

Foreword:

First I wish to express a warning to readers who should be aware of my starting point for making comments to the July 16 proposed Approach to USO.

My views need to be seen in the light that they come from an aggrieved and embittered eligible USO applicant, harmed by BT through its first quote for over £50,000 in September 2020 that I believe was deliberately inflated to prevent my acceptance, then harmed by being made to wait for nine long months by Ofcom's court of enforcement examining whether BT had been following regulations and now suffering the same fate of a reissued quote that Ofcom's July 16 Update told me to expect. Again for over £50,000 as BT's remedy in August 2021. The reissued quote is already making use of these new regulatory proposals in the July 16 Approach although they have not yet become regulations.

I will add that the context of this miserable USO battle is a neighbourhood cluster of 16 properties on the outskirts of an Essex town where FTTC technology would easily serve them all with USO's 10Mbps and with a reasonable cost overlay of the quotes provided would expect to result in my individual cost of around £2,500 and therefore a USO connection could have been expected to have almost been delivered by now.

I wish to remind readers that USO is a well-intentioned rescue attempt to save a small number of citizens from social deprivation because they do not have fit-for-purpose broadband connections. My own broadband stutters along at 2Mbps on good days. The EU recognised the rescue was necessary because commercial interests alone would leave them behind and it instructed member states, that included the UK at the time, to attend to avoiding this. The UK Government legislated accordingly in March 2018. I never did understand Matt Hancock's launch headline that legislation would allow UK citizens to "ask" for a decent connection ,,,,, we Brits have been free enough for centuries to be able to ask for anything the real issue was "would we get it?"

The July16 Approach is an obvious reaction to the financial difficulty of getting a quart out of a pint pot and has the intention to soften the impact of financial losses on BT, the monopoly provider that so far has satisfied its legitimate business needs by flouting regulations to halt USO serving those who had to pay for infrastructure on the simple premise of "no connections = no losses". The July 16 Approach cannot bring itself to let us see how effective BT was in this endeavour because Ofcom has redacted how few of these connections have agreed to be planned from the result of USO's first 18months in operation. The July 16 Update, however, said that BT should repay those who had accepted inflated quotes and reissue quotes to those who had not been able to afford them.

The birthplace of the July 16 Approach is what is effectively the court of regulation the enforcement process where the suspect BT was put on trial for contravening regulations in the Oct 15 Investigation with Ofcom the prosecutor on behalf of the UK citizens in this case the citizens were those USO eligible citizens who may have been harmed to the degree that warranted remedy. The defendant, BT, has seemingly been able to persuade Ofcom it was really the regulations that were at fault and the result is the proposed regulatory revision in the July 16 Approach.

I believe BT's intention was, and still is, to throttle USO to extinction to protect its legitimate business interest it is not a charity. Ofcom's acceptance of BT's position in the July 16 Approach is dressed as having very little effect on eligible applicants but they will offer BT endless possibilities to achieve their goal in many different and complex ways that will be difficult for citizens to challenge because BT works on the principle that what it does internally is confidential. This is aided and abetted by Ofcom's position that individual citizens (USO-eligible citizens are "individual" by definition) cannot be complainants in regulatory investigation cases ably assisted by BT's position that Ombudsman Services cannot be used to decide on broadband availability. It appears that citizens have no real voice in the matter. Having said this, after months of being a complete nuisance to Ofcom, I have been granted the status of being an "interested third party" to its October 15 Investigation

I have worked hard to provide comments to this Consultation, drawing on an immense amount of work that I have done since an expectant application for USO on March 20, 2020, the first possible day. The immense amount of work has been made necessary by a disgraceful approach by BT that I

told my MP made me feel ashamed to be British. I thought Ofcom would be my ally through regulation that I have never had the need to dabble with before but this has turned out to be what I now see as a betrayal at least BT is doing what it is doing for a reason. I now regret that I did not listen to friends and family who advised "you can't win" "make a splash with Look East or Panorama and spend the rest of your life in ways that might be more productive". The experience reminds me of the recently exposed case of vulnerable children in care homes in Lambeth where 33 investigations by authorities found nothing and the case only came to light as a result of the harmed themselves gathering evidence and making the case to the courts, decades after the happenings.

I have chosen not to hold back in these comments that may be my swansong. I have no doubt in my mind that the "Approach to high cost under the broadband Universal Service Conditions. July16, 2021" does not meet the legal tests of objectivity or transparency required of it in the Communications Act and even less doubt that Ofcom is acting as BT's servant rather than in the interest of UK citizens that the Act requires of Ofcom as its first duty.

I think the best way for me to marshal my comments to the July 16 Approach is by asking questions and providing responses. I offer these in the following pages under the headings below in a format that adopts a fresh page for each of those questions.....

- The root cause of the financial risks to BT that underpin the proposed July 16 Approach is an oversight in the 2019 Statement and the 2019 Conditions. Will these proposals address the root cause?
- How is the money to be collected where excess costs for the connection are greater than £5,000?
- Will there be any impact on those whose excess costs are under £5,000?
- If Ofcom's July 16 Approach is going to the trouble to make a "small technical change" to revise regulations to convert a portion of individual applicants into being processed as a group to avoid a BT shortfall, why would Ofcom retain the present regulations to process the remaining portion of applicants? The unchanged portion (excess cost under £5,000) will continue to generate shortfall.
- What alternative ways are available to fund the cost recovery shortfall?
- How clear are the regulations?

