

**Quality of Service for WLR, MPF and GEA
Consultation on proposed quality of service remedies**

TalkTalk's response to Ofcom's consultation document

9 June 2017

NON-CONFIDENTIAL VERSION

This is TalkTalk's response to Ofcom's consultation on quality of service for WLR, MPF and GEA ("the consultation") published on 31 March 2017.

1 Executive summary

1.0 Quality of service was "the single biggest issue attracting comment" through Ofcom's consultation on the Strategic Review of Digital Communications (DCR). Ofcom concluded that "urgent improvements" were needed to drive "a step change in quality of service". It identified that "setting tougher minimum quality requirements on Openreach, rigorously enforced" was central to its strategy and committed to setting "minimum standards in new areas, such as for faults and incomplete orders" where required.¹ We welcome these conclusions, support the proposals to toughen quality standards in this consultation and identify areas where Ofcom needs to go further to deliver the urgent step change in Openreach performance that UK consumers are calling for.

1.1 We support Ofcom's proposals to increase the quality standards required of Openreach for the provision and repair of WLR, MPF and GEA services. As shown by the analysis in Ofcom's DCR and the 2017 Wholesale Local Access (WLA) and Narrowband Market Review (NMR) consultations, BT's significant market power (SMP) in the wholesale fixed access networks means that it has insufficient incentives without regulation to sustain and improve Openreach network quality. Specific regulation requiring BT to comply with defined quality standards and reporting requirements is vital. While the quality standards introduced in the previous 2014 Fixed Access Market Review (FAMR) have led to some improvements, we agree that further action is needed to achieve the levels of quality that consumers expect and that are necessary to support competition in retail broadband.

1.2 We agree that tougher quality standards are required to drive improvements across broadband repair and installations. To meet growing customer expectations of this essential service, Ofcom should move to the higher standards more rapidly than the glidepaths it proposes and introduce a specific quality standard for fault rates. We also note the important work we are undertaking with other CPs, Openreach, the OTA2 and Ofcom to improve the quality of service for customers through better diagnostic testing. Our detailed comments on the consultation are set out as follows:

- Section 2: Ofcom's approach to regulating quality of service
- Section 3: A quality standard for fault rates
- Section 4: Regulating Openreach's service performance for repairs and installations
- Section 5: Service Level Agreements (SLAs) and Service Level Guarantees (SLGs)

¹ See Section 5 in Ofcom DCR statement, February 2016:
https://www.ofcom.org.uk/_data/assets/pdf_file/0016/50416/dcr-statement.pdf

- Section 6: Concluding remarks.

2 We support the use of quality standards to improve quality of service

- 2.0 We agree that BT's SMP in the wholesale fixed access markets means that Ofcom must regulate to address potential competition problems across BT's network with regard to both price and quality. Specifically, the fact that BT does not face effective competition in these markets means that, without targeted regulation backed up by rigorous enforcement, it has insufficient incentives to sustain and improve quality. There is also the possibility of BT discriminating against non-BT group communications providers to protect its market share by providing BT divisions with better quality than its competitors. Similarly, BT could discriminate by providing and prioritising aspects of quality that are more important to BT Retail than to its competitors.
- 2.1 As Ofcom recognises, Openreach failing to deliver sufficient quality of service not only leads to consumer harm by adversely affecting the customers involved, it also risks undermining the network access remedy by deterring switching and therefore reducing retail competition. Specific quality of service regulation is needed to protect consumers and ensure the effective functioning of the network access remedy to support retail competition (see §§3.2-3.5 of the consultation).
- 2.2 The charge control remedies alone do not provide incentives for BT to improve quality of service. We disagree with Ofcom's view that wholesale charge controls will "strengthen Openreach's incentives to make long term investments in service quality" (§1.10) and therefore welcome the proposals for a suite of quality standards set out in this consultation. Targeted regulation requiring it to comply with specific minimum quality standards and reporting requirements, and enforcing those standards in such a way as to deter poor performance, is vital.
- 2.3 The importance of regulating to improve quality was demonstrated by Openreach's declining performance on quality prior to the introduction of minimum quality standards in the 2014 Fixed Access Market Review (FAMR). In the years before 2014 we saw Openreach deteriorate quality (firstly in MPF/WLR and then in Ethernet) as a means of reducing its costs and increasing its profit. For example, Openreach decided to reduce costs by reducing the number of field engineers, which contributed to an overall decline in provisioning and repair performance in the period from 2009.² This deterioration of quality occurred against a backdrop of BT excess profits of £9.6bn from 2006-2016.³

