
Monitoring compliance with the EU Open Internet Regulation

A report to the European Commission and BEREC

Contents

Section

1. Introduction	3
2. Monitoring the quality of IAS	5
3. Safeguarding open internet access	9
4. Transparency measures	16
5. Complaints and remedies	19

1. Introduction

- 1.1 The EU Regulation on open internet access¹ ('the Regulation') imposes a range of obligations on internet service providers (ISPs) regarding their provision of internet access services (IAS). The aim of the Regulation is to "safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services 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 IAS.
- 1.2 The Body of European Regulators for Electronic Communications (BEREC) has published Guidelines on the Implementation by National Regulators of European Net Neutrality Rules.³ The Guidelines state that the National Regulatory Authorities (NRAs) of the EU Member States "should take utmost account" of the Guidelines, which "should contribute to consistent application of the Regulation, thereby contributing to regulatory certainty to stakeholders."⁴
- 1.3 Ofcom is the designated NRA responsible for enforcing the Regulation in the United Kingdom. National legislation sets out Ofcom's powers in this regard, including powers to impose penalties for breaches of the Regulation.⁵
- 1.4 The Regulation requires NRAs such as Ofcom to monitor and ensure compliance with the Regulation, and to promote the availability of non-discriminatory IAS at levels of quality that reflect advances in technology. The Regulation also requires NRAs to publish an annual report regarding their monitoring and findings and provide those reports to the European Commission and to BEREC. This report fulfills Ofcom's obligations in this regard.

Overview of report

- 1.5 This is Ofcom's fourth annual report since the Regulation came into force and covers Ofcom's activities relating to enforcement of net neutrality provisions in the period May 2019 to April 2020. The report is divided into four sections and incorporates, where relevant, specific activities from Covid-19 period:
- Monitoring the quality of IAS;
 - Safeguarding open internet access and traffic management;
 - Transparency measures; and
 - Complaints and remedies.

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. See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02015R2120-20181220>

² EU Regulation 2015/2020, Recital (1)

³ [BEREC Guidelines on the Implementation of the Open Internet Regulation](#), 11 June 2020 ('BEREC Guidelines')

⁴ BEREC Guidelines, Paragraph 1

⁵ [The Open Internet Access \(EU Regulation\) Regulations 2016](#)

Monitoring compliance with the EU Open Internet Regulation

1.6 This report shows that:

- The quality of fixed IAS has improved compared with the last few years;
- Ofcom's work in this reporting period has secured standards for consumers and ensured ISPs remain compliant with the Open Internet Regulation. The UK's Codes of Practice relating to transparency of broadband speeds are working well;
- UK's networks coped during the peak of the pandemic thereby ensuring that consumers stayed connected and accessed mobile and fixed broadband.

1.7 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.

2. Monitoring the quality of IAS

Article 5(1) of the Regulation

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 Article 5.1 requires Ofcom to promote the availability of non-discriminatory IAS at levels of quality that reflect technological advances.
- 2.2 Our activities to fulfil this obligation have included monitoring consumer complaints, conducting market surveys, and technical network monitoring. We measure various indicators, including broadband speeds and web browsing performance.
- 2.3 Overall, we have found that fixed speeds have improved for consumers of IAS and remained steady despite the surge in network traffic during the Covid-19 pandemic. We published an updated framework on monitoring mobile QoS in October 2019⁶ and expect to publish updated findings later this year.

Fixed broadband network IAS quality

- 2.4 We measure the availability of high-quality IAS on fixed broadband networks through a programme of regular monitoring and reporting. We use two complementary methods to measure the quality of IAS on fixed networks.
- 2.5 We analyse information provided by ISPs regarding the sync speed of each active line. We collect sync speed data at the address-level from the four largest networks⁷, as well as from smaller network providers. This gives a measure of the maximum possible connection speed achievable between the ISP's access network and the consumer premises. We published the findings of this analysis in our Connected Nations reports.⁸
- 2.6 We also analyse data collected by our research partner SamKnows Limited from a panel of volunteer home broadband users. The panel is selected to be representative in terms of geographic location, broadband connection technology, ISP and broadband package. Volunteers connect a hardware measurement unit to their broadband router. This method measures a number of metrics that help determine the broadband user-experience, including actual speeds, streaming performance, average daily disconnections, latency and packet loss. The findings of this analysis are published in our Home Broadband Performance reports.⁹

⁶ Ofcom [Mobile Matters](#), October 2019

⁷ BT, Sky, TalkTalk and Virgin Media.