This consultation asked the question

Do you agree with our proposal to amend the treatment of excess costs in determining eligibility for a USO connection, where excess costs are above £5,000? Please set out your reasons and supporting evidence for your response.

..... and the simple answer is "No". I have given reasons in the parts that follow.

The root cause of the financial risks to BT that underpin the proposed July 16 Approach is an oversight in the 2019 Statement and the 2019 Conditions. Will these proposals address the root cause?

Readers should see the financial model of a USO connection for USO customers who have to pay excess in two parts part 1) the first part of infrastructure, accounting for £3,400 where BT does not charge for this part of the infrastructure provided, but recovers this investment bit-by-bit from part of the monthly service charge (the same as for all the non-USO customers across the length and breadth of the UK) and part 2) for the portion beyond the first portion, representing his "excess" beyond £3,400.

Ofcom's 2019 Statement and 2019 Conditions derived from the Statement only requires the USO-eligible applicant to pay for his share of infrastructure. It needs to be recognised that infrastructure design is more investment-efficient when it is made to reach more than one person in a network. Broadband networks usually serve many people either through FTTC technology designed to capitalise on sharing through a cabinet and saving on fibre by continuing to use the copper line that is already installed to the customers' houses or through FTTP where sharing is accomplished by splitting the fibre that eventually goes all the way to each customer's house. The FTTP approach has a speed capability of 1000Mbps, but costs a lot more than FTTC whose maximum speed is capped around 80Mbps, but this drops off with distance of the house served from the cabinet and threatens even the achievement of USO's humble 10Mbps when the distance exceeds 2.5kms.

The basic flaw in the 2019 Statement regulations is that they only require one person out of the many served by any investment-efficient network approach to pay his own share of an infrastructure network. For all the other customers, there is no regulatory requirement for them to pay for their share of infrastructure. It is no wonder that there is a shortfall in BT's coffers there is a deficiency of cost recovery built into the regulations. USO is designed for its provider to fail financially, but Ofcom has created a fund for its provider to be compensated.

We are surprised and shocked in a context of a regulated USO scheme that Ofcom records (footnote 25) and condones continuance (3.30) of BT's creative ways, outside of regulation, that it has been pursuing of its own accord, outside of regulation, to collect funds for USO infrastructure from customers in the network designed to reduce the shortfall that Ofcom regulation causes. So, BT has already been operating a group-funding scheme akin to the revised regulations proposed, but we assume that too has been unsuccessful in addressing USO regulation's built-in deficiency. If the regulatory scheme does not work and needs revision, our expectations are that regulatory revisions will address the problem completely and eliminate the need for extra-regulatory USO activity of the kind that has been going on. What's the point of a regulated scheme that only half works? and allows the operator to invent his own ways to impact the scheme? Half-cocked regulation is in nobody's interest.

The July 16 Approach sets out to convince us that making "a small technical change" to the regulations will solve the problem. This small technical change is to force a proportion of connections (at the most expensive end of the individual cost spectrum - above £8400 cost per property) into a group scheme, within which the sum of all the infrastructure shares of costs for each and every customer connection in the new network must be paid up front or BT will not build a network for any of them. This will or will not provide resolution dependent on the mix of properties whose individual costs are above £8,400. Only a high mix of conversion into "group" will impact effectively a low mix, as all the language of this July 16 Approach might suggest, will just turnout to be another failure.

To settle this, an objective approach is necessary and this is supposed to be provided in Section A5.

I doubt if any person in the world would believe Section 5 provides a convincing answer it suggests it is unconvincing itself because it is a field of the unknown where there is no data available from the UK where traditionally customers have not been charged for their infrastructure in sufficient numbers to understand the price/demand elasticity so it's guesswork at best and is not objective.

In developing the present regulations in the 2019 Statement there is healthy cross-industry debate recorded on expected USO take-up rates from 5.80 onwards till 5.85. In this, it states "BT noted that it uses a 61% take-up assumption in its BDUK contracts". However, Ofcom decided that 70% would be a more appropriate take-up assumption for USO bearing in mind this was a decision in 2018 about what would be realistic in 2020 when USO opened for customers. Even then it was recognized that take-up rates for better broadband were rising. Since then, we have had the pandemic to cause a tsunami of realisation how valuable a decent broadband connection is. The perceived value of decent broadband has increased by a huge factor but here in the July 16 Approach take up rates "invented for the occasion" are slashed downwards in an effort to justify a conclusion that was wanted. Most people would say that the previous 70%, as a start point for elasticity consideration, needs to move substantially upwards.

Of course everybody knows about price elasticity as a principle, but even in the low excess cost region where the regulations are to remain unchanged the average take up rate between a high take up scenario and a low take up scenarios has been depressed from the 70% previously thought to be a good value, to be only an average 25% In the region where excess costs are higher (from £5,000 onwards) these are slashed down to average less than 2% If it is not too cruel to identify the obvious "fiddle", the low take-up scenario assumptions belie reason between the £3,000/£4,000 excess cost region where a 2.4% take up rate is displayed but at the more expensive £4,000/£5,000 region, take up improves to 2.8% to defy everything that has previously been known about price/demand elasticity.

Ofcom recognises these assumptions for its model are dubious excusing this at A5.11 with

"We think that these scenarios could represent a plausible range for how long-term demand for USO connections might turn out. However, we recognise that, in practice, demand may turn out to be higher or lower than these profiles. We use them here only to test the sensitivity of the cost shortfall to changes in demand profiles."

