



## **Ofcom's proposed Plan of Work 2023/24**

*TalkTalk submission*

**February 2023**

**NON-CONFIDENTIAL**

This is TalkTalk Group's response to Ofcom's proposed Plan of Work 2023/24, published on 14 December 2022.

## 1 Introduction

- 1.1 We have restricted our comments to three areas of fundamental importance to Ofcom's delivery of its strategic duties in relation to fixed communications networks: the affordability of broadband; promoting network competition; and maximising take-up of gigabit-capable services. Ofcom must revise and expand its plans under its first strategic priority, "internet we can rely on", to deliver this outcome for consumers. We urge Ofcom to re-think its approach to ensure consumers can access affordable broadband, network competition can thrive, and the full benefits of the UK's transition to gigabit-capable networks can be realised.
- 1.2 We are concerned that Ofcom's focus on its new areas of responsibility (telecoms security and online harms) and interest (cloud computing) is leading to it giving insufficient attention and rigour to discharging its fixed broadband responsibilities. Ensuring thriving competition and the availability of future-proofed broadband networks at an affordable price should be central to Ofcom's activities and its regulatory approach must evolve to achieve this market outcome.

## 2 Affordable broadband for all

- 2.1 Ofcom acknowledges that it is setting its priorities for the year ahead in the context of significant "pressures facing the country" including on "cost-of-living" given that "inflation ha[s] hit its highest level for over 40 years" (§1.23).
- 2.2 However, Ofcom has so far failed to make the most logical step it could take to relieve the cost-of-living pressures on consumers: making a reasonable adjustment to the CPI-linked wholesale price increase that Openreach has proposed to impose in April 2023. Under the Wholesale Fixed Telecoms Market Review (WFTMR) 2021, Openreach can increase FTTC40 wholesale prices by a maximum of CPI, supposedly to fund FTTP roll-out. TalkTalk at the time opposed this. Now, Openreach is proposing to increase wholesale prices by 11.1%, taking the peak of CPI inflation in October 2022. Both the Minister for Digital Infrastructure and the DCMS Deputy Director for Digital and Media have told Parliament that it is in Ofcom's power to intervene to prevent consumer harm. We strongly believe that the regulator should heed concerns from consumer rights groups and advocates and tell Openreach that 11.1% is too high an increase.
- 2.3 As well as acting to address the immediate risk of consumer harm presented by wholesale prices rising with extraordinary levels of CPI, Ofcom should review its activities in the round to ensure it is taking a joined-up approach to regulating to achieve the best outcomes for consumers. The 2021 WFTMR set a framework that allowed wholesale prices to rise and ultimately for consumers to pay more for broadband services. Subsequently, Communications Providers (CPs) have faced pressure from Ofcom during this review period to offer Social Tariffs and not to apply mid-contract price rises, at the same time as their costs increased as a direct result of Ofcom's regulation.

- 2.4 As it prepares for the next WFTMR, we would urge Ofcom to review its regulatory approach to ensure consistency between its interventions across the wholesale and retail markets. Any public policy goals to deliver particular outcomes to ensure decent broadband is affordable for consumers should be factored into Ofcom's analysis and decision-making process in the WFTMR 2026.

### 3 Promoting network competition

- 3.1 Ofcom asserts that its regulatory approach set out in the WFTMR published in 2021 "played an important role in promoting competition between networks that is now driving fibre rollout" (§2.5). However, to promote competition Ofcom must monitor Openreach's approach and network rollout to ensure that Openreach is not acting anti-competitively to squeeze out nascent competition: for instance, targeting network build in altnet roll-out areas; or 'flag planting' to deter build. As Ofcom outlined in the last Ofcom Monitoring Unit (OMU) report in December 2021, the extent of monitoring needs to expand to include assessing the development of competition in gigabit-capable networks following the 2021 WFTMR.<sup>1</sup> It would be valuable for Ofcom to outline the OMU's planned activities to support effective stakeholder engagement on this topic and ensure Openreach understands what is expected. Ofcom should also set out a timetable for future reports to be published. Last year's plan of work indicated that a report was planned for Q3 2022/3 but, as far as we are aware, this has not been forthcoming.
- 3.2 Another important factor in promoting competition between networks in rolling out gigabit-capable broadband infrastructure is ensuring sufficient rates of take-up of services offered over the new networks. Take-up is vital for investors to see the required levels of return to justify continuing to fund rollout. Low levels and slow rates of take-up will compromise the ability of altnets to compete with Openreach and jeopardise the fulfilment of coverage targets overall. Take-up is fundamental to the delivery of Ofcom's strategic objective to promote competitive investment in gigabit broadband. We outline further actions Ofcom should take to promote take-up in Section 4 below based on research by Frontier Economics.

