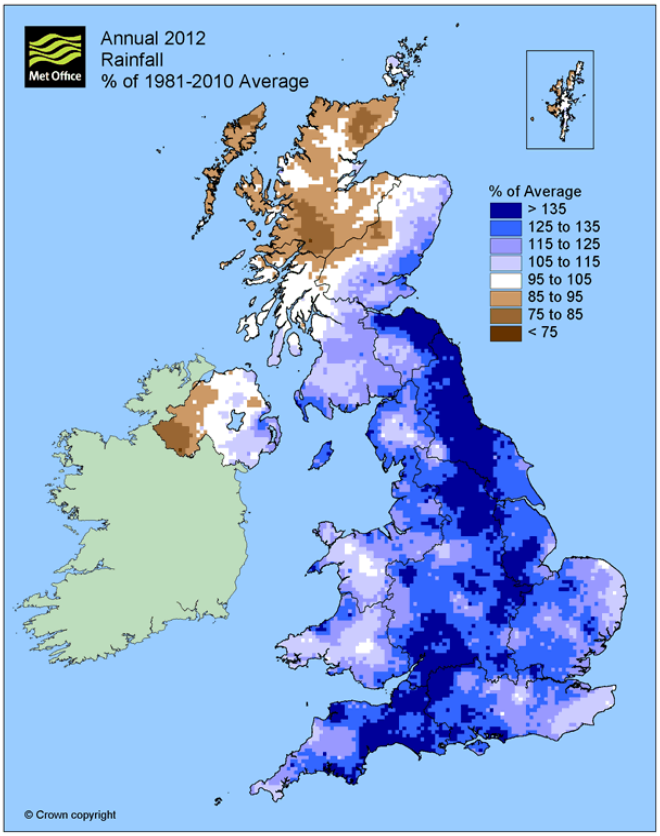
and R15k programmes on repair[2]. If we had had the same repair volumes in the summer of 2012 as in the previous year, we would have held provision lead-times between 10-14 days. Although we are not complacent about current lead-times, these would have been extended significantly without the impact of these programmes.

2. Openreach has demonstrated its commitment to delivering the best QoS outcomes possible during an incredibly demanding year

The equation outlined above needs to be set in the context of the severe service challenges that Openreach has faced in the past year, caused by the extreme weather. Based on the England and Wales rainfall data series that commenced in 1766, we had the wettest ever April and June in 2012 while the summer (June, July, and August) was the wettest since 1912. Rainfall totals for autumn and December also remained well above average, and a succession of rain events in late November and late December contributed to extensive disruption from flooding. For the UK as a whole, 2012 was the second wettest year since modern records began in 1910 and the latter nine months of 2012 were together the wettest period in history. As a consequence of these conditions repair levels rose to sustained and unprecedented high levels across wide areas of the country.

Chart 1 below shows the severity of the poor weather during 2012, including the sheer geographical extent of the area where significantly higher than average recent rainfall was experienced in 2012. For example, many locations from the south-west to the north-east received over 135% of the average rainfall over the last 30 years.

Chart 1 – Annual rainfall 2012 as % of 1981-2010 average (source: Met Office)



[2] The R10k and R15K programmes are initiatives to reduce repeat faults thereby freeing up engineers to work on productive repair and provision activities. Without these programmes fault rates would have undoubtedly been significantly higher

3. Openreach was well prepared for weather swings in 2012, but no-one could predict such an unrelenting deluge with its impact on fault levels

The sheer extent and persistence of poor weather led to sustained increases in fault levels, with a higher proportion of more difficult to fix fault types such as underground faults. We believe Openreach has taken all available steps to help our customers through this period, but absent the ability to hold contingency resource for dealing with such extremes, cannot be held solely responsible for delivering positive QoS outcomes in the face of such extreme conditions. It is worth recapping on just how the weather impacted on service during 2012/13:

