

# OBARCC

## Commitments Compliance Report 2018



The Openreach Board Audit, Risk and Compliance Committee (OBARCC) is a committee of the Openreach Limited Board. This is “the Openreach Report” for the period ended 31 March 2018. Unless otherwise stated, all facts, statistics, events or developments are correct to the nearest practicable date before 13<sup>th</sup> June 2018. The Openreach Report is a requirement of the Commitments notified to Ofcom by British Telecommunications plc pursuant to Section 89C Communications Act 2003.

Unless it is otherwise clear from the context, ‘2018’ refers to the financial year running from 1 April 2017 to 31 March 2018.

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# 1 Introduction from the OBARCC Chair

*The Openreach Board Audit Risk and Compliance Committee (OBARCC) has been operating for just over a year now. We are a sub-committee of the Openreach Board and also have a reporting line into the BT Group plc Board Audit and Risk Committee. This is the first annual Commitments compliance report<sup>1</sup> and is intended to provide an overview of our operation over the past twelve months and our plans for the year to come.*

## Introduction

The OBARCC is a committee of the Openreach Board and held its first meeting on 24th March 2017. We are charged with ensuring that the corporate governance of Openreach is working effectively. Whilst our work covers risk, audit, assurance and compliance for all aspects of Openreach's operations, the focus of this annual report is our work on monitoring Openreach's compliance with the Commitments and the Governance Protocol. For BT, Commitments and Governance Protocol compliance is monitored separately by the BT Compliance Committee (BTCC).

## Key areas of focus this year

During the year, Openreach and BT have pressed ahead with implementing key changes associated with the Commitments and Governance Protocol. These changes have included the establishment of Openreach Limited with its own independent board, the launch by Openreach of a new training package, introduction of a new information disclosure process with BT, and Openreach's creation of its own new brand.

Similarly, the OBARCC has been proactive in carrying out our compliance monitoring duties. We have instigated a comprehensive 'Commitments Validation Plan' and compliance dashboard, and asked our support office - the Commitments Monitoring Office (CMO) - to investigate areas of concern on our behalf. We have also reviewed specific topics such as the revised Code of Practice, behavioural measures and training, and access control arrangements to Openreach's headquarters.

On the whole the committee has been pleased with progress and not yet found any significant concerns relating to compliance. However it has become clear that there remains a number of functional areas and processes where it is not yet clear how to strike the right balance between Openreach having greater independence and BT retaining adequate parent company control. The annual and strategic planning process is a critical case in point. The operation of this year's process can be seen as a 'trial run' and further work is required to refine the approach so that the next planning cycle has a pre-defined process to follow.

The relationship with Ofcom is crucial for Openreach and the committee invited Ofcom's Openreach Monitoring Unit (OMU) to attend one of our meetings so they could see the work first hand. We believe that this kind of transparency is important and allows the OMU to see Openreach operating with greater independence but also with increased governance.

The OBARCC has also inherited the Equality of Access Board (EAB) responsibilities to monitor Openreach's compliance with the Undertakings until BT is released from them. It is anticipated that (subject to the outcome of the statutory TUPE consultation) this will be one

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<sup>1</sup> This detailed report is referred to as the **Openreach Report** in paragraph 7.6(f) of the Governance Protocol that accompanies the Commitments. For 2018, the **Openreach Report** also serves as the summary report.

month after the transfer of employees working for Openreach to Openreach Limited has been completed and Openreach has fully implemented its trading on behalf of BT plc<sup>2</sup>.

### Looking forward

During the coming year the OBARCC will focus on monitoring certain key aspects of the Commitments and Governance Protocol including the transfer (subject to the TUPE consultation) of employees into Openreach Limited, new product launches, the operation of new information disclosure arrangements, the strategic planning process and culture and behaviours. The OBARCC is also very keen to continue our ongoing dialogue with the industry and we will be inviting CPs and other stakeholders to our meetings so that we can hear about their issues directly.

### Our opinion in summary

Commitments compliance is adequate with a good system of oversight and monitoring though there is scope in certain areas for better definition of the balance between Openreach and BT Group roles.



