

# OBARCC

## Commitments Compliance Report 2019



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 2019. Unless otherwise stated, all facts, statistics, events or developments are correct to the nearest practicable date before 20<sup>th</sup> June 2019. The Openreach Report is a requirement of the Commitments notified to Ofcom by British Telecommunications plc pursuant to Section 89C Communications Act 2003.

This report covers the 2018/19 financial year running from 1 April 2018 to 31 March 2019.

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# 1 Introduction from the OBARCC Chair

*The Openreach Board Audit Risk and Compliance Committee (OBARCC) is a committee of the Openreach Limited Board and also has a reporting line into the BT Group plc Board Audit and Risk Committee. This is our second annual Commitments compliance report<sup>1</sup> and provides an overview of our operation over the past twelve months and our plans for the year to come.*

I am pleased to introduce our second annual report, covering a year which has seen very significant progress in embedding the unique governance arrangements which BT and Ofcom agreed in 2017.

For our customers and stakeholders the significant strides which Openreach has made over the past year in service levels, increased investment in fibre to the premises, and in greater responsiveness to customer needs (which will be fully covered in Openreach's annual review) are more important than the detailed mechanics of the Commitments and Governance Protocol. But compliance with these, which OBARCC is tasked with monitoring as part of our wider audit, risk and compliance duties within Openreach, provides a key underpinning to Openreach's progress, and ability to engage confidentially and innovatively – but still equivalently – with our customers to better meet their needs. The GEA special offer developed this year is an excellent example of this.

The Commitments and Governance Protocol were adopted by Openreach and BT in April 2018 and came fully into force on 1 October 2018 with the TUPE transfer of more than 31000 Openreach employees to Openreach Limited. On the same date, BT's Northern Ireland operations transferred to be hosted by Openreach. Ofcom confirmed BT's release from the Undertakings on 31 October 2018.

However, this does not reduce the need for ongoing effort and vigilance to ensure the right balance between Openreach's greater independence and BT's parent company oversight and need to exercise its legal, regulatory and fiduciary duties. We welcomed in particular the finalisation of BT Group's strategy and financial planning processes - which were agreed with the Openreach Board - and the fact that BT transparently shared these with industry. Openreach operated in line with the financial planning process in 2018/19 and will follow the strategy process in 2019/20, although we note that BT's strategic framework needs to be finalised for this to be fully operational.

As well as monitoring the establishment of these processes, OBARCC commissioned a joint review with the BT Compliance Committee of parent/subsidiary relationships, and probed Openreach's supplier arrangements with BT. These two reviews have given us assurance that Openreach does have greater independence and that its supplier arrangements are appropriate, though the inherent tensions in the model mean that ongoing vigilance will be required.

Within Openreach, compliance with the arrangements has in general been good. No formal Commitments complaints were received from CPs, and the small number of breaches which were identified this year were mainly trivial and inadvertent instances of inappropriate information sharing. OBARCC will continue to monitor the changes to HR processes which have been made to help prevent such errors. We recognise the efforts made across the BT Group to implement the new arrangements over the course of the year and were

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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 2019, the **Openreach Report** also serves as the summary report.

encouraged by the results of a behavioural survey across the BT Group which found that culture both in Openreach and the rest of BT had evolved in response to the Commitments. But perhaps most significant of all was the feedback which we have received from CPs since introducing in October 2018 a regular slot for CPs to present to us. The verdict has been unanimous that there has been positive change in Openreach, and no significant compliance concerns have been raised in relation to the Commitments.

Thanks to OBARCC's wider remit, we are also able to scrutinise other key issues which lie outside the scope of the Commitments and Governance Protocol but which potentially raise issues of real concern to our stakeholders and customers. This year, for example, we have reviewed all the legal, regulatory and compliance aspects of the new Physical Infrastructure Access product, to ensure that Openreach does not unduly discriminate against our CP customers, and that there is no inappropriate sharing of information internally. We have also reviewed the criteria used by Openreach to decide on where to deploy Fibre to the Premises.

This has thus been a year of significant progress, with the formal implementation of the Commitments and new processes and ways of working established. But ongoing vigilance is required to guard against the risk of any significant breach which could undermine the growing trust which Openreach is building with our customers. And more work is needed to clarify how some of the general principles in the Commitments should be applied in practice. For example, as Openreach develops new ways of working with CPs, a key priority for the year ahead is to refine the processes that codify Openreach's commercial independence while BT retains appropriate parental control. We will also continue to monitor that the Openreach Board and its committees are appropriately recognised in BT's internal processes.

It is through such processes, and through ongoing training and culture change, that Openreach and BT Group will succeed in fully embedding these unique and important governance arrangements. It is these arrangements which underpin Openreach's progress in better meeting our customers' and our stakeholders' expectations.



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Edward Astle  
OBARCC Chair  
20th June 2019

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

## 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 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, with a remit across all audit, risk and compliance activities; and
- reviewing compliance by Openreach with the Commitments and the Governance Protocol.

### Meetings

During 2018/19 the OBARCC held five formal meetings. Minutes of our formal meetings have been provided to the Openreach Board and those parts of the minutes relevant to the Commitments and Governance Protocol 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 joined the Openreach Board in January 2017, having been an independent member of BT's Equality of Access Board (which monitored the Undertakings) since 2013. He has significant telecoms and board governance experience and is also chair of the Board of Governors of the University of Manchester.