..... but ultimately these "manufactured" values are key to the conclusion that BT stands to lose £17m in the high take-up scenario and £84m in the low take-up scenario leading to the conclusion it is a necessity to alter regulations and the values at each interval are the key to deciding where the alterations should be placed. These are not "real" data and we challenge Ofcom that its conclusions based on them are "objectively justifiable" to satisfy the statutory requirements and the legal test set out in the Communications Act as it claims at 3.33a) in the proposal.

In looking for "real data" in section A5, the experience of USO to date redacts the number of customer orders but the words say that relatively few customers have been willing to pay we assume this was due to BT 's hugely inflated calculations to quote tens and hundreds of thousands of pounds bringing a halt to demand and the consequently distorted history cannot be used. BT's data on the distribution of costs by number of premises at A5.1 might have been interesting but these too are redacted, although we notice it only covers the case of FTTP technology raising another concern that the extent of any losses is exaggerated in this analysis, compared to what it might have been. I will cover this here by copying a piece about the A5 analysis I have already written to Ofcom in another document

"Its sophisticated academic complication leads to the risk quantification being somewhere between £17m and £84m about the same as a risk destination assessment of a journey from London to Watford by saying there is a risk we might end up in Birmingham or 500% further afield in Aberdeen.

To exaggerate the risk many times, the analysis is based on 100% use of full fibre (FTTP) that BT is quite desperate to apply to every USO connection even although it represents huge technical overkill of 1000Mbps capability to supply the humble USO 10Mbps requirement an especially juicy reward for BT when the USO applicants who face excess costs are made to pay for this technology for BT's long term benefit. Most thinkers would agree that the risks prevalent are proportional to the cost of the technology deployed and if the costs of the technology chosen are higher than necessary, then so too is the extent of the risk.

Any realistic risk analysis would start with finding out what proportion of connections the much lower cost fibre-to-the-cabinet (FTTC) technology would be needed. My own observation of human habitation is it being most dense in town centresbut further out there is not then a step change to uniform low density. Beyond the edge of town there tends to be natural clusters already served by copper phone lines. It is too simplistic to think of everybody beyond the edge of town requires FTTC for a 10Mbps connection it will work of course, but at what cost?.

For a clue, we need look no further than the 2019 USO Statement at 3.25 where Ofcom states "Fibre to the Cabinet ("FTTC"), which delivers fibre to the street cabinet and then serves the customer's premises through a copper line, is also capable of meeting the technical specification in the Order in most cases. Some FTTC connections may not deliver a suitable service because of the length of the copper line or the quality of the connection." Lets imagine "most cases" means 80%, but we recognise in cases where costs are likely to lead to excess payments there may need to be a lower mix of FTTC, so by guesswork we could reduce this to 40% this drives a coach and horses through the validity of the quantified risk analysis.

I am not a genius spotting this flaw it is simply the condition that applies to our own neighbourhood cluster where, simplistically, a single 2 kms fibre extension to a cabinet in our midst would easily deliver USO's 10Mbps to all 16 properties connected to the cabinet using the existing copper lines compared to at least 6 kms of fibre to reach the doorstep of every property. The DCMS's miserable reply that "USO is technology neutral" is the same as is published at footnote 21 in these proposed regulation revisions a phrase that the DCMS borrowed from the chapter that deals with incorrect choice of technology debarring USP claims from the pan-industry fund for fair compensation.

The first test of technology choice lies in satisfying the 2018 Order at Schedule 2 where it clearly tasks Ofcom with making connections "affordable". If this requirement was recognised, then FTTC would be the default with FTTP the exception. BT's position is not even that it is "technology neutral" to give either an appropriate application. It is that there is no choice possible its all the most expensive FTTP stuff whether it's needed for 10Mbps or not and this has been used in the analysis to justify the regulation revision. I like to use analogies to illustrate ideas and in this case see it's like trying to rescue people from a public transport deficiency who are only equipped with bicycles by providing them with Rolls Royce saloons and finding neither they, nor their provider can deal with the financial fallout of such stupidity when the obvious solution is to provide them with an affordable Ford. When Virgin Media was faced with the prospect of contributing to making good any financial shortfall that BT might incur from this practice, it objected to FTTP too, referring to it at 6.46 in the 2019 USO Statement as " gold plating".

FTTC technology is not the flavour of the month in excitement but then again neither is the USO 10Mbps hurdle. "Horses for courses" applies. It needs to be stated that FTTC remains in over 70% of UK properties today where broadband is received by 96% of them at more than 30Mbps a rate that is three times superior to the humble 10Mbps that USO requires. Unnecessary use of high cost FTTP technology is fundamental to exacerbating cost recovery shortfall problems the low cost approach of FTTC should not have been dismissed from being a candidate solution for USO and requires to be a factor in any analysis that relates to costs.

In section 3.20 there is an attempt to quantify how many customers will swing from the "individual" method to the "group" method. Of course this swing analysis depends on the price /demand elasticity assumptions that has been "invented", but putting that to one side, the first shocking thing to appreciate is how few customers are perceived to be willing to pay anything at all under these assumptions. In the most optimistic view of take up, only 6,200 (9%) of the 66,500 who have to make any payment will be prepared to do so in the most pessimistic view only 2,400 (3%) are prepared to pay any money an indictment enough of the scheme's value to customers having to pay at best, 91% of them will not be helped from their misery by USO if these data are realistic. In the optimistic view of take up, the swing caused by the proposed regulation changes transfers 1,400 of the 6,200 prepared to pay by the group method of charging and if the £84mm shortfall is to be fixed the benefit of the swing would have to be £60,000 per transferred customer. In the

more pessimistic view of take up it is hardly worth commenting on, but only 120 customers are transferred to be under new regulations and the effect of each one swung would have to be £141,000 per transferred customer to clear the £17m shortfall. Obviously this can't happen and therefore we can't see a benefit to the shortfall which was the reason given for the regulation revisions proposed. This analysis is obviously a case of rubbish in = rubbish out. I doubt if I could have come up with a more powerful discrediting of Ofcom's analysis, if I'd tried

