



Approach to high excess costs under the broadband universal service

BT Response

10 September 2021

Comments should be addressed to:
Regulatory.affairs@bt.com

1. Overview

- 1.0. Since the broadband USO scheme was launched in March 2020 we have made great progress despite the challenges posed by Covid-19 during the period. In the first year of the scheme we had over 18,000 enquiries from customers and were able to refer most of these applications to existing products or already planned network builds that would meet their need. In addition, in March 2021 we also introduced a cost sharing option for USO customers to help reduce the contributions required from them towards their build.
- 1.1. We have been in dialogue with Ofcom since before the opening of its investigation about the calculation of USO costs to ensure that they are calculated in a manner that is both fair to consumers and doesn't represent an unfair burden on industry. To that end, BT has provided voluntary assurances to Ofcom about how it intends to interpret the criteria and calculate excess costs going forwards.
- 1.2. We support Ofcom's proposed changes to the USO conditions and agree that they represent a reasonable balance in sharing excess costs between industry and customers.
- 1.3. In this response we:
 - Set our understanding of the USO consumer journey as a result of the proposed changes (section 3); and
 - Seek clarity from Ofcom on the interaction between the amended USO conditions and 2021 WFTMR SMP obligations (section 4).

2. BT supports Ofcom's proposals

- 2.0. BT supports Ofcom's proposals laid out in the consultation "Approach to high excess costs under the broadband USO" published on 16 July 2021, and agrees that they represent a reasonable balance in sharing excess costs between industry and customers.
- 2.1. We welcome Ofcom's proposed changes. In particular, the changes to, and new definitions of, "Cluster", "Cluster Excess Costs", "Excess Costs" and Condition B.11 provide important clarity as to Ofcom's interpretation of the requirements which are to apply both below and above the £3,400 threshold.
- 2.2. BT remains of the view that our interpretation of, and current approach to estimating and charging for, excess costs is consistent with the existing legal requirements, in particular, for any excess costs above the £3,400 threshold to be borne by the USO customer¹.
- 2.3. For the avoidance of doubt, our support and assurances are given in the context of the proposed changes to the existing 2019 Universal Service Conditions applicable to Broadband Services. Any future changes of the scheme (e.g. the "Technical Specification") would require Ofcom to consult on the entire scheme, including the modified Conditions.
- 2.4. BT agrees that Ofcom's scenario modelling in Annex 5 is a reasonable assessment of the potential impact of the proposed changes given the lack of empirical evidence of customers' willingness to pay excess costs.
- 2.5. Finally, for ease of future reference, it would be helpful to stakeholders if, when publishing its final statement, Ofcom also published a revised consolidated version of the 2019 Universal Service Conditions.

¹ Condition A.3(c); and paragraph 2(d), Schedule 1, of the 2018 Order.

3. BT's understanding of the consumer journey under the amended process

3.0. There are two new elements to the journey for USO customers:

- i. For the first element, where the costs of connecting a cluster with multiple premises exceed the £3400 cost threshold, we will calculate whether each premise's equal share of the Cluster Excess Cost is above or below £5k² (excluding VAT):
 - o If it is above £5k, then USO customers will be offered BT's Shared Cost Option (SCO) which enables customers in the cluster to join together to fund the Cluster Excess Costs before BT commences build; or
 - o If it is below £5k, then BT will provide a connection to any individual premises, on condition that the owner pays their share of Cluster Excess Costs (i.e. the Excess Costs attributable to their individual premises).
- ii. The second new element is a new Openreach process to "unlock" already built USO infrastructure to connect those customers who come under the £5k (excluding VAT) threshold and are willing to pay their individual premises' share of the Excess Costs.

3.1. **Error! Reference source not found.** below shows BT's understanding of the consumer journey through the USO process as a result of the proposed changes. The blue coloured boxes indicate the new steps in the customer journey.