### 4 Maximising take-up of gigabit-capable services

- 4.1 Activities to promote the take-up of gigabit-capable services are missing from Ofcom's plan of work. Frontier found (in research conducted for TalkTalk published in September 2021) that up to a third of households will remain on copper connections in 2030 despite gigabit-capable connections being available to them.<sup>2</sup> The report shows that there are significant behavioural barriers to FTTP adoption that are likely to limit take-up. It puts forward

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<sup>1</sup> *Ofcom's annual Openreach monitoring report*, Ofcom, December 2021: [Ofcom's annual Openreach monitoring report](#)

<sup>2</sup> *Unlocking the gigabit dividend*, Frontier Economics, Sept 2021: [unlocking-the-gigabit-dividend.pdf \(frontier-economics.com\)](#)

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proposals for action by Government, Ofcom and industry to address these barriers and improve the level and rate of take-up to support the UK's gigabit ambitions.

4.2 The report demonstrates how four behavioural barriers will inhibit take-up and shows how these could affect all customers to some degree:

- Reward – People make decisions based on them 'feeling good' and with broadband this is limited as it's more of a 'hygiene factor' for customers; potential reward isn't anticipated at the point of sale, especially when most customers today have a good service;
- Loss Aversion – The fear of losing the service you've got is likely to loom large, and could outweigh the as yet unknown 'reward' for the new service;
- Ease – Our default is to 'do nothing' and the hassle associated with change is typically avoided. For broadband, people anticipate problems relating to installation for example that put them off; and
- Social Proof – FTTP is in its infancy so as yet there is limited 'social proof'; typically people like to follow others and fit in.

4.3 Frontier recommends that a "proactive approach to stimulating FTTP migration" is required because "policymakers cannot assume that the successful rollout of FTTP will lead to the full socioeconomic benefits that FTTP is expected to deliver". Furthermore, it states:

*"Slow FTTP migration will cause the UK to miss out on a valuable opportunity to boost productivity, grow the workforce, deliver more 'digitally native' public services, reduce greenhouse gas emissions and to increase digital inclusion. Slow migration may also reduce the future pace and extent of FTTP rollout by undermining the business case for investment."*

4.4 Frontier describes the take-up gap as a "textbook case for government intervention" because the potential benefits to society as a whole exceed the perceived benefits to individual consumers today. The report highlights that the fragmented attribution of the benefits of increased take-up and the risks of coordination failure will mean that there is a limit to what can be achieved by the industry alone.

4.5 Individual CPs and network providers can and will continue to take steps to incentivise and support the migration to gigabit services and support customers in the migration by addressing practical and behavioural barriers. TalkTalk is already adopting an 'FTTP first' mindset and investing in marketing to build consumer awareness. But further public policy intervention is needed to maximise take-up and deliver the corresponding benefits for the UK.

4.6 Based on Frontier's findings we have called on Government to:

- Set and track a take-up target alongside roll-out targets to create shared ambition and momentum; and
- Create a new 'Gigabit UK' cross-government taskforce with Ministerial accountability to coordinate consumer migration and monitor progress on adoption.

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We are also asking Government to consider the specific recommendations for Government action to address behavioural barriers outlined in the Frontier report, including a public campaign to raise awareness of the long-term benefits of migrating to FTTP.

