EXECUTIVE SUMMARY

We are all interested in quality of service. Prospect members working for Openreach want to carry out a good job and they want to deliver a good customer service which surpasses customers' expectations. Our members took great pride in their role at delivering a successful communications strategy for the London Olympics in 2012 and it is right that we acknowledge the flexibilities and extra lengths to which Openreach employees went in achieving that success. They are also acutely aware of the weight and pressures of competition in the industry. We note that there are criticisms of Openreach's quality of service but would quote the legal saying that 'hard cases make bad law': where there are quality failures, these are frequently the result of the extreme weather conditions that the UK has been experiencing over the last couple of years and are very rarely anything to do with our members not being aware of customer service or a lack of incentive to deliver, and improve, customer service.

We should also add that not only are our members already working extremely hard for Openreach and their customers, they are also doing so under intense, not to say stressful pressures of workload and, frequently, at levels of hours which are not only extremely high but which also frequently breach statutory working time limits. There is thus also a clear link between improving quality of service and placing increased demands on a group of employees who are already stretched very tight. There is, therefore, a risk that this could push parts of Openreach to breaking point which would actually have a negative and detrimental impact on quality of service. At the same time, it is probably fair to say that, at current staffing and resource levels, the quality of service standards being consulted on are unreasonable and too demanding. Improving quality of service will inevitably require Openreach to invest significantly to increase its staffing and resource levels.

We are glad, therefore, that Ofcom has raised this issue: as we have argued previously, it is our view that Ofcom has under-appreciated the importance of investment in its regulatory approach in the past. A relentless focus on driving prices downwards will always carry implications for investment. In contrast, recognising that improving quality of service will raise Openreach's costs, and that these need to be taken into account in the prices which are set for regulated products, is an important step in the recognition that investment will not happen unless the price is right.

There is a clear link between improvements to quality of service and Openreach's cost base and, therefore, the price which may be accurately and fairly set with regard to Openreach's regulated products. While recognising this evident link, our response here focuses on the quality of service aspects of the consultation.

Our submission to this Ofcom consultation argues the following main points:

- it is Ofcom's own approach to its statutory duties – an approach which focuses narrowly on prices in the short-term – which has led to Openreach being under-resourced to the point where quality of service is affected. It must, therefore, reconsider its approach and aim to establish a regulatory environment in which investment, and resourcing considerations, may take their proper place

- overall staffing levels have increased slightly since 2012/13, but Openreach is still not adequately resourced to meet existing quality of service standards. We believe that this situation can only become worse with more stringent standards, especially against the requirement to deliver an annual 5% reduction in running costs. Openreach needs to be better resourced if it is to meet enhanced quality of service standards

- the 3.9% uplift in engineering costs which has been allowed to Openreach is insufficient given the scale of the challenge facing it. We believe that a higher resource uplift will be required if Openreach is to improve its performance further and without heavy penalties on a workforce that is already significantly stretched

- furthermore, we would invite Ofcom specifically to recognise that the attempt to raise quality of service standards is unlikely to be successful at a time when Ofcom is proposing further price cuts. Raising quality of service requires a greater level of resource – yet this is simply not going to be the outcome of the demand for further price reductions. In short, improving quality of service requires resource being driven into Openreach; trying to do more with less carries the significant risk that it will be driven out

- Openreach is entitled to recover the efficiently-incurred costs of providing its services and, if CPs desire a raising of quality of service standards, the cost of doing so must be reflected in the price that they pay for Openreach products. We do not accept any arguments that raising quality of service can be done without an increase in the cost base.

INTRODUCTION

1. Prospect is an independent trade union representing over 120,000 managers, specialists and professionals in both the private and the public sectors in a range of industries and organisations from the communications, media and digital industry to aviation, agriculture, defence, energy, environment, heritage, industry, scientific research and children's services.

2. Our members working in the information and communications technology area work extremely hard, and with a strong degree of personal commitment, for network operators and service suppliers to deliver timely and cost-effective network upgrades and repairs, as well as high-speed digital communications and entertainment services. It is clearly in their interest, in terms both of the health of the companies that they work for and the ability of such companies to deliver good jobs characterised by decent working conditions, that the regulation of their industries is fair and takes full account of the positions of the companies for which they work.