His previous non-executive roles include Intertek Plc (the FTSE 100 international testing and inspection group, where he was a member of their risk and audit committee) and he was executive director of National Grid plc from 2001 to 2008, where he was responsible for their telecoms-related businesses. From 1999 to 2001 he was non-executive chair of three telecoms ventures, served as managing director of BICC Communications (and a director of BICC Group) and as executive and regional director of Cable & Wireless plc. He's held senior business strategy positions in the UK and France.

**Mike McTighe**

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

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 joined the Openreach board in January 2017 and 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 board of trustees of Mountview Academy of Theatre Arts.

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, the Court of Directors of the Bank of England and the Board of Transport for London.

**Liz Benison**

Liz joined the Openreach board in March 2017 and 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 specialises in transformation within businesses. Improving customer focus has been a key feature of Liz's executive roles to date.

Liz is currently part of the management board at Arriva, where she's responsible for a portfolio of business in mainland Europe. Before that she was at Serco, running one of their UK and Europe divisions. It was her team's job to restructure the company after it had some difficulties. Liz joined Serco in 2014 from Computer Science Corporation (CSC) where she'd spent the previous four years as vice president and general manager of their UK business. Previously she was chief operating officer 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 Undertakings to the Commitments**

At the start of this year, the Undertakings which BT had offered to Ofcom in 2005 were still in force. In April 2018, Openreach and BT adopted the Commitments and Governance Protocol, save for those trading aspects that might prematurely trigger a TUPE transfer of employees. The OBARCC and BT Compliance Committee (which is a sub-committee of the BT Group plc Board Audit & Risk Committee) took up their Commitments monitoring responsibilities at that point, and assumed the residual Undertakings monitoring responsibilities of the Equality of Access Board when it was stood down in May 2018.

The Undertakings remained in force until 31 October 2018, and so there were areas of overlap between the Undertakings and the Commitments for that period, principally the information sharing rules. BT and Openreach agreed, having discussed the matter with Ofcom, that they would work to the new, more rigorous information sharing regime in the Commitments during the period of overlap. The TUPE transfer of employees to Openreach

Limited took place on 1 October 2018, and Ofcom subsequently confirmed BT’s release from the Undertakings.

The Equality of Access Board made a number of recommendations to both its successor bodies. Those relevant to Openreach - establishing a comprehensive behavioural measures programme, proactively reviewing information sharing, and improving the governance of employee moves between Openreach and BT - have all been taken forward and are discussed in the ‘Review of the Year’.

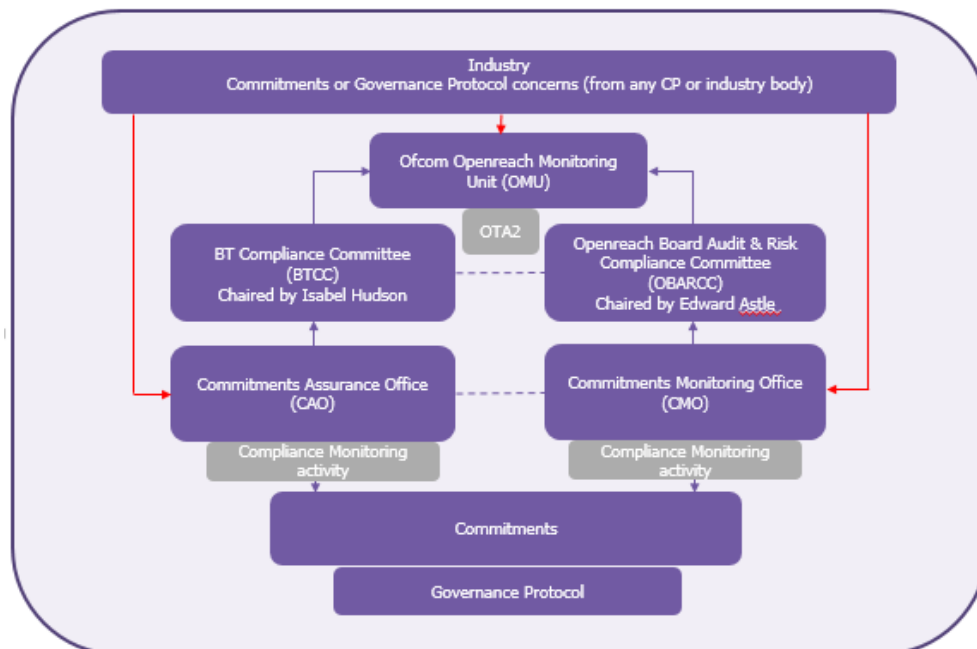
### The Commitments Monitoring Office (CMO)

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.

The OBARCC and CMO sit within an overall compliance monitoring framework which includes the Ofcom Openreach Monitoring Unit (OMU) and the BT Compliance Committee (BTCC). Industry can engage directly with any of these bodies, as shown on the diagram below.





## **OBARCC's processes**

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 of the Commitments or Governance Protocol. 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 23.

### ***Reporting***

We report regularly to the Openreach Board and provide the Ofcom OMU with a copy of the minutes of each OBARCC meeting which relate to the Commitments and Governance Protocol. We also report once or twice per year on non-Commitments matters to the BT Group plc Board Audit and Risk Committee (BARC).

### ***Investigations and reviews***

An important aspect of our work is the investigations carried out by the CMO in response to breaches and complaints or requests for information from CPs, industry bodies or Ofcom. The CMO also conducts proactive reviews into any areas of Commitments compliance which it has identified through its own monitoring work or at the request of the OBARCC. This work is detailed in the 'Review of the Year'.