² See §§11.12-11.14 Ofcom FAMR 2014 statement volume 1:
https://www.ofcom.org.uk/_data/assets/pdf_file/0032/78863/volume1.pdf

³ Frontier Economics report for Vodafone, November 2016:
<https://mediacentre.vodafone.co.uk/wp-content/plugins/newsroom/download.php?file=https://public-vodafone->

- 2.4 Even following the introduction of minimum quality standards in the 2014 FAMR, Openreach's performance has not been significantly ahead of the baseline set, particularly on repair (§3.25). Indeed, Openreach chose to invest materially less in network maintenance than Ofcom forecast (§2.69 in WLA review vol. 2). In the context of BT intentionally underinvesting in service quality while making excess profits, BT's assertion that Ofcom should take responsibility for the service failures is wholly unfounded:

"In ten years of regulating Openreach, Ofcom prioritised cost reduction in every charge control, and every product, taking over £1bn of revenue out of Openreach in the period, and to date only in one control (the 2014 FAMR) has its drive for lower cost been balanced by a goal of service quality. The imperatives of making cost efficiencies as required under the price controls clearly can conflict with extra expenditure on service, and Ofcom's regulatory policy has therefore had a substantial bearing on service performance. [...] In short, Ofcom should look to its own responsibilities for the regulatory failures that have inhibited service improvements, as well as judging the performance of individual operators."⁴

The attitude expressed indicates that Openreach has not accepted its responsibilities for improving quality of service and strong regulation is therefore needed to secure improvements. Openreach cannot be relied upon to prioritise better quality by reducing faults and improving delivery of broadband repairs and installations within timescales that meet consumer expectations without specific regulation.

- 2.5 We therefore support Ofcom's proposal to regulate Openreach's quality of service performance by continuing to rely on a combination of transparency measures detailed in KPIs, the regime of Service Level Agreements (SLAs) and Service Level Guarantees (SLGs) between Openreach and communications providers (CPs), and regulated quality standards. Together these three measures represent an appropriate and proportionate regulatory intervention given the different role each one plays in driving Openreach to deliver better quality of service. Quality standards set overall baselines to incentivise better performance, KPIs hold Openreach to account and SLG compensation payments incentivise improvements to delivery. Ofcom's proposal to place greater weight on quality standards within the overall package of measures is appropriate given Openreach's poor historic record on quality of service performance noted above and the growing significance of broadband to consumers.
- 2.6 We agree with Ofcom's proposal to apply quality standards to Openreach's GEA-FTTC superfast broadband service for the first time, in addition to

a.s3.amazonaws.com/mediacentre/2016/11/VW01S2Rt.pdf&filename=frontier-bt-regulatedprofitability-2016-281116-vfinal.pdf

⁴ BT's response to Ofcom's discussion document on the strategic review of digital communications, 8 October 2015:

https://www.ofcom.org.uk/data/assets/pdf_file/0029/37937/bt.pdf

continuing to apply quality standards to WLR and MPF used to deliver standard broadband services. Since the 2014 FAMR, GEA-FTTC use has grown significantly and it has become central to the services Openreach offers; this progress will continue in the period up to 2021. Poor quality of service on GEA would harm consumers, adversely affect retail competition, and could become an artificial barrier to customers upgrading.