3. It is also clearly right that we acknowledge, and pay tribute to, the pride our members take in carrying out good jobs for customers, that are right first time and which raise customer satisfaction. The most obvious example is the role our members played in delivering an extremely successful communications strategy for the 2012 London Olympics. Nevertheless, working on such high profile public projects should not blind us to the jobs our members do, day in and day out, often in adverse, not to say miserable, weather conditions, to deliver customer satisfaction. Our members recognise that, for each customer, their individual job is always a high profile one.

4. Prospect welcomes the opportunity to respond to this consultation. Our submission focuses on the general points which we consider to be important in motivating our response and then moves on to a consideration of the questions which Ofcom has posed for consideration. We focus heavily on the quality of service aspects of the consultation – thus on Section 3 of the consultation document and its questions – but do recognise the inevitable link to Openreach's cost base and, therefore, the price of its regulated products.

5. Our response has been the subject of detailed consultation with our Openreach Industrial Relations Committee, a body of lay representatives which act as Prospect's interface with Openreach and who all work full-time for Openreach in a managerial and professional capacity. The response has greatly benefited from the input of our lay representatives, who are extremely well-placed to comment authoritatively on the impact of heightened standards at a time of cost reductions both across Openreach and in detail as regards what these will mean to men and women working to deliver Openreach services on the ground.

6. We would, at the outset, make the comment that reading a consultation document that is redacted is not only difficult but that it also complicates the response process. We recognise, and absolutely accept, that certain evidence is commercially sensitive and needs to be kept confidential, but would appeal to Ofcom to restrict its redactions to such cases and to take the view that, in the absence of commercial sensitivity concerns, there is little reason to redact – for example, over the identity of organisations submitting evidence at earlier stages in the consultation process.[1] This would greatly aid

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[1] As at para 3.11.

transparency and effective consultation within Ofcom's guidelines, but also assist the smoothness with which inevitably complex documents may be read and interpreted.

GENERAL POINTS

7. We are glad that Ofcom has raised the issue of quality of service in the particular context of its recognition that raising quality of service has a cost implication. Improving quality of service will necessitate investment. Ofcom itself recognises that:

    When sufficient resources are available it should be possible to achieve a high quality of service,

and that:

    Openreach's past performance suggests that *when well resourced*, Openreach can complete over 90% of orders and over 80% of faults successfully.[2]

8. We would invite Ofcom to consider that an approach which seeks to satisfy its statutory duties via a relentless focus on driving prices downwards has an inevitable consequence for the extent to which regulated companies are able to ensure that they are properly and fully resourced. This means, firstly, that such companies feel compelled to deploy a level of resource below what is optimal, or else be more uncertain (and therefore slower to react) concerning the amount of labour that needs to be taken on to deal with increases in the work stack which may not be sustained over a period; and, secondly, that they feel compelled to squeeze more out of the resource which remains. This is frequently a result of the need to stay as close as possible to the regulated cost base since any increase in costs outwith these parameters mean that BT is incurring costs beyond the prices it is able to charge as a result of these being regulated. We would further point out that the likely explanation of Openreach being 'slow to recruit additional resources in response to the increase in fault volumes in the summer of 2012'[3] is that it had been looking to squeeze more out of the existing resource, via intensified workloads, because of its acute awareness of costs.

9. This provides a clear illustration of the hazards of a cost-based approach to regulated pricing: when costs need to increase, as a result of a requirement to increase labour inputs, for example, the temptation for regulated companies will frequently be to seek to increase that input as far as possible without increasing costs. For our members, who (as managers and professionals) are paid a salary with the responsibility to manage their own working time, that often means an increase in their utilisation since this does not have a direct impact on BT's costs.[4] Consequently, the pressure is frequently on them to raise their working time. This, we would suggest, is particularly likely to be the case in situations of a high work stack where this has been caused by 'emergency' situations arising from extreme weather conditions; but it is certainly not limited to such situations.

10. Furthermore, we should observe that intensified pressures on people frequently lead them to leave the companies they work for, creating a vicious circle in the areas which are those most in need of additional resource: a high work stack leading to intensified pressures leading to higher labour turnover can only add to the work stack and further affect quality of service; paradoxically, this is frequently likely to be the case in those

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[2] Quotes from A5.11 (emphasis added).

