

Short-term requirements for improvements to the PIA remedy under the WFTMR

Urgent action required by Ofcom

June 2024

Non-confidential

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1 Executive summary

- 1 This report sets out improvements to the PIA product that Ofcom should ensure are implemented before the expiry of the Wholesale Fixed Telecoms Market Review (WFTMR) in March 2026. INCA will produce a separate report setting out the specific PIA provisions that should be included in the Telecoms Access Review (TAR).
- 2 PIA is Ofcom's remedy to enable the promotion of infrastructure competition. Ofcom stated the importance of the PIA remedy in its 2021 Wholesale Fixed Telecommunications Market Review:

"Openreach will continue to be required to allow all network operators to lay their own fibre networks using Openreach's infrastructure through its Physical Infrastructure Access (PIA) product. This access facilitates competition by cutting the upfront cost of building these competing networks by around half, and several firms are already using Openreach's ducts and poles to connect thousands of homes and businesses without having to dig up streets multiple times".¹

- 3 INCA consider that PIA is not a fully effective remedy and believes the current product has constrained PIA users' ability to compete effectively with Openreach.
- 4 Flaws in the design of the regulated product, clunky and inefficient processes, and a lack of any credible prospect of enforcement of the letter and spirit of the WFTMR result in PIA users having to deal with delays that Openreach do not face.
- 5 The WFTMR required that:

"IT systems should where possible provide an integrated solution between PIA users and Openreach to facilitate process automation and help ensure that PIA can be used at scale, in a cost-effective and predictable manner."

¹ WFTMR final statement, 18 March 2021, Volume 1, Page 2.

and that,

Openreach should “*build any new or upgraded services, systems and processes in a way that supports EOI*”.²

- 6 INCA does recognise that improvements have been made. Systems and processes have been ‘upgraded’. However, PIA users do not consider that upgrades have been provided in a manner that ‘supports EOI’. Many of the changes implemented by Openreach are adjustments to existing systems and processes and have resulted in little progress towards EOI for PIA users.
- 7 With the support of the OTA2, the PIA product has improved substantially since the major review in 2018, but INCA is concerned that Ofcom has not proactively sought to enforce the provisions in the WFTMR.
- 8 INCA considers that fair, efficient, transparent and non-discriminatory PIA terms and processes are an integral part of delivering the ‘fair bet’ stated by the government in the Statement of Strategic Priorities³ (SSP), and also referenced by Ofcom in the context of both the WFTMR and the TAR.
- 9 Many of the issues presented in this report show that Openreach continues to fail to recognise and treat PIA users as customers for the PIA products due to PIA products, systems and processes designed with limited or late consultation with PIA users, or even with the PIA team within Openreach who are often left trying to resolve problems caused by changes made with little or no thought for PIA customers (for example the introduction of the Arena app).
- 10 Ofcom should require Openreach to address the timeliness and simplification of its processes and ensure that transparency is applied to those processes in the form of meaningful and reportable Service Level Agreements (**SLAs**) to underpin the

² WFTMR final statement, 18 March 2021, Volume 3, Para 3.79.

³ Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services. Department of Digital, Culture, Media and Sport, 29 October 2019.

commercial relationship between PIA users and Openreach. Such process areas of concern include:

- a. The resolutions of D-pole health and safety related issues and the D-pole replacement processes,
- b. Management of NOIs whilst there remain outstanding Network Adjustments,
- c. Ensuring that there is a transparent, “timely”, and reciprocal process in place to for both Openreach and PIA users to respond to and manage damage claims,
- d. Improvements to Openreach’s process for the billing of PIA products as well as the commercialisation of the overall PIA management and billing process,
- e. Measuring Openreach performance on delivery against original rather than adjusted CCD, and
- f. Improvements to allow PIA users to meet Government’s requirements to protect vulnerable users..

11 Openreach’s IRO provides limited details on the use of its infrastructure. There are opportunities for Openreach to reduce the amount of discrimination by ensuring that equivalent processes are applied to PIA users as those used internally by Openreach. A statement of “non-equivalence” should form a starting point for consideration of actions that Openreach should take to provide EOI to PIA users.