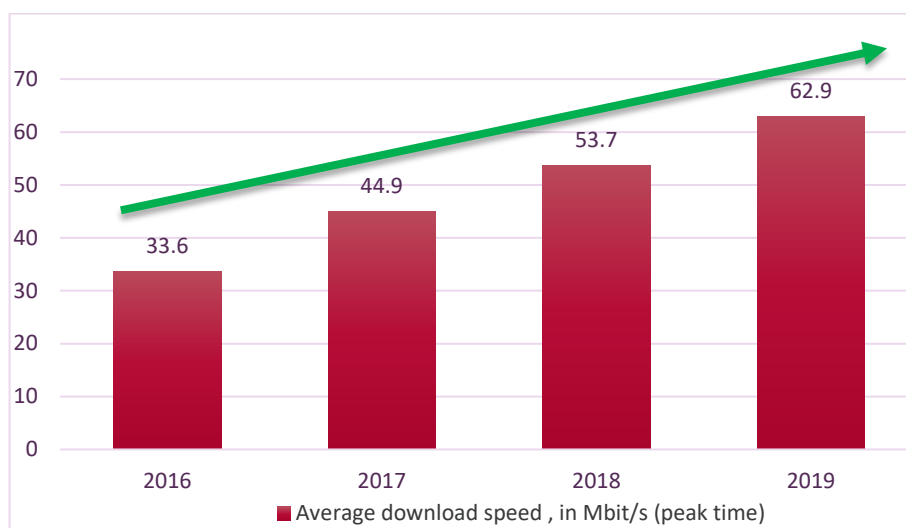
⁸ Ofcom [Connected Nations Report](#), December 2019

⁹ Ofcom [UK Home Broadband Performance](#), May 2020

Key findings

- 2.7 The data we gathered from ISPs about sync speeds indicates that the trend of increased average download speeds continued in 2019, up from just over 49Mbit/s in 2018 to 61Mbit/s.¹⁰
- 2.8 The findings in relation to mean average actual speeds also demonstrate continued improvement in the year to November 2019, with average download speeds increasing by 18% to 64.0 Mbit/s and average upload speeds growing significantly to 14.0 Mbit/s due to the growing availability and take-up of superfast and ultrafast fibre and cable services.¹¹
- 2.9 Data collected by our research partner, SamKnows, indicates improvement in 8-10pm ‘peak time’ download speeds compared to 2018 with unchanged average maximum speed. In 2019, the figure was 62.9 Mbit/s, 96% of the average maximum speed.¹² This improvement is partly because the proportion of lines receiving a 24-hour average download speed of 30Mbit/s or higher increased from 58% to 69% in the year to November 2019. Superfast broadband provides a higher level of speed which in turn reduces the likelihood of congestion.¹³

Figure 1: Improvement in average download speeds between 2016 and 2019



- 2.10 In March 2018, the UK Government decided to introduce a broadband Universal Service Order (USO) to ensure people in the UK have the right to request a broadband connection with a download speed of at least 10Mbit/s and an upload speed of at least 1Mbit/s. The USO launched in March 2020 and, after a short pause as a result of Covid-19, BT will now start raising awareness to consumers who may be eligible.¹⁴

¹⁰ Ofcom [Connected Nations Report](#) Data dashboard, December 2019. The figure was derived from the open data looking at ‘fixed output area’ performance data. Link includes an annex to the methodology.

¹¹ Ofcom [UK Home Broadband Performance](#), May 2020

¹² Ofcom [UK Home Broadband Performance](#), May 2019

¹³ Ofcom [UK Home Broadband Performance](#), May 2020

¹⁴ See Ofcom website: <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/broadband-usage-need-to-know>

Mobile broadband networks IAS quality

- 2.11 Ofcom monitors mobile coverage in the UK on a monthly basis and we are also part of a UK-wide industry steering group, which is addressing common practices for mobile coverage estimation and information presentation to consumers. This is expected to increase the level of transparency and comparability of mobile services in the UK¹⁵.
- 2.12 In addition, we are continuing our research on technical metrics, measurement methods and handsets, which are supplemented with field measurements in order to better understand mobile quality of service (QoS) in view of the Regulation and the corresponding BEREC Guidelines. Later this year, we will publish our updated findings on the Mobile Matters, a research that aims to provide information about the mobile quality of service¹⁶.
- 2.13 Ofcom has been closely supporting the development of the BEREC Internet measurement tool.
- 2.14 As members of the BEREC's Net Neutrality expert work group, we had been closely engaged with the on-going discussions on the BEREC Internet measurement since its inception. We have also been a member of BEREC's collaborative advisory committee drawn from several NRAs, which was set up to advise BEREC on the development of the measurement tool. Ofcom contributed to the production of the technical specifications of the measurement tool as well as helped BEREC in the procurement process (tender production and tender evaluation) and oversaw the development of the software, such as advising on deliverables and reviewing the results of the tests and evaluation of the tool during its development process. Ofcom continued to engage with the advisory committee until December 2019 when the tool was completed.