[3] A5.82.

[4] Of course, there is the potential for an *indirect* impact on costs where such situations lead to stress-related sickness leave as a result of people becoming 'burned out'.

areas requiring additional resource the most. Furthermore, this is also likely to increase Openreach's direct costs as a result of the expense necessitated by the recruitment process.

11. Both these two situations – a lower level of resource deployment and attempt to squeeze more out of the resource which does exist – provide sub-optimal levels of efficiency and they both have the potential to lead to declining quality of service. In our view, Ofcom must accept that it has a responsibility in this: it is its approach to regulation and the interpretation of its statutory duties which has led to Openreach being under-resourced to the point where quality of service is being affected.

12. Consequently, it is welcome that Ofcom has allowed for a 3.9% increase in Openreach's engineering costs for provisioning and fault repair. However, we do not think that this goes far enough to restore an optimal position in the resources available to Openreach to meet quality of service targets. Our view is that meeting the standards set out for quality of service (improving provisioning appointments by around twenty percentage points on 2011/12 performance, for example) represents a sizable challenge and that this figure is simply insufficient given the scale of what is ahead of Openreach. Overall staffing levels have increased slightly since 2012/13, but Openreach is still not adequately resourced to meet existing quality of service standards. There is also a question about engineers having received the right training to carry out their work. This situation will only become worse where more stringent quality of service standards are applied, especially against a background where Openreach is expected to deliver an annual 5% reduction in running costs. Quite simply, Openreach will need to be better resourced if it is to meet enhanced quality of service standards.

13. We therefore believe that a cost uplift of a much higher figure would be more appropriate. We appreciate that this 3.9% is drawn from the Resource Simulation Model commissioned by Ofcom, as validated and subsequently critiqued as regards the extent to which it accurately reflects practical experience. However, we also note that 3.9% is very low in the range of estimates of the appropriate resource uplifts modelled by Ofcom for a variety of different scenarios and that this reflects a desire to get it to 80% of the SLA target for repair performance and provisioning.[5] We believe that Openreach would be able to do much more, and at lower potential impact on Prospect members' workloads, were the resource uplift to be higher than this 3.9% and that this would occur with only a small impact on end-user prices.[6]

14. Ofcom is of the view that:

It would not be appropriate to set a standard which demands resource levels such that they risk significantly increasing the cost associated with the provision of those services and undermining demand.[7]

15. Clearly we do accept that – in a market environment – there is a link between prices and levels of demand although we might argue that the market for broadband (for example) does not operate in a perfect way. However, we do not accept that the price increases associated with a higher level of cost recovery to achieve quality of service standards – which we see as small enough even at higher levels than is associated with the 3.9% which Ofcom is proposing – is likely to affect demand. We are far from the level of cost rises to end-users which might impact on their willingness to pay, as TalkTalk argued in

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[5] Table A5.5.

[6] Table 3.6.

[7] Para. 3.82. Ofcom also makes the same point about the impact of costs on competition in Para 3.71.

its response to the earlier consultation.[8] Indeed, we would agree with the argument that a certain level of price rises may even increase demand since customers may well be prepared to pay the necessary price to achieve a given level of quality of service. At least, it would do so where the market works well – although the extent to which CPs believe that quality of service can be raised without raising prices seems to us to be a strong indicator that the market does not work well.

16. However, Ofcom's main point in advancing its view is that the cost of services is a critical factor in competition – but we would disagree that service cost rises are likely to have an (adverse) impact on competition: Openreach evidently supplies regulated products to all customers (including BT Retail) on the same price basis, so the effect of a cost rise facing all CP customers, in principle, favours or disfavours no-one. CP customers will clearly have their own pricing and profit models as regards the end-consumer but these are not within the control of Ofcom or indeed of Openreach. Openreach is entitled to recover its efficiently-incurred costs and, if quality of service issues require to be addressed, then the costs of doing so need to be reflected in the price which CPs pay. We dismiss the arguments put by some CPs that raising quality of service standards can be done without an increase in costs.[9] We are relieved that Ofcom does not share this view.[10] There is indeed no such thing as a free lunch.