- **our provision lead times were 4 to 6 days at the start of April 2012**. The repair work stack was consistently under 16,000, a very low level which allowed provisions to be completed with extremely short lead times, leading to an overall work stack of around 140,000;
- **the wettest April since records began almost doubled our overall work stack.** Despite that, we recovered to near normal by the end of May as we had built flexibility into our response chain and resource capacity, but were then hit the extreme weather in subsequent months;
- **our normal weekly fault intake is in the region of 55,000.** We do see spikes peak at 80,000 a week during especially during severe winter periods but we have never had to deal with such a sustained period of weather-induced faults from June onwards. We accumulated 100,000 more faults than we would normally expect during the summer period alone and again into the autumn of 2012, which equated to between 25,000 and 35,000 additional engineer working days. Recovering from so many faults as quickly as we would have liked proved to be impossible;
- **at peak periods of flooding and underground water damage, we as an industry agreed that repair must take priority.** Doing so during 2012 meant that we were just not able to fulfil as many provision jobs each week, hence the increase in provision lead times;
- **after the worst of the storms, underground faults rose to 25% of the total number of faults** against the usual 15%: this change in the mix of faults remained for many months as underground water cannot drain away.
- **high winds damaged our overhead network, bringing down cables and telephone poles:** replacing this type of infrastructure requires specialist engineering resource, heavy plant and vehicles.
- **the majority of flash flooding was in rural areas.** Getting engineering resource to those areas is always more challenging and time-consuming.
- **weather damage is often the most complex to fix,** demanding repeated pumping out of underground chambers, multiple digs, road safety apparatus and hoists for overhead work. On average, such faults take twice as long to fix as normal faults and the engineers fixing them need to be multi-skilled with years of experience and specialist training.
- **fixing these complex faults in such volume has a knock on effect** which means that at peak periods of infrastructure repair, we saw around 10,000 provision jobs over the course of a week not completed and added to the stack.

In the face of this challenge Openreach continues to take all available steps to drive improvement, for example:

- we have continued to expand our engineering capacity through overtime, productivity improvements and additional resource, with record levels of repair and provision completions delivered through the year, and with output currently on an increasing trend. For example, in

December 2011 our weekly provision and repair completions were running at around 120,000 and are currently in excess of 145,000, a 20% increase. This compares with an average of 90,000 completions per week three years ago ;

- we have had 1700 additional engineers working on repair full time from Quarter 2 of 2012/13;
- during 2012 we recruited 600 permanent new engineers from within the business, 1000 external hires and1400 additional contractors. We have also increased the headcount within our customer call centre and escalation teams**.** By March 2013 we will have grown our field force by 20% in 18 months and mostly in non-funded repair activities;
- we have launched a number of initiatives to help our customers including introducing the "Disputed no Access" and a renewed "Ring Ahead, Ring After "process, aimed at reducing missed appointments;
- we are delivering the R15k programme to proactively remove faults, removing in excess of 400,000 engineering visits so far in 2012/13, with a financial year-end target of circa 600,000 visits saved and 600,000 additional provision visits not delayed. It is worth noting that the vast majority of those repair visits saved have been chargeable, such as special fault investigations, so this not a commercially motivated decision; rather, we have remained completely focused on service levels at all times;
- we invested tens of millions of pounds during the year in equipping our engineers with better tools, including more powerful laptops and hand-held line testers;
- we continue to work closely and transparently with our customers to keep them informed of service issues - including progress against our recovery plans in periods of extreme weather, such that they can manage their customers effectively. This includes regular service calls with industry where members of the Openreach executive team are present.

4. To understand the current context within which QoS is delivered, it is important to examine the underlying demand drivers. Different factors are putting more pressure on the Openreach delivery organisation

The level of repair demand placed upon Openreach continues to rise: for example between 2009 and 2012, the fault intake volume has increased by in excess of 20%. The systemic factors that are driving this increase will continue to drive growth of repair demand over the timescale associated with this Ofcom review. The total level of provision demand also is also increasing, and MPF (with higher care levels) is increasing as a percentage of the total installed base of circuits. As the weather in 2012 has shown, there is a practical limit to our ability to deal with the impact of extreme volatile weather without some impact on service levels and lead-times.

The systematic factors driving demand are as follows:

- **The "Broadband Premium."** Consumers are less tolerant to downtime or speed variations on broadband services when compared against voice services and this drives significantly higher fault reports, with operational implications for Openreach and CPs. The growth in consumer expectations, with its implications for service, is expected to continue as the Openreach network is used to deliver other applications such as TV and super-fast broadband, and reinforces the importance of Openreach and CPs working together to reduce fault and repeat rates.