3 A quality standard for fault rates is required

3.0 We consider that it is vital that Ofcom introduces an additional quality standard to reduce fault rates, in addition to strengthening quality standards for installation and repair. Ofcom presents a range of evidence that demonstrates the significant consumer harm caused by broadband faults and notes that "66% of residential consumers believe their households would struggle to function without broadband" (§3.33). The harms caused include denial of access to communications, costs of alternative services, disruption, time and effort, stress and anxiety (table 3.1). Ofcom has estimated that the harm caused from loss of service equates to £10 a day (§3.35). In its work on cross-platform switching, Ofcom estimated that the total harm resulting from losing service and the hassle of rectifying a fault amounted to c.£83 per incident (§1.19). In addition, consumer expectations of consistent broadband access mean that faults caused by Openreach have an adverse impact on CPs' businesses, drive additional costs, and impair retail competition.

3.1 A set of measures to improve quality of service in broadband is incomplete without introducing a quality standard on fault rates. As Ofcom recognises, the evidence shows that preventing faults occurring at all is an important consideration for consumers and competition. Clearly, the best customer experience is achieved by not having a fault at all, rather than one that is repaired quickly. We disagree with Ofcom's assessment that it must choose between imposing a quality standard on fault rates or repair times. Contrary to Ofcom's assertion that repair standards will "create a strong incentive to reduce the overall level of faults" (§3.45), we do not agree that they will provide sufficient incentive on Openreach to improve. Without a quality standard on fault rates, there will not be adequate assurance for consumers and CPs that Openreach fault rates will reduce. Setting higher quality standards for repair times may encourage lower fault levels to some degree but Ofcom has not presented evidence to show that the improvement will be material or sufficient. Indeed, quality standards on repair times have been in place since the 2014 FAMR but the "in-tariff fault rates for lines carrying standard broadband services (i.e. MPF and WLR+SMPF) have remained

broadly stable at 11% per year” (§4.24). During this period, Ofcom assesses that Openreach’s capex has been “lower than the level required to replace the assets that have reached the end of their useful life” (§4.36), which indicates it was not investing sufficiently to maintain the reliability of its network and reduce faults. The evidence in the consultation therefore suggests that the repair time quality standard has a weak impact on fault levels.

Ofcom notes that Openreach has shared confidential information on its new Fault Volume Reduction (FVR) programme. It states that “if successful, Openreach aims to reduce the network fault rate from its current position of 110 faults/1000 lines per annum by at least 10% (i.e. to less than 99 faults per 1000 lines)” (§4.49). It appears that Openreach has started this programme in response to Ofcom’s assessment that it underinvested in its network over the last charge control period and “even if Openreach spends sufficient opex such that it continues to meet repair quality standards, the outcomes for customers would be worse given the stress and inconvenience associated with faults” (§4.44). Ofcom implies that setting charges consistent with low fault rates will ensure Openreach delivers its FVR programme: at §4.50 Ofcom suggests that setting MPF prices using a low repair opex and no additional capex for network maintenance will ensure that “Openreach follows through with its planned investment in the FVR programme”. This is not the case. The assumptions that Ofcom uses to set prices do not affect the incentives that BT have once that price is set. We welcome the FVR programme but consider quality standard regulation on fault rates is essential to ensure Openreach follows through. Ofcom should not rely on partial and weak incentives provided by other aspects of its proposals for standards and the assumptions used in setting the charge control.

3.2 We think that the claimed implementation barriers to introducing a quality standard on fault rates that Ofcom sets out at §3.46 are neither sound nor sufficient reasons not to introduce regulation to address the issue:

- Ofcom asserts that “assessing the costs of quality standards on faults may require us to identify exactly how Openreach should target its network investments to achieve an optimal quality outcome.” We do not consider that such an assessment of Openreach’s investment would be necessary and Ofcom has presented no evidence or explanation to justify its claim. Ofcom can make informed assumptions on the appropriate fault rate standard based on trends and drawing on information from Openreach’s plans – for instance, setting the standard at the level in the FVR programme. This same ‘problem’ of the need to assess investments might be claimed when Ofcom needs to set an efficiency assumption in order to set charges – yet Ofcom does not need to assess investment to make such an assumption.