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Edward Astle  
OBARCC Chair  
13th June 2018

A handwritten signature in black ink that reads "E. Astle." The signature is written in a cursive, slightly slanted style.

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<sup>2</sup> Paragraphs 5.25 to 5.27, Ofcom Statement, Delivering a more Independent Openreach, 13<sup>th</sup> July 2017.

## 2 The OBARCC in brief

The Openreach Board Audit Risk and Compliance Committee (OBARCC) was established in March 2017 as part of the Commitments offered to Ofcom. We are a sub-committee of the Openreach Limited Board, with terms of reference setting out our role, monitoring and reporting remit and how our members are appointed.

The OBARCC has the role of:

- ensuring corporate governance is working effectively in Openreach; and
- reviewing compliance by Openreach with the Commitments and the Governance Protocol.

### Meetings

During 2018 the OBARCC held eight formal meetings. Minutes of our formal meetings have been provided to the Openreach Board and relevant parts of the minutes have been shared with Ofcom.

We set out the work the OBARCC has done in more detail in the “Review of the Year” section, starting on page 9.

### Board members

The Commitments require that the OBARCC consists of the three Openreach Independent Non-Executive Directors and the independent Openreach Chairman.



**Edward Astle**

**Mike McTighe**

**Sir Brendan Barber**

**Liz Benison**

#### **Edward Astle, OBARCC Chair, Independent Non-Executive**

Edward has significant telecoms and board governance experience and joined the Openreach Board in January 2017, having been an independent member of the EAB since 2013.

In his executive career he was a director of National Grid Plc from 2001 to 2008, responsible for their non-regulated and telecoms businesses (most notably wireless infrastructure); non-executive chair of 3 telecommunications ventures 1999-2001; managing director of BICC Communications (and a director of BICC Group) from 1997 to 1999, and an executive and regional director of Cable and Wireless Plc from 1989 to 1997. Previously he held senior business and strategy positions in UK and France. He has also been Pro-Rector Enterprise at Imperial College London (2008 – 2013) and a non-executive director of Intertek Plc (2009 to 2016). He is currently chair of the board of the University of Manchester and Vice Chair of the Shannon Trust.

**Mike McTighe**

Mike is an experienced telecoms executive and regulator. He was appointed as Openreach's first chairman in November 2016.

Mike spent eight years on the board of Ofcom, from 2007 to 2015. He's previously been chairman of several other public and private companies, and is also carrying out the role for Together Financial Services Ltd, IGas Energy plc and Arran Isle Ltd. He's held various non-executive roles after spending most of his career at Cable and Wireless, Philips, Motorola and GE.

**Sir Brendan Barber, Independent Non-Executive**

Brendan has been chairman of ACAS since January 2014. He's also deputy chairman of the Banking Standards Board, an independently led body that promotes standards across the UK banking industry. Alongside that he's a member of the council of City University of London and of the board of trustees of Mountview Academy of Theatre Arts, and he served on the board of Transport for London from 2013 to 2016.

Brendan spent most of his career as an official of the TUC, which he joined in 1975. He carried out various roles there including deputy general secretary and general secretary. He's also sat on the ACAS Council, the Board of Sport England, the UK Commission on Employment and Skills and the Court of Directors of the Bank of England.