- **Technology is pushing the network harder than ever.** With the network supporting new and technically more demanding applications such as broadband, symmetric high speed services and TV, it is being pushed to the limits of its design capabilities. Openreach must have the right investment incentives to ensure the network delivers what is being demanded of it by the market. In the context of a rising propensity by consumers to raise faults, which may be related more to dissatisfaction with line speeds rather than outright service failure, it is also important that Openreach and CPs are aligned in the approaches they take in respect of fault test and diagnostics, since this will ensure that the most efficient (least wasteful) approach is taken.

- **There are different costs for providing QoS in different geographies.** The cost for providing QoS can vary significantly between geographies with very different underlying demographic characteristics. For example, the costs associated with repairing services in rural communities where there is a significantly greater average travel distance for engineers are greater than those present in suburban areas, and significantly greater than those in dense urban areas. The next regulatory settlement needs to better reflect these geographic differences in the cost of providing service.

- **The growth of MPF.** Between April 2010 and January 2013 the installed base of MPF lines has more than doubled, with growth from 3M (around 11 % of the overall copper estate) to around 6.5M (25%). This trend is set to continue, with MPF lines expected to rise to just under 10M by the end of financial year 2016/17. Because MPF is offered at Care level 2 Openreach is required (in 100% of cases) to fix all valid faults by the end of next working day (i.e. *twice as fast as for WLR*) or otherwise pay a SLG. This places a massive, and increasing, additional pressure on the Openreach delivery organisation. An implication of this is that Openreach is less able deal with demand fluctuations; the spare capacity that would be needed to do this is simply not present. We urge Ofcom to ensure that the additional costs (and pressure) that arise from the MPF service level are fully addressed in the next charge controls.

- **Volatile weather.** Openreach had taken account of the weather in previous years, a number of which have seen high rainfall, and on this basis was well prepared for weather swings, as evidenced by the recoveries made in May and June 2012 following the repair peaks that came after heavy rainfall in those months. We might reasonably then have expected the subsequent months to be dry. However, the unrelenting weather in those months, with a sustained impact on fault levels across such a broad geographical area, highlights the practical limitations to our ability to keep service delivery unaffected in such circumstances. As indicated above, an important consequence of the poor weather has been an increase in the proportion of faults, such as damage to overhead lines and underground flooding that are the more difficult and costly to fix. This is in part because the engineers required to fix them need to be multi-skilled, have specialist training and have access to specialist equipment.

In this context getting accurate regional demand forecasts from CPs is critical. CPs are better placed than Openreach to provide insight into the level of future demand that they require. Developing better forecasting processes between Openreach and CPs will be of benefit to all, since by better understanding what levels of engineering resources are required when (and where), Openreach is better able to meet the challenges placed upon it. As a minimum, CPs should work with Openreach to provide medium-term forecasts for the size of their installed base (split by product including broadband), and short-term forecasts if they are proposing an activity likely to lead to a demand spike

(e.g. a marketing push). The recently agreed Copper Appointment Availability (CAA) SLA/SLG offers a positive template, aspects of which should be replicated. In this scheme, for example, the largest CPs are required to place accurate[3] demand forecasts in return for enhanced SLAs/SLGs in what has been a positive step change in CP commitment and collaboration between Openreach and its customers.

5. It is not reasonable for Openreach to be expected to deal with unconstrained demand. There is a cost for delivering different QoS levels that needs to be more explicitly recognised. Balancing cost and QoS means choices need to be made.

Given this equation for delivering QoS, the challenging context and outlook for both provision and repair, and the comprehensive nature of the Openreach's existing SLA/SLG arrangements, it is not reasonable for Openreach to be held solely responsible for delivering consistently positive QoS outcomes at low prices without a change to the means by which Openreach can reasonably recover all the costs it incurs.

With the introduction of the CAA SLA/SLG in addition to the numerous schemes already in place, all aspects of Openreach provision and repair performance for its highest volume products are now covered by proactive SLAs/SLGs. Industry has agreed that should the need to make a choice on resource allocation arise, repair would always be prioritised over provision.