- Ofcom states that it might be challenging to measure Openreach’s compliance with a quality standard on fault rates due the range of causes of faults, only some of which are within Openreach’s control. While we recognise there can be a range of causes of faults, we do not think that there is a difficulty with measuring Openreach’s performance in this area especially as relevant Openreach faults are already identified in order to impose the quality standard on repair times. The SIN349 test is already used to identify relevant faults for measuring Openreach’s performance on repair times and there is no reason why it could not be used to track the incidence of faults as well. This could be combined with a measure after faults are closed that confirms the number of closed faults within Openreach’s responsibility, although this could result in perverse incentives for Openreach engineers.
- Ofcom suggests that there may be issues applying a standard on fault rates as historic performance has shown that “faults are highly sensitive to exogenous factors such as weather.” While this may be an appropriate consideration for setting a standard, we think that it can be addressed through setting a long compliance period (e.g. 12 months) and considering if exceptions are needed to account for exogenous factors, in line with the approach taken in general for quality standards.

In summary, none of the problems Ofcom sets out are sufficient to present a material barrier to introducing a fault rate quality standard.

3.3 In the absence of any significant barriers to implementation and given the consumer harm resulting from faults, we think there is a clear case for proposing a quality standard for fault rates. It would ensure that Ofcom is applying regulation where needed: at the root of one of the main issues with broadband quality of service. We consider the introduction of a fault rate quality standard would be complementary to Ofcom’s proposals on repair times. As a minimum, the fault rate should be clearly monitored through the KPIs but this is inferior to setting an appropriate quality standard.

4 Setting and enforcing tougher standards for repair times and installations 4.0

We support Ofcom’s proposal to increase the existing minimum quality standards for repair times and installations and to add an additional standard for repairs completed in excess of five working days over SLA timescales. We agree that standards of at least 90% performance are necessary to provide consumers and CPs with sufficient certainty (§3.57).

4.1 We note that Ofcom has proposed the following standards including a glidepath towards improvements in quality of service:

Quality standard	Current	18/19	19/20	20/21
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Repair within SLA timescale	80% (77%)	83% (80%)	90% (87%)	93% (90%)
Repair completion within SLA + 5 days	N/A	95%	96%	97%
Quality standard	Current	18/19	19/20	20/21
Installations completed by the committed date	90% (89%)	92% (91%)	92% (91%)	95% (94%)
Working days within which first date offered for installation appointments	12	12	12	10
Frequency with which regulated installation appointment date must be offered	80% (79%)	90% (89%)	90% (89%)	90% (89%)

(%) indicates quality standards including Ofcom's proposed allowance for local MBORC events

Repairs

- 4.2 We consider that tightening the repair standard within SLA alongside our proposal to introduce a quality standard to reduce the incidents of faults is necessary in order to deliver improvements in quality of service. The proposal to set the minimum standard for on time repairs at 83% in the first year of the review period is not stretching enough as it is “consistent with current UK average performance” (§5.69). We consider that Ofcom must set a higher requirement for a minimum standard for on time repair in the first year in order to ensure consumers experience improvements quicker and Openreach begins to deliver a true step change in quality of service.
- 4.3 We agree with Ofcom's proposal for compliance against completion of repairs within SLA timescales to be assessed by measuring combined performance of wholesale voice and broadband lines (WLR, MPF, and GEA-FTTC in aggregate) but apply separately to both service maintenance levels (SMLs 1 and 2). It is also appropriate for repairs within SLA timescales (table 5.1) will be measured in each of OR's 10 geographic regions on an annual basis. Ofcom's proposal that the new +5 days repair standard (table 5.2) will be assessed at UK-level only and include the High Level MBORC exemptions, but no local allowance is sensible.