**Liz Benison**

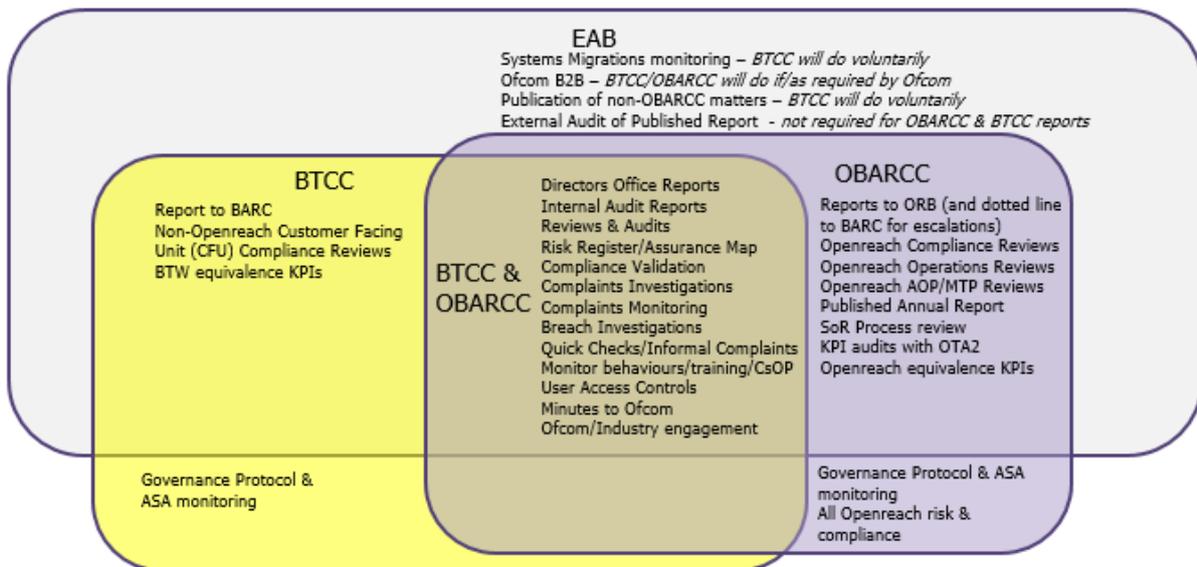
Liz is an experienced executive who has spent most of her career in the technology and business services sectors, after training as a manufacturing engineer. Liz has been involved in a number of business turnarounds, and is particularly adept at transformation within businesses. Improving customer focus has been a key feature of Liz's executive roles to date.

Most recently, Liz was at Serco where she ran one of their UK and Europe Divisions, as part of the team tasked with restructuring the company following some difficulties. Liz joined Serco in 2014 from Computer Science Corporation (CSC) where she'd spent the previous four years as VP and general manager for their UK business. Before that she was VP COO of Capgemini's financial services division, and before that UK chief operating officer of Xansa plc. She spent the early part of her career as a manufacturing engineer for Ford and Jaguar.

**Transition from the EAB to the OBARCC**

During the year we have worked very closely with the EAB to ensure a smooth handover of its responsibilities to the OBARCC. Great care has been taken to ensure that continuity has been built into the new oversight arrangements. The OBARCC is chaired by Edward Astle, one of the independent EAB members. The OBARCC is also being supported by the Commitments Monitoring Office (CMO) which comprises former members of the Equality of Access Office (EAO).

As shown in the diagram on the following page, together with the EAB and BT Compliance Committee (BTCC) we have reviewed the overlaps and potential gaps between the responsibilities of the EAB and its successor bodies to ensure that nothing is overlooked during the transition period, and shared our analysis with Ofcom. The EAB has provided us with a comprehensive list of outstanding actions, breaches and recommendations that apply to Openreach and we will take over responsibility for these now that the EAB, with Ofcom's agreement, has been stood down. Therefore, we are confident that the handover process will be as seamless as possible.