These data do not support the case for changing the regulations because BT's shortfall will hardly be impacted so we must look for other motives. In the foreword I said "I believe BT's intention was, and still is, to throttle USO to extinction" and this is what I reiterate here. BT has tried the blunt method by issuing wrongly calculated quotes, inflated so much to tens and hundreds of thousands of pounds as to make USO's built-in shortfall disappear (no connections = no losses) but I assume it felt uncomfortable that it could sustain this method and has found out that its group approach experimented with outside of regulations doesn't work either. And now it has persuaded Ofcom to change the regulations to let the same group approach fail inside regulation without even a process defined for collection of funds.

BT gave us a clue 15 days after it entered the dock of the enforcement process. On October 30 in its published Report on USO, here's what it said it wanted to cure the high cost connections it had created

Some customers have been understandably frustrated at being quoted significant sums to be connected. We know there is room for improvement in how and what we communicate in these circumstances. As part of the next phase of USO delivery, we are working to help better set customers' expectations of what the USO programme might mean for their specific circumstances through our initial engagements. We'll also be clearer on what other options may be available beyond the USO – such as Openreach Community Fibre Partnerships.

Alongside that, we are developing a simple solution to enable customers to share costs above the £3,400 industry contribution amongst their neighbours who would also benefit (where there are other nearby households that will share the upgraded infrastructure). Under this, customers will retain the legal right to trigger network build themselves (by paying all costs above £3,400) but will also be given the opportunity to meet the costs together with others.

..... we thought this was the role of Ofcom, the regulator, but I suppose no single unit has a monopoly on good ideas beware, however, I doubt if USO applicants will be so pleased if these proposed revisions are adopted.

How is the money to be collected where excess costs for the connection are greater than £5,000?

This is a very major revision proposed for USO. Where excess costs for the individual applicant are identified as greater than £5,000, the cumulative funds for every member of a cluster must be paid to BT before a USO connection is built.

We have discovered from the proposed revisions to the 2019 Conditions accessed through the link at A6 and A7 that paying these cumulative costs for every member of the cluster must be paid to BT by the USO eligible member (or members if there is more than one eligible member in the cluster).

- (i) where costs that are attributed to the individual Premises as calculated in accordance with Conditions A.3(c) and B.8 are 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:
 - a. in relation to an individual Premises which does not form part of a Cluster, the Excess Costs and VAT on the amount of Excess Costs;
 - b. in relation to an individual Premises which forms part of a Cluster:
 - i. the Cluster Excess Costs and VAT on the amount of Cluster Excess Costs; or
 - ii. an appropriate share of the Cluster Excess Costs and VAT on that share of Cluster Excess Costs, **provided that the Cluster Excess Costs are agreed to be cumulatively paid by the USO Customer and other USO Customers of eligible Premises** in the Cluster

This very major new condition whose responsibility is not mentioned in the text where the new approach is loosely defined at 3.26 b). We heavily criticise Ofcom for failing to make A6 and A7 part of the printed material of this regulatory proposal on the grounds that this information has a material impact on USO and is not available at any other place in the proposal. Whilst there is a link to the information, not all readers will necessarily have a broadband connection available to access it, especially those with an interest in accessing a broadband improvement under USO. We consider this as hidden from obvious view and fails to meet Ofcom's principle duty to citizens under the Communications Act where Ofcom must support this duty having regard, in all cases, to the principle under which regulatory activities should be "transparent".

We consider the three words "of eligible premises" has been chosen for the straw that breaks USO's back. An individual member from the network group, whose qualification for money collecting is no more than he happens to be unfortunate enough to be eligible for a USO connection. has been singled out for a task that BT, with all of its resources and skills, has found it could not perform in its extra-regulator activity mentioned in footnote 25. This is what sportsmen refer to as a "hospital pass" where rather than face the difficulties themselves, the certain failure is passed on to others.

From reading about the operational difficulties of the Community Fibre Scheme on which this USO revision is modelled, where the members have to form themselves into a legal entity to negotiate amongst each other and agree who pays how much for what service by when and to subsequently be able to collect and dispose of money accordingly, Ofcom ought to know better than to fail to define exactly how this is expected to be done in USO. I do have experience of the 2019 Statement's similar "BT is expected to" approach and it was never even close being realistic for example at 5.139 in the 2019 Statement "we expect" BT to tell you all about your site survey to establish your quote, enough to be able to save cost by digging the trench across your own field where, when asked by letter, BT replied in writing that it would not reveal the route. We now see Ofcom's "we expect" to mean that "BT has refused to agree and there is no way we can make it do what we expect.

The member(s) of the cluster designed by BT who live in the eligible properties have no means of specified in the regulation of even knowing who the others in the cluster may be. I cannot imagine sitting in this seat and going round other owners of a cluster that BT has designed and I may not

even know well, asking them for sums of more than £5,000 if it were a level share I thought appropriate to start with it may come to them as a complete surprise, never having heard of USO and returning later to Tom to explain to him that he had to give me more money because Dick put in less than him, and Harry would not pay a dime.

