

## Communications Consumer Panel and ACOD response to Ofcom's consultation on Strengthening Openreach's strategic and operational independence

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The Communications Consumer Panel (the Panel) and the Advisory Committee for Older and Disabled People (ACOD) welcome the opportunity to comment on Ofcom's proposals to strengthen Openreach's strategic and operational independence.

The Panel works to protect and promote people's interests in the communications sector, including the postal sector. We are an independent statutory body set up under the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and micro businesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers.

Four members of the Panel also represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues. Following the alignment of ACOD with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

### *Response*

#### ***Better outcomes for consumers***

We broadly welcome Ofcom's proposals. If anything, we would urge that an even greater emphasis be placed on consumer outcomes - which should be the central purpose of the exercise. For example, we would like to see a more direct link between Openreach's performance and the experience of end users, with the main features of the preferred model including clear consumer based targets for which Openreach is wholly accountable. Alongside this, there should in our view be straightforward incentives and penalties which encourage excellence and deter poor performance; and which have the effect of providing absolute clarity of purpose.

Various Panel research (referenced elsewhere in our response) has underlined the importance of reliable high quality communications services. People depend on an increasingly diverse range of services - broadband, for example, is widely regarded as an essential service these days - and disruptions to communications have a huge and detrimental impact. Consumers in vulnerable circumstances can be disproportionately affected, and that can include micro businesses - where livelihoods are at stake.



We recognise the improvements that have taken place since BT's undertakings in 2005, when there were significant problems. Consumers in the communications market have benefitted in terms of price and availability - primarily flowing from the increase in the retail share of BT's competitors, from 2% to 40%; and the increase in broadband take-up from 31% to 78%. But that was a decade ago and we agree with Ofcom's assessment that "a step change is required in the outcomes delivered to consumers and businesses". It is our view that the step change is required in terms of:

- Certainty of quick and effective fault repair;
- No undue wait times for new installations;
- An effective means of resolving escalations and complaints; and
- Effective infrastructure deployment and efficacy.

Consumers and businesses - and we are particularly concerned about the position of micro businesses - are still not receiving a consistently high enough level of service provision. In our view, in order to maintain and promote competition, access, quality of service (and ultimately, affordability and value for money) across the UK, more can - and must - be done. An example of how the current model is failing is that a consumer can wait up to five days for a fault to be repaired, yet Openreach would still be deemed to have hit its target. Under maintenance level one, the measure is to fix a fault with two working days after it is reported. If a consumer reported a fault on a Friday, this means a repair by the following Tuesday evening is regarded as acceptable. Openreach's latest statistics<sup>1</sup> also show that they only achieve the maintenance level one measure in 84% of repairs.

In our view the measure above is flawed. It does not reflect the reasonable expectations of consumers in 2016; and the fact that it is being under achieved in 16% of cases is unacceptable. We would argue that this is a product of the current model, and is evidence that the functional separation of Openreach has run its course - it cannot deliver the required step change without bold and radical change, rooted in good consumer outcomes. We would therefore urge Ofcom to consider a thorough review of the measures by which Openreach's success is judged; and that consumer outcomes are the starting point for those measures.

Ofcom's proposal to strengthen Openreach's strategic and operational independence is timely and necessary, and it is key to better serving consumers. We are pleased to see that Ofcom has retained the option to initiate full structural separation if legal separation does not achieve the aims set out in the consultation document. We have a concern about the length of time it will be before consumers notice the step change - so whilst the issue is complex and the solution must be proportionate, we would urge all stakeholders to move as quickly as possible so that consumers are better served by a genuinely competitive market.

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<sup>1</sup> <https://www.homeandwork.openreach.co.uk/OurResponsibilities/our-performance.aspx>

### *Effective and proportionate*

A lack of consistent, quality access and good service is a source of detriment to many consumers, with people in more vulnerable circumstances potentially feeling the impact the most strongly. One example is people in remote rural locations<sup>2</sup>, where there is little or no competition and the average age is higher than in the rest of the UK.

From 1 April - 30 June 2016, it took Openreach nine working days for an installation without an engineer and 12.5 working days if an engineer was required. Businesses had to wait an average of 28 working days for an Openreach installation for on-net services - 85 working days if a new network build was required, or nearly a third of a year. And although they may account for a minority of faults overall, too many consumers have to battle against faults for unacceptably long periods. The percentage looks low, with Openreach's latest figures showing 0.45% level one faults not fixed within 31 days; but they also say that typically they handle 175,000 repair and installation jobs a week - so the absolute number of consumers waiting over 31 days for a repair will be high. We do not believe that any stakeholder should regard this as acceptable.