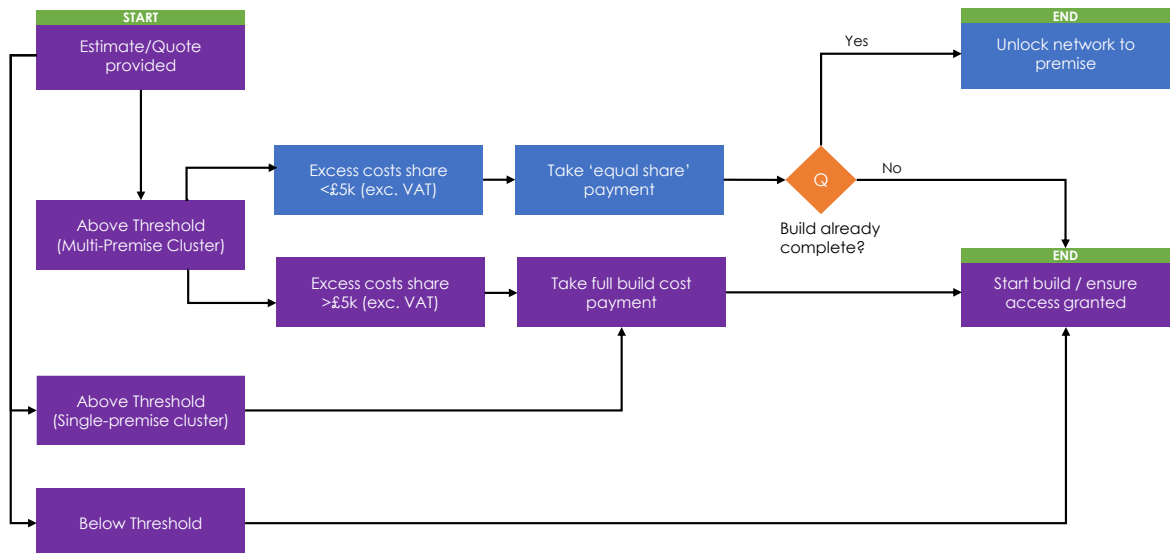
² Assuming 70% take-up within the cluster

Figure 1

- **Above threshold** – sits above the £3400 per premise BT contribution (based on 70% demand aggregation) so is required to pay excess costs for a new broadband network
- **Below threshold** - sits below the £3400 per premise BT contribution (based on 70% demand aggregation) so is not required to pay excess costs for a new broadband network
- **Cluster** – a set of premises grouped together by Openreach that are USO-eligible (i.e. don't have access to >10mbps broadband)
- **Single-premise cluster** – there is only 1 premise that is USO eligible in that cluster
- **Excess costs share** – the total excess cost for the network divided by the number of relevant premises in a cluster
 e.g. excess cost = £28k | 10 premises in cluster | 7 relevant premises | equal share = £4k

Overview of customer journey

Once a customer is given an estimate and quote we will work through the below approach



4. Interaction with SMP Access and NUD Conditions

4.0. Under Ofcom's proposals,

"where costs that are attributed to the individual Premises as calculated in accordance with Conditions A.3(c) and B.8 are [more than £3,400 but] no more than £8,400 excluding VAT, BT is required to provide a Broadband Service if the USO Customer reaches an appropriate agreement with BT in respect of payment of the Excess Costs³ and VAT on the amount of Excess Costs;" (proposed amended Condition B.11(d)(i))