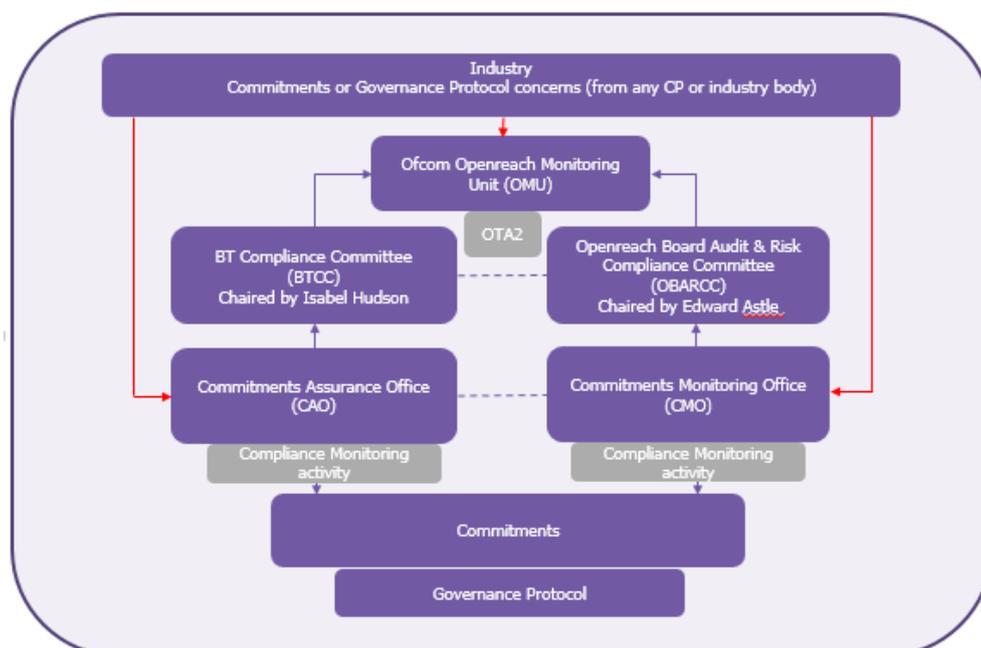
### The Commitments Monitoring Office (CMO)

The CMO is staffed by former members of the Equality of Access Office (EAO). The CMO’s remit is to support the OBARCC by analysing and reporting regularly to the OBARCC on the detailed status of Openreach’s compliance with the Commitments and Governance Protocol. The CMO carries out investigations into complaints made by CPs and into possible breaches of the Commitments and Governance Protocol on the OBARCC’s behalf.

The CMO has its own code of conduct, which sets out the values and behaviours expected of its members. Most importantly, the code of conduct requires their analysis and judgements to be made on the basis of factual evidence which is independent of the influence of Openreach, BT, Ofcom and other CPs.

The Openreach Secretariat organises meetings of the Openreach Board, OBARCC and other Openreach board committees.

As shown below, the OBARCC and CMO sit within an overall compliance monitoring framework which includes the Ofcom OMU and the BTCC.



## Establishing the OBARCC's processes

One of our first tasks has been to create a set of processes to ensure that we effectively discharge our role of reviewing Openreach's compliance with the Commitments. We have based these on the well-established monitoring processes developed and used by the Equality of Access Office (EAO) to support the EAB. These processes are run on our behalf by the CMO and are described in more detail below.

### ***Commitments Validation Plan (CVP)***

The Commitments Validation Plan (CVP) is a detailed monitoring and validation plan covering each Commitment and Governance Protocol clause. It sets out how the CMO will gain assurance that Openreach is satisfying its obligations for each clause. The CVP is updated on a continuous basis and is shared with the Ofcom OMU monthly.

### ***Commitments Compliance Dashboard***

The Commitments Compliance Dashboard is a high level view of the status of the main Commitments and Governance Protocol obligations which we use to track Openreach's ongoing compliance. The Commitments Compliance Dashboard is based on the detailed work carried out in the CVP, together with metrics such as product Key Performance Indicators (KPIs), Statements of Requirements (SORs), complaints and breaches. The Dashboard is shared with the Ofcom OMU on a monthly basis. A copy of the Dashboard can be found in the Appendix on page 16.

### ***Reporting***

We report regularly to the Openreach Board and provide the Ofcom OMU with a copy of the relevant minutes of each OBARCC meeting. We will also report regularly to the BARC.

## OMU Information Requests

During the year the CMO has responded to two detailed information requests from the OMU. These information requests have required us to provide a significant amount of detailed information covering all aspects of Openreach's progress on implementing the Commitments such as greater functional separation of Openreach, our strategic and operational independence from BT, culture, training, compliance oversight and new information sharing arrangements.

## 3 REVIEW OF THE YEAR

The OBARCC has had a very productive year, moving rapidly from start-up mode to a position where we have now taken responsibility for reviewing Openreach's compliance with the Commitments and Governance Protocol. Our approach is to determine not only whether the letter of the Commitments has been complied with, but whether the intended DCR outcomes are being achieved – sometimes referred to as compliance with the “spirit”.

