



Impact assessment guidance

Openreach's
response to
Ofcom's
consultation

12/05/2023

Consultation on Ofcom's approach to impact assessment

Openreach's response

Introduction

Openreach welcomes this opportunity to respond to Ofcom's consultation on its approach to impact assessment ('the Consultation')¹ and draft update to its impact assessment guidelines ('the Updated Guidelines').² Openreach is supportive of the need for a refresh of the existing guidelines and broadly supportive of Ofcom's proposals.

Ofcom's policy objectives, statutory duties and sectoral coverage are broad and give it wide scope for interventions that can affect businesses and consumers. It is therefore vital that Ofcom carefully assesses the impact of any intervention before it is put in place. To be able to do this consistently, it must have clear and well-founded guidance in place to permit it to undertake appraisals that can be understood and responded to by affected stakeholders. It is therefore important that in taking this opportunity to refresh its guidelines, the revisions and updates that it makes will support this engagement between Ofcom and its stakeholders.

Distinguishing between sectors

Openreach considers that the fundamental principles of impact assessment are the same across sectors, although we also agree with Ofcom that for each impact assessment it is important to consider the context in which it is being undertaken.³ As such, we welcome Ofcom's proposed updates to the guidance that will reflect sectoral and legislative differences and account for changes in its duties since 2005.

Ofcom highlights that in some instances legislation requires it to make interventions and that in these scenarios it will not generally carry out an impact assessment. It details these types of scenarios at a high-level.⁴ Ofcom could further assist its stakeholders by

¹ Ofcom, [Impact assessment guidance: Consultation on Ofcom's approach to impact assessment](#), 17 March 2023.

² Ofcom, [Ofcom's impact assessment guidance](#), 17 March 2023.

³ Consultation, para 1.16.

⁴ Updated Guidance, para 3.5.

including within the Updated Guidance a more specific table of examples covering the sectors and regimes where it would not anticipate producing an impact assessment as part of an intervention.

Bias against intervention

We welcome Ofcom's proposal to maintain its bias against intervention, recognising the risk that without such a bias it may impose policies which have unintended detrimental impacts, or which do not achieve their objectives as intended. At the same time, we also acknowledge that in some cases Ofcom is compelled to intervene. Many of the regulatory measures Ofcom imposes, including most of those placed on Openreach, have a statutory basis, for example via the SMP regime as enacted in the Communications Act 2003. We are therefore pleased that Ofcom also acknowledges that where it does intervene it should seek to do so in the least intrusive way possible.

Presentation of impact assessments

The Consultation proposes to update the 2005 Guidance to remove the statement that impact assessments should normally be presented as a separate annex.

We consider that it is vital that Ofcom's impacts assessments are clearly set out, including explaining the inputs, assumptions, calculations and principles used. Further, Ofcom must explain how it has applied its judgement to these inputs to reach its conclusions. As such, a clear and detailed explanation of its assessment must be presented, in order for stakeholders to be able to understand and respond to the proposals. In turn, these responses are needed for Ofcom to be able to receive accurate and considered input from stakeholders, which can inform Ofcom's policy decisions.

We accept that a clear presentation of an impact assessment does not necessarily require a separate annex, although consider that in some cases this may be appropriate. Where such a separate annex is not provided a clear, well-presented summary should be given. We therefore welcome Ofcom's proposal that consultation documents and statements will generally contain a section headed 'Impact Assessment' which will either summarise the results of impact assessment or identify where Ofcom has published the results.⁵

⁵ Consultation, para 1.25.

As a further comment, on transparency and access to information, Openreach would also emphasise the ongoing importance of Ofcom's consultation principles, and in particular its commitment to engage with organisations before launching large consultations.⁶

Qualitative and quantitative impacts

Ofcom has proposed to place greater emphasis on qualitative assessment being as important as quantitative assessment.

Openreach recognises that qualitative impacts can be important and in principle accepts that they can be as important as quantitative assessments. However, Openreach is concerned that Ofcom ensures that the use of qualitative impacts does not undermine evidence-based decision making. There is a risk that too much focus on qualitative impacts will lead to speculative and un-evidenced impacts being included and/or that decisions will become opaque due to lack of evidence. Ofcom should therefore ensure that where it assesses qualitative impacts, these are well evidence and well described and that quantitative impacts should not be deprioritised or left unquantified unnecessarily.

Qualitative impacts cover a wide range of factors that might arise from an intervention by Ofcom. Such qualitative impacts are often benefits which are inherently non-financial (e.g. reduction in harms). These can be real and legitimate benefits, but their inclusion should be based on clear evidence (e.g. consumer surveys) in order to avoid the inclusion of speculative or ill-founded factors. Further, in some cases, factors which may initially appear qualitative are still conducive to an estimation of their scale,⁷ which should play a role in Ofcom's assessment of any policy.

Quantitative impacts are often, but not always, the costs incurred by businesses that must comply or respond to interventions. Ofcom should recognise that many quantitative estimates of costs are lower bounds, in the sense that they may cover the direct costs of introducing a measure, but they do not cover a wider range of indirect costs associated with the introduction of that measure (e.g. new systems), interference (e.g. introducing frictions and interfaces within a business) and management time (e.g. in planning and implementing such a change).

⁶ Consultation, para A2.1.

⁷ See, for example, Ofcom, [Automatic Compensation – Protecting consumers from service quality problems](#), chapter 4 – estimates of consumer harm.

Counterfactuals

In Ofcom's Updated Guidelines it explains that it is critical to identify a counterfactual for impact assessment analysis, such that the intervention can be assessed against an alternative situation. Openreach agrees that assessment against a counterfactual is a necessary part of an impact assessment. However, Openreach is of the view that Ofcom should enhance this section of the guidance to reflect that:

- Identifying and describing counterfactuals can be complicated particularly as the assessment looks further into the future;
- Several plausible counterfactuals may exist (e.g. where there is significant uncertainty about technological developments, or consumer demand for certain services);
- Where several plausible counterfactuals exist, Ofcom should determine whether it is appropriate to assess the intervention against just one counterfactual (e.g. if the assessment would be the same) or against multiple counterfactuals. Where the assessment could materially differ across different counterfactuals, then Ofcom should take this into account in its assessment and consider the likelihood of each.

Equality duties and Welsh Language Standards

Openreach operates across the whole of the UK and is committed to being a diverse and equal opportunities employer.

We recognise the importance of Ofcom's obligations in relation to its equality duties and Welsh Language Standards and support Ofcom acknowledging these as part of its Updated Guidance.