## **OMU Information Requests**

During the year the CMO has responded to two detailed information requests on the Commitments 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, the SOR process and new information sharing arrangements.



## 3 REVIEW OF THE YEAR

This has been a significant year for the OBARCC, as the Commitments and Governance Protocol have come fully into force. Our approach to monitoring Openreach's compliance with the Commitments and Governance Protocol remains broad. We look to determine not only whether the letter of the Commitments has been complied with, but whether the intended outcomes are being achieved – which is a useful indicator of how well we are complying with the 'spirit' of the Commitments. We use our wider knowledge of Openreach to inform our activities within our specific Commitments remit, and of course consider Openreach's compliance with all applicable legislation and regulation - including competition law and appropriate internal information sharing - across all areas of our remit.

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

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

### Compliance Monitoring

We have set out below a number of key pieces of work that we have undertaken during the year.

#### Communications Providers presentations

One of the most useful initiatives we have pursued this year has been facilitating a regular slot for CPs to present at each of our quarterly meetings. The presentations are made in confidence to the four Openreach non-executives who are the OBARCC members. CPs are welcome to raise any issue, but we always take the opportunity to check their views of the Commitments and Openreach's compliance.

Three CPs have presented to us so far this year: TalkTalk Group, Virtual 1 and Sky. Gamma Telecom and BT Consumer are due to present to us later in 2019. All three CPs we have spoken to so far have been positive about the changes they have seen in Openreach. TalkTalk Group raised some specific Commitments issues, including a request for greater transparency on the Openreach trading model, its interactions with BT as a supplier and the level of BT Group's involvement in Openreach's decision-making. We have addressed these areas this year: BT has published its [processes](#) for strategic and financial planning, which it agreed with the Openreach Board; we commissioned a review of Openreach's supplier arrangements, and the results were shared with industry at the OTA2 Executive; and we have conducted an in-depth review of interactions between Openreach and its parent company, known as 'Project Seesaw', which is reported below.

#### Full implementation of the Commitments and Governance Protocol

BT's March 2017 notification to Ofcom, in response to Ofcom's DCR strategic review, set a number of pre-conditions which had to be fulfilled before the Commitments and Governance Protocol could come fully into force. In April 2018, Openreach and BT adopted the Commitments and Governance Protocol, save for those trading aspects that might prematurely trigger a TUPE transfer of employees. The TUPE transfer of more than 31000 Openreach employees to Openreach Limited took place on 1 October 2018. Ofcom confirmed BT's release from the Undertakings on 31 October 2018, completing the final pre-

condition needed for the full implementation of the Commitments and Governance Protocol.

### **Openreach Northern Ireland**

At the same time as the Openreach employees transferred to Openreach Limited, on 1 October 2018, BT's Northern Ireland operations moved to be hosted by Openreach, under the new name of Openreach Northern Ireland. Formal responsibility for monitoring compliance in Northern Ireland transferred to Openreach at this point, and the OBARCC's terms of reference were updated to include this responsibility.

Openreach Northern Ireland remains a virtually separate organisation which provides an end to end service using Openreach, BT Enterprise and BT Technology products and services to install, support and maintain the entire Northern Ireland electronic communications network, working on behalf of a number of retail CPs. This brings its own unique compliance challenges and this is therefore an area we will be reviewing in greater detail in the next year. The CMO maintains regular engagement with Ofcom Northern Ireland and Northern Ireland CPs, and has investigated several informal complaints relevant to Northern Ireland this year (detailed in the 'Complaints and requests for information' section on page 13).

### **Financial 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. We reported last year that BT had attempted to draft guidelines for those involved in the Annual Operating Plan/Medium Term Plan (AOP/MTP) process, to include details of how Openreach and BT should interact under the new Commitments governance arrangements, but that these had not been agreed at the time of our last annual report. Guidelines for the financial planning process have now been approved and made available to industry. We have closely monitored how this process has operated in practice and have found that it has been followed compliantly, that the expected controls have been operating and that there is an evidenced audit trail of how the plans have developed and the reasons for any changes. Whilst there are some small points of learning that can be incorporated for future years, in summary, the financial planning process is now more effective and able to provide greater assurance that Openreach and BT Group are operating in line with the Commitments.

### **Annual strategic development process**

Openreach's new annual strategic development process has recently been agreed and will operate for the first time in 2019/20. This process requires BT's strategic framework to be finalised before it can be fully implemented. We will be reviewing both the framework and the operation of the strategic development process within Openreach over the coming year.

### **Information disclosure process**

The Commitments information disclosure process came into effect in early April 2018 and requires the control of Openreach Commercial Information (CI) and Customer Confidential Information (CCI) so that it is not inappropriately shared with BT employees. In addition, there is an obligation for significant information within these categories which is shared with and within BT to be recorded and reported to the OBARCC under a disclosure record, unless there is a specific information sharing agreement already in place. BT has put in place a marker system on its internal employee directory to identify the BT employees with whom Openreach's CI and CCI information can be shared. It has set up information sharing

agreements, to cover information which is required to be shared and so is not specified in the disclosure record.