Provisioning and installation

- 4.4 The proposed standards for provisioning on time delivery (“% installations completed by the committed date”) are not challenging enough. Setting the target at 92% for the first two years will not deliver any improvements as the current blended metric across copper and fibre for on time delivery is already above 92%. As Ofcom notes at

§6.42, “this is a level of performance which Openreach has consistently delivered and exceeded.” The current copper on time delivery metric is lower at around 90%. [X]. We consider that Ofcom should introduce an immediate improvement to the quality standard to above 92% and move to 95% within the first two years of the review period.

- 4.5 Similarly, the working days within which first date offered for installation appointments should be reduced earlier in the market review period. [X].

Therefore, the proposal to only reduce the standard to 10 days from 12 days in the final year of the market review does not go far enough. We consider it would be appropriate to introduce a 10 day standard in the first year of the review based on Openreach’s current performance.

Glidepath

- 4.6 While we recognise that it may be appropriate to phase in the improved standards to take account of the operational improvements Openreach will be required to make to bring about the change, we consider that the glidepaths proposed are too gentle and extend the consumer harm by only reaching the required levels at the end of the review period. As noted above, Ofcom’s intention to set higher quality standards has been clear from the initial conclusions of the DCR in February 2016, so Openreach has had and will have sufficient time to plan for the required operational changes. In general and in line with our comments on specific standards, phasing beyond the first year is therefore unnecessary and Ofcom should introduce the full improvement in the standards from the second year through to the end of the review period.

MBORC events

- 4.7 We consider that force majeure or ‘Matters beyond our [BT’s] reasonable control’ (MBORC) only applies in the most extreme circumstances where there are genuinely no steps that Openreach could take to mitigate the impact on the broadband network. We observe that this can be clearly monitored through the use of high-level national MBORC allowances. However, the application of an across the board local MBORC adjustment for repair timescales, installation completion and installation appointment dates does not include individual scrutiny of BT’s declarations. It is surprising that Ofcom states in its consultation on automatic compensation that “providers can often take mitigating measures to protect their networks and

operations against the impact of force majeure events.”⁴ This statement is contradictory as force majeure events are defined as being beyond BT’s reasonable control. By nature therefore, BT could not take steps to mitigate against an MBORC event. Ofcom should apply greater focus on monitoring the correct use of MBORCs, including local MBORCs, even if it considers a local MBORC adjustment is the most appropriate way to regulate. It is appropriate that MBORCs continue to be monitored through specific KPIs.

- 4.8 The local MBORC adjustment for repairs of 3% is too generous. As Ofcom acknowledges the ‘worst case scenario’ allowance was based on 2012/13 which was a year of particularly poor weather. Since then there has been a reduction of the number of repairs affected by MBORCs (§§5.81-5.88): the

⁴ §8.38 Ofcom consultation on automatic compensation, March 2017: https://www.ofcom.org.uk/_data/assets/pdf_file/0030/98706/automatic-compensationconsultation.pdf

percentage of fault repairs that missed SLA impacted by MBORC fell from 4.5% in 2013/14 to 1.1% in 2012/13 to 1% in 2015/16 (table A6.48). While we acknowledge that poor weather is by nature unpredictable we do not think it is appropriate for a 3% allowance to apply across the market review period, regardless of conditions. If Ofcom considers it appropriate to maintain the 3% allowance it must present further evidence and analysis to support the case, rather than re-stating the conclusions reached in the 2014 FAMR before Ofcom had established any experience of applying quality standards. In our view, Ofcom should phase in a reduction of the MBORC allowance for repair times to 1% across the market review period.

- 4.9 As noted above, we agree with Ofcom's proposal not to introduce a local MBORC adjustment for the +5 days repair standard and only allow the highlevel MBORC exemption on this quality standard.