- 4.7 In parallel, we have asked Ofcom to take steps to:
- a) Support better consumer understanding of FTTP e.g. promoting benefits of the new products and establish clarity on terminology;
  - b) Publish more regular and more granular analysis on the levels of FTTP take-up by geography;
  - c) Set a framework for copper switch-off to aid industry discussions and support customer awareness at the appropriate time; and
  - d) Reset the regulatory approach to put the consumer at the heart of FTTP policy.
- 4.8 We look forward to engaging further with Ofcom on these recommendations and would like to see activities to support FTTP take-up recognised and given priority in Ofcom's plan of work 2023/24 under its strategic priority "internet we can rely on".

### Consumer understanding and awareness of FTTP

- 4.9 Ofcom's plan of work 2022/23 included project work on "Consumer information on gigabit-capable / ultrafast broadband"<sup>3</sup>. It stated that:
- "People and businesses need the right information to make informed decisions about the broadband services that are best for them. We have convened an industry working group to develop common terminology for broadband services, including next generation gigabit-capable networks. This work aligns with the recommendations of the GigaTAG working group that industry should look to develop consistent terminology and use cases." (p.43)*
- 4.10 We supported this work through engagement in the industry working group. We favoured an approach that would amplify the use of 'full fibre' terminology to differentiate new products offered over these networks. The reasoning behind our position was that 'full fibre' terminology was already gaining traction in the market with awareness of the term growing among consumers. Used in conjunction with existing speed terminology, 'full fibre' labelling would indicate where a product is offered over a future-proof network that will provide greater reliability and support concurrent usage at all speeds. We considered that 'gigabit-ready' terminology risked adding to the jargon, without improving transparency for customers about the product they were buying and its characteristics. Frontier's recommendation for Ofcom to update "marketing guidelines to focus on reliability" in order to increase 'ease' for consumers and build 'social proof' adds further weight to our position.
- 4.11 We are aware that Ofcom is taking forward its work on common terminology in line with the GigaTAG recommendation. Based on conversations with the Ofcom team, we understand that a consultation on naming of broadband products is forthcoming and will be informed by

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<sup>3</sup> Ofcom's Plan of Work 2022/23, Ofcom, March 2022. [Statement: Ofcom's plan of work 2022/23](#)

consumer research. We look forward to responding to this consultation and suggest it should be added to Ofcom's plan of work.

Meaningful FTTP take-up data

- 4.12 Currently Ofcom reports on take-up of FTTP annually at a national level in the Connected Nations report. The December 2022 report showed take-up of broadband over full fibre at 25% where it is available and 38% for gigabit-capable networks.<sup>4</sup> Take-up of full fibre had only increased by 1 percentage point since 2021 and Ofcom noted that:

*“Our reporting of full fibre take-up may appear lower than expected because networks are deploying at pace and take-up lags behind coverage. This could occur because there is a lag in awareness of availability or consumers need to wait until their existing service contract ends before they can migrate to a new service.” (p. 21)*

- 4.13 Ofcom also reported that take-up of superfast broadband had increased over the year to 73%.
- 4.14 Building on Frontier's recommendation that Ofcom should publish more data on FTTP to help to build 'social proof', we suggest that Ofcom should carry out and publish further analysis on FTTP take-up trends. More granular analysis by local exchange, particularly those with mature availability of FTTP, and across different demographics, would help to track how FTTP take-up is developing. If take-up is rapid in areas of high FTTP availability, the analysis could be used to add to 'social proof' about the new technology and further reduce this behavioural barrier to take-up. If take-up is slow and lags in particular demographics, the analysis may indicate that the challenges Frontier has identified are playing out. This analysis could then be used to inform policy-making to increase take-up.
- 4.15 We also encourage Ofcom to consider publishing FTTP take-up analysis more frequently than once a year to ensure responses to the findings in this rapidly changing market are timely.
- 4.16 We have had early discussions with Ofcom teams on the proposal to expand its reporting on FTTP take-up and look forward to further engagement on this topic. We recommend that Ofcom should add an activity to its plan of work on reviewing and improving the data it publishes on FTTP take-up.