This is a preposterous and unrealistic proposal and the three words "of eligible premises" should be removed and replaced with the USP remaining in the chair as the money collector ,,,,,,, it is a red line beyond which the whole July16 Approach confined to the dustbin where for a multitude of reasons it belongs.

Apart from these practical impossibilities, this idea, conceptually, does not fit with the 2018 Order that supplies the start point for the Regulations and the Conditions. The 2018 Order is the start point to legalise the individual how deficient his property needs to be and what he alone must be prepared to do (pay excess over £3.400 if appropriate) but it mentions nothing about him having to pay for others whose selection over which he had no ability to control.

Will there will be any impact on those whose excess costs are under £5,000?

Quite contrary to what is claimed by Ofcom at 1.8, there will be an impact of the proposed regulation revisions for USO connection where excess costs are below £5,000. These will come from new definitions to the 2019 Condition listed in Annex 6 and repeated very helpfully with yellow lines to show the proposed changes in Annex 7. The definitions here are effective across the whole of USO and will affect those with excess below £5,000, as well as above £5,000 where they are not stated to be unique to either

We heavily criticise Ofcom for failing to make A6 and A7 part of the printed material of this regulatory proposal on the grounds that some of this information has a material impact on USO and is not available at any other place in the proposal. Whilst there is a link to the information, not all readers will necessarily have a broadband connection available to access it, especially those with an interest in accessing a broadband improvement under USO. We consider these as hidden from obvious view and fails to meet Ofcom's principle duty to citizens under the Communications Act where Ofcom must support this duty having regard, in all cases, to the principle under which regulatory activities should be "transparent".

Our comments

j. **"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;

Previously Cluster was not defined, but my assumption was that it was a group of geographically proximate premises linked by infrastructure that contained at least one USO eligible premises. .

A set of two or more eligible Premises? Two is an unnecessary high hurdle and a cluster should be a set of premises with at least one eligible Premises that meets the criteria in Condition A.3. We cannot see any need or justification for two instead of one.

Will use all the same shared infrastructure? not exclusively for FTTC – it is satisfactory definition for the portion on the exchange side of the cabinet, but is not satisfactory for the retained copper after the cabinet that is not shared.

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d) provide a Broadband Service to the USO Customer if the USO Customer reaches an appropriate agreement with BT in respect of payment of the sum of: (i) the Excess Costs or the Cluster Excess Costs under that full quotation; and (ii) VAT on those Excess Costs as applicable in accordance with the following:

- (ii) where costs that are attributed to the individual Premises as calculated in accordance with Conditions A.3(c) and B.8 are 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 Costs and VAT on the amount of Excess Costs; **and**

The "and" should be "or"

If Ofcom's July 16 Approach is going to the trouble to make and "small technical change" to revise regulations to convert a portion of individual applicants into being processed as a group to avoid a BT shortfall, why would Ofcom retain the present regulations to process the remaining portion of applicants? The unchanged portion (excess cost under £5,000) will continue to generate shortfall.

I assume the answer is that this is a window-dressing exercise, to make the proposed regulation change look as if some balance has been struck between taking away too little and not taking away too much and more importantly to retain a segment of customers under the same rules as before, thus looking as if there is still some relationship to the 2018 Order.

The effectiveness of the proposed changes on BT's shortfall will only be significant if the mix of those converted to "group" processing is high. Perhaps it is already known from data not disclosed in the 2016 Approach that conversion rate will be high or 100% or can be made so, if it turns out to be low. As with all regulatory boundary conditions there will be a degree of uncertainty near the boundaries created at the £5,000 excess breakpoint between "group" processing and "individual" processing with those citizens whose excess BT says is £5,001 seeing the outcome quite differently to those whose excess BT says is £4,999.

I do not see that the group method of processing for those with excess over £5,000, sits well within the requirements of the 2018 Order. Everything about the Order is about being an "individual" particularly Schedule 2

SCHEDULE 2

Guidance about matters relating to broadband universal service

Demand aggregation

1. In order to facilitate the effective aggregation of demand for connections, OFCOM should ensure that, in calculating **the cost of providing a broadband connection to a particular location**, due account is taken of the extent to which the cost may be shared between multiple locations.

Pricing

2. OFCOM should ensure that any designated universal service provider is required **to offer broadband connections** and services at prices that are—

(a) **affordable**; and

(b) uniform throughout the United Kingdom, unless OFCOM have determined that there is clear justification for not doing so.

..... my view is that "group" affordability of a network of connections contravenes the intention of Schedule 2 (the cost of providing a broadband connection **to a particular location**). According to the proposed July16 Approach there is no set cost for an individual where he could assess what was or was not affordable to himself it will be variable dependent on the contribution of others in the group as low as nothing or as high having to consider paying the whole group costs by himself as the price of his USO rescue. The whole process will become a blind negotiation with the neighbours with the rules engagement guided by the principle of "he who holds out longest, will pay least". We think this will leave social resentment in the community that need not be there. If its uneasy fit to Schedule 2 is not recognised, we could just as easily transfer the meaning of Schedule 2 to apply to monthly services charges where, instead of £29.99 per month for an individual, for example, it could be made into a BT demand for £299.90 for a group of 10 with BT withholding services for everybody unless the whole is paid.