IAS quality in times of Covid-19

- 2.15 Our UK Home Broadband Performance research looks at measurements taken in March 2020 to assess the effect of Covid-19 lockdown on home broadband performance. Our analysis found that UK broadband speeds largely held up well, despite rising demand from home working, online lessons and TV streaming. While there was some degradation in broadband performance in the second half of March 2020, the observed differences tended to be limited. In the last week of the month, average download and upload speeds were, respectively, 2% and 1% lower than those measured in the first week of the month.¹⁷
- 2.16 During this time, Ofcom launched the Stay Connected campaign in order to provide advice to help broadband and mobile users get the most from their connections.¹⁸

¹⁵ See Ofcom website: <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/advice/ofcom-checker>

¹⁶ See Ofcom website: <https://www.ofcom.org.uk/research-and-data/telecoms-research/mobile-smartphones/mobile-matters>

¹⁷ Ofcom [UK Home Broadband Performance](#), May 2020

¹⁸ See Ofcom website: <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/stay-connected>

Consumer satisfaction surveys and complaints

- 2.17 We monitor consumer complaints to our Consumer Contact Team to evaluate consumer satisfaction. This helps us to identify relevant complaints about the quality of broadband services, including the speeds that customers are getting and the information provided to them.
- 2.18 To facilitate consumer awareness of the Regulation and the rights it guarantees, in 2017 Ofcom created a short video to explain the core principles of net neutrality and posted this on the Ofcom website. We continue to promote this information through social media and other consumer advice bodies.¹⁹

¹⁹ See Ofcom website: <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/advice/net-neutrality>

3. Safeguarding open internet access

- 3.1 Article 3 of the Open Internet Regulation sets out the rights of end-users and ISPs' obligations. In order to fulfil our regulatory obligations in this reporting period Ofcom has:
- Conducted initial reviews of zero-rating offers that have been brought to market; and
 - Engaged with mobile operators about the application of the Open Internet Regulation.
- 3.2 Ofcom's work in this reporting period has secured standards for consumers and ensured ISPs remain compliant with the Open Internet Regulation. A summary of our work is set out below.

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.

- 3.3 Article 3(2) of the Regulation allows agreements between ISPs and their end-users on terms such as price, data volumes, and speed, so long as they do not limit end-user rights as set out in Article 3(1).
- 3.4 "Zero-rating" offers are increasingly popular 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 or category of applications.
- 3.5 The Open Internet Regulation neither prohibits nor allows all zero-rating offers, but the BEREC Guidelines indicate that such offers should be assessed by NRAs carefully, on a case-by-case basis, to ensure they do not undermine the goals of the Regulation. In particular, the BEREC Guidelines note that zero-rating can create an economic incentive to use a particular application instead of competing ones, where there is a risk that *"the effects of such a practice applied to a specific application, are more likely to "undermine the essence of the end-users' rights" or lead to circumstances where "end-users' choice is materially reduced in practice" (Recital 7) than when it is applied to an entire category of applications"*.
- 3.6 The BEREC Guidelines further supplement the Open Internet Regulation by suggesting that NRAs should intervene where agreements lead to a situation where customer choice is materially reduced in practice or where they would result in the undermining of the essence of end-user's rights.

- 3.7 The recently revised Guidelines expand on the original 2016 Guidelines which provide NRAs with issues to consider when assessing whether zero-rating offers are compliant with the Open Internet Regulation and whether to intervene if end-user rights are undermined. These considerations have been taken into account by Ofcom when it created its framework for reviewing zero-rating offers, as noted in last year's report²⁰. The framework can be found on Ofcom's website.²¹

Summary of reviews in 2019-20

- 3.8 In this reporting period, Ofcom has concluded initial reviews of two zero-rating offers which are described below.