In this section we describe our work on the following key areas:

- monitoring Openreach's compliance with key aspects of the Commitments;
- investigating complaints from CPs; and
- reviewing potential breaches of the Commitments.

### Compliance Monitoring

Where possible, we have been proactive in fulfilling our responsibilities for reviewing Openreach's compliance in advance of the Commitments coming into effect. We have set out below a number of key pieces of work that we have undertaken during the year.

### Commitments Code of Practice

The BT and Openreach Commitments Codes of Practice lay out the behaviours expected of BT and Openreach people<sup>3</sup>. As a result they are a key foundation to the overall success of the new regime. The OBARCC reviewed Openreach's new Commitments Code of Practice and provided advice that further detail should be included regarding the new information sharing arrangements. We were supportive of Openreach launching its new Code of Practice as early as possible, but noted the potential for confusion whilst the Undertakings remained in place, particularly as the information sharing regimes required by the Undertakings and Commitments are different. We therefore encouraged Openreach to review with Ofcom how this could best be handled before the new Code of Practice was issued. Ofcom agreed that it would not enforce compliance with the Undertakings that would impede the successful introduction of the new Commitments regime. Therefore, BT has ceased operating certain provisions in the Undertakings relating to restrictions on information sharing, and instead commenced operation of the information sharing restrictions set out in the Commitments.

### Annual and strategic planning process

One of the key aims of the Commitments is to allow Openreach greater independence in setting its own strategy and plans, whilst acknowledging that BT must retain control as parent company. During the year, BT attempted to draft guidelines for those involved in the AOP/MTP<sup>4</sup> process to include details of how Openreach and BT should interact under the new Commitments governance arrangements. While this year's cycle can be seen as a trial run, and the AOP/MTP itself was approved by the Openreach Board, it is disappointing that these guidelines are not yet agreed. The OBARCC has asked BT, and BT has agreed, to incorporate the learnings on both sides into revised guidelines in time for the 2018/19 planning cycle.

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<sup>3</sup> Additionally, there is a further Code of Practice for BT employees working for Northern Ireland Networks.

<sup>4</sup> Annual Operating Plan/Medium Term Plan

### **Information disclosure process**

The Undertakings information sharing arrangements have been replaced with a new information disclosure process. The new process requires the disclosure of Openreach Commercial Information (CI) and Customer Confidential Information (CCI) to be recorded and reported to the OBARCC under a disclosure record, unless there is a specific information sharing agreement already in place. We have kept the development of the new process under review during the year. Whilst the new process came into effect in early April, it will take time to bed down and therefore we intend to conduct a review of the operation of this process during the coming year.

### **Openreach branding**

For end customers and Communication Providers, the branding of Openreach is the most visible and important change in symbolising its greater independence. The Commitments require Openreach to substantially phase out the use of “BT” and “British Telecom” from its brand over a three year period. The CMO has monitored the Openreach rebranding programme which includes van livery, uniforms, buildings, web assets and social media. Good initial progress has been made and we will be continuing to track progress of the changes during the coming year and throughout the transition period.

### **Access control arrangements for Judd Street**

It is important that Openreach can demonstrate that its headquarters building is only freely accessed by its own people. The CMO conducted a review of access controls at Openreach’s headquarters in Judd Street and identified that a number of people had retained access to the building after leaving Openreach. The findings of the review were submitted into the Openreach breach process and the case was agreed to be a trivial breach of the Undertakings by the EAB. This would also have constituted a trivial breach of the Commitments, had they been in force at the time. Access for the people concerned was removed and the governance process for granting access to Judd Street was amended to include a quarterly review of building access. In addition, a leavers’ checklist for managers was produced and briefed to employees.

### **Fibre to the Premises (FTTP) programme**

The CMO facilitated a request from the Ofcom OMU to understand the operation of the FTTP programme which will become ever increasingly important in the coming years. This also gave the CMO the opportunity to gain assurance that the FTTP programme was operating in line with the Undertakings and the Commitments.