Framework for copper switch-off

- 4.17 Frontier recommended that Ofcom should “set and publicise an expected copper switch-off date” to build 'social proof' and tackle 'loss aversion'. While we acknowledge Openreach will ultimately determine the date for copper switch-off in consultation with Ofcom and its customers, we agree with Frontier that there is more Ofcom could do to signal to customers and businesses that copper is being withdrawn and replaced by full fibre as part of an upgrade to UK broadband infrastructure. Strong, clear signalling from the regulator, building on the parameters for copper withdrawal Ofcom set out in the WFTMR 2021, would be welcome. CPs could then use this signalling from the regulator to communicate clearly with customers about the need to migrate and reduce some of the current behavioural barriers.

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<sup>4</sup> Connected Nations 2022: UK report, Ofcom, Dec 2022. [Connected Nations 2022: UK report \(ofcom.org.uk\)](https://www.ofcom.org.uk/connected-nations-2022-uk-report)

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- 4.18 In addition to playing a role in raising awareness of copper withdrawal and the UK-wide broadband upgrade, we expect Ofcom to support industry in developing effective frameworks for collaboration to support customer migrations to FTTP, and thereby minimise the number of forced migrations that may be required. This would help to address some of the risks of coordination failure and misaligned incentives identified by Frontier. We see Ofcom's role as including setting expectations for agreements on the fair share of costs between parties and facilitating solutions for specific types of customers where migrations may be more challenging (e.g. vulnerable and Critical National Infrastructure) or where they are outside the FTTP footprint.
- 4.19 We encourage Ofcom to review with Openreach, the Office of the Telecoms Adjudicator, CPs and other interested parties whether the current structures and processes are fit-for-purpose to deliver this national upgrade programme. This should be reviewed in the round alongside Ofcom's planned activities on monitoring the migration to Voice-over-IP (VOIP) services.

### Consumer focused FTTP policy

- 4.20 Great efforts have been made to incentivise investment in the underlying infrastructure, we now need to focus on how we get everyone connected and deliver the benefits of the new technology for every home, small business and for society as a whole.
- 4.21 The benefits of high gigabit take-up include benefits to people who don't currently use broadband at all. Creating an equitable framework for the migration to full fibre will be important in bridging, rather than further entrenching the digital divide.
- 4.22 We therefore encourage Ofcom to add these activities to its plan of work and contribute to wider efforts across Government and industry to address the risk of a take-up gap. Taken together we believe these steps will enable Ofcom to reset its regulatory approach to put the consumer at the heart of FTTP policy.

## 5 Conclusion

- 5.1 We recommend that Ofcom takes immediate action to protect consumers from retail price rises by urging Openreach to review and lower its proposed 11.1% increase in wholesale prices.
- 5.2 We also recommend that Ofcom adds the following activities to its plan of work for 2023/4:
- **Affordability of communications services.** Ofcom should review its regulatory approach to ensure consistency between its interventions across wholesale and retail markets as it begins preparation for WFTMR 2026. Where Ofcom identifies public policy goals related to the availability of affordable broadband, these should be factored into the analysis that will underpin the upcoming market review.
  - **Promoting network competition / Openreach Monitoring Unit.** Ofcom should add the activities planned by the OMU to its plan of work and publish a structure and timetable for its engagement with the sector. In particular, the OMU should update on its monitoring of WFTMR 2021 outcomes. In line with the OMU 2021 report, we expect the update to include an assessment of how competition in gigabit-capable

networks is developing and any obstacles that need to be addressed to secure the delivery of Ofcom's WFTMR strategy.

- **Consumer focused policy to boost gigabit take-up.** By adding the actions outlined in Section 4 to its work programme under the strategic priority 'internet we can rely on', Ofcom can help to maximise societal benefits from the rollout of gigabit-capable networks.