We received the first disclosure record report from BT at our July 2018 meeting and, over the course of the year, we have asked for this report to be refined. While the information sharing agreements work well for standard information sharing, we supported changes to the disclosure record to ensure information sharing on key sensitive projects was captured for our review, even where such projects were covered by an information sharing agreement. We also welcomed work from the compliance teams in BT and Openreach to review the scope of the information sharing agreements to make sure significant information was appropriately captured in the disclosure record. We subsequently agreed that, where information is shared as set out in agreed processes (such as the financial planning process), there should be no need to include that information in the disclosure record. The compliance teams have responded to our feedback and we recognise that improvements have been made to the report during the year: a greater volume of disclosures are now being made and so reported, while fewer unnecessary disclosures are being made. The report also now highlights key themes from the disclosures. We have been reassured that the Openreach Business Integrity team has done deep dive reviews of information sharing within high-risk teams but we need to see further work to be assured all disclosures are actually being reported. We have asked the CMO to review the report with Openreach's Business Integrity team and we – in co-operation with the BTCC - will continue to look for improvements to make this process fully effective.

### **Project Seesaw and supplier reviews**

During the course of the year, it became clear that there were a number of areas and processes where it had not yet been defined how to strike the right balance between Openreach having greater independence and BT retaining appropriate parent company control. We therefore commissioned two reviews around Openreach's interactions with BT. One reviewed the functions where there were interactions between Openreach and BT as a parent company (Project Seesaw) and the second reviewed the services where Openreach chooses to have BT as a supplier.

Project Seesaw was implemented in two phases. The first phase, which took place earlier this year, focused on whether there was a clear way of working between BT and Openreach that both parties were comfortable with and that was documented so it could endure. It examined each of the corporate functions (HR, finance, legal, regulatory affairs, etc) and found most had settled into an agreed way of working, and for those where there were issues, most notably 'brand marketing', an agreement was facilitated. However it found that a number of functions needed to better formalise their way of working and this was subsequently completed. One outstanding item is the finalisation of the Group strategic framework, which is an important last step in making the strategy development process complete in practice.

With the way of working agreed, the second phase looked at the extent to which this provided Openreach with greater independence. A key test was whether Openreach was treated differently from the other BT divisions. This has now completed and concluded that there were good examples of different processes, as well as many cases where Openreach was following the same underlying process as other divisions. What contributed most to Openreach's greater independence was the existence of the Openreach Board, Openreach's board members and Openreach having its own corporate teams for functions such as regulatory affairs and public affairs. One of the challenges of our governance structure is that – in compliance with the Commitments - BT's Delegation of Authority follows an executive line, going directly from the BT Group plc CEO to the Openreach CEO. This is

managed by the Openreach Board being included in those decisions which involve Openreach's parent company, but is nonetheless an area we keep under review. We will continue to monitor whether the processes in place offer Openreach sufficient independence in practice, and that the Openreach Board and its committees have appropriate recognition in BT's internal processes.

The supplier review has identified some areas where Openreach has chosen to go outside BT, and confirmed that there are valid reasons for choosing BT as a supplier in other areas. The results of the review have been shared with industry at the OTA2 Executive.

### **Product and offer reviews**

The CMO reviews the launch of new products and special offers for compliance with the Commitments. This year, it has confirmed that Optical Spectrum Access Filter Connect was launched compliantly and conducted an in-depth review of the Generic Ethernet Access (GEA) special offer, also known as 'Project 112'. This review was done in conjunction with BT's Commitments Assurance Office (CAO), and gave us assurance that the Commitments had been respected in the interactions between Openreach and BT Group, both in terms of information sharing and BT Group's involvement in the Openreach decision-making process. There was also evidence of Openreach liaising with CPs and taking account of their feedback as it developed the structure of the special offer and, in response to issues raised by industry, the CMO was able to confirm that the final offer did not disadvantage smaller CPs, nor did it favour BT CPs. We have, of course, also monitored that Openreach complies with all regulatory and legal requirements, with a particular focus on the competition law aspects of the GEA special offer.

### **Behaviours and employee moves**

When the Equality of Access Board handed over to us its monitoring responsibilities, it recommended that we take forward establishing a comprehensive behavioural measures programme and improving the governance of employee moves between Openreach and BT.

We have seen through the course of this year that employee moves from Openreach to BT, and subsequent failure to update email distribution lists, have been a source of information sharing breaches. We understand why information sharing remains a key concern for CPs, and have pushed for action to be taken to amend Openreach's policies and practices to make this less likely. Openreach has safeguards in place to mitigate information sharing risks when Openreach employees move to roles in BT. For high-risk employees, these can include periods of gardening leave, and these employees no longer receive external emails sent to their old Openreach email addresses. A solution to stop internal emails is due to be implemented by the end of June 2019. Openreach has now committed to advertise sensitive Openreach roles externally as well as in BT Group, and a review of Openreach employees moving to BT Group has found that such moves are limited: 64 managers, across a range of areas and seniority levels, but the majority in junior roles, have moved into a variety of areas in the BT Group over the last year.

There was a detailed internal communications campaign to support the move of employees into Openreach Limited on 1 October 2018, which reinforced the message of a new Openreach. In addition, BT commissioned a comprehensive survey across the BT Group this year by external culture experts, to measure progress instilling a Commitments-compliant culture. The consultants presented their findings to us in January 2019, and we welcomed their assessment that the culture across the Group, including Openreach, had evolved in response to the introduction of the Commitments and that it was ahead of where the consultants had expected it might be at that stage. We agreed with their view that strong

leadership would continue to be important for the Commitments to become fully institutionalised and noted the areas they had identified as risks to continuing progress: employees' confidence to make decisions at an appropriate level and processes which were not cumbersome. We receive a detailed behavioural report six-monthly and will continue to monitor this important area closely.