17. Fundamentally, increased quality of service standards will inevitably mean a bigger work stack while, additionally, there will need to be greater fluidity in the work stack as priorities will need to shift to carrying out work to try and meet the enhanced quality of service standards. This would mean resources would have to deployed more flexibly but, with unpredictable demand from CPs, this will be hard to achieve in a planned and strategic way.

18. At the same time, we note that the other adjustments, in combination, have the effect of slightly reducing the charges for MPF and WLR rental in real terms, significantly so in the first year with further, more modest reductions over the remainder of the charge control period. Consequently, Ofcom might be appearing to allow an increase in costs to accommodate the greater resource requirements associated with meeting improved quality of standards targets – but, ultimately, when other considerations are taken into account, Openreach is still being asked to do more (as regards quality of service) with less (during a period of further declines in the prices of regulated products, even allowing for the 3.9% resource uplift). This will inevitably have an impact on our members and raises serious concerns over the achievability of quality of service targets. Quite simply, an attempt to raise quality of service standards is unlikely to be successful at a time when Ofcom is proposing further price cuts which have led in the first place to those quality of service failures as a result of their impact on resourcing decisions.

19. Ofcom must, therefore, reconsider its approach to its statutory duties such that concerns such as quality of service (and, indeed, investment in general) may take their proper place in Openreach's cost base and, therefore, in its organisational planning.

20. We have referred to the impact on Prospect members of their existing workloads, as well as our concerns that the regulated model introduces a temptation on regulated companies to increase resource utilisation, where possible without an increase in the cost base. Prospect conducts an annual survey of our members working in Openreach,[11] asking them a variety of questions about hours, workload, stress and work-life balance.

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[8] Para 3.11.

[9] Paras 3.64-3.65.

[10] As is supported by the argumentation in Para 3.88.

[11] And in the rest of BT, too. However, we are able to split off the responses made by our Openreach members.

Consequently, we have not only a snapshot of how these issues look at a particular point in time but also a collection of longitudinal data which demonstrates changes over time. We would be happy to share this data with Ofcom, on request.

21. To illustrate the point, our 2013 survey produced the following snapshot analysis of Openreach members:

    - 29% of Openreach members say they usually work more than 48 hours per week,[12] among which 13% have usual working weeks of 55 hours or more

    - 51% say that they do not have a good work-life balance

    - 71% say that workloads are becoming more, or much more, difficult

    - 78% say that their jobs are not doable in their contractual hours

    - 58% disagree, or strongly disagree, that they have control over the pace and intensity of their work.

22. Evidently, these figures are averages, struck from respondents right across Openreach: they are actually much poorer in the Service Delivery parts of the business and particularly so in two specific sub-units of this part of the business. It is worth pointing out explicitly that Service Delivery is where the impact of enhanced quality of standards will be felt most keenly: i.e. workload pressures are already most significant where resourcing challenges are also the most affected by the enhanced quality of service proposals. This emphasises the level of the resourcing challenge facing Openreach in delivering enhanced quality of service when the engineering cost input allowance is so small. Without much greater resource input, this will have an impact on Prospect members who are already under severe amounts of pressure; and it will also have an impact on the ability to achieve such targets.

23. These figures combine into what we have termed a 'perfect storm' facing Openreach members: high workloads arising from jobs not being doable and becoming higher, combined with poor work-life balance and a feeling that the pace and intensity of work is out of individual workers' direct control, leads inevitably to workers feeling under intense pressure. Indeed, some 63% of Openreach respondents to our 2013 survey reported that they had suffered from a period of stress in the previous six months which they considered to have been work-related.

24. These are very challenging figures which cause our members considerable difficulties in delivering the quality of service towards which they aspire. The prospect of such pressures not becoming alleviated during the next charge control period, but actually becoming worse as a result of the impact on them of further pricing cuts, is not only unattractive and unappealing in practical, day-to-day terms as well as in career development ones, but is likely to cause them considerable practical problems in not only their working but also their domestic lives.[13]

25. People whose working weeks are usually above 48 hours per week are not only breaching statutory limits on working time but, on the basis of the contractual working

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[12] This is the statutory working time limit which reflects the European Working Time Directive. In comparison, the contractual working week for Prospect members in BT is 36 hours.