We share Ofcom's concerns regarding BT's current position in the market. There is too much BT control over Openreach's strategic decision-making, including its budget; too much control over Openreach's governance and research and development functions; and no formal monitoring of the way it consults with competitors on investment in new networks.

The effect this has - as the consultation document explains - is a lack of independence for Openreach on both the operational and strategic sides of the business. This in turn, restricts its ability to perform in a way that allows genuine and fair competition - it may even inadvertently encourage just the opposite, providing an incentive for anti competitive behaviours.

Residential consumers and micro businesses in rural areas, where competition may currently be non-existent, or reduced, should not bear the cost of this, be it financial or in terms of inconvenience. Non-existent or inconsistent access to a good quality service can mean that people are unable to carry out a range of tasks such as shop online (and access online-only deals), access information and medical services, find jobs, work from home, run a business and fill in their tax return.

The Panel and ACOD commissioned research on the importance of communications to micro businesses, which also highlighted the needs of micro business owners with a disability.<sup>3</sup> The research highlights that communications services play a critical role in the success of micro businesses. However, they face a wide range of challenges in using and

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<sup>2</sup>[http://stakeholders.ofcom.org.uk/binaries/research/infrastructure/2015/downloads/connected\\_nations2015.pdf](http://stakeholders.ofcom.org.uk/binaries/research/infrastructure/2015/downloads/connected_nations2015.pdf);

<sup>3</sup> <http://www.communicationsconsumerpanel.org.uk/research-and-reports/realising-the-potential-micro-businesses--experiences-of-communications-services>

fully exploiting the opportunities offered by these services and technology for the benefit of business.

We also commissioned research on consumers' customer service experiences - Going Round in Circles<sup>4</sup> - which demonstrated the fact that many consumers suffer in silence, without raising complaints or switching provider, in some cases due to the perceived hassle of doing so.

Consumers need protection against the detriment caused by an inconsistent or poor service and from getting stuck in a chain of suppliers. Having considered the analysis provided in the consultation document on costs to BT Group and Ofcom's suggested mitigations, we believe that Ofcom's preferred model for Openreach, with Openreach becoming a separate legal entity within the BT Group, may be effective in protecting vulnerable consumers against this detriment.

Giving Openreach more independence and operational and strategic control, with a greater requirement to consult BT's competitors in investment decisions will hopefully level the playing field for CPs. With more choice and more reason to have higher expectations from CPs other than BT, customers may be more able to engage more in the market, including making complaints and switching providers when necessary.

We do not agree with BT's proposal to make the Openreach Board a committee of the main BT Board. To achieve the consumer outcomes that will flow from self-governance and self-determination - and to facilitate more effective consultation on equal terms for all of its customers - there needs, in our view, to be a much clearer removal of BT Group influence. One way of looking at this, perhaps, is to treat Openreach "as if" it were structurally separated from BT. If BT and a new look Openreach can achieve the desired outcomes from that approach, the market and its consumers will benefit and BT will avoid the need for actual separation.

We also believe that to achieve success Openreach needs its own culture to accompany its further independence. It will be no good if Openreach is simply a microcosm of BT Group. Therefore we support fully Ofcom's proposed role in approving appointments to the Openreach Board. We also believe that Openreach will need a legally separate Chief Executive and senior executive team - unencumbered by the influence and pressure of the wider BT Group. For this reason, we would oppose BT Group Executives (as the company has suggested) occupying any Openreach Board seats.

In this context, Ofcom's proposals appear proportionate in making changes without causing unnecessary disruption that could pose further problems to consumers (keeping experienced Openreach staff and assets). However, we trust that Ofcom will continue to review the position regularly and will act accordingly if the market fails to produce a fair outcome for consumers. We hope that Ofcom will share with the Panel any such monitoring plans at an early stage of its development.

### ***Seamless support for consumers and micro businesses - DCR statement***

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<sup>4</sup> <http://www.communicationsconsumerpanel.org.uk/downloads/going-round-in-circles.pdf>



We agree that Openreach should be given control over the resources required to develop strategy and manage operational delivery without relying on BT Group. Openreach should be able to maintain relationships with all of its CP customers independently of BT. Openreach may also wish to consider developing a greater direct relationship with consumers and micro businesses, undertaking research about where its services are delivering and where they require improvement - and taking appropriate investment decisions to support this.