The same failure of the July16 Approach to fit with the 2018 Order applies to Schedule 1

SCHEDULE 1 Broadband universal service
Broadband universal service: specification

1. Subject to paragraph 2, **affordable broadband connections** and services **must be provided** throughout the United Kingdom with all the following characteristics—

- (a) a download sync speed of at least 10 megabits per second;
 - (b) an upload sync speed of at least 1 megabit per second;
 - (c) a contention ratio of no higher than 50:1;
 - (d) latency which is capable of allowing the end-user to make and receive voice calls over the connection effectively;
 - (e) the capability to allow data usage of at least 100 gigabytes per month.
- Broadband universal service: eligibility

2. Paragraph 1 only applies to the extent that all the following conditions are met—

- (a) the broadband connection is to a fixed location which is a residence or place of business;
- (b) a prospective end-user requests that a broadband connection is provided to that location;
- (c) a broadband connection and service with all the characteristics specified in paragraph 1—
is not available to that location; and

(ii) will not be made available to that location through a publicly-funded intervention within the period of one year beginning with the date on which the request is made;

(d) **provision of the broadband connection—**

(i) will cost no more than £3,400; or

(ii) **will cost more than £3,400, but any costs in excess of £3,400 will be paid by the end-user.**

..... the intent of the 2018 Order is that the **end user, in the singular**, will pay his own excess to acquire a connection. The July16 Approach is about a group task, to settle a group cost amongst them, for an individual to be able to acquire a connection and this is not authorised by Schedule 1. The excess for an end user under the July 16 Approach for those whose excess on a individual basis through sharing as described in the present regulations becomes over £5,000, has just become anything at all between zero and paying for everybody else's excess as well as his own..

Not only does this fail to satisfy Schedule 1, we doubt if it practical. The rules are now so contrived first to fit with "individual" as the 2018 Order and then to digress into "group" in the new regulations that we doubt if the public will understand these complications enough to be able to decide whether the proposed regulations had been followed. The operation of the proposed regulation revisions for those the excess over £5,000 fails all the tests of good regulatory practice. There will be insufficient transparency in relation to what exactly the regulation was intended to achieve. It may be possible to write this in a satisfactory way for BT to appreciate its transparency but we think regulation needs to be transparent to the consumer as well. In this case it not transparent and thus fails the legal test in the Communications Act

BT already offers a group scheme as an unregulated commercial offering to the public ... the Openreach Community Fibre Partnership scheme where USO applicants are as free as others to apply. There are many more freedoms and transparency advantages that would be of advantage to citizens within the Fibre Partnerships, although the downside is that they have to organise themselves into an entity to exercise these.

Community Partnership Schemes are outside the regulatory orbit. It is widely reported that those who have not joined the scheme are ultimately allowed to make use the infrastructure after it is built I suppose those who have paid have to put aside their feeling about "free riders" who have decided not to join the partnership and not to contribute to funding the community network and just be happy that they have a network to use. With the same possibility in a USO group scheme but it being funded under regulation we think the legal position of the "free rider" needs to be set out in the regulations.

What alternative ways are available to fund the cost recovery shortfall?

At its very highest value identified, the cost-recovery shortfall of leaving the regulations unchanged is stated as £84m.

As mentioned at 2.16 and 2.17 in the July 16 Approach, Ofcom introduced secondary legislation on May 2020 to create an industry fund to compensate BT for losses incurred fairly whilst engaged in USO activity. We consider that the shortfall addressed here is fairly incurred. If, under the unaltered present regulations, the maximum shortfall risk of £84m ever materialised, Ofcom dismisses that the fund could be used to prevent increases that would feed through to household bills throughout the country. We do not agree that the complications of the July 16 Approach are worth sacrificing such a small effect £84m would have across 29m households and would argue that if the resultant one-off £2.89 per household is beyond contemplation, then the industry fund should not have been set up. We understand other industries carry these hidden levies for the good of society, for example it is thought to be about £400 per household to recover costs of infrastructure for the production of green electricity.

The regulations to set-up the industry fund has been identified to be misleading by the Joint Committee for Statutory Instruments. The reference to "Central Funds" needs to be changed to read "money provided by Parliament". I have written to Ofcom Board and the Secretary of State at the DCMS with a plea to pursue funding any USO shortfalls as a priority need within the £5bn that parliament is committed to spend on broadband. The text below indicates how disturbed I feel about contributing to public funding BT's rush to 1000Mbps free-of-charge for citizens who already receive at least 30Mbps when I am stuck, vulnerable on 2Mbps and cannot understand why USO, the only regulated scheme for broadband provision and designed to rescue me, can't get me to 10Mbps without the need to spend over £50,000. My concluding sentence sums this up as "something has gone horribly wrong with USO

"Where BT incurs losses that are seen to be fair in the execution USO, Ofcom has promulgated the Electronic Communications (Universal Service) (Costs) Regulations 2020 in secondary legislation that became effective in June 2020. These allow Ofcom to gather funds from across industry to cover BT's fair losses in delivering USO, but Ofcom argues the preferred case for revised USO legislation is that alternatively, the maximum risk, some £84m, equivalent to £2.89 per household, would be too harsh to be passed on to household bill payers through industry suppliers. We suspect the real reason for preferring the new regulation revisions is that Ofcom fears that collecting compensation from those who know the industry better than the public will see the justification is false and will resist collection and so Ofcom, as well as BT and the rest of industry, would prefer equipping BT with the means to close down the stricken USO. So then, with regulator and industry both happy to make USO disappear, we only have Government left as our defence.

It has recently come to light that the Electronic Communications (Universal Service) (Costs) Regulations under which Ofcom could raise compensation funding for BT needed revision to make it clear that its inadequate reference to the term "central funds" is clarified in the legislation to mean "public funds" that in turn means "money provided by Parliament". The revisions are underway. So instead of industry players compensating for BT's losses fairly incurred in its USO activity, it is clear that Government itself could be called on to compensate BT.