[13] We have evidence – again from our surveys – that workers who are under stress are much more likely to report difficulties with personal relationships. Practically speaking, it is evidently difficult to maintain personal and family relationships when you are spending 48 hours per week or more at work.

week in BT being 36 hours, are adding at least one-third to their contractual working time.

26. We have two further points to make here, on top of what we have already said. The first is that working weeks which are regularly long are unlikely to be efficient: there comes a point at which productivity falls with additional hours – more sometimes can indeed be less. Additionally, where people who are working long hours are also driving, which our first-line managers in Openreach are likely to be doing since their jobs (put very simply) are to supervise the implementation of the work stack, raises issues around public as well as individual safety. Secondly, and returning directly to a point we raised above, if quality of service issues are raised where a large proportion of people are already working at least one-third on top of their contractual working time, these issues are unlikely to be addressed seriously in practice where Ofcom is allowing for only a 3.9% increase in the cost base of the engineering input. Even allowing for the productivity gains which are likely to be associated with working less, this is probably around one-fifth or even one-sixth of the level required to raise quality of service to the standards expected by Ofcom.

CONSULTATION QUESTIONS

Question 3.1: Do you agree that it is appropriate to use the existing SLAs as the basic standard around which to set the new minimum standards? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

27. In our view, industry has reached a voluntary agreement on a Service Level Agreement, even if some parts are evidently unhappy with it, and that agreement should continue to stick until such times as the industry works out its unhappiness by reaching a new agreement. We note that Ofcom has maintained the 12-day SLA target for provision appointment availability and that this essentially provides an independent authority for seeing the target as reasonable.

28. Nevertheless, we would point out in this context that enhanced quality of service standards inevitably carry cost implications. This needs to be accepted by the industry, which would also extend to an acceptance that improvements in quality of service need to be paid for if desired. Furthermore, we doubt that a serious attempt to address quality of service issues, to get Openreach to the enhanced standard, is likely, given where resourcing currently is, to be achieved via the allowance of an uplift in engineering costs of just 3.9%. In our view, Openreach will be extremely challenged to attain such standards given what is on offer as an increase in the cost base, and that this will result in heightened workload demands being placed on Prospect members which many ordinary people would regard as unacceptable given the workload which our members already face.

Question 3.2: Do you agree that it is appropriate to use General Manager areas rather than forecasting regions in the minimum standards and the KPIs? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative

Question 3.3: Do you agree that it is appropriate to apply the same minimum standards to all regions? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

29. We do not agree. We accept that Ofcom has moved significantly from its original proposals, but its suggested compromise is far from workable. Having nine GM regions

plus Northern Ireland (10 in all) and applying the three targets in each creates an industry around the issue of compliance and risks tying Openreach up in a multiplicity of compliance investigations, including with a direct impact on people on the ground, as well as of potential fines. We believe that resource would be better spent in continuing to address, and to strive for, quality of service. Neither do we believe that such a level of granularity is in the interests of CPs to monitor, since it creates similar resource implications for them, too.

30. We would also point out that Ofcom is *not* proposing that Openreach publish KPIs for each of its GM areas plus Northern Ireland, as Question 3.2 seems to suggest. The proposal here is, instead, for UK-level KPIs to monitor the tail, while the minimum standards are applied in each of the GM areas plus Northern Ireland. This creates an apparent confusion since if the KPIs are to be published on a UK-wide basis, this seems to support the view that the minimum standards should also be published on a unitary basis. Furthermore, we would also observe that Openreach will continue, under the SLA, to be obliged to pay service level guarantees to CPs if it misses the SLA targets on specific jobs but, in addition, it will, under these proposals, also have targets based on its performance against the SLA at the level of the GM regions plus Northern Ireland where it can be fined if it misses those targets. This seems a little like double jeopardy – and this will, additionally, have a further impact on Openreach's ability to resource quality of service improvements in the first place.