Hitherto, provision lead times had acted as a pressure valve during periods of unforeseen or un-forecast demand. However, with the introduction of the CAA SLA/SLG this option is no longer available to Openreach without it incurring potentially substantial incremental SLG payments. This is not an equitable situation: any future regulatory framework should not place the cost of unfettered repair demand solely upon Openreach.

In assessing possible changes to the regulatory framework, Ofcom should carefully consider the outcomes that both end users and CPs want, and what they are willing to pay; for example:

- **Higher contingency resource.** If a consistently high base level of QoS is required, for example, associated with MPF and its "next working day" repair SLA, Openreach would need to hold greater contingency resource within its engineering teams in order to deal with demand peaks, such as those caused by the weather. This would mean greater costs that would need to be equitably recovered via the prices that Openreach is able to charge its customers;

- **Higher incremental network investment.** Higher Openreach investment to meet, for example, the requirements of what we have termed the "Broadband Premium" on behalf of industry would need to be reasonably funded through changes to regulated prices;

- **Trade-off of service standards.** The existing position of setting SLA/SLGs at 100% is not realistic and will not deliver service improvement without more pragmatism about what can be reasonably delivered in the context of rising demand and cost. Trading off service levels could include, for example, moving away from SLGs being paid in 100% of cases where the SLA has not been met, or taking a different approach to SLA targets in different geographies (rural, suburban, urban) to better reflect the underlying costs of delivery.

[3] Currently set at +/- 15% accuracy on a geographic regional basis.

In considering how to best regulate QoS, we look to Ofcom to consider approaches that are workable for both Openreach and CPs, and to acknowledge that good service is a shared responsibility between Openreach *and* its CP customers. Any revised framework should be based on a realistic understanding of the challenging environment faced by the Openreach delivery organisation and its operational processes. In our view Openreach already has very strong incentives to provide the best service it can to all its customers; not least because of its functional separation and the provision of services on an Equivalence of Inputs basis to all CPs including downstream parts of BT. Openreach is committed to achieving the highest standard of service it can for all CPs and end users, and both the charge controls and wider regulatory framework must create the right incentives for all parties as well as allowing Openreach the recovery of efficiently incurred costs for any given service level.

Question 10.2 Do you consider that the current contractual SLAs including SLGs relating to Openreach's quality of service are adequate? If not, what are the current shortcomings? Please provide reasons to support your views.

1. Openreach already offers a comprehensive and generous range of SLA/SLG schemes

Openreach offer a comprehensive and generous range of SLA/SLG arrangements for the FAMR products, all of which are proactive (i.e. the CPs do not need to make a claim in order to receive SLG payments), and most of which are well established, having been in place since 2008. Furthermore, Openreach is required to pay out the SLG in *100%* of cases where the SLA target is missed. This means in scenarios where Openreach is required to meet unfettered demand, the total cost to Openreach can include the cost of provision, the SLG costs *and* the incremental operational costs (e.g. overtime and recruiting/employing additional resources), large elements of which are not recovered in the product prices.

The 100% target is not a realistic one, as several factors mean that certain repairs at particular times can never be fixed on time due to:

- faults with complex requirements taking considerably longer to fix – for example, where extensive underground or overhead work is required;
- safety and process issues associated with working out-of-hours and/or in the dark;
- the impact of cable theft and other network damage;
- highly volatile demand (both provision and repair) at a local 'patch' level.

In practice due to the reasons above there is a "glass ceiling" for repair, meaning that only a maximum of 85% of combined WLR and LLU repairs could ever physically be completed within the current SLA times. These factors should be more fully accounted for in the way that QoS is regulated going forward.

There are a wide range of SLAs/SLGs on each FAMR product, and these reflect an established regime where SLG payments (following "liquidated damages" principles) are intended to be a genuine pre-estimate of loss set at the beginning of the contract and should not be set at "punitive" levels, nor such that the predominant purpose is to deter a breach.

On MPF, for example, there are SLA/SLG arrangements covering:

- provision – performance against customer committed date (CCD), with SLG at £8 per day;
- provision - missed engineering appointments – with the SLG set at 5 months line rental;
- provision - appointment availability lead time with SLG set at £2 and £4 based on performance;
- provision – "Dead on Arrival" status on service activation with SLG set at £16 per day;
- repair - failure to hit the SLA level,[4] leads to an SLG at 1 month's line rental per day.