As consumers' requirements and hardware and software become more complex, CPs will also need to move to being able to provide a system of seamless support to consumers and micro businesses. It will no longer be acceptable for consumers to be told that it is an issue outside of the CP's control.

In its February 2016 statement as part of its Strategic Review of Communications (DCR) , alongside proposals regarding Openreach, Ofcom proposed to introduce automatic compensation for residential consumers and smaller SMEs (micro businesses) and to make switching easier.

We consider it vital that reform of Openreach helps Ofcom to deliver on these goals; the current proposals regarding the legal separation of Openreach may help Ofcom to deliver on these ambitions.

We welcome Ofcom's intention to raise Openreach's targets, from the previous 'minimum standards'. Openreach's Charter, published on its own website, states that Openreach aims to "do much better than these minimums" and "continue to expand our range of services and products, increasing customer choice." Furthermore, it states: "If we get it wrong and miss agreed service levels, we pay compensation to our communications provider customers." We would urge a legally-separated Openreach to lead the way for CPs to deliver world-class connectivity across the UK and not to be the reason that CPs claim they are unable to deliver what they promise.

A more independent Openreach must be a more transparent and accountable Openreach, ensuring that it opens up its data far more than it has in the past (for example, its roll-out plans and take-up data).

### ***Consumers and businesses in Northern Ireland***

As Ofcom notes, Openreach does not exist in Northern Ireland, where the provider of the access network and wholesale telecoms services is BT's Northern Ireland Networks. We welcome Ofcom's engagement with BT in Northern Ireland, its competitors and particularly with consumer representatives. We also welcome Ofcom's commitment to continue to monitor BT Northern Ireland's performance and regulatory compliance.

However, the consultation document states that through lack of evidence during the above engagement exercise, it would not be proportionate to change the current arrangements, to bring them in line with the proposals that are currently being consulted on. Whilst Ofcom highlights BT Northern Ireland's likelihood to follow the changes that are applied to the rest of the UK via Openreach, we would caution that no assumptions are

made about this. We believe Ofcom should set a firm commitment to review the current arrangements regularly and consider bringing arrangements in Northern Ireland in line with the rest of the UK.

### ***Measuring success***

Frequent and robust monitoring of Openreach's performance is vital - as is improved transparency in Openreach's performance and delivery data.

The proposal suggests that Ofcom will publish periodic monitoring reports - initially at six month intervals, and then annually. We would strongly suggest that these should be at quarterly intervals initially, moving to six monthly over time.

We note that Ofcom expects to see the following improvements:

- Openreach behaviours, in particular its responsiveness to its CP customers.
- Industry outcomes, in particular levels of competition, investment and innovation
- Consumer and business outcomes, including availability, quality, choice and pricing of services.

We would welcome more detail on the way these outcomes will be measured (especially in respect of how repair, installation and escalation targets are constructed) and how soon Ofcom would expect to see results before deciding whether to reconsider its options.

We would also urge Ofcom to make consumer and business outcomes the first of the three measures, not the last. The ultimate measure of success is consumers benefitting from a well functioning competitive market; arguably the first two bullet points as they stand are the means - not the end. A further measure of success would be that any costs resulting from a legally separated Openreach do not bear on consumers. It would in our view be a perverse outcome if prices increased as a result of a legally separated entity.

### ***Summary***

The Panel broadly supports Ofcom's preferred model as a means of achieving the required step change to improve the quality of service enjoyed by consumers and businesses.

To achieve greater independence of decision making, and change the performance of the business there needs to be a step change, centred on culture. All stakeholders of Openreach, Openreach management, and Openreach staff need to be absolutely clear that this step change is happening - this is likely to need a similarly large step change in governance and ownership.

A legally separate, self-governing Openreach is, we believe, the best way forward. This in our view requires an organisation with its own culture and ethos, which is not influenced by the BT Group.

We believe Openreach needs targets that are meaningful to consumer outcomes and reflect the importance of Openreach's service to consumers and businesses. If Openreach

does not meet those targets, then that failure must have a profound impact on Openreach.

In order to be properly focussed on delivering its targets, Openreach needs appropriate funding and governance that allows it to manage the business in the interests of all its end users.

We urge all stakeholders to act as quickly as possible to achieve the desired outcomes for the market and the consumers that it serves; and we support Ofcom in reserving the right to move to full structural separation if the evidence suggests that is necessary.

We believe that consumers need to feature more prominently in the proposal, with consumer centric targets forming the key success measures; and we believe that the design and enforcement of those targets will be key. We look forward to seeing more detail on this.