31. We do not agree that the minimum standards should be applied in each GM region plus Northern Ireland but, at the same time, we believe that it would be anyway invidious to apply different minimum standards to different 'regions', not least in the view of Scotland's prospective independent status. This risks setting the view that some regions and nations of the UK (with more challenging conditions) are somehow less equal, or less worthy of the same minimum standards as others (where the conditions are less challenging). This would be an unfortunate development and would potentially have much wider repercussions for the cohesiveness of the UK as a whole.

32. Our preferred alternative in this area would be for Ofcom to maintain a unitary approach to the setting of the minimum standards, i.e. that these should represent a single set of standards applied across the UK as a whole, in line with the SLA and to minimise the degree of regulatory intervention in something that the industry has already agreed by itself. We deal with MBORC more fully below but, at the same time, we believe it would be appropriate to be flexible around the application of allowances for extreme weather such that in nations and regions of the UK where there are specific challenges, not the least weather-based ones but also in terms of remoteness, a greater level of tolerance is applied in applying a level of permitted variation from the standard. Clearly, for example, the Highlands and Islands of Scotland presents particular problems in this regard. We believe that it is impossible to be prescriptive in advance in this regard and that taking a case-by-case basis to circumstances, given actual events, is by far the better approach.

Question 3.4: We have set out the details of our analysis in Annex 5. In light of this analysis, do you agree that the 2011/12 resource deltas from the Resource Simulation Model provide a reasonable basis to assess the resource and associated cost increments associated with minimum standards? Please provide reasoning for your answer.

Question 3.5: Do you consider whether it is appropriate to take account of the difference in the resource levels between 2011/12 and 2012/13 in setting the final resource multiple to account for the more challenging conditions in 2012/13? Please provide reasoning for your answer.

33. We note Ofcom's view that the independent Resource Simulation Model commissioned by Openreach is 'partially successful' (although the analysis seems to convey a somewhat more positive view of its abilities to replicate practice than that phrase implies). More directly, we may observe that the 2011/12 performance outcomes essentially form the basis on which Openreach is currently funded and it is therefore these to which we should look, rather than the 2012/13 outcomes, as regards the basis for calculating the increase in costs in the charge control regime implied by the enhanced quality of service standards.

34. Openreach is indeed now better resourced than it was then, but we would like to reiterate our view here that the difference between 2011/12 and 2012/13 is, given the scale of the challenge facing Openreach to get performance to the level of the enhanced standard, slight. Consequently, we do not agree that Openreach is now not only able to meet the requirements of challenging years but to improve on these in good ones; as we have said above, the scale of the challenge remains considerable and, although a start has been made, Openreach is not yet resourced to the point whereby we can be sanguine about its abilities reliably and consistently to deliver the enhanced standards being proposed, even in times of 'normal' weather. That is not an attempt to excuse failure in advance: it is simply a reflection that Openreach has to improve resourcing considerably further if these standards are to be realisable, and that means other CPs accepting the part that they need to play (via agreeing to higher cost allowances) in achieving that.

35. Additionally, whatever the apparent increase in resourcing that there has been, Prospect members still face an extremely challenging work environment in terms of the pressures on them of high levels of working hours given the size of the work stack. We cannot ignore that, even with an improved level of resourcing, our members are still facing pressures that would be intolerable to many.

Question 3.6: Do you agree that the existing MBORC statistics form a reasonable basis for inclusion in the minimum standards? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

Question 3.7: Do you agree that it is appropriate to base the repair MBORC allowance on the statistics for 2012/13? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

Question 3.8: Do you agree that it is appropriate to use 3% as the faults MBORC allowance and 1% as the provisioning MBORC allowance? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

36. We agree with Openreach that 'matters beyond our reasonable control' are exactly that – circumstances which are eminently unpredictable in advance and beyond the capacity of human intervention to control while they are proceeding and in the immediate aftermath before they have subsided. Scenes of people battling (and evidently in vain) to control the effects of the extreme weather that we are currently having are illustrative enough of what is, by definition, 'MBORC'. We all know it when we see it. It is probably also important to point out – although it should not be – that the starting point here should be that failures to meet quality standards are likely to be for a very valid reason and not due to general sloppiness on the part of individual employees (or indeed of Openreach): our members do good work, often in extremely trying (and sometimes downright dangerous) circumstances, to deliver the service and the standards that people expect.