The generous nature of current SLAs/SLGs can be seen from the following scenario relating to MPF provision:

[4] Ranging from service level 2 where fix is required end of next working day (Monday to Friday) to service level 4, where fix is required is required within 6 hours (Monday-Sunday).

The CP orders an "appointed" (i.e. requiring an engineering visit to the end user) MPF new provide with Openreach. The earliest date the engineer is available is in 17 working days, and the CP places an order to have service delivered on day 17, using the "am" time slot available. In the event the Openreach engineer is not able to make the slot and service is subsequently delivered on day 20.

In this scenario Openreach will owe the CP £80, *or >90% of the entire annual line rental price*, made up as follows:

	Copper appointment availability SLA/SLG. 4 times £4	£16
+	Success against CCD SLG. 3 times £8	£24
+	Missed appointment charge. 1 times £40	£40
	Total SLG payable	**£80**

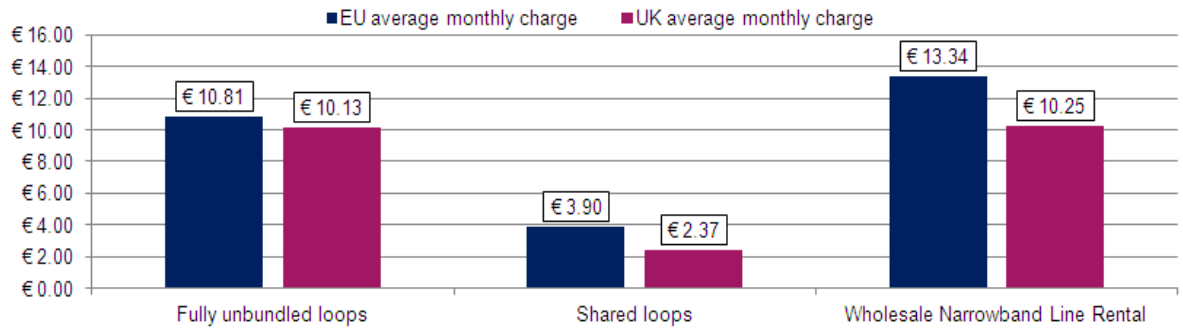
There are similarly comprehensive arrangements in place for WLR3 Analogue, with SLA/SLG arrangements covering:

- provision - success against customer committed date (CCD), with SLG at 1 month's line rental per day;
- provision - missed engineering appointments – with the SLG set at 5 month's line rental;
- provision - appointment availability lead time with SLG set at £2 and £4 based on performance;
- repair - failure to hit the SLA level,[5] leads to an SLG at 1 month's line rental per day.

SLA/SLG arrangements of similar breadth and value also exist for SMPF, GEA, ISDN2 and ISDN30. Furthermore, there are SLA/G arrangements covering system availability for any order placed over the Equivalence Management Platform (EMP).

In our view, the SLA/SLG arrangements offered by Openreach are the most comprehensive available internationally, and that further, they should also be viewed in the context of Openreach operating within one of the most competitive telecoms markets in the world, with CPs enjoying low prices and access to a broad variety of regulated products and services delivered on an EOI basis. Chart 2 below emphasises the competitive level of wholesale access prices in the UK; this reflects both the competitive nature of the UK market and the challenging charge control settlements.

Chart 2 - Wholesale prices for copper access



Source: Cullen International, December 2012

[5] Ranging from service level 1 where fix is required end of next working day +1 (Monday to Friday) to service level 4, where fix is required is required within 6 hours (Monday-Sunday).

We believe these SLA/SLG arrangements are more than adequate; and further tightening of them, or the regulatory-driven imposition of new SLA/SLG schemes will not deliver the balanced framework best placed to deliver the QoS demanded by the market. In particular, achievement of SLA targets should be set at a realistic level rather than the universal 100% target, and the agreements should better reflect that the responsibility for delivering QoS sits more broadly than just on Openreach. It is worth noting that while many of the SLA/SLG arrangements were imposed after Ofcom's last consultation on service levels (*Service level guarantees: incentivising performance* March 2008), other SLA/SLG arrangements have been implemented without the need for formal regulatory intervention, including the CAA SLA/SLG and the GEA[6] SLA/SLG arrangements.