12 Absent of ‘hands on regulation’ and oversight by Ofcom the industry has worked hard to improve the PIA product. Specifically, INCA appreciates the support that has been provided by the OTA2.

13 INCA calls upon Ofcom to ensure that Openreach delivers to the regulatory requirements that are set out in the WFTMR and does not rely on the offices of the OTA2. It is clearly Ofcom’s role to ensure compliance with the WFTMR.

2 Introduction

- 14 There are currently significant differences between how PIA products are provided to PIA users and how Openreach has access to the same infrastructure. This ongoing situation creates significant issues for PIA users to be able to compete effectively against Openreach.
- 15 INCA recognises the progress being made on improvements to the PIA products as well as the supporting systems and processes. The unwavering hard work by the OTA2 has played a large role in achieving those improvements and INCA recognises the OTA2 expertise and impartiality in navigating the challenges that arise in the course of using the PIA product.
- 16 However, these improvements are in many cases for issues that were raised by PIA users in previous years when no agreement was reached. Thus, they represent the classical picture of an incumbent ‘walking backwards slowly’. Even with the improvements that have been made, it is not as easy or as efficient for PIA users to build networks using PIA as it is for Openreach to use the same infrastructure. This is because many administrative processes apply only to PIA users and also because those processes are not supported by clear SLAs and SLGs as would be the case in many commercial supply contracts. In some cases it is because Openreach provides a better system to itself / its contractors than it does to PIA users (e.g. the Orion mapping tool versus the PIA mapping tool).
- 17 Flaws in the design of the regulated product leads to delays in PIA users’ build programmes and missed service delivery dates for end-users. These have a significant impact on the business performance of PIA users.
- 18 This report identifies a number of the key issues faced by PIA users and provides, where appropriate, recommendations for improvements that Ofcom should require Openreach to make in the remaining period of this WFTMR in order to ensure that

Openreach complies with its obligation of no undue discrimination. This report calls for Ofcom to step in and ensure the improvements are made quickly and efficiently.

19 This report is structured as follows:

- a. Background,
- b. PIA users' issues with current PIA remedy,
- c. Summary of Recommendations.

3 Background

20 PIA, as a remedy, was first introduced in 2011. The promotion of infrastructure competition in the 2015 Strategic Review of Digital Communications led to improvements in the PIA remedy with continuations of improvements through the 2018 Wholesale Local Access Market Review (WLAMR) and the 2019 Physical Infrastructure Market Review (PIMR). In its 2021 WFTMR Ofcom set out its decision to impose on Openreach a requirement to provide specific network access in the form of physical infrastructure access (**PIA**). That decision also required Openreach to provide PIA ancillary services and to publish a PIA reference offer. Specifically in its decision Ofcom states that:

*"[a]n effective PIA remedy is key to [Ofcom's] strategy as it secures the access to Openreach's physical infrastructure that will help support other telecoms providers in deploying competing fibre networks at scale."*⁴

21 The Ofcom decision is clear that, absent of regulation, Openreach would have the incentive and ability to favour BT's downstream businesses over competing telecoms providers in the relevant downstream markets, distorting competition in these markets, which is ultimately against the interest of consumers.

⁴ WFTMR final statement, 18 March 2021, Volume 3, Para 4.2.

*“Openreach could provide access to its physical infrastructure on less favourable terms and conditions compared to those obtained by its own downstream businesses”.*⁵

22 Ofcom’s 2020 Openreach Monitoring Unit (**OMU**) Annual Monitoring Report⁶ reported that:

“more needs to be done to ensure PIA is effective”

and that,

“some network operators do not always feel that they are receiving fair and equal treatment.”

The report also highlighted a requirement for

*“enhanced communication about Openreach’s internal processes to help it demonstrate compliance with non-discrimination obligations”.*⁷

23 In autumn 2020, the industry identified five areas of work (the “five initiatives”) intended to help meet its objective to ‘industrialise’ PIA. These were formally agreed at the September 2020 CEO’s duct and pole industry roundtable meeting.⁸ The five initiatives are:

- a. Data integrity and information sharing,
- b. Network adjustments, and their related processes,
- c. IT systems, to support the PIA interface between Openreach and the PIA users,
- d. Processes, to support efficient and effective PIA usage,
- e. Equivalence, addressing concerns with transparency and compliance with no undue discrimination (**NUD**) obligations.