EE Music and Video Passes

- 3.9 EE customers can purchase a monthly "Video Pass" add-on for £8.99 per month. During the month data for the following apps are zero-rated: Netflix, Amazon Prime Video, BT Sport, MTV Play and TV Player. EE also offers a monthly "Music Pass" add-on for £7.99 per month. During the month data for the following apps are zero-rated: Apple Music, Deezer and Tidal.
- 3.10 EE discussed both its Music and Video Passes with Ofcom before launching. EE explained that both Passes are open platforms and they are working on recruiting new content or application providers for these.
- 3.11 Ofcom does not intend to take any further action in relation to EE's Video and Music Pass. This is because the essence of end-user rights does not appear to be undermined by the offer.
- 3.12 EE's Music and Video Passes are likely to be attractive to consumers who already have subscription to one of the content services included in Passes and their data allowance is quite low, hence it may reinforce consumer's preference towards the included services to some extent. However, customers using these offers, in particular customers who seek out and pay for Passes (as opposed to those who are provided with a Pass as part of their monthly subscription) are also likely to be on plans of at least 10GB or more, which will lessen the incentive. Therefore, it appears that the impact of this incentive is currently limited.
- 3.13 The open platform EE created for both Passes appears to be relatively straightforward for other CAPs to join, which mitigates any potential internet innovation risk, hence we concluded overall that the Passes were not likely to materially impact internet innovation. In any event, it appears that the existence of mobile data zero-rating offers in the present context is unlikely to be a key factor in determining whether other competing apps come to market.

²⁰ [Monitoring compliance with the EU Open Internet Regulation](#), 2019

²¹ See Ofcom website: <https://www.ofcom.org.uk/research-and-data/internet-and-on-demand-research/net-neutrality>

Sky Watch

- 3.14 Sky Mobile customers who have a Sky TV package can watch Sky TV and use Sky apps without this counting toward their general data allowance. Apps that do not require a subscription, such as Sky News, are zero-rated for all Sky Mobile customers.
- 3.15 The Sky Watch offer raised some concerns that could *potentially* affect end-user choice and circumvent the provisions safeguarding open internet access under the Open Internet Regulation. In particular:
- a) The offer could reinforce Sky TV's strong market position within the UK pay TV market;
 - b) The offer is closed. Sky is effectively zero-rating its own content which could give it the ability to distort competition in the content market by discriminating between its own application and those offered by potential competitors;
 - c) Other ISPs are unlikely to offer the same deal as Sky Mobile in the foreseeable future;
 - d) The offer is likely to be particularly attractive to customers who already subscribe to Sky TV and so may reinforce customer preference for those Sky content services;
 - e) The data used for live streaming sports fixtures, or streaming video on catch up is relatively data 'heavy' and so the zero-rating of this data could act as an incentive to use the Sky applications over non-Sky applications.
- 3.16 However, with regards to whether these concerns create a situation where end-users' choice may be *materially* reduced (or otherwise adversely affected) in practice, we noted that:
- a) Sky Mobile has a very small market share of the mobile market, as a result the number of potential customers taking up the offer is currently limited;
 - b) Information provided by Sky during the initial review suggested the Offer had not had a material impact on the usage of Sky applications; the number of Sky Mobile customers or the number of Sky TV subscriptions.
 - c) Research suggests that just over two thirds of the time (69%) people were connected to WiFi rather than cellular networks when using their mobile devices²².
- 3.17 Ofcom therefore does not intend to take any further formal action in relation to this zero-rated offer at this time. Ofcom intends to keep a watching brief on the numbers of customers joining Sky Mobile and using the Sky applications involved in the offer.
- 3.18 This offer required Ofcom to give serious consideration to issues related to offers which involve vertically integrated companies. We will keep a watching brief on whether this practice of zero-rating content from vertically integrated companies becomes more generalised and we will assess whether any effects are material.
- 3.19 Whilst Ofcom considered that there is *potential* for this offer to affect end-user choice, we did not consider that, based on the information obtained as part of our initial review, the

²² [Mobile matters Researching people's experience of using Android mobile services, 2019](#)

offer had a *material* effect. Therefore, in the specific circumstances of this offer we did not find that the essence of end-users' rights have been undermined or that internet innovation had been negatively affected.