### **Openreach branding**

For end customers and CPs, 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 progress has been made. In the UK mainland, 67% of Openreach vehicles were rebranded at the end of April 2019 and 97% of contractor vehicles. All Openreach clothing is now up to date with the new brand, and over 50% of employee passcards, while 78% of buildings have been rebranded. In Openreach Northern Ireland, all staff were supplied with new Openreach branded workwear and Openreach passcards in October 2018. Of the 618 vehicles used by Openreach Northern Ireland, 318 have now been rebranded, with the remainder planned for completion by the end of this calendar year.

We will be continuing to track progress of the changes during the coming year.

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

Last year, the CMO investigated two complaints about the deployment of FTTP. We have taken a keen interest in ensuring this flagship programme operates in line with all the relevant legislation and regulatory requirements, covering competition law as well as the Commitments. We have specifically reviewed the process Openreach uses to decide on areas for deployment and confirmed there were no issues under the Commitments or other concerns.

### **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. Following the disbanding of the Equality of Access Board, the OBARCC also had responsibility for assessing Openreach complaints which related to the Undertakings whilst these remained in force.

Complaints and requests for information can be raised in a number of ways, from formal complaints to information clarification 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 clarification requests.

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 received during 2018/19

During 2018/19 the CMO received no formal complaints but had sixteen issues raised which it classified as ‘informal complaints’. The sixteen informal complaints investigated by the CMO are categorised and described in more detail below.

For all complaints, the CMO investigates and reports back its findings to the organisation who raised the issue.

Issues/concerns raised regarding Equivalence	CMO response
A CP raised a concern with the CMO regarding potentially non-equivalent comments made by an Openreach employee on the Linked In social media site.	Openreach confirmed to the CMO that the person who made the comments had been interviewed and appropriate disciplinary action taken. In addition, Openreach issued a communication briefing on the compliant use of social media.
A CP raised equivalence concerns regarding a Wholesale Line Rental 3 (WLR3) service provision order for a temporary site office. When an order was raised directly with Openreach, the CP was quoted for a survey plus excess construction charges (ECC) costs. When the CP raised a similar request with Openreach via its wholesale CP, no survey or ECC costs were raised.	Openreach was able to confirm that, when the order was placed directly with Openreach, the product correctly included a site survey and an action to remove the physical infrastructure from the location when the line was ceased, in compliance with health and safety requirements. When the order was placed via another wholesale supplier, it was raised with Openreach as a standard order (with no infrastructure removal) and therefore attracted no survey or ECC costs. Hence the difference in the costs was down to a difference in the exact order raised.
A concern, originally raised by industry at the Ethernet Product and Commercial Group industry meeting, that Supplier Information Notes relevant to Openreach were located on a BT controlled site was also raised separately with the CMO by the Ofcom OMU.	This concern was reviewed and Openreach has now taken action to ensure that Openreach Supplier Information Notes –which are appropriately located on the BT controlled site - can only be accessed by BT employees in the same way as they are available to the rest of industry. The CMO have confirmed that this is the case.
A CP raised concerns with the CMO regarding Openreach people moves to BT. The CP indicated that it believed that Openreach should treat moves to BT just as it might treat external moves, with no preference given to Openreach role vacancy candidates from BT and no secondments from BT to Openreach. In addition the CP felt there should be suitable non-compete and non-disclosure obligations imposed on leavers and that BT people joining Openreach should sell BT shares and share options.	The CMO was able to confirm that, in response to the concerns raised by the CP, the Openreach people moves policy had been enhanced to include a wider range of Openreach people in sensitive roles moving to BT. The policy requires gardening leave and/or other steps to be implemented for Openreach individual leavers in sensitive roles where appropriate. The CMO also found that enhanced email controls were being implemented for people leaving Openreach to join BT. The CMO gained assurance that many Openreach roles were now being advertised externally. When BT people join Openreach they are not eligible for future executive BT share incentive schemes, but the Commitments do not require BT people to sell their BT shares (or any other CP shares) upon joining Openreach.