⁵ WFTMR final statement, 18 March 2021, Volume 3, Para 4.11.

⁶ Ofcom, 19 November 2020, Openreach Monitoring Unit’s Annual Monitoring Report 2020.

⁷ WFTMR final statement, 18 March 2021, Volume 3, Para 4.4.

⁸ Minutes of 7th CEO’s meeting on PIA implementation, 29 September 2020.

24 Thanks to PIA users working with the OTA and Openreach through the PIA Product and Commercial Group, the PIA Executive Steering Group and the PIA CEO forum (chaired by Melanie Dawes), there have been positive developments to the regulated PIA product.

25 However, INCA members continue to be concerned that the PIA product is not effective in addressing BT's SMP position and that BT has material advantages in its network construction and maintenance compared to PIA users. Using tried and tested techniques of denying and delaying product developments to PIA users, BT has successfully managed to leverage its dominant position in the legacy copper world to establish a new dominance in the FTTP world, much as it did when the market transitioned from dial up internet access to always on broadband.

26 The regulation contained in the 2021 WFTMR for Openreach to develop PIA systems and processes leading towards equivalence for the products.

27 The 2021 WFTMR included Openreach's positions that:

"... any PIA remedy needs to incentivise PIA customers to 'control their own civils/skilled engineering burden they place on Openreach'. It encouraged more PIA customers to do their own civils works, including management of local factors such as geography, wayleaves, street work regulations, and adverse weather".

Openreach concluded by stating that:

"it was willing to work with PIA users and Ofcom to improve performance within PIA systems and processes"..⁹

28 Ofcom summarised its reasoning and decision by stating that:

"PIA is a collection of systems and processes to facilitate access to BT's physical infrastructure, with telecoms providers using such physical infrastructure in a variety of ways once access is achieved. PIA implementation is an ongoing activity and

⁹ WFTMR final statement, 18 March 2021, Volume 3, Para 4.75.

*product developments are likely to be introduced access the five-year review period”.*¹⁰

29 Ofcom states that

“PIA systems must be efficient and capable of meeting demand for large-scale fibre deployment.

Importantly, the 2021 WFTMR includes the requirement that:

“IT systems should where possible provide an integrated solution between PIA users and Openreach to facilitate process automation and help ensure that PIA can be used at scale, in a cost-effective and predictable manner. As progress continues with development of API tools for PIA, we expect Openreach to work with telecoms providers as these systems are launched, recognising PIA users need to contribute requirements and feedback in a timely manner to assist with implementation”.

*“We expect Openreach to build any new or upgraded services, systems and processes in a way that supports EOI. While we accept that this might not always be possible, we would require a strong justification for not doing so and consider such circumstances to be exceptional. We consider that making new or upgraded services, systems and processes equivalent from the outset will not involve the same level of disruption and cost as reengineering existing ones. When Openreach is developing any systems relevant for PIA, it should ensure that these are fully interoperable with the systems of third parties. Given our position that Openreach must provide its services, systems and processes on an equivalent basis wherever possible, we do not consider that we need to set a timetable for imposing an EOI requirement or for Openreach to begin using PIA for its own operations”.*¹¹

30 Despite those statements, Ofcom has not involved itself actively in the policing of their implementation. The OTA2’s role has been to facilitate operational improvements, not to push Openreach to comply with the WFTMR provisions. It

¹⁰ WFTMR final statement, 18 March 2021, Volume 3, Para 4.94.

¹¹ WFTMR final statement, 18 March 2021, Volume 3, Para 3.79.

would not be appropriate for the OTA2 to take on that role as it could compromise its valuable role as an independent facilitator.

- 31 The 2021 WFTMR sets out the requirement on Openreach to publish an IRO to allow Ofcom and stakeholders to identify any difference in the processes for internal use of network access to such use by third parties.

