

# Memorandum of Understanding (MoU)

**Between**

**Ofcom**

**and**

**BT**

This Memorandum of Understanding (MoU) sets out the working arrangements agreed between the Commitments Assurance Office within British Telecommunications Plc (the CAO), and the Openreach Monitoring Unit within Ofcom (the OMU).

The purpose of the OMU is to monitor and report on implementation and compliance with the Commitments and Governance Protocol notified by British Telecommunications plc to Ofcom on 10 March 2017, including on the extent to which Openreach is acting independently of the Rest of BT (BT), treating customers equally and acting in the interests of all its customers (the “Monitoring Activities”). The monitoring process is intended to be rigorous and Ofcom expects BT to cooperate fully with the OMU to facilitate its Monitoring Activities. In particular, Ofcom expects that BT will:

- provide all information requested for the purposes of the OMU’s Monitoring Activities in a timely manner;
- allow the OMU full and open access to the business to conduct its Monitoring Activities. This will include open access to any relevant individuals at all levels of seniority within BT, as well as attendance by the OMU in an observational capacity at selected meetings of BT decision-making bodies, including the Board and its committees.

This MoU does not have legal effect and therefore the legal rights of Ofcom, BT and any third parties are accordingly reserved. To the extent the text of this MoU is inconsistent with the Commitments, the Commitments shall prevail. Nothing in this MoU shall fetter Ofcom’s statutory powers in respect of any matter.

## **Background**

1. On 10 March 2017 BT gave a notification to Ofcom (the Notification), pursuant to Section 89C Communications Act 2003. Pursuant to the Notification, BT will adopt a set of Commitments and a Governance Protocol, through which it will implement changes to the governance structure of the Openreach Line of Business (Openreach), in order to secure its greater strategic and operational independence from BT.
2. On 13 July 2017 Ofcom published its statement “Delivering a more independent Openreach”, in which it set out the positive outcomes it expects to see for consumers and businesses as a result of the implementation of the Notification (the “DCR outcomes”).
3. Pursuant to the Commitments and the Governance Protocol, BT has established:
  - a. the BT Compliance Committee (BTCC), whose terms of reference include having the responsibility, on behalf of the BT Board, for ensuring that BT is complying with the Commitments and the Governance Protocol; and
  - b. the Commitments Assurance Office (CAO), with responsibility for monitoring and reporting to the BTCC on BT’s compliance with the Commitments and the Governance Protocol.

4. Ofcom has established the Openreach Monitoring Unit (OMU) with responsibility, on behalf of Ofcom, to carry out the Monitoring Activities, in line with its general duties in carrying out its functions.

#### **Purpose**

5. This MoU is designed to enable the OMU to effectively carry out the Monitoring Activities and sets out the working arrangements established between the CAO (on behalf of BT) and the OMU.
6. The MoU does not cover:
  - a) how the OMU will monitor and report on Openreach's compliance with the Commitments which is covered under a separate MoU with the Openreach Commitments Monitoring Office (CMO);
  - b) the relationship between BT and Ofcom on other regulatory matters, unless and insofar as they affect the Commitments; and
  - c) how Ofcom will undertake its overall assessment of the DCR outcomes, save that information gathered under this MoU may be used by Ofcom as it sees fit when it undertakes that assessment.

#### **Guiding principles**

7. This MoU is agreed in order to clearly set out the collaboration required to deliver a successful monitoring and reporting regime.
8. Through its Monitoring Activities, the OMU will develop a rounded, robust and comprehensive view of BT to judge whether it, in all its relationships with Openreach, is acting in line with the "letter" and "spirit" of the Commitments and the Governance Protocol which are intended to ensure that Openreach is run in a way that supports independent decision-making in the interest of all its customers. This will involve OMU engagement with BT at all levels of seniority and, subject to paragraph 10 below, relies on full and open access to the business for the purposes of carrying out its Monitoring Activities.
9. The OMU's Monitoring Activities will assess whether the management of BT and its relationship with Openreach, as well as the behaviour of BT employees, are in line with the 'spirit' of the new model and its intended outcomes, as well as complying with the 'letter' of the Commitments and Governance Protocol.
10. Any activity carried out by the OMU under the MoU, and any requests made by the OMU to the CAO to undertake activity under the MoU, will be proportionate and reasonable, and reasonably required to carry out its Monitoring Activities.

#### **Role of the CAO**

11. The CAO's role is to support the BTCC by analysing and reporting regularly to BTCC on the detailed status of BT's implementation and compliance with the Commitments and the Governance Protocol. It is responsible for:
  - a. investigating complaints made by CPs, BT or Openreach employees, or issues raised by Ofcom, relating to allegations of breaches of the Commitments and/or the Governance Protocol by BT;
  - b. presenting the findings related to alleged breaches of the Commitments and the Governance Protocol to the BTCC;
  - c. producing any reports requested by the BTCC, for example, covering BT's implementation and compliance with the Commitments and the Governance Protocol, and its handling of customer complaints and representations; and
  - d. ensuring, on behalf of BT, that all activity required by this MoU is carried out.