<p>The Ofcom OMU flagged a consumer customer concern regarding whether the Broadband service provision in a specific Sheffield street location was being provided equivalently as some customers on the street were potentially receiving faster broadband service than others.</p>	<p>The CMO investigation identified that service to customers in the street in question had been provided over a lengthy period of time and that, during that time, building developments had resulted in service to some customers being provided by a second street cabinet. This had resulted in customers receiving different broadband speeds, depending on the distance between their premises and the street cabinets through which their Broadband was being provided. Openreach has a policy of not re-routing customers when new cabinets are introduced. The CMO was able to provide a detailed response to the Ofcom OMU and to the customer, who accepted the OBARCC findings although they remained unhappy with the broadband speed they were receiving.</p>
<p>A customer flagged a potential non Equal Treatment/equivalence behavioural concern to the CMO that Openreach engineers laying super-fast cables at a premises in Monmouthshire, told customers to contact BT Broadband Business for service and request 'fibre to prem'.</p>	<p>The CMO found that there was no record of any Openreach engineers visiting the site for over a year and therefore could not progress the investigation any further. The customer was happy for the investigation not to be progressed, as fibre access had now been provided.</p>
<p><b>Issues/concerns raised regarding the GEA special offer (known as the 112 deal)</b></p>	<p><b>CMO response</b></p>
<p>The Federation of Communication Services (FCS) raised concerns on behalf of its members that discounts initially discussed for the GEA special offer (known as the 112 deal) could potentially disadvantage smaller CPs.</p>	<p>The CMO reviewed the offer as it evolved with the development of specific bandings for the different CP communities and gained assurance of transparent engagement by the Openreach product team with industry, which included responding to CP concerns.</p>
<p>A CP raised a concern that CPs had been offered commercial terms on Fibre to the Cabinet (FTTC) that provided discounts in return for volume commitments and that BT CPs had potentially been offered different terms to non-BT CPs.</p>	<p>As part of the wide-ranging review of the Openreach GEA Volume Broadband Agreement Special Offer as detailed above, the CMO identified that each of the bandings would likely be attractive to more than one CP. There was no specific banding that would benefit only BT CPs.</p>
<p>A CP raised a concern there had been no Openreach proposal for commercial terms on FTTP, which the CP had been expecting, and that it was potentially not receiving equal treatment via the GEA special offer.</p>	<p>The CMO was able to confirm that the Openreach FTTP consultation started in July 2017 and that the CP had responded to it in September 2017. Industry was initially told there would be a second consultation during November/December 2017 but were then informed by Openreach there would be no second consultation as Openreach had decided to move forward with FTTP more swiftly than previously planned. Details of the proposed commercial offer were shared with industry as the deal option details evolved, following Openreach engagement with CPs. The CMO identified no discrimination against the CP and was able to clarify that the Openreach GEA Volume Broadband Agreement Special Offer did not favour BT CPs.</p>



<b>Issues/concerns raised regarding Openreach Northern Ireland (ONI)</b>	<b>CMO response</b>
A Northern Ireland based CP flagged a concern that an 'Ambition' magazine article in Northern Ireland made references to BT in an article that was primarily about ONI.	The CMO found that the magazine had made the error and confirmed back to the concerned CP that the ONI compliance team had subsequently liaised with the magazine to ensure this type of error was not repeated.
A Northern Ireland based CP flagged a concern to the CMO regarding potential collusion between a BT person and ONI on a community fibre partnerships voucher scheme.	ONI were able to confirm to the CMO that the individual that the CP thought worked for BT, no longer worked for BT and was actually an ONI employee who had not updated their LinkedIn profile. The individual's profile was updated and Openreach published briefing guidance on the importance of ensuring that social media details were kept up to date.
The Ofcom OMU flagged a CP concern to the CMO regarding a Hays field service engineer job advert publication in Northern Ireland which stated that the vacancy was for 'BT Openreach'.	The CMO was able to confirm back to the Ofcom OMU that human error had led to the advert being incorrectly worded by Hays who, following discussion with the ONI compliance team, now understood that future adverts should not make any reference to BT and should simply be for ONI.
<b>Issue/concern raised regarding Passives/Duct and Pole Access (DPA)</b>	<b>CMO response</b>
A CP involved in DPA raised a concern with the OBARCC regarding potential non-compliant information sharing on a school fibre service provision, where a BT Local Business (BTLB) employee engaged with the school shortly after the CP had placed an order with Openreach.	The CMO investigated whether there had been any collusion between Openreach and the BTLB, and the BT CAO investigated what triggered the BTLB engagement with the school. The CMO and CAO found that the BTLB had previously engaged with the school regarding a service offering and had re-engaged due to increased fibre access in the local area. There was no evidence Openreach had inappropriately shared any information with the BTLB.
<b>Issue/concern raised regarding Trials compliance</b>	<b>CMO response</b>
The FCS raised a concern with the CMO around whether an Openreach chargeable trial for Copper/GEA provision and repair had been adequately communicated to and was affordable by all CPs.	The CMO investigation found that the trial had been communicated to all of industry and there was no disadvantage for smaller CPs. However, the trial rollout had been accelerated in response to industry feedback and requirements. Openreach committed to communicating trial terms more clearly going forward.

Issues/concerns raised regarding Billing compliance	CMO response
The OTA Executive flagged a concern to the CMO that had been highlighted at the industry billing forum that BT Group people, who supplied billing services to Openreach and were in possession of commercially sensitive CP information, could move roles to support BT downstream CPs and potentially share information that might provide BT downstream CPs with an advantage.	While the CMO identified no Commitments compliance breach, BT and Openreach have agreed to strengthen the controls in place to ensure that any BT billing people moving role, for example, to support downstream CPs, are carefully monitored and managed.
A CP raised a concern that Openreach had continued to over-apply Deemed Consent on Ethernet provision orders after Openreach was aware of Ofcom's Deemed Consent findings (in late 2016).	The CMO found that Openreach had taken the decision to remedy quality shortfalls in the Deemed Consent process by making proactive payments to CPs, and had implemented a set of improvement initiatives that were thorough and subject to independent assessment.

## Breaches

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

Whilst the Undertakings remained in place, we were responsible for assessing any new potential breaches of the Undertakings and for ensuring that any un-remedied Openreach Undertakings breaches were brought to a resolution as early as possible. No new Undertakings breaches were identified this year, and we were able to agree over the course of the year that all the previously identified Undertakings breaches which were relevant to Openreach had been resolved.

We have adopted practices to categorise breaches which align with those adopted by the BTCC. Breaches are categorised by the OBARCC as either trivial or serious:

- **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 serious 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 has the option to exercise its discretion not to investigate fully if it considers any 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 (serious 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.

The OBARCC has agreed that five breaches occurred this year, one of which was serious, and all of which concerned inappropriate information sharing.