Now Government is already committed to gift £5bn to BT to help it expand its penetration of its 1000Mbps leading edge quickly by 2025 BT sees the grab of this as vital strategic long-term benefit to keep other providers at bay. The question I am asking the Ofcom Board and Government is why, within this £5bn allocation of taxpayers money moving to BT, can't the plight of the unenviable USO eligible applicants be made the priority spend?..... with the Government funding the £84m USO risk that Ofcom has identified for fair compensation to BT if the risk ever materialises? In that case, only funding £4.916bn for 1,000Mbps expansion for the other users. Why is the Government as well as the Regulator and the Industry so against saving those at the bottom first?

It is quite hideous to me as a general taxpayer, trapped in a vulnerable condition at 2Mbps and facing a charge of over £50,000 for rescue, that I am required through general taxation

to fund free-of-charge 1000Mbps connections for other people, 96% of whom who already have fit-for-purpose 30Mbps broadband. And this feeling is magnified, when I consider that addressing my USO vulnerability is the only broadband condition that Government has thought fit to legislate to mount my rescue. To top this, if at all possible, many organisations are trying their best to close the possibility of my rescue down. We are told that the 1000Mbps leading edge expansion is ripping along at 43,000 connections per week. At that rate, all of the 66,500 sub-10 Mbps USO connections where charges are due could be upgraded in one and a half weeks. We hear lots of faux "inside out" (or is it "outside in" ?) nomenclature to conjure up a picture in our minds of some worthy plan being executed but I simply cannot understand why I never hear anyone advocating a far more deserving "bottom up" strategy. We already know that social deprivation, albeit for a few, is the consequence of not adopting this approach.

Many, including ministers, like to characterise this rescue as if all those that are USO eligible live in very remote mountains or off-shore islands whose connections will be prohibitively expensive the stock phrase they have planted in our minds is "hard to reach". This is simply misrepresentation of the problem as most of the semi-rural habitation sector that is its lion's share, has a distribution bias towards towns rather than away from them. In my own case the "hard to reach" mantra is far from the truth with the centre of our community only requiring a 1920m fibre extension from the nearest existing fibre. The community lies in pastoral Essex, only 38miles from the Parliament building itself.

Something has gone horribly wrong with USO and Ofcom's new proposals of revised regulation to fix it for BT are entirely dishonourable. There are opportunities to mount a USO rescue as an alternative approach with Government standing as a fund provider of last resort if BT needs to be compensated for its endeavours to make USO work under the present regulations."

How clear are the regulations?

Ofcom says that the fruit of its nine-month long investigation was the discovery that BT had not divided the cost of shared infrastructure "in the way we expected".

It seems pretty easy to understand the concept offered at 3.6 in the July16 Approach

Where network is shared, BT is required under the 2019 Conditions to calculate the cost of connection at a particular premises by assuming that 70% of the customers connected to shared infrastructure will take up the service. The premises that share the same shared infrastructure are referred to as 'clusters'. BT calculates the shared costs for the cluster based on the 70% forecast, and each customer in the cluster must then decide whether to pay their excess cost, which is the difference between their individual cost of connection and the £3,400 RCT.

If we are to believe that there was a difference between Ofcom and BT on how to divide, the present regulations are obviously not adequately clear. Here is how the 2019 Conditions are written at B8

B8 In order to make an assessment under Condition A.3(c), BT must, where the provision of a Broadband Connection to a Premises involves the deployment of infrastructure which is capable of serving more than one potentially eligible Premises, calculate the share of costs that is attributed to that individual Premises as follows:

$$\frac{\text{Total Cost of Provision of Infrastructure which is capable of being shared}}{\text{Number of relevant Premises}}$$

where the number of relevant Premises is the highest of:

- (i) 70%, or another proportion as approved by Ofcom from time to time, of the **total number of potentially eligible Premises** which can be served by that infrastructure; or
- (ii) **the actual number of Premises** which can be served by that infrastructure and in respect of which Requests which meet the criteria in Condition A.3 have been made.

In B8, the new aspect compared to the 3.6 explanation in the July16 Approach introduces "eligible", but everything else seems about the same. In the July 16 Approach, however at 2.11 Ofcom tells us something about eligible nearly the same as the 2019 Conditions but there are parts gone missing

The conditions require that the number of relevant premises is the higher of:

- a) 70% of the **total number of eligible premises** that are capable of being served by the shared infrastructure; or
- b) the actual number of eligible premises that can be served by the shared infrastructure that have requested a USO service.

The two lines a) and b) taken together are quite meaningless that I will explain in momentbut it is important to see that the word "potentially" is present in line (i) of the 2019 Conditions but absent from the words in line a) the July 16 Approach.

If I asked "What is the higher of 70% of the total number of eligible premises as in line a) and the actual number of eligible premises as in line b) you might recoil think it was a trick question because 100% as in line b) is always higher than 70% of the same characteristic as in line a). This leads to question what these two lines a) and b) could possibly mean and how do they compare with what lines (i) and (ii) mean? .

We find that the word "potentially" is missing from line a) in the July16 Approach. The insertion of "potentially" to make "potentially eligible" into line a) makes a world of difference. The two lines seeking to know which one is higher is now meaningful. The difference in outcome can be life-changing. It also explains why BT keep getting more than £50,000 as its answer for my division sum and is certainly not "in the way we expected" to coin a phrase.