### **Role of the OMU**

12. The OMU will, on behalf of Ofcom, monitor, gather evidence and report on matters relating to the Monitoring Activities, including:
  - a. the implementation of the legal separation between BT and Openreach;
  - b. Openreach's and the wider BT Group's compliance with the Commitments and the new Governance Protocol; and
  - c. the extent to which Openreach is acting independently of BT, including the extent to which it is making its own decisions, treating customers equally and taking strategic decisions that are made in the interests of all its customers in line with the Commitments and the Governance Protocol. This will include the extent to which BT creates a successful culture that values Openreach's independence.
13. Any information gathered, or outputs produced under this MoU will also be used by Ofcom in its overall assessment of DCR outcomes.

### **Working together to facilitate monitoring of the commitments**

14. The OMU and CAO will work together in an open, transparent and collaborative way.
15. The CAO will be BT's key interface with the OMU. The CAO will cooperate with any requests made by Ofcom for the CAO to undertake activities in accordance with clause 11 in the course of its Monitoring Activities. The CAO will collect evidence to be made available to Ofcom and will facilitate any activity being undertaken by the OMU in accordance with clause 12 as part of the OMU's Monitoring Activities.
16. The OMU and CAO have agreed the following ways of working relating to key activities carried out under the monitoring regime.

#### *Information provision*

17. The CAO shall provide to the OMU regular updates on implementation progress, and provide assurance that BT has taken all such steps required to fully implement the Commitments and the Governance Protocol. To the extent that there are any concerns relating to the progress of implementation, the CAO will inform the OMU without delay.
18. The CAO will be open and straightforward in its dealings with the OMU, and will share relevant information and issues of potential concern with the OMU on a proactive basis. The OMU will review and, as appropriate, verify information provided by the CAO. The CAO will fully participate in, or ensure BT's full participation, in any such verification activity.
19. Each year the OMU will set out an annual work plan identifying the information the OMU requires as part of its Monitoring Activities. This will be prepared by the OMU and shared with the CAO, who will be provided with a reasonable opportunity to make representations before it is finalised by the OMU.
20. The CAO will use its best endeavours to:
  - a. ensure that all information provided under the monitoring regime is accurate, complete and not misleading;
  - b. ensure information is provided in the form and manner requested by the OMU and in accordance with the deadlines set out in the work plan or, unless otherwise agreed, within a maximum of 15 calendar days of the request; and
  - c. ensure, on reasonable notice, that sufficient staff or other resources are made available to meet the requirements set out in the work plan, including but not limited to facilitating:
    - i. interviews of BT employees, including senior management, and BT Non-Executive directors, by members of the OMU;
    - ii. attendance by members of the OMU, for observational purposes, of selected meetings of BT decision making bodies, such as the BT Board, BTCC and

- other Committees as these relate to or affect the Monitoring Activities (the OMU will select which meetings it wishes to observe); and
- iii. other onsite work or observation activity as required.

21. To the extent the OMU requires information, or to undertake one or more of the activities set out at paragraph 20(c) above, outside that identified in the work plan, this will be discussed with the CAO in advance where possible. The CAO will use its best endeavours to facilitate such additional activity or information provision in a timely manner, in accordance with the deadline set, or unless otherwise agreed, within a maximum of 15 calendar days of the request.
22. As part of its Monitoring Activities, the OMU will gather information using both voluntary requests (in accordance with the OMU workplan) and, where the OMU deems it appropriate to do so, using statutory information gathering powers (including pursuant to section 135 Communications Act 2003). The CAO will provide information in accordance with paragraph 20 (a)-(c) above.
23. To the extent the OMU intends to rely on specific information provided by the CAO on a voluntary basis, for example in advance of key publications referring to or relying on such information, the OMU may require the CAO to confirm the accuracy and completeness of such information in the context of a statutory request (including under section 135 Communications Act 2003).

Dealing with complaints

24. Any complaints or representations made to the CAO alleging failure to comply with requirements of the Commitments and/or the Governance Protocol will be investigated by the CAO as part of its monitoring regime. When the CAO carries out such investigations, it will report the findings at a summary level to the OMU, and will provide full details of such investigations to the OMU on request. Should the OMU not be satisfied with the action taken by the CAO and/or BT relating to such complaints and representations, it may escalate the issue in accordance with paragraph 28, carry out its own investigation or refer it to other parts of Ofcom for further regulatory scrutiny if appropriate.
25. The OMU may identify a concern relating to BT's compliance with the Commitments and/or the Governance Protocol, or may receive complaints or representations from CPs or other stakeholders. In such circumstances the OMU may decide to investigate such a concern itself or, subject to confidentiality concerns, refer the complaint to the CAO for investigation.
26. Where the CAO carries out an investigation it will report progress and outcomes as part of its monthly meetings with the OMU or as soon as its investigation is completed (whichever is earlier). In the event that the OMU carries out the investigation, the CAO will facilitate the provision of information, onsite work or access to BT employees, including senior management and BT Non-Executive directors required by the OMU in accordance with paragraph 20 above. The OMU will share the outcome of the investigation with the CAO as part of its monthly meetings (subject to confidentiality concerns).
27. The OMU will report on such complaints and representations as part of its annual compliance reports (subject to confidentiality concerns).