“The IRO should set out the services to facilitate access to BT’s physical infrastructure that Openreach uses in a different manner to its customers, giving visibility to any justification for non-equivalence, as well as highlighting where processes, rules or systems (or similar) are the same. For example, where engineering rules are equivalent, this should be transparent. This will help to ensure that PIA users can have confidence that they are not at a disadvantage, particularly in terms of extra cost, time or uncertainty, where Openreach follows different processes.”¹²

- 32 In INCA’s experience, little or no benefits have resulted from the IRO. This is because it does not focus on what differences there are between Openreach’s own access and that of PIA, nor explain the justification for those differences.

- 33 Ofcom set out that it expects that:

“new or upgraded services, systems and processes to be built in a way that supports EOI. Where Openreach introduces new or upgraded services, systems and processes on a non-equivalent basis, it must update the published IRO according, giving industry and Ofcom visibility of such developments. Equally, where system developments remove, or reduce, non-equivalence between internal operations at Openreach and PIA, that would require an update to the published IRO.”¹³

- 34 Essentially the 2021 WFTMR had little impact on the PIA remedy from previous decisions taken by Ofcom. The only significant differences were the reference to EOI for new systems and processes and the call for a PIA product usable at scale.

¹² WFTMR final statement, 18 March 2021, Volume 3, Para 4.108.

¹³ WFTMR final statement, 18 March 2021, Volume 3, Para 4.110.

Whilst the scale deployment has been progressed, no effort has been made towards EOI.

35 The Statement of Strategic Priorities for telecommunications¹⁴, to which Ofcom must have regard when exercising its regulatory functions, Government refers to the ‘fair bet’ wherein:

“an effective ‘fair bet’ regime would be one that allows firms making large and risky investments to have confidence that any regulation will reflect a fair return on investment, commensurate to the level of risk incurred at the time of making the investment decisions”. Notably, Government includes all firms in its definition of the fair bet.

INCA considers that providing a fair bet approach requires a significant reduction of the differences between the conditions faced by PIA users and Openreach itself to use Openreach’s passive assets.

4 PIA user issues with current PIA remedy

36 INCA recognises that, due to the OTA2 involvement and consistent pressure for improvements from PIA users, there have been gradual improvements with the PIA product, however significant issues remain. Key to this situation is that Openreach has yet to provide a full suite of processes and systems to support the PIA product in order to comply with the principle of “no undue discrimination” required by Ofcom. Further, despite the fact that Openreach has introduced new processes, systems and Apps for its own access to ducts and poles and for PIA products, there has been a complete lack of movement towards EOI. Nor have there, to the best of our knowledge, been any processes for Openreach to justify how and why those processes have not been designed to be EOI compliant. This being despite the fact

¹⁴ Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services; DCMS; October 2019.

that Ofcom clearly set out its expectation in the WFTMR that “*new or upgraded services, systems and processes to be built in a way that supports EOI*”.

37 Whilst there has been progress on the issues raised by PIA users in the various forums, there remain ongoing concerns that should be addressed by Ofcom in the short term and under the WFTMR provisions. That would deliver benefits to the operations of PIA users, and to some extent reduce the operational burden on Openreach as well.

38 For many of the issues raised by PIA users the “devil is in the detail” as different PIA users often have different issues with the same process. This report summarises some of those issues faced by PIA users, that INCA believes should be addressed by Openreach in the short term. This section sets out some of the issues across a number of themes, those themes being:

- a. PIA products
- b. PIA processes and systems
- c. Network Adjustments
- d. Claims and damages
- e. Billing for PIA products
- f. No Undue Discrimination

39 The order in which issues are discussed in this report does not provide a prioritisation of the issues.

4.1 PIA products

40 Openreach does not use PIA products. Openreach does not operate within the same constraints as PIA users and therefore Openreach should not second guess PIA users’ requirements. Closer working and understanding of the PIA users’ requirements are essential for the success of PIA.

41 This section identifies issues faced by PIA users with the PIA product. Whilst the PIA product does not lend itself to innovation, it is important that PIA users do not face unnecessary discrimination through bundling of PIA products as well as restrictions on duct space that are not true reflections of the actual PIA product deployed.