The 2019 Conditions were written with line (i) containing the word "potentially" to mean - 70% of the properties in a cluster where everything told someone who knew the business they would likely to be eligible, if their owners had applied (i.e. potentially eligible). For USO it is not the applications that create the opportunities for cost sharing, it is the infrastructure design. USO networks will be no different from other networks they all have the same aim of investment efficiency to supply a geographic group of people when compared to supplying every house individually from the exchange.

It would be grotesque to design a network around only those people who had made USO applications, avoiding the properties where applications had not been made. The 70% figure represents the fixed take up rate of customers expected to use that network designed speculatively and sensibly as a result of even one USO application. The forecast was that 70% of possible network users who would decide to use the USO upgrade. This was Ofcom's way of speeding up USO, rather than waiting for actual application demand to build up, waiting for it to finalise and only then to decide on how to build and how to share all helpfully and wonderfully explained in the 2019 Statement..

The line (ii) of the 2019 Conditions was placed there to represent cases where more than 70% of the network cluster had actually made successful USO applications and the fixed forecast of 70% was exceeded in which case, their individual costs would be reduced versus the application of line (i) by allowing a higher denominator number in the cost sharing division sum.

In the case of our real cluster, we know that 16 properties make up the whole of the present unfit-for-purpose copper network, all fed from cabinet 12 in the nearby Halstead, and we know that none of the properties get more than 10Mbps from resident reports and from BT wholesale data. We identified each property by map location, by address, by owner name and by owner's email address in our March 2020 application and our request for a reissue of the quote following the July 16 Update. On the basis of the B8 in the 2019 Conditions we expected 70% of 16 = 11.2 to be the appropriate denominator. We expected the full survey would determine an appropriate USO network design for this geographic cluster and that BT would base the quoted costs on the fixed 70% of those who could use as the denominator for the cost share.

Perhaps the incorrect version of B8 Conditions, as displayed in the July16 Approach without the ""potentially eligible" is being used at BT where there has been only one USO applicant, myself, and therefore only one formally eligible premises giving its line a) as 70% of 1 = 0.7 and line b) as 1 with the higher of these i.e. "1" being used in the denominator and I keep getting a quote that does not represent any cost sharing at all.

It is an interesting coincidence that both Ofcom and BT might be using the same incorrect B8 Conditions. It may even be conspiracy, because BT tell me that their interpretation has been "agreed". Whatever the explanation it is a cardinal sin for Ofcom to be using any incorrect information in their otherwise excellent papers. The effect of the missing "potentially" on my own case is an 11.2 fold magnification of my excess costs on what I see ought they to be.

If anyone is prepared to think about USO as hard as I as I do, they inevitably come round to a difficult question " How could BT have applied this approach in the period during 2019 when it got ready for a fast delivery start immediately before USO opened" as the 2019 Statement relays BT did, encouraged by Ofcom to do so. In this period, before USO being opened to the public in March 2020, it managed to conclude that there were properties whose individual share of costs were identified as under £3.400 loads of them and it got infrastructure designs underway. If it had then interpreted the regulations in the way it wants to do now to inflate costs enormously in order to suppress demand, supported by an absence of the word "potentially" the denominator would have been "zero" because there could not have been anyone "eligible" before USO opened..... and mathematicians will tell you that instead of getting a figure of under £3.400 from their calculations, they would have arrived at figure of Infinity so large, that they could not imagine it, far less anyone on earth being able to afford it.

Obviously they did it in some other way likely by using their experience and expertise designing networks to suit geographic areas where they already knew broadband was unfit-for-purpose and they did not need to have any formal eligibility process completed to establish the denominator and if they were ever inclined to check their good design instincts in this regard they used 70% of "potentially eligible" in the denominator - that would have been all of the properties for which it had designed the network, but reduced to 70% of them because this was the pre-determined take-up rate that was thought would ensue.

A sensible approach by sensible people would have been used in 2019 by BT. What has changed now is that USO has become transformed into an administrative game of how can we possibly misinterpret regulations in a way difficult for others to follow to produce such high quotes for those who need to pay so that no one will want to continue.

I'm afraid Ofcom just drags on behind BT, in agreement. In this case, Ofcom has let down its guard by committing this misinterpretation to print in the July 16 Approach instead of its usual effective pretence that it is acting in the interest of citizens, its principal duty under the Act. My expectation was that Ofcom would come down hard on BT for its inflated USO quotes but it cannot bring itself to do so. Ofcom now requires the inflated quotes to be repaid and reissued and to be calculated "in the way we expected" so even in receipt of remedy for the first harm, the citizen is again exposed to whatever BT wants to do.

A relevant question against this conspiracy theory would be "If BT is motivated to suppress USO builds over £3,400 per property, why would BT want to build USO connections that it says cost under £3,400 per property?" The answer might be that BT has to build them for its own needs in any case. Expanding networks built in different eras grow up in what is subsequently seen as a troublesome disorderly way and BT needs to tidy up its network from time to time. What better a cosmetic opportunity to make it look as if USO is working? I may be looking in the wrong media, but I cannot find traces of delighted USO applicants recording their relief and gratitude of being rescued from sub-10Mbps depravity.

So to clear up this regulatory mess I'm calling on Ofcom to publish exactly what is meant by "the way we expected" this could simply mean anything that BT wants it to mean and allows Ofcom to escape from being accountable. What was wrong? Does the version in the 2019 Conditions stand? Does it need clarification to help us all of us contribute to assuring regulation is applied properly?