- 4.1. Where the calculation (assuming 70% take-up) produces a per premise connection estimate above the £3400 reasonable cost threshold but below £8,400 in total (exclusive of VAT), customers within a Cluster⁴ will be connected if they agree to pay their individual share of the Cluster Excess Costs⁵ (or these excess costs are funded in some other way), including where the network has already been built, until such time as Ofcom determines otherwise.
- 4.2. In such circumstances, the Cluster build will be triggered by the first customer in the Cluster who pays their individual share of the Cluster Excess Costs. This customer and each subsequent customer in the Cluster will be connected when they pay the Excess Costs attributable to their individual premises (i.e. their share of the Cluster Excess Costs).
- 4.3. Ofcom's policy intends that eligible customers in a Cluster should pay their share of Cluster Excess Costs to access the new broadband USO infrastructure in order to avoid an unfair net burden on BT. Otherwise, BT (and industry) would have to fund all Excess Costs that are not being paid for by customers. To achieve this, BT will have to refuse access to its network until such Excess Costs are paid or a recovery decision is made. That could take over 2 years from the date the build is triggered.⁶
- 4.4. Where connection costs per premise are above £3,400 and do not exceed £8,400 (exclusive of VAT), such refusal to provide access pending payment of Excess Costs, will be compliant with the 2019 Universal Service Conditions (as amended).
- 4.5. However, under the 2021 WFTMR, BT is also subject to SMP obligations to provide network access on reasonable request and to no undue discrimination obligations. It is important that the interaction between the 2019 Universal Service Conditions (as amended) and BT's 2021 WFTMR SMP conditions (in particular, Access on reasonable request and No undue discrimination) is clear and transparent, i.e. that refusal to provide access pending payment of Excess Costs is also compliant with the 2021 WFTMR.
- 4.6. Ofcom has indicated to BT that it considers that until Excess Costs (not exceeding £5,000) are recovered (from the customer, the fund, BT or otherwise), a request for

³ "Excess Costs" means any costs of providing a Broadband Connection attributable to an individual Premises which are more than £3,400 excluding VAT calculated in accordance with Conditions A.3(c) and B.8.

⁴ "Cluster" means a set of two or more eligible Premises which can be served by Broadband Connections which will use all the same shared infrastructure.

⁵ "Cluster Excess Costs" means the sum of all of the Excess Costs for each eligible Premises in a Cluster.

⁶ For example, 12 months until build + 6 months post build + 9 months until a funding decision by Ofcom .

access will not be reasonable, and therefore refusing access will not breach applicable SMP access or no undue discrimination conditions. Ofcom also said that it therefore did not anticipate that it would be appropriate to take any enforcement action against BT so long as its actions are consistent with BT's obligations under the 2019 Universal Service Conditions (as amended) and the associated guidance.

- 4.7. As USO infrastructure is built, it becomes an integral part of Openreach's network, inseparable from other parts of the network. As such, customers (including CPs on behalf of their customers) requesting access to that network, may be refused access due to unpaid Excess Costs.
- 4.8. To increase transparency and certainty (and avoid unnecessary regulatory disputes), we ask Ofcom to include in its final statement a confirmation of its position along the following lines:

"We consider that a request to BT and/or Openreach for access to its network, built under and/or subject to the 2019 Universal Service Conditions (as amended), will not be a reasonable request and, therefore, a refusal to provide access to such network will not be a refusal of a reasonable request for access and/or unduly discriminatory, for the purposes of the access and no undue discrimination requirements imposed following the 2021 WFTMR, so long as: a) Excess Costs have not been recovered; and b) BT acts in accordance with the 2019 Universal Service Conditions (as amended) and Ofcom guidance in its Statement of [date]."
- 4.9. Such confirmation will make it clear that BT's refusal of access to individual premises in a Cluster pending payment of Excess Costs (where not exceeding £5,000), is compliant with both the 2019 Universal Service Conditions (as amended) and with BT's SMP conditions (in particular, the 2021 WFTMR access and no undue discrimination conditions).
- 4.10. Ofcom has provided similar clarifications in the 2021 WFTMR for instance in relation to BT Downstream use of Openreach inputs, i.e. that a request for access to the downstream products created by Enterprise would not be a reasonable request for network access and therefore could be refused by Enterprise. Ofcom similarly clarified its position on the interaction of the Universal Service Conditions with obligations under the WLA and WBA Market Reviews in the 2019 Universal Service Statement.⁷

⁷ See: paragraph 1.41 of the 2021 WFTMR Volume 3: non-pricing remedies; and paragraphs 8.68-8.72 (in particular, 8.72), p.116-117 of Ofcom's Statement "Delivering the Broadband Universal Service" (June 2019).