42 Ofcom should ensure that Openreach designs PIA products, systems and processes in a way that it could use them itself, if required to. The scope and scale of the operations of Openreach is significantly different than its customers, the PIA users. Openreach should openly consult with its customers on all matters of developments and improvements to PIA products and ensure it works closely with its customers to meet those requirements.

4.1.1 *Bundling of PIA products*

43 INCA is making proposals in relation to the TAR that include simplified pricing for PIA products. This paper is a standalone paper and, as it addresses issues under the WFTMR, considers the issues faced today under current product and pricing frameworks.

44 Owing to the way that some PIA products are defined and provided, there is potential for unnecessary and disproportionate waste and additional costs to PIA users. For example, individual items to provide a customer lead-in have now been replaced by a 'kit' to provide the lead-in over an 'average' distance, as defined by Openreach. PIA users are finding that the average 'actual' lead-in is potentially materially shorter than the length provided for in the kit. Therefore, PIA users consider that they are overpaying for the kit including the longer lead-ins. Either PIA users should pay for the actual length of the lead-in used and/or they should be able to choose between buying a kit (or choice of kits of different lead-in length) or buying the individual elements to provide the lead-in. Openreach's own costs of lead-ins are not subject to this bundled cost, so PIA users are often at a financial disadvantage to Openreach. Whilst the simplification of the product portfolio could be beneficial, it should not be at the cost of fair and non-discriminatory pricing.

45 Openreach should be required to review all PIA products to ensure that PIA users only have to purchase those products that are appropriate to meet their needs and are not restricted to unnecessary bundling.

4.1.2 Provision of sub-duct

46 The use of sub-duct in the network in many situations does not reflect the actual deployment, and therefore the actual space consumed, by the PIA users.

47 The current 25mm sub-duct product provides more capacity than is required by most PIA users and, in many cases, PIA users are using cables of a smaller diameter in the space available and not deploying sub-ducts at all. Therefore, the unit of “25mm sub-duct” is excessive and does not optimise the usage of duct space.

48 The selection of 25mm for the sub-duct was based on the Openreach practice of using 25mm rod (as part of the cable installation process). However, if PIA users find a blocked duct or less than 25mm space, Openreach uses a 16mm or a 12mm diameter device to remove blockages and the duct is then deemed fit for use despite 25mm space not being available.

49 Openreach’s plan for exchange closure will result in increased duct utilisation around the surviving exchanges and therefore it is important that there is a review of the PIA product prior to that. In addition to the current 25mm option, the availability of smaller diameter PIA duct access products would result in less space used by each PIA user and therefore less duct congestion going forward. Although the WFTMR specifies the 25mm product, Ofcom should require Openreach to offer additional products that more realistically reflect the actual use of duct space by PIA users.

4.2 PIA process and systems

50 Despite improvements made, PIA users continue to experience inefficiencies with current processes and systems that seriously impact both the short- and long-term operation of their businesses.

51 Openreach should improve transparency of its systems and processes plans and include PIA users at a very early stage to ensure that their requirements are sought, understood, accommodated and reflected in any modification and/or development. Such transparency is within the scope of the WFTMR and should be mandated by Ofcom.

52 PIA products and associated processes and systems are designed from the point of view of Openreach, with PIA users only being able to “tinker at the edges” of the development and not able to influence the overall design of processes and systems during the early stages. This results in processes and systems that do not meet PIA user needs and increases the administrative overhead to the PIA user.

4.2.1 General systems related issues

53 Openreach’s systems and associated processes are not supportive of a “shared environment”. This is particularly true of non PIA specific changes which often seem to occur with little or no consideration of PIA or involvement from the Openreach PIA team. Even when a development is PIA specific, the approach taken by Openreach seems to focus on “how would Openreach consume PIA” and is less based on a consideration of how to supply PIA to the PIA users. PIA products appear to have been designed by “Openreach standards” rather than Openreach considering how other operators could fit into Openreach’s network.