**Serious breach**

Type	Description of breach	Remedy
Sharing of CI	Inadvertent sharing of Openreach CI when a weekly report on complaints received by Openreach was inappropriately shared with a BT Group employee for over three months. The information would have given little commercial benefit to BT but this was agreed to be a serious breach as it was not corrected when it was originally identified.	An incorrect email distribution list, which was the source of the breach, was corrected.

**Trivial breaches**

Type	Description of breach	Remedy
Sharing of CCI	Inadvertent sharing of Openreach CCI when a legacy distribution list was used which included a former Openreach employee who had moved to a BT role.	The distribution list was updated. Openreach is progressing an email programme which will block internal emails to high-risk individuals who have moved to BT; the block is already in place for external emails.
Sharing of CCI	Inadvertent sharing of Openreach CCI as part of cross-team work with other BT units to rectify a system error.	The information was recalled/confirmed as deleted.
Sharing of CCI	Inadvertent sharing of Openreach CCI as part of cross-team work with other BT units to improve escalation handling.	The information was recalled/confirmed as deleted.
Sharing of CCI	Inadvertent sharing of Openreach CCI when it was emailed to a BT employee who had the same surname as the intended recipient.	The information was confirmed as deleted.

**Non-conformances with policy**

We also review **non-conformances** with policy, where there has been no breach of the letter of the Commitments but where nonetheless there is an area of concern. This would typically be where policies established to ensure compliance with the Commitments - but which are

not mandated in the Commitments - have not been followed. Non-conformances can also be categorised as either trivial or serious.

The OBARCC has agreed that six non-conformances with policy occurred, one of which was serious.

The serious non-conformance concerned nine individuals moving from BT into Openreach prior to formal transfer, to satisfy business critical needs. In all instances the individuals had a clean break from their old BT role and solely worked on their new Openreach responsibilities.

The remaining five cases all concerned potentially inappropriate information sharing and - while investigation confirmed these were not Commitments breaches - Openreach has reviewed and tightened its processes as a result.

### **Remedied Undertakings breaches**

The EAB reported to us five breaches of the Undertakings relating to Openreach which remained unremedied at the time that the EAB was stood down. Four of these cases were remedied and closed in July 2018; the final one was remedied and closed in January 2019.

Four of the cases concerned inappropriate information sharing. The fifth case concerned a WLR product variant, which allowed vulnerable customers' calls to be controlled, being made available only to BT Consumer. This had been made available by BT's technology function and, once Openreach was aware, it committed to make a similar product variant equivalently available to all CPs.

### **Cases agreed by the BTCC**

Over the course of the year, the BTCC has reported to us four breaches and six non-conformances. Details of these are published in the BTCC's [regular bulletin](#) and annual review.

## 4 Outlook for 2019/20

In the coming year we will continue to report transparently to Ofcom via the CVP and the Commitments compliance dashboard. While we recognise that considerable progress has been made in establishing the Commitments and the processes to support them, we are conscious that embedding them so they become ‘business as usual’ is the challenge through which we must now view future progress. We have identified a number of key priority areas of focus and have summarised these below.

### **Openreach’s strategic independence**

There are several key areas where Openreach must have sufficient independence of decision-making from BT and we will remain focused on these areas to ensure they are working effectively. We will continue to monitor the operation of the financial planning process during 2019/20 and we have also started our initial monitoring of Openreach’s new strategic development process, including the development of BT’s strategic framework. A further process, which sets out Openreach’s commercial independence, is being updated and we will review this as it progresses. We will follow-up on the outcomes of the supplier review and Project Seesaw to ensure they are sustained and embedded, and monitor new arrangements proposed for the branding teams to confirm these remain compliant with the Commitments. BT has recently announced a share distribution for all its employees, and we will review the compliance of the proposed award for Openreach employees.

### **Information sharing and the disclosure process**

As we report in the breaches section, all of the breaches reported to us this year related to information sharing, which demonstrates that this remains a key risk area for compliance. The new information sharing and disclosure process must be effective and clear enough for employees to comply with the rules, and for the OBARCC to be assured that information is only shared as is necessary. Whilst the design and implementation of the new process continues to evolve, there must be an ongoing focus on appropriate controls and behaviours to guard against issues arising. In addition, the perpetual challenge of preventing inappropriate access to Openreach systems requires constant vigilance and innovative controls.

We will follow-up on the outcomes of our review of the operation of the new information sharing and disclosure process. This includes identifying improvements on giving assurance that all relevant instances are being self-reported and that there is clear analysis as to whether the sharing was necessary. In addition, we will consider the outcomes from the planned audit of systems separation by BT Group Internal Audit to assess whether Openreach information continues to be sufficiently ring-fenced from the rest of BT.

### **Culture and Behaviours**

There has been significant effort to promote and progress an independent culture within Openreach over the last 12 months and we recognise similar effort has been made within BT Group. Ensuring that this endures will be vital to the success of the Commitments, and we consider this should be an area of ongoing attention for the OBARCC.

We will continue to review Openreach behavioural measures on a regular basis, and engage with the BTCC where its monitoring work includes the review of relevant employee behaviours in BT Group. We will also seek confirmation that changes made to the Openreach email system have been implemented and are operating effectively. In

particular, we will review any significant new initiatives by Openreach (such as innovative pricing offers) to ensure that they are consistent with the Commitments.