Industry-led improvements to diagnostic testing

- 4.10 We are very committed to working with other CPs, Openreach, the OTA2 and Ofcom to improve quality of service through better diagnostic testing. Ofcom notes the rise in volume of out-of-tariff activities and that they now represent a significant volume of all fault repair activities (§§4.28-4.29). We welcome Ofcom's recognition of the work that industry is doing to improve the use of diagnostic testing to bring more repair activities in-tariff. We are working with other CPs to develop a new copper line standard to support broadband performance. The proposal is to augment the current SIN349 test – an electrical test used to establish if a line can provide a working voice service – to include additional broadband speed and broadband stability measures. This will support better remote diagnostics to identify the problem when a line test is successful but there are still problems that need to be resolved by Openreach. This will result in a more efficient service for customers.
- 4.11 Faults that fail this broader test should be repaired in-tariff by Openreach (and to suitable SLAs and SLGs). This will significantly improve Openreach's incentives to reduce fault levels since it currently makes a margin when there is a fault (that passes SIN349) since CPs have to pay a Special Faults Investigation (SFI) charge to repair it (which is priced above LRIC costs). It is common sense to ensure that the party that can control fault levels on its network (Openreach) should be responsible for the cost of repairing those faults. We consider that the new quality standard plays an important role in

underpinning an effective system of automatic-compensation for retail customers.

4.12 We consider there is a role for Ofcom and OTA2 to play in supporting the collaboration between CPs and Openreach to bring about the introduction of these improvements. We note that Ofcom plans to review the implications, including for charges, after the changes are agreed. [X].

4.13 We look forward to completing this work to improve the quality standard to deliver real benefits to customers.

5 SLA/SLGs

5.0 SLAs and SLGs form an important component of the regulatory regime for broadband quality of service. They ensure that CPs are compensated where Openreach fails to meet SLAs which also improves incentives for Openreach to improve performance. We are therefore concerned about Ofcom's proposal to remove the 2008 SLG Direction. The 2008 SLG Direction includes important principles for negotiations between Openreach and CPs that must be maintained in order to preserve the guiding framework that helps the parties to reach agreements that are consistent with the regulatory objectives. Negotiations to date have involved repeated recourse to the 2008 SLG Direction. We understand that Ofcom considers that the principles are replicated in other documents such as the Reference Offer condition and the WLA review. We consider that it would be better to maintain the 2008 SLG Direction or replicate the principles in a single Ofcom guidance document, so that they are clearly stated, easy to reference and do not conflict. In either case, the principles must be extended to apply to VULA, as Ofcom notes.

5.1 We support Ofcom's proposal to remove the 60-day cap on SLG payments. Removing the cap will ensure that Openreach faces financial consequences that will incentivise it to address the long tail of repairs and mitigate consumer harm caused in these cases. Where repairs are unresolvable due to matters outside Openreach's control, the SLGs would not apply in line with contracts and therefore the impact on Openreach remains appropriate to deliver the policy objective of achieving better fault performance.

Auto-compensation

5.2 As Ofcom notes, the Openreach SLG payments will need to cover the automatic-compensation costs (§3.17). In our view, the SLAs and SLGs must be fully reviewed and amended to ensure they are fit-for-purpose to support

the implementation of automatic-compensation before the introduction of the scheme. The overriding and critical principle is that the requirements on retail providers are mirrored exactly in Openreach's SLAs and processes. In particular, the SLG values must reflect the total cost to CPs of delivering automatic-compensation to customers in the event of an issue caused by Openreach. The SLG increase must include the compensation payment to the customer and an uplift to cover the CP's reasonable overhead costs of managing the process of receiving and mediating the payment from Openreach. We set out more detail on the changes required in our response to Ofcom's consultation on the automatic-compensation proposals.

6 Concluding remarks

- 6.0** In conclusion, we support Ofcom's objective to strengthen the regulation of quality of service so that Openreach is incentivised to deliver better performance for CPs so that the experience of broadband and voice customers is significantly improved. We think that Ofcom should bolster its proposals with a quality standard for fault rates and a more rapid introduction of improvements across repair and installations. We will play our part in delivering further improvements through cross-industry collaboration on diagnostic testing to deliver better quality of service for customers when they experience a fault.
- 6.1** The full package of quality standards, KPIs and SLAs/SLGs together should drive Openreach to invest in its network so that fewer faults occur and provisioning is more efficient. Overall, these improvements will lead to better customer experience and support retail competition.