### **Assurance for Openreach Implementation Report**

In April 2018, Openreach provided Ofcom with a detailed report setting out Openreach’s progress with implementation of the new arrangements between BT and Openreach as part of the Commitments. This report is known as the “Openreach Implementation Report” and will be contained as an annex within Ofcom’s wider Commitments implementation report which is scheduled for publication during the week commencing 11<sup>th</sup> June 2018. The CMO reviewed key aspects of the Openreach Implementation Report in order to provide a degree of independent assurance over the content.

## Complaints and requests for information

The Governance Protocol gives the OBARCC the duty to review complaints relating to the compliance of Openreach with the Commitments and the Governance Protocol, including those made by BT and Openreach employees, Openreach customers and Ofcom. Now that the EAB has been stood down, the OBARCC has taken over responsibility for assessing Openreach complaints which relate to both the Undertakings and the Commitments.

Complaints and requests for information can be raised in a number of ways, from formal complaints to information requests. The OBARCC will provide a choice for CPs if they wish to raise a concern or ask for information about the Commitments and/or Governance Protocol. They can do so either by raising a formal complaint or using our alternative “Quick Check” process, which provides a speedy review of informal complaints or information requests. Historically, the EAB found that the majority of CPs have opted so far to use the informal complaints process.

CPs can raise queries or complaints by contacting the CMO by email at the following address: [commitments.monitoring.office@openreach.co.uk](mailto:commitments.monitoring.office@openreach.co.uk).

### Complaints and information requests during 2018

During 2018 the CMO received one formal complaint from a CP, one informal complaint from Ofcom’s Competition Policy Director and two detailed Information Requests from Ofcom’s Openreach Monitoring Unit (OMU). These are described in more detail below.

#### ***FTTP Deployment in East Lothian, Scotland (Formal Complaint)***

In November 2017 the Openreach Chairman received a complaint from a CP raising concerns relating to Openreach’s FTTP deployment in the East Lothian area of Scotland already covered by their existing fixed-wireless broadband solution. The CMO investigated and found that the Openreach plans in the area had been cancelled after initial investigations, but the public website had not been updated. The CMO identified no Commitments issues, however a number of recommendations for improvement were identified. The CP was informed of the outcome of the investigation.

#### ***FTTP Deployment in Rotherhithe, London (Informal Complaint)***

In November 2017, following a site visit, Ofcom asked the CMO to investigate Openreach’s FTTP deployment plans in the Rotherhithe area of London. There were questions around the rationale for this potential overbuild and the use of pre-connectorised technology. The CMO’s investigation identified no areas of concern. A disabled end-user had written to Openreach complaining about the lack of adequate broadband on his ‘exchange-only’ telephone line and that had instigated the local FTTP build.

## Breaches

The Commitments place obligations on Openreach to identify and report breaches to the OBARCC. We will evaluate potential breaches reported to us by Openreach and CPs, as well as those identified through our own investigative work.

During the current year we were kept informed of Undertakings breaches affecting Openreach by the EAB. Now that the EAB has been stood down, the OBARCC will take over responsibility for assessing any new non-compliances with the Undertakings and the Commitments and Governance Protocol. We will seek to understand the impact that these might have on CPs and on Openreach’s business. In addition, we have taken over

responsibility for ensuring that any un-remedied Openreach Undertakings breaches are brought to a resolution as early as possible.

Breaches will be categorised by the OBARCC as either trivial or non-trivial.

- **A trivial breach** is where a technical non-compliance has been found. In most cases it has had little or no impact on CPs, such as certain instances of sharing information internally in BT with individuals who should not have been allowed access.
- **A non-trivial breach** is where non-compliance is considered to be more serious in nature and it may have had a direct impact on CPs, such as where Openreach has used a different process to provide service to BT and non-BT CPs.

The OBARCC will also have the option to exercise its discretion not to investigate fully a case if it considers the case to be very minor and the expense of a full legal and factual review would be disproportionate.

Following a breach notification from Openreach, the CMO will follow its internal process:

- the CMO reviews each case and reports to the OBARCC;
- the OBARCC determines whether it is a breach or not, gives its view on the case and either endorses Openreach's view of its significance (non-trivial or trivial), or makes a finding of its own; and
- the OBARCC also considers the appropriateness of Openreach's proposed remedial actions.

