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## Executive summary

- Regulatory quality of service obligations on Openreach provide an essential overlay to the service commitments offered by Openreach's contractual terms. While the market operated with contractual terms alone, Openreach could choose to make commercial trade-offs between quality of service investments and the payment of failure compensation, with Openreach frequently following the path of failure and compensation. The interplay between the contract and the regulation should form a key role in deciding how to proceed. We advocate retention of the current obligations.
- There are a number of situations which give rise, in our view, to inaccurate and misleading reporting of quality of service performance. These scenarios need immediate resolution.
- High quality, proactively maintained networks, alongside high quality rapid response / on-time repair is critical to the functioning of UK citizen lives. We expect Ofcom to continue to prioritise service quality as part of the Wholesale Fixed Telecoms Market Review and the resilience workstream.

## The role of SMP quality of services measures on the market

The Ethernet and dark fibre services under consultation provide critical connectivity to their users. These users can be other communications networks, who use the services to build broadband infrastructure and connect cell sites, in turn providing end consumers with broadband and mobile connectivity. They can be Government and Critical National Infrastructure organisations upon whom society relies for the provision of key services. They are used by the NHS, by banks, by retailers. The resilience of these services is foundational to the smooth functioning of our everyday lives. Proactive network quality improvement programmes and the repair of services, that Openreach has failed to pre-emptively quality assure, is a critical function that requires high quality professional standards.

Openreach is a critical and primary supplier of Ethernet and dark fibre. Openreach's website substantiates its position of importance with Openreach supplying 300+ Ethernet service retailers<sup>1</sup>.

Openreach's very existence and the Significant Market Power (SMP) designation on many of the products it supplies are a direct result of market failure. Absent regulatory intervention, Openreach would be in a monopoly supplier position in many situations. Its UK geographic supplier ubiquity gives it a unique market advantage that cannot be replicated by any other wholesale competitor.

In the 2016 BCMR Ofcom recognised the need to implement SMP Quality of Service obligations for Ethernet service provision, including on time to repair. Quality of service measures<sup>2</sup> operate alongside the service commitments of the Openreach connectivity services contract. The regulatory QoS standards, by design, elevate service failure beyond a commercial trade-off between ongoing investment in service quality versus the payment of service level guarantees following contractual service commitment failures. Via the introduction of regulatory quality of service standards quality of service has become a substantive regulatory compliance concern for the Openreach executive management team. Quality of service now has widespread external

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<sup>1</sup> [Ethernet for business | Openreach](#)

<sup>2</sup> The cost of achieving the quality of service standards and service improvements is included within the pricing framework for services.



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transparency and far more serious financial accountability for failure. Service quality has reached a priority that commercial SLGs alone have failed to achieve in the past.

In setting remedies in 2021, Ofcom were, again, very mindful of this unique and powerful market position and recognised that not only were remedies around pricing and an obligation to supply necessary, but meaningful Quality of Service obligations were also required. Absent any QoS safeguards, Openreach would lack the normal commercial incentives that encourage suppliers to deliver a quality service experience. When experiencing poor service, customers are unable to vote with their feet and move supplier and instead are left to endure a substandard service experience, with no credible alternative suppliers available. Quality of Service regulation is therefore a key remedy in addressing the negative consequence of market failure on consumers.

A well-functioning regulatory QoS measure addresses Openreach's SMP power and elevates, via the power of regulation, the equivalent commercial term – in this case on time to repair. Service users have negotiated commercial terms for on-time delivery and on-time repair as these terms are fundamental to them effectively competing in the market. Since their inception, quality of service measures have mirrored the primary contract terms - on-time delivery and on-time repair. The regulatory quality of service measures have added additional data point reporting of a complementary and supporting nature, such as mean time to provide.

Regulatory *and commercial* QoS measures require transparent processes and categorisation. It is in Openreach's interest to fail to provide sufficient detail, to create grey / unagreed and obviously misallocated areas around these processes, preventing us for example from challenging stop the clock and job allocations. This, in turn, prevents us from receiving the correct and appropriate compensation for service failures and creates a false impression of job classifications and performance success. These matters require resolution and regulatory attention. The datasets that Openreach has used to validate its fault categorisations includes "grey" disputed data.

### **In-life market review changes are the reserve of material changes**

The market review framework is designed to offer five years of regulatory certainty to all market participants and, while we accept there are circumstances where intervention to modify the regulatory obligations within that five-year period would be appropriate, such interventions should be rare and reserved for circumstances where there is clear and material consumer welfare benefit to justify such a mid-review intervention.

We firmly believe that the issues highlighted within this consultation fall well short of the threshold necessary for in-flight regulatory market review modification to be considered, and it is surprising that they have triggered this process. We also note that the consultation appears to be relying on the Openreach set of requests to ease its burden on meeting existing QoS standards, rather than adopting a more proportional approach and assessing if a more balanced set of changes (including those advocated by Communications Providers) would be more appropriate.