Zero rating in times of Covid-19

- 3.20 In March, 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.net²³.
- 3.21 In April, the Department for Education (DfE) announced a package to support remote learning for vulnerable children.²⁴ It initially considered offering zero-rated access to educational sites, including Google Education, Microsoft 365, Oak Academy and BBC Bitesize. This possibility was discussed during a roundtable between the government, Ofcom and ISPs.
- 3.22 However, due to the technicalities of zero-rating content and the inability to uniquely identify education traffic from other traffic, DfE did not move forward with the plan. Instead, DfE is working with local authorities and schools, to identify those pupils that are in need and will address the connectivity issue in a more targeted way by removing the data caps for those identified who are on mobile only.
- 3.23 More recently, the government announced that MNOs have 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 have all agreed to remove charges for accessing the sites.²⁵

²³ <https://www.gov.uk/government/news/mobile-networks-remove-data-charges-for-online-nhs-coronavirus-advice>

²⁴ <https://www.gov.uk/guidance/get-help-with-technology-for-remote-education-during-coronavirus-covid-19>

²⁵ <https://www.gov.uk/government/news/data-charges-removed-for-websites-supporting-victims-of-crime>

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.*

3.24 Since closing three investigations last year, Ofcom has not identified new cases of concern regarding ISP's traffic management practices under the Open Internet Regulation. As reported last year, Ofcom published a framework publication which sets out our approach to assessing compliance with aspects of the Open Internet Regulation, including a Traffic Management Framework²⁶. We believe this framework has helped ISPs in self-assessing any current or future traffic management measures that they may be considering. Ofcom encourages ISPs and CAPs to self-assess proactively their compliance with the net neutrality rules and discuss any queries they may have with Ofcom.

²⁶ [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](#), May 2019

Traffic management in times of Covid-19

- 3.25 The Open Internet Regulation requires ISPs to treat all traffic equally when providing internet access services 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.²⁷ 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.²⁸
- 3.26 Ofcom liaised with ISPs to ensure that any measures put in place to manage and mitigate any network congestion due to the increase of home-working and internet usage during the Covid-19 pandemic met these requirements.
- 3.27 In the UK, ISPs have not reported having to rely on exceptional measures, in part because major content providers, such as Amazon, Netflix, YouTube, Disney, agreed temporarily to reduce high definition video quality to standard definition, resulting in less strained networks.²⁹
- 3.28 Ofcom has also been made aware of the measures taken by industry players higher up in the internet value chain to optimise routing and peering arrangements to avoid data-heavy applications causing disruption or congestion.
- 3.29 More specifically, ISPs were concerned about major game releases and patching updates planned during lockdown and the impact it would have in network congestion. Ofcom convened with representatives from ISPs, content delivery networks and gaming industry to anticipate these issues and find avenues to mitigate the impact of peak downloads.
- 3.30 Following this discussion, Ofcom suggested a range of options such as asking game companies to release updates between off peak usage (midnight and 8am), limit download speed where possible and provide advanced notice to ISPs of future releases. We eventually received feedback from all the major gaming companies we had contacted, many of which have taken proactive actions to meet the suggested options. This collaboration between our stakeholders and Ofcom allowed UK consumers to get access to content, while mitigating concerns of traffic congestion, without adverse effects.
- 3.31 Overall, despite the increase of internet usage, traffic has remained within manageable levels.

²⁷ See Article 3(3), first and second subparagraphs, of the Regulation.

²⁸ See Article 3(3), third subparagraph, of the Regulation.

²⁹ <https://ec.europa.eu/digital-single-market/en/news/commission-and-european-regulators-calls-streaming-services-operators-and-users-prevent-network>

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.

- 3.32 In the last year, Ofcom has met with a number of mobile operators to discuss practical applications of specialised services and how the Open Internet Regulation may apply. Of particular interest to Ofcom is how the introduction of 5G and ‘network slicing’ by operators could impact the application of the existing net neutrality rules. We understand from our discussions that industry is still developing the deployment of a fully-fledged and commercial network slicing, so it will take a few years before we see the full capability of 5G functionality.
- 3.33 The application of the net neutrality rules to mobile edge computing is another area of interest. A number of ISPs are partnering with cloud computing providers to bring edge capabilities to their networks to minimise the latency to connect a mobile device to an application. As part of these discussions, we are keen on exploring how the practical arrangements of such partnerships would fit within the existing framework to ensure compliance. This is an area Ofcom may need to explore further in the future.
- 3.34 On the basis of these discussions and our own analysis, we have not been able to identify a case study or a situation where the current rules would present a realistic challenge to the introduction of new 5G services. Given the fast-moving technological change and market circumstance, we will continue to follow this area closely.
- 3.35 Until 31 January 2020, Ofcom continued to engage about these issues and contributed to the debate within BEREC in relation to specialised services. On 16 June 2020, BEREC published the revised guidelines providing views on some of these issues.