The CMO will independently investigate potential breaches, where it has identified something through its own reviews of Openreach's compliance or where a CP makes a formal or informal complaint. The CMO will also review matters where Ofcom has flagged a particular issue, brought to its attention by CPs or trade associations.

Finally, as previously stated, the OBARCC will be concerned with identifying not just breaches of the letter, but also where actions or behaviours are not aligned with the intent of the Commitments. With this in mind, we will be engaging industry experts to help us identify best practice in this area.

## 4 Outlook for 2018/19

We have a clear idea of the areas we intend to focus on in the coming year.

Firstly, now that our processes are fully up and running we are in a position to review any new potential breaches, complaints or other issues that may be identified during the coming year. We will also continue to report transparently to Ofcom via the CVP and the Commitments compliance dashboard. Secondly, we have identified a number of key priority areas of focus in the coming year and have summarised these below. And finally, we will continue to monitor any of the residual Undertakings items that haven't yet been superseded by the Commitments.

### **TUPE transfer of employees into Openreach Limited**

The key remaining step necessary to fully implement the new arrangements set out in BT's Section 89C Notification to Ofcom Commitments is for BT to transfer all Openreach employees into Openreach Limited under a TUPE arrangement and subject to the outcome of the statutory TUPE consultation. During the coming year we will be monitoring progress towards agreement and implementation of this transfer.

### **Product launches**

As Openreach brings new product offerings to market, we will conduct pre and post launch reviews as appropriate to ensure the products are consistent with the Commitments. Of particular interest will be the launch of the new OSA Filter Connect product variants and Single Order GEA (SOGEA) during 2018. In addition, we will pay close attention to the operation of the confidential consultation process for major initiatives to ensure that they are consistent with the intent of the Commitments.

### **Information disclosure process**

We will be conducting a review of the operation of the new information disclosure process to gain assurance that it is working effectively in practice.

### **AOP/MTP process**

The OBARCC's priority will be on ensuring that BT Group and Openreach have agreed usable AOP/MTP guidelines that capture the spirit of the Commitments and Governance Protocol's intention, and capture the learnings from 2017/18.

### **Governance arrangements**

We plan to conduct a review of certain aspects of governance within Openreach, including how the Delegations of Authority are agreed and implemented, training effectiveness, the operation of the Openreach SoR process and Product KPIs.

### **Stakeholder management**

We are very keen to continue our ongoing dialogue with CPs and stakeholders from across the industry, such as the OTA2. Therefore we would be pleased to hear from CPs and industry bodies who would like to engage with us, including by attendance at one of our regular meetings.