It remains our firm view that these matters should have been left until the next market review. Allowing them to be considered in the round, giving a more balanced, equitable and evidenced based assessment of what QoS safeguarding arrangements should be imposed.

### **History of engagement**

Openreach flagged a desire to change the QoS repair measure at the May 2022 Ethernet Service Forum and subsequently presented the topic in detail to the Ethernet Service Forum in Aug 2022. The Vodafone representative was on leave at the time of this forum. While slide decks are distributed to the membership there are no formal minutes taken at this forum. The Ethernet Service Forum was not the appropriate venue to seek to



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agree a key commercial and regulatory matter.

Between August and November there were no industry or bilateral communications regarding the repair QoS topic. Openreach then presented to the EPCG November 2022 its intention to make the QoS change application to Ofcom requesting CP engagement.

Openreach arranged a bilateral with Vodafone on 15th December 2022. This meeting was effectively our first engagement with Openreach on the topic, having missed the single service forum meeting on the topic. The matter was presented to us as notice of Openreach's intent to request the change via Ofcom and to obtain our support for the request. We explained we did not support Openreach's change proposal struggling to see what has changed of sufficient substance since the market review conclusion which could not have been forecast and considered in the consultation phase<sup>3</sup>. Vodafone supports continuation of the on-time repair obligation.

### Openreach identifies data issues behind its reporting

Openreach's presentation to industry regarding the proposed QoS changes sets out that it is necessary to resolve a number of matters related to "Start, pause and stop the clock". This includes:

- 1) A review of the exact points in the journey that the OST (out of service time) clock starts and stops and produce industry guidance on how its managed
- 2) Pausing the clock and the process to do so
- 3) KCI and internal note structure reviewed

We agree that these issues need to be resolved as a matter of priority<sup>4</sup>. There are a number of process anomalies resulting, in our opinion, in inaccurate data collection and false reporting. The issues can be explained as follows:

Matters (1) & (2): Transparency of the stop the clock process: Vodafone has requested Openreach to document their process relating to how their "clock process" works as this is another current area of contention. Openreach has stated that until access details and timings for a customer site has been provided and their engineers are actually at site, the repair clock does not start. Vodafone does not believe that this is a fair process as CPs will only provide access where requested and necessary to do so in order to fix the fault, noting that a number of faults can be fixed with no requirement to access a customer site. Openreach's process therefore negates any time lost due to their resource deficiencies or delays in diagnosing. Openreach has stated that this is their longstanding process which facilitates engineering resource and avoids inefficiencies. They have agreed to document this in a future Product Description update so it is clear to CPs.

Matter (3): Incorrect report of fibre repairs as customer faults: Fibre fault repairs taking engineer time to repair are being falsely classified as customer fault with a one-minute clear time. Openreach uses unilaterally determined rationale to stop the clock. Stop the clock appears to be a universal category to be applied where customer contact detail have not been provided by the CP (and are not necessary to be supplied). This includes orders where we have reported a fault to Openreach, which Openreach subsequently repairs without requiring access to the customers' premise. The fault is a fibre fault and not a customer fault. The criteria for associating this fibre fault type into the customer fault category and assigning an incorrect repair timescale is a misrepresentation of the type of faults occurring.

Concerning matter (3) Vodafone is happy to work with Openreach on KCI note structure problems.

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<sup>3</sup> For example Openreach sets out the ongoing nature of processes. "There has been significant focus on improvements to the repair processes in the last 3 years. The scope of these improvements has ranged from organisational changes within Openreach to designing and implementing processes to ITIL (Information Technology Infrastructure Library) standards. These initiatives have been discussed regularly at the Ethernet Service Forum and collaboration between Openreach and CPs has been particularly constructive. The result of everyone's efforts has been an improved customer experience and reduction in certain fault categories over the last few years."

<sup>4</sup> and in the event that Ofcom is persuaded to change the QoS standard these must be resolved prior to the standard changing over



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## Responses to questions

**Question 1:** Do you agree that the fault mix on relevant Ethernet and Dark Fibre products has changed significantly enough to justify a change to the OTR minimum standard in the markets for the supply of LL access in LL Access Area 2 and LL Access Area 3, and the market for the supply of IEC in BT only and BT+1 exchanges? Please provide evidence to support your views.

The criticality of this style of fibre service continues to increase over time. These services are used to build competing fixed and mobile network infrastructure, supporting internet backhaul conveyance across the country, connecting urban and rural cell sites. These services are also used by our customers who themselves are critical national infrastructure providers, Government, the NHS and cross sector enterprises to carry out their business functions. For us and for our end customers maintaining and improving fibre network quality and fixing fibre faults on time is of utmost importance. We estimate that Vodafone is Openreach's second largest external<sup>5</sup> customer. We have negotiated to the best of our ability with Openreach, given its significant market power position for on time service repair and associated SLGs. The SLGs we have been able to negotiate have historically proven to be too low. This has meant that Openreach has had a choice between the incurring the costs associated with maintaining service levels versus the costs of paying SLGs. The regulatory QoS obligations create an important overlay to the contractual terms addressing the imbalance in performance incentives. Users are compensated by the SLGs and the QoS metrics keep delay to a minimum and a focus on investment to maintain standards.