There are some very positive lessons to be learned from the CAA SLA/SLG both in terms of both the process for reaching agreement (via negotiation and Ofcom involvement, but not Ofcom direction), and in terms of the inherent characteristics of the scheme that recognise the joint responsibilities between Openreach and CPs, for example, in terms of demand forecasting. This would not be possible with SLAs/SLGs imposed under SMP regulation which cannot introduce obligations other than on the company found dominant in the particular market being considered. This was also an agreement that reflected compromises made on all sides in the interest of reaching a resolution.

We therefore believe the process for establishing and reviewing SLAs/SLGs should continue to be driven by industry discussion and agreement with Ofcom and the OTA performing valuable facilitation roles. In particular, the involvement of the OTA helps to resolve any issues relating to the definition of measures and the transparency of data: it is clearly important that industry discussions are on the basis of agreed and well-understood metrics and accurate and objective data.

More fundamentally, it is important to recognise that SLAs/SLGs are only one component in regulating service. SLAs should be regarded as setting a worst case "backstop" level of performance, rather than the level of performance that should be typically achieved, with SLGs designed to compensate on the basis of a genuine pre-estimate of loss. Openreach is absolutely committed to delivering service above SLA level as a standard offering and to develop "premium" QoS propositions that will be best delivered via commercial negotiation between Openreach and its customers.

2. Making SLA /SLG schemes more effective

To be more effective SLA /SLG schemes need to have certain characteristics and there are positive lessons to be applied from the CAA SLA/SLG:

- SLA levels should be set at a worst case "backstop" level of performance, rather than the level of performance that should be typically achieved. This aligns with good practice in commercial contracts, and creates certainty between Openreach and CPs ;
- by focussing regulation against a "baseline" level, and allowing greater regulatory freedom beyond this level, Ofcom would provide the best context for regulating QoS without impeding the development of "Premium" QoS propositions that will be best delivered via commercial negotiation between Openreach and its customers. This approach is also consistent with the successful approach taken elsewhere by Ofcom (e.g. in regulation applied to services beyond the "core" offerings for WLR and MPF);

[6] In our view it is premature for the GEA QoS and associated SLA/SLG arrangements to be included as part of the QoS review, given the more flexible regulatory approach adopted for the NGA product set which recognises the nascent state of this market.

- the commercial and legal principles setting out that SLG levels should be a genuine pre-estimate of loss, and should not be set at punitive levels that would be legally unenforceable, nor should they have the predominant purpose of deterring a breach;
- if an SLG is to be triggered on 100% occasions where the SLA is missed (as is currently the case), there needs to be commensurate extra contingency resourcing costs built into the regulated product costs to account for provision and repair demand variability. Alternatively, a more realistic approach needs to be taken in setting the SLA/SLG targets in the first place that better recognises what is possible given real-world delivery constraints, and taking into account end user and CP priorities ;
- the SLA/SLG arrangements should recognise that the responsibility for delivering QoS is broader than Openreach, and that therefore a more effective arrangement will not simply target the SMP operator. In this respect, there are positive lessons to be learned from the CAA SLA/SLG both in terms of the process used for reaching agreement (via negotiation and Ofcom involvement, but not Ofcom direction), and in terms of the inherent qualities within the scheme, for example in forecasting with its recognition that delivering good service is a joint responsibility between Openreach *and* the largest CPs. In setting the "principles" for the CAA SLA/SLG project, Ofcom have previously recognised that "Delivering good service is the joint responsibility of Openreach and CPs." This is right, and as a principle needs to be more broadly applied.

Question 10.3 If you consider that there are shortcomings in the current service quality arrangements, what aspects do you consider to be solely within Openreach's control, what aspects do you consider are impacted on by the actions Openreach's customers and what aspects do you consider are solely within Openreach's customers' control? Please provide reasons to support your views.