### **Customer Engagement**

The Openreach confidential Customer Consultation process has not yet been widely used by CPs. It is not yet clear whether this is because CPs do not trust the new process or because they are satisfied that Openreach is responding to their needs via general business process engagement.

We will continue with our ongoing monitoring of the wider consultation process and the SoR process, including any specific CP requests if appropriate. In addition the CMO will continue to attend industry forums including the Copper/Fibre Product & Commercial Group, Ethernet Product & Commercial Group, and the Passives Industry Working Group forum and the Telecom Stakeholder Forum in Northern Ireland.

### **Commitments compliance in Openreach Northern Ireland**

Since 1 October 2018, the former Northern Ireland Networks team has been hosted by Openreach, and known as Openreach Northern Ireland. However, apart from some minor changes to the information sharing processes, the structure and way this team operates remain largely the same as before. Unlike Openreach in the rest of the UK, Openreach Northern Ireland provides an end to end service using Openreach, BT Enterprise and BT Technology products and services to install, support and maintain the entire Northern Ireland electronic communications network, working on behalf of a number of retail CPs.

Given the risks inherent in the unique structure of Openreach Northern Ireland and the recent change of host organisation, we intend to conduct a review of how the Commitments are being operated in Openreach Northern Ireland and whether Commitments compliance has become fully embedded within the organisation. We will also monitor ongoing progress on re-branding and the CMO will continue to attend the Telecoms Stakeholder forum in Northern Ireland twice a year.

### **Equal Treatment of Openreach customers**

We recognise that CPs may want more tailored product offerings from Openreach or co-investment opportunities, and these could give rise to tension with the Commitments requirement for Openreach to treat all CPs equally. Therefore we will continue to monitor this area closely. We will continue to review that new products are designed and launched in compliance with the Commitments, such as the planned Single Order Transition Product (SOTAP) which will be an enabler for WLR withdrawal. We will be monitoring closely the operation of the Physical Infrastructure Access product through the year.

### **Stakeholder management**

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

## 5 Glossary

AOP/MTP	Annual Operating Plan/Medium Term Plan
BARC	The BT Group plc Board Audit & Risk Committee
BT CPs	BT Communications Providers: BT Enterprise and BT's downstream businesses: BT Global Services, Plusnet, BT Consumer and EE
BTCC	BT Compliance Committee – the body responsible for reviewing BT's compliance with the Commitments and Governance Protocol.
CAO	Commitments Assurance Office, the BT team which supports the BTCC
CCI	Customer Confidential Information
CEO	Chief Executive Officer
CI	Commercial Information
CMO	Commitments Monitoring Office, the Openreach team which supports the OBARCC
CPs	Communications Providers
DCR	Ofcom's strategic Digital Communications Review
EAB	Equality of Access Board
FCS	Federation of Communication Services, an industry association for (mainly small and medium sized) CPs delivering voice and data communications solutions to UK business and public sector customers
FTTC	Fibre to the Cabinet
FTTP	Fibre to the Premises
GEA	Generic Ethernet Access, a product enabling broadband connections over Next Generation Access (NGA)
KPI	Key Performance Indicator
Non-BT CPs	CPs external to BT
OBARCC	Openreach Board Audit, Risk & Compliance Committee
OMU	(Ofcom) Openreach Monitoring Unit
ONI	Openreach Northern Ireland
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
UKCTA	UK Competitive Telecommunications Association, a trade association promoting the interests of fixed-line (mainly larger) CPs in the residential and business markets
WLR	Wholesale Line Rental, a service in which a CP takes control of the connections made through a telephone line and is able to bill the customer



# 6 Appendix

## Commitments Compliance Dashboard

OBARCC Commitments Compliance dashboard		openreach
Status by Section		
1. General Provisions	• Delays agreeing changes to the BT Pension scheme via the "Statutory Instrument" have now been resolved. No further issues.	11. Customer Consultation Process – all phases
2. Set the purpose and incorporate Openreach limited	• Openreach Limited incorporated. The Agency and Services Agreement is now operational.	12. Separate Headquarters
3. Openreach Division remit	• Openreach is providing products on behalf of BT. No known issues, ongoing compliance reviews to follow.	13. Systems Separation
4. Operating as a Functionally Separation Division	• Openreach Board in place to enable Openreach to operate and be managed as a separate division. No known issues.	14. Supply of Services by BT
5. Equal Treatment of Customers	• No current concerns. The challenge is how to meet individual CP requests in a tailored and equivalent manner.	15. Sales Activities
6. Strategy of Openreach	• The Strategy development process now agreed and published. Confirmation of the BT Group strategic framework awaited.	16. Branding
7. Transfer of Openreach Employees	• BT TUPE consultation completed and people transferred into Openreach Limited as of 1st Oct 2018.	17. Code of Practice
8. Employee remuneration arrangements	• Openreach remuneration committee reviewed this and identified no concerns.	18. Northern Ireland arrangements
9. Openreach assets and trading	• AOP/MTP process now agreed and published, no known issues but not yet fully operationally tested for a full process cycle.	19. Monitoring of Compliance
10. Protecting confidentiality and influence	• Information disclosure record process in place. Operation and reporting of information shared during major projects needs to be fully tested and confirmation that report meets audience's requirements.	20. Openreach Division Reporting
		21-27. Other legal requirements

**Note:**

From 1 October 2018, BT’s operations in Northern Ireland moved to be hosted by Openreach and the OBARCC took over responsibility for monitoring Openreach Northern Ireland’s compliance.