It is our view that the fault mix has not changed in any material way, nor in ways which would have been unexpected from plans in place at the time of the WFTMR consultation. We do not see change that justifies a change to the on-time repair standards.

Vodafone's analysis of Openreach ethernet fault clear codes over the period from 2020 to end of July 2023 shows no material percentage changes in fibre fault mix:

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We do not consider that Openreach has provided transparency of data of sufficient detail to support it a case for change.

- Table LL/IEC fault types provides a qualitative narrative with any indication of the range of change. This table is wholly insufficient in providing a basis on which to form a judgement. We would expect to see the quantitative detail presented at least identifying a range of change enabling us to constructively engage with the debate.
- We are unable to track how the cluster chart, showing on time repair performance, provides evidence of performance behaviours. An alternative interpretation of the chart could be that it illustrates the proportion and performance of services where Openreach has decided that it is commercially better off paying late repair SLGs than investing in the higher cost of achieving on time repair.
  - Faults that are not repaired on time will be subject to the payment of commercial SLGs.
  - The commercial contract for service provision setting out the SLAs and SLGs are given additional teeth by the regulatory QoS standards. The QoS standards address the fact that the commercially negotiated SLGs are not of sufficient financial value or consequence to Openreach to protect end users.

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<sup>5</sup> In line with regulatory reporting categories.



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**Question 2:** Do you agree with the proposal to continue to include MBORC in the QoS measure? Please provide evidence to support your views

MBORC faults have been included within the QOS metric since it was inception. No rationale justification has been advanced as to why it would now be reasonable, consistent or proportionate to remove them.

We continue to regard their inclusion will promote a more timely resolution of the related faults.

**Question 3:** Do you agree with the proposal to exclude customer faults from the new measure? Please provide evidence to support your views.

We do not agree with this proposal at this time. There are anomalies with the faults that are included within this category. We experience Openreach closing faults as customer faults (Right When Tested) although the fault is an Openreach network fault and requires engineer work to repair. Network faults are classified as customer faults where customers site access details have not been provided by the CP despite not being required by Openreach in order to fix the fault. Openreach contends that access must always be provided to speed up fault resolution but they will look to resolve faults in the network where possible without such access. We regard the reporting of this particular set of data to be disingenuous and having the effect of making the customer fault data set unreliable.

**Question 4:** Do you have any views on the appropriate period for the mean time to repair standard? Please provide evidence to support your views.

The importance of repair to the overall levels of quality of service makes it essential that if there are to be any changes that the change does not lead to any lessening of the levels of service expected. The 5-year WFTMR settlement of included services, pricing and quality of service is all linked. The level of pricing includes the level of quality of service. Any reduction (or increase) in service levels required by the regulated standards requires a review of the level of prices. We note that Openreach's revenues are substantially above those assumed for the market review period due to the substantial difference between forecast and actual rates of inflation. BT reported in its results for 2023<sup>6</sup> that revenue growth by Openreach has offset decline in its other units.

Ofcom's proposed MTTR minimum standard (including MBORC faults but excluding customer faults) is 3:50. We are of the view that to achieve equivalence with the current on time measure and there not to be a weakening of the measure that the standard needs to be set as follows:

- MTTR minimum standard (including all faults) 1:30.
- Adjust MTTR minimum standard to excluded customer faults 3:30.

**Question 5:** Do you have any views on applying a longer assessment period initially of more than 12 months, beginning from the publication of any decision? Please provide evidence to support your views.

If there is a new obligation it should be equivalent to the current obligation and readily flow from the current obligation. Report should continue as normal and include retrospectively calculated data for any time period that has already elapsed.

**Question 6:** Do you agree with the proposal to make a direction adding the two new KPIs to those already required in the markets for the supply of LL access in LL Access Area 2, LL Access Area 3 and LLA HNR, and the market for the supply of IEC in BT only and BT+1 exchanges? Please provide evidence to support your views.

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<sup>6</sup> [Results for the full year to 31 March 2023 \(bt.com\)](#)



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Vodafone does not believe splitting out customer clears to a separate KPI will provide any meaningful data. Openreach always closes down such faults they deem to be customer clears with a 1 minute (or, in some cases zero minute) timescale. A MTTR KPI for such faults would therefore be meaningless unless Openreach changes its practices in this regard.

Vodafone has reviewed a 3-month sample of such faults which shows that most faults are designated as being cleared within 1 minute.

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Ends