1. The equation for delivering QoS is complex and Openreach and our CP customers share the responsibility

As previously outlined, QoS is dependent on an equation that balances demand and the available resources. Openreach is a key part of the QoS value chain, but does not control all aspects of this, particularly in respect of interactions with end users. In order to set the right regulatory framework, Ofcom needs to acknowledge the boundaries of what is reasonably within and outside of Openreach's control, and which aspects are within the control of CPs. For example, we believe that industry could have helped more in the challenging circumstances this year as we are all responsible for keeping customers informed.

Provided that Openreach is able to recover its efficiently incurred costs, Openreach should be legitimately expected to:

- resource to the right levels to meet CP provision forecasts when given in advance;
- deliver ongoing efficiency improvements;
- respond to changing volumes / product mix, for example in terms of the growth of LLU within the copper portfolio, plus the emergence of GEA services;
- manage resource prioritisation between provision and repair.

However, there are a number of important aspects that cannot be within Openreach's control, which can be addressed through improvements in CPs' own processes and better CP management of the customer experience. In particular, we would look to CPs to actively and accurately forecast provision demand and to ensure reasonable notice is given of planned increases.

There are also a number of improvements that made through CPs adhering to "process" best practice. This would address:

- CPs cancelling engineering appointments at late notice for provision and repair;
- CPs sending engineers to the wrong address due to their not confirming the customer's address properly;
- engineers not being able to gain access to the end users premises because customers are not there or no longer want the service;
- CPs ordering an engineering appointment when it is not needed – poor use of "Working Line Takeover" (WLTO) or "start of a stopped line."

2. Recent programmes show that there are a number of areas where CPs can take on extra responsibilities - for the benefit of all

Openreach plans to make approximately 130,000 provision and repair visits per week for WLR and LLU but up to 20,000 of these are likely to be abortive due, for example, to late cancellations (after the engineer has already set off for the job) or customer 'no answer'. As previously noted, most of Openreach's activities will also have an associated SLA, with SLG payments triggered in 100% of

cases where the SLA is not met. For their part, CPs have the ability to reduce the need for engineering appointments to nearer 95k per week by targeting improvements in their processes, for example: reduced cancellations, getting correct addresses, keeping end customers informed and utilising existing line plant to reduce the actual need for engineering visits. If CPs achieved this, there would be significant benefit to all in terms of improved provision and repair delivery, since Openreach resources would be focussed on the smaller sub-set of jobs where they are really needed. Given the extent to which CP practice can impact on the efficient allocation of scarce resource, and the criticality of that resource in delivering good QoS outcomes for the market, the future QoS framework has to better incentivise CPs as well as Openreach.

By way of illustration, in parallel to the discussions relating to the CAA SLA/SLG, there has been an important programme of work led by the OTA to understand where current processes and practice (whether within Openreach or CPs) have led to inefficient use of Openreach engineering resources. Reducing the inefficient use of this valuable and scarce resource is a key dependency for delivering economically viable QoS improvements for the good of all, and needs to form an integral part of any effective QoS regime. It cannot be right going forward that inefficient use of Openreach resources by one CP should negatively impact service outcomes for another CP, nor that CPs are not themselves incentivised to deliver better outcomes in the areas where they can influence QoS.

One of the success factors of the OTA programme lies in the simple recognition that driving greater operational efficiency relies on action from Openreach *and* CPs, and that collaborative working and targeting is more effective than simply laying the challenge solely at Openreach's door.

The programme contains a number of work streams that each target the reduction of inefficient engineering visits, which on an aggregate level have been conservatively estimated to make up around **10-15% of the total population of appointed engineering visits.** The programme contains the following initiatives:

<u>Provision</u>

- **adoption of WLTO** – i.e. ensuring that in home mover scenarios, CPs use WLTO (in line with OTA best practice) instead of new provides (estimated potential savings of 1500 engineering visits / week);
- **reduction in late cancellations** – understanding the root causes of cancellations by CPs that are placed so late that a wasted truck-roll results (estimated potential savings of 2000 visits/week);
- **optimising Address Matching** – ensuring accuracy of Openreach address matching processes and optimal CP interfaces into the Address Matching systems (estimated potential savings of 60% reduction to manual interventions);
- **reduction in the use of "forced provides"** unless required by the end user (estimated potential savings of 1000 visits/week).