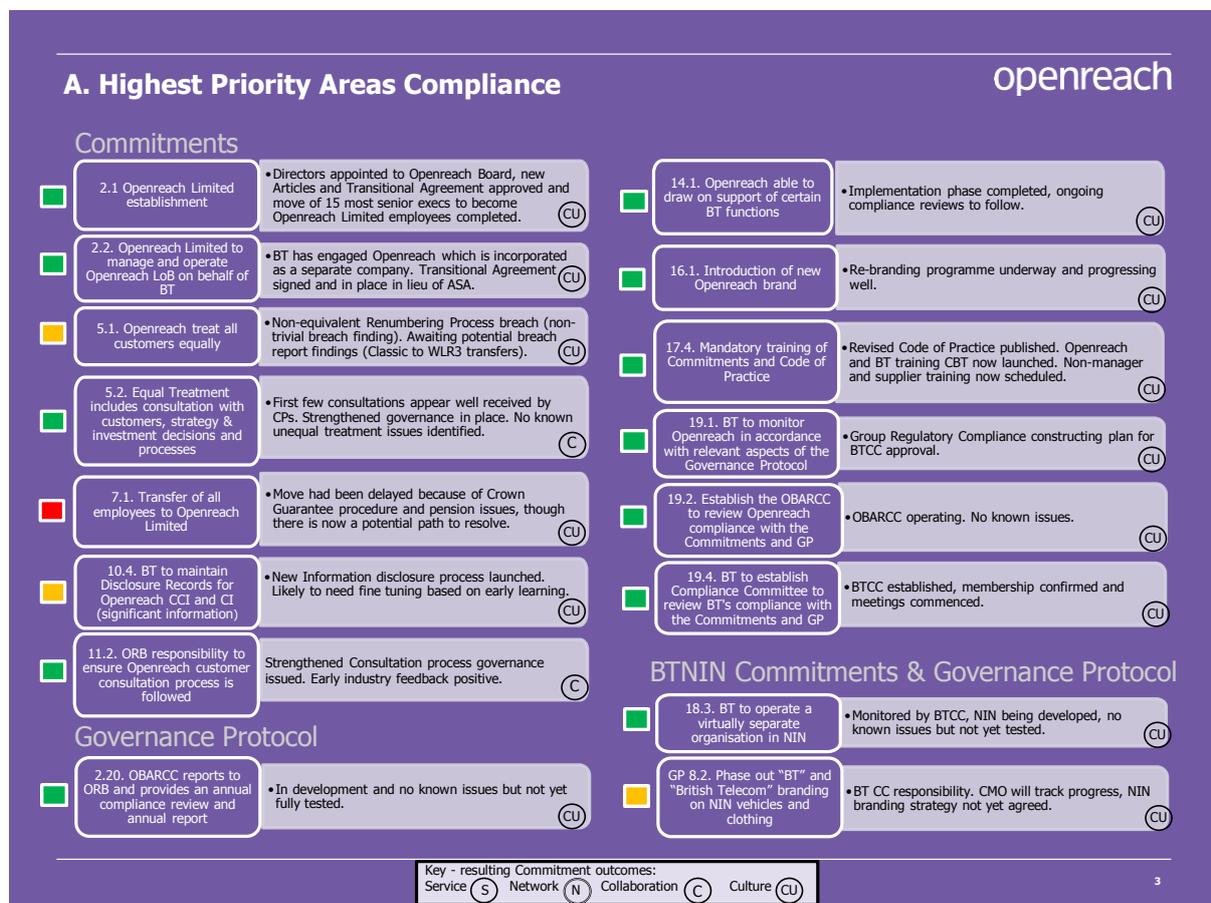
## 5 Glossary

AOP/MTP	Annual Operating Plan/Medium Term Plan
ASA	Agency and Services Agreement
B2B	Board to Board meeting
BARC	The BT Group plc Board Audit & Risk Committee
BT CPs	BT Communications Providers: BT Wholesale & Ventures and BT's downstream businesses: BT Global Services, BT Business and Public Sector, Plusnet, BT Consumer and EE
BTCC	BT Compliance Committee – the body responsible for reviewing BT's compliance with the Commitments and Governance Protocol.
BTW	BT Wholesale
CAO	Commitments Assurance Office
CCI	Customer Confidential Information
CEO	Chief Executive Officer
CFU	Customer Facing Unit
CI	Commercial Information
CMO	Commitments Monitoring Office
CPs	Communications Providers
CsOP	Codes of Practice
DCR	Ofcom's strategic Digital Communications Review
EAB	Equality of Access Board
EAO	Equality of Access Office
GEA	Generic Ethernet Access, a product enabling broadband connections over NGA
GP	Governance Protocol
KPI	Key Performance Indicator
NGA	Next Generation Access
NIN	Northern Ireland Networks
Non-BT CPs	CPs external to BT
OBARCC	Openreach Board Audit Risk & Compliance Committee
OMU	(Ofcom) Openreach Monitoring Unit

ORB	Openreach Board
OSA	Optical Spectrum Access, a product providing high bandwidth connectivity over dedicated fibre links
OTA2	Office of the Telecommunications Adjudicator 2
SoR	Statement of Requirements, the process by which CPs submit new product and service requirements to Openreach and BT Wholesale & Ventures
TUPE	Transfer of Undertakings Protection of Employment

# 6 Appendix

## Commitments Compliance Dashboard



**Note:**

BT is responsible for monitoring compliance of Northern Ireland Networks. However, during the current year, progress on implementing Commitments compliance in NIN has been included in the OBARCC's compliance dashboard for completeness.