37. We would further observe that, since Openreach had not, prior to October's St. Jude storm, declared MBORC in relation to provisioning appointments, there is, consequently, less historical data on which we can base a viable MBORC figure for this particular area. The 1% figure that Ofcom has come up with is clearly the product of a 'finger in the wind' exercise which may or may not bear any resemblance to actual reality.

38. Consequently, we believe that the sensible approach would be to take a case-by-case review to define what is 'MBORC' and to agree how this should affect an assessment of what impact such events have on Openreach's ability to meet minimum quality of service standards across the piece. The industry should be able to come up with a panel, perhaps independently chaired, which is charged with the remit of reviewing circumstances which are 'MBORC'. We do not therefore agree that there is merit in setting any targets in advance for what is 'MBORC', however rooted in past circumstances that may (or may not) be, since weather conditions into the future are inherently unpredictable.

39. Influential agencies are already commenting that the extreme weather patterns we have seen over the past couple of years are, if they are the result of climate change, likely to become more the case into the future. Consequently, the past in this respect is likely to be less a guide to the future than it currently is. Far better that we do not have a regulatory environment which is governed by such a risky set of predictions, but to be flexible enough to take each case as it comes.

40. For this reason – i.e. the unpredictability of weather patterns in the future – even were we to agree with the MBORC approach, we do not regard the proposed limits as giving enough leeway to take account of truly exceptional circumstances such as the current weather conditions across large parts of the UK.

41. The other problem in this area is that the demands on Openreach by CPs are themselves unpredictable. Often, and at very short notice, a new product will be offered by a CP which means a very sudden increase in the work stack. Indeed, in some respects the system actually creates an incentive for CPs to give Openreach as little notice as possible of likely demand for their products since they will then receive compensation under the SLA if quality of service standards are not met. Consequently, the other side of the desire to improve quality of service standards is that CPs should be compelled to give as much advance notice as possible of their product programme.

Question 3.9: Do you agree with the minimum standards we have proposed for the third year? Please provide reasoning for your answer.

Question 3.10: Do you agree with the range we have identified for the minimum standard in the first year and our proposed recommendation within that range? Please provide reasoning for your answer.

Question 3.11: Do you agree with the proposed glide path? Please provide reasoning for your answer.

42. It is impossible to agree with the minimum standards proposed for the third year, or with the range proposed for the first year and the recommendation within that range, since the resource uplift in engineering costs which has been allowed is simply insufficient given the scale of the resourcing challenge required to achieve the targets. We have said above that past practice has seen our members loaded with additional work as a result of the challenges to resourcing of Openreach being required to work within impossible cost

constraints, and we would have to assume that this will be the same response into the future. We simply could not agree.

43. In principle, we think that it is rational to allow a range and a target set at the mid-point of the range in the first (and second) year and a glidepath to the end of the third year since this embodies important time to adjust and to 'get things right'. However, these are very much secondary questions when the envisaged increase in the cost base is simply insufficient to achieve them.

Question 3.12: Do you agree with our analysis of the risks of unintended consequences in the setting of the minimum standards and our proposed approach to addressing the risk, including the use of new KPIs? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

Question 3.13: Do you agree with the set of KPIs proposed? Is it sufficient that they are national rather than regional? Do you agree they should be publically available? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

44. That Openreach already tracks the number of cases falling at set intervals outside the SLA seems to indicate that it is not only aware of the danger of such 'unintended consequences' but that it is already doing something at least to monitor them. Consequently, we are not really quite sure what purpose regulatory intervention would serve. The normal approach in such circumstances, not least when the background is a voluntary industry-level agreement, would surely be to start to take action where there is proven to be a problem rather than to try and pre-empt action where they may well not be one, and we have seen no such evidence that there is an issue which needs to be addressed.

45. Having said that, the use of KPIs would be a good way of providing some monitoring and tracking and that, in the world of 'big data', publication of these is certainly good practice. Given that the purpose is monitoring and tracking, there is no merit in publishing the figures on any other than a national basis; circumstances of a particular growth in a problem would no doubt require a deeper dive – but we are getting way ahead of ourselves here when we do not know that there even is a problem. We would, however, have no objection to the publication of what is being collected.

Contact

46. For further information about any aspect of this submission, please contact:

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