<u>Repair</u>

- **reducing repair appointment late cancellations -** (estimated potential saving of 1500 visits/week);
- **reducing repair "no access" levels** – (estimated potential savings of 1500 visits/week).

There has also been a set of initiatives in relation to CPs who address the business market, with the focus on improving service requirements for these CPs by adopting new ways of working that will

significantly reduce costs for both Openreach and CPs. A number of workstreams have been established, chaired by different CPs and supported by the OTA, covering the following:

- developing KPI reporting appropriate for Business CP needs at individual CP and aggregate industry level;
- agree KPI review mechanism for Business CP performance/service issues and how risks can be identified/discussed and mitigated through industry/Openreach collaboration;
- jeopardy management and where recovery is not meeting CP needs;
- suitability of provision and repair processes for Business focused CPs;
- development of additional Business Services.

Overall, the potential for CP practice to impact on the usage of Openreach's engineering resources and thereby on QoS outcomes is therefore significant. It is therefore important that any framework developed to regulate QoS must allow further initiatives such as those identified here to thrive; and that it ensures appropriate targeting of CPs in addition to Openreach.

Question 10.4 If you consider that there are aspects of service quality that cannot adequately be dealt with by contractual arrangements (including but not limited to SLAs and SLGs), what aspects are these and what framework do you think should apply to deal with these? Please provide reasons to support your views.

As indicated in our response to the previous questions, service quality needs to be considered as an 'equation', essentially comprising the demand for repair and provision; the resources available; and the mechanisms to incentivise the right behaviours. Contractual arrangements, including SLAs and SLGs, are one such mechanism but are unlikely to be sufficient in themselves. It is always best if industry can agree appropriate terms and conditions amongst themselves without the need to constantly resort to contractual backstops as remedies for both parties

SLA/SLG schemes do serve an important purpose of increasing the financial and contractual certainty between parties, thereby helping to preserve commercial relationships without triggering recourse to litigation. However, as previously noted, this situation can be improved by ensuring that the SLA/SLG schemes themselves have the right characteristics including (a) placing responsibilities upon CPs rather than solely upon Openreach as the SMP operator (b) being set at a backstop level that affords regulatory freedom beyond the baseline and (c) are legally enforceable by being set in line with good practice for liquidated damages; i.e. not at a punitive level, nor such that their predominant purpose is to deter a breach.

In addition, other contractual mechanisms such as "force majeure" provisions play a critical function in outlining the conditions under which normal contractual supply obligations cannot be fulfilled (typically on a temporary basis). The "matters beyond our reasonable control" (MBORC) provisions in the Openreach contracts are examples of force majeure; and are invoked in circumstances where external events (e.g. severe weather, cable thefts and third party network damage etc.) prevent Openreach from fulfilling its contractual obligations.

Contractual arrangements, where they are required, should contain fair and applicable commercial incentives and rewards for both parties to perform but they must also clearly reflect the broader range of drivers for QoS that we have outlined in this response:

- precise product specifications and their impacts, notably the growing scale of MPF and the implications of the growing volumes of repair required the next working day;
- the "broadband premium" with its implications for the network;
- growing customer expectations due to the services carried, such as TV, changing the definition of a fault – speed issues as opposed to no service;
- the impact of potential long term climatic changes.

As we have outlined in this response, a regulatory framework for QoS needs to:

- more effectively recognise (and target) the areas that CPs are responsible for, including incentivising CPs to more efficiently utilise Openreach resources and processes;
- define the baseline level of service and focus any required regulation here, allowing the market to develop differentiated and premium service propositions;
- allow Openreach to recover its efficiently incurred costs in relation to a given service level, particularly if the baseline represents a higher level of QoS. It is not proportionate that Openreach is expected to deliver high service levels without an appropriate rate of return, whilst being expected to deliver efficiency improvements and cope with the implications of unfettered demand;

- recognise that SLA/SLGs cannot assume that 100% service levels are achievable.

A holistic approach to regulating QoS needs to consider all these factors. As we have indicated, we believe the current SLA/SLG approach is generally fit for purpose. The mechanism for adequately funding the desired Openreach service levels also exists through the charge control review. The area where we believe further attention is needed is in ensuring the right incentives exist to optimise resources throughout the value chain.