Escalation of issues

28. If the OMU becomes aware of a failure (or potential failure) by BT to comply with requirements of the Commitments and/or the Governance Protocol, it may take such steps as it deems appropriate in the relevant circumstances. For example, the OMU may take one or more of the following steps:
- a. hold discussions with the CAO;
  - b. undertake a more detailed investigation;
  - c. attend the next scheduled BTCC meeting to discuss that matter;
  - d. escalate the matter to the relevant senior manager, the Chief Executive, the Chairman or other Non-Executive Director(s) of BT as appropriate; and/or

e. report such non-compliance in its annual monitoring reports.

29. To the extent the OMU identifies issues that could represent wider compliance failures (e.g. associated with General or SMP Conditions), it will refer this to other parts of Ofcom for resolution in accordance with its normal investigation and enforcement procedures.

Northern Ireland monitoring

30. The Openreach Board Audit, Risk and Compliance Committee (OBARCC) will be responsible for the monitoring of compliance by Openreach Northern Ireland (OR NI) with the Commitments and the Northern Ireland Governance Protocol, as applicable. The CAO's liaison with the OBARCC will include:

- a. keeping itself informed in relation to the OBARCC's monitoring activities in relation to compliance by OR NI where these relate to BT Plc activities; and
- b. discussing complaints or representations relating to OR NI and related investigations by the OBARCC on issues that might have an impact on BT's compliance with the Commitments and/or the Governance Protocol.

Reporting / outputs

31. The CAO will produce an annual report for the BTCC on BT's compliance with the Commitments and the Governance Protocol and its handling of customer complaints and representations. The CAO will:

- a. share a draft of the report with the OMU at least 5 working days in advance of submission to the BTCC in order to (i) fact check the draft report and (ii) enable the OMU to comment before the report is submitted to the BTCC by the CAO and take account of any comments made by the OMU; and
- b. once endorsed by BTCC, provide the final report to the OMU at least 3 working days in advance of publication.

32. The OMU will publish regular reports into Openreach and the wider BT Group's compliance with the Commitments and the Governance Protocol, including:

- a. an Implementation Report, describing the steps taken by Openreach and BT Group to implement the Commitments and the Governance Protocol, the monitoring activity carried out by the OMU in the period and the extent to which Openreach has complied with the spirit of the Commitments in advance of implementation;
- b. an initial Compliance Report, six months after the publication of the Implementation Report; and
- c. Annual Compliance Reports, each year thereafter.

33. The OMU's annual compliance monitoring reports will complement and provide input to Ofcom's assessment of DCR outcomes.

Regular meetings

34. The CAO and the OMU will, unless otherwise agreed, meet at least monthly to discuss:

- a. progress against the CAO's Commitments Validation Plan (CVP) and OMU's workplan;
- b. any issues, complaints and breaches concerning the Commitments and the Governance Protocol identified in the period;
- c. the outcome of any audits and reviews carried out by the CAO concerning the Commitments and Governance Protocol, or by Ofcom under Ofcom's work plan;
- d. the latest status of the CAO's Commitments Compliance Dashboard covering implementation, compliance and independence and equal treatment; and
- e. any other issue arising in the period relevant to the Monitoring Activities or the DCR outcomes.

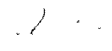
Other activity

35. To the extent the OMU and CAO carry out activity in relation to the Commitments and the Governance Protocol not explicitly mentioned above, the general principles set out in this MoU apply also to any such activity.
36. More widely, as part of its statutory duties, Ofcom will also assess whether the new arrangements deliver positive outcomes for competition and consumers (taking account of the monitoring outputs generated by the OMU). Ofcom will also continue to carry out other policy and enforcement activity, including that associated with SMP and General Conditions, in accordance with normal procedures.

**Review**

37. This MoU is in force from the date of signature and will remain in place for as long as the Commitments and Governance Protocol remain in force, unless agreed otherwise by Ofcom and BT. It will be reviewed annually by OMU and CAO and any resulting amendments will only be incorporated if both parties agree.

**Signed on behalf of Ofcom**



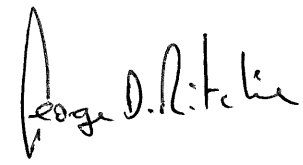
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**Name: Gaucho Rasmussen**

**Position: Director of Investigations and Enforcement**

**Date: 17 October 2018**

**Signed on behalf of BT plc**



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**Name: George Ritchie**

**Position: Commitments Assurance  
Director**

**Date: 17 October 2018**