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 Article 4(1) of the Regulation sets out the transparency measures ISPs are required to adhere to in relation to information contained in customer contracts.

4.2 For ISPs to be compliant with the Regulation, information contained in customer contracts should be accessible, clear and comprehensible. BEREC guidelines set out the test for assessing whether information meets this standard as follows:

- it should be easily accessible and identifiable for what it is;
- it should be accurate and up to date;
- it should be meaningful to end-users, i.e. relevant, unambiguous and presented in a useful manner;
- it should not create an incorrect perception of the service provided to the end-user;
- it should 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 contractual terms used by different ISPs) and ISPs in such a way that the comparison can show differences and similarities.

- 4.3 To fulfil our responsibilities to monitor and ensure compliance in this area in 2018, our primary activities were to review:
- ISP publicly available information from ISP websites, including most especially their contracts and terms and conditions;
 - responses to the information requests we had issued during the 2016/17 reporting period; and
 - consumer complaints
- 4.4 As noted in our 2017/2018 report, we completed our analysis relating to transparency obligations following information requests sent by us to the eight largest fixed and mobile ISPs. Although we did not open any formal investigations, through our engagement with ISPs we secured key changes to ISP consumer contracts to enhance transparency around traffic management and how ISP practices may impact on privacy and protection of personal data, as well as changes to improve transparency of the remedies available to consumers if they experience performance issues with their IAS. We have not performed any detailed analysis since then, but we continue with our usual market monitoring.
- 4.5 Ofcom's revised voluntary 'Broadband Speed Codes of Practice' for residential and business customers came into force on 1 March 2019.³⁰ 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 internet access services 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 Under the Regulation, advertised speeds must be included in contracts. In the UK, the Committee of Advertising Practice (CAP) is the body responsible for advertising guidelines for broadband speeds. On 23 May 2018, CAP guidelines on the advertising of broadband speeds were introduced. These require that any speeds used in broadband advertising should reflect actual package performance and should be based on the download speed available to at least 50% of customers at peak times. Previous guidelines required that the advertised speed should be the maximum speed available to at least 10% of customers on a package, meaning that, potentially, up to 90% of customers might never be able to receive it.³¹
- 4.7 In January 2020, Ofcom introduced new rules to require Codes signatories to use the live sync speed of individual lines as the basis for estimates of speed at the point of sale, where available. In March 2020, Ofcom issued guidance about the application of the Codes during the period of disruption from Covid-19.³² The guidance advised signatories that Ofcom would not expect to raise concerns with providers about reasonable failures to restore

³⁰ Ofcom [Voluntary Codes of Practice](#) statement, March 2018.

³¹ CAP, 2017. Major change to broadband speeds claims in ads <https://www.asa.org.uk/news/major-change-to-broadband-speed-claims-in-ads.html>, accessed May 2019

³² See Ofcom website: <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/broadband-and-mobile-firms-commit-helping-customers-during-coronavirus>

Monitoring compliance with the EU Open Internet Regulation

customers' minimum guaranteed speeds, although we continue to expect providers to offer customers minimum guaranteed speeds and the right to exit their contract if they cannot access these, as normal. Ofcom retracted this guidance as of July 2020.

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.

Article 4(2) 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 an 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). [...]

- 5.2 Article 4(2) requires ISPs to have transparent, simple, and effective processes to address customer complaints about their core rights under the Regulation.
- 5.3 The new requirements for complaints handling by ISPs came into effect on 1 October 2018. 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 ADR if their complaint concludes without a resolution.

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 Article 4(4) 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.
- 5.5 In addition, in the UK consumers have access to additional specific remedies in cases of poor or non-performance by their ISP. Under the revised voluntary Codes of Practice for broadband speeds for fixed services, customers will receive a minimum guaranteed speed at the point of sale. If speeds fall below the minimum guaranteed level for a sustained period of time, the customer has the right to exit the contract without penalty. ISPs are required to make information about the 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 November 2017 we published a statement on 'Automatic Compensation'³³, which set out our position on the need for automatic compensation to protect residential landline and/or fixed broadband consumers who are affected by service quality issues. A voluntary industry scheme was launched on 1 April 2019 covering delayed installations, delayed repair following loss or service and missed appointments. We are monitoring the scheme and we will publish a review later this year.

³³ Ofcom [Automatic Compensation](#) Scheme