54 When Openreach develops systems or functionality it should consider the wider community and provide functionality to PIA users within the same timescales that it provides such functionality internally. There needs to be increased visibility upfront to determine functionality (**open conversations**) with collaboration between Openreach and PIA users through the complete design and development phase. Openreach’s PIA processes should not be designed without engagement of the relevant PIA interest groups. SORs for system development need to include PIA users specifically in budget setting for systems requirements as, whilst such developments may have little interest within BT, they do have the potential to significantly impact on PIA users. PIA users should be given the option of

contributing to the development budgets of changes and improvements they have requested.

4.2.2 *Implementation of APIs*

55 For those PIA users making use of Openreach's APIs, the APIs work well and do deliver operational benefits. However, the APIs are often difficult to implement for the PIA users and often take many months to become operational. Implementation support by Openreach is lacking with a limited resource to handle PIA user queries. Often Openreach take many days to respond which delays the development of PIA users' systems to take advantage of the APIs.

56 For existing PIA users, i.e. a PIA user that has already built network using PIA products without the APIs, there are data management issues for the implementation of APIs. The data structure used by Openreach for its APIs do not reflect the structure used by PIA users and therefore the data requires to be processed manually into Openreach's data structure to allow the API to function. This requires PIA users to allocate significant resource to undertake the data management process to introduce APIs. Newer PIA users do not face those issues.

57 Ofcom should require that Openreach, in its development of systems and APIs, ensures that it focuses on the requirements of PIA users, including understanding the issues faced in the implementation and ongoing management of any system introduced.

4.2.3 *Processes for PIA users not using APIs*

58 For PIA users that do not make use of the APIs, the processes and systems are described as "clunky", "not straight forward", "difficult to use", and "not user friendly". Whilst there are benefits for Openreach in PIA users moving to use the APIs, this may not be realistic for smaller PIA users. Smaller PIA users do not believe that Openreach understands the scale of their operations and therefore is not able to meet their requirements for effective and efficient manual processes that work for them. The current manual processes place considerable and unnecessary burden

on the PIA users. PIA users consider that some of that burden could be removed through the re-design of certain Openreach processes. It is possible that the focus on enabling scale deployment has had the unintended consequence of significantly disadvantaging smaller PIA users.

59 Multiple platforms and systems are used to provide services to PIA users. For example, Canvas sits on a separate portal. Multiple portals create an overhead for PIA users for the efficient administration of PIA products.

60 Whilst there have been developments undertaken by Openreach to provide additional functionality, often these are designed and created without a significant understanding by Openreach of how PIA users operate and are launched when they are not fit for purpose, one such example is the introduction of the asbestos register.

61 Ofcom should require that Openreach engages with PIA users to produce a coherent plan of systems based on user requirements and a full understanding of the resource requirements and limitations faced by those PIA users. All process developments for PIA products should also include systems-based improvements to deliver the functionality required by the PIA user community.

4.2.4 IT support provided by Openreach

62 IT issues raised by PIA users take a long time to resolve. INCA understands that the back-office support provided by Openreach is off-shored and there are difficulties in having Microsoft Teams calls with that resource.

63 Such IT issues, in addition to the lack of effective support, create significant impacts on the operations of PIA users and Openreach should ensure that its support functions are customer focused and deliver timely and efficient service.

64 Ofcom should require that Openreach reviews the support that it provides to its PIA customers to ensure that they are fully supported in a timely and effective manner.

4.2.5 Access to duct and pole maps

65 Openreach already provides its own sub-contractors with read only access to Orion, a similar mapping tool to the one PIA users use. However, Orion is faster in operation and provides an increased level of detail on Openreach's duct infrastructure. There is a clear discrimination in how access to duct and pole maps is provided to Openreach itself and to PIA users. Openreach has agreed to extend read-only access to its mapping tools to PIA users' sub-contractors, in line with the process Openreach already provides for its own sub-contractors with effect from September 2024. This is yet another example where Openreach has delayed introduction of an equivalent system for PIA users, thereby gaining a considerable advantage for a prolonged period of time. Ofcom should investigate why this happened. The PIA no undue discrimination principle should mandate the same level of access to important safety information to the sub-contractors of PIA users, as is provided to those of Openreach.

4.2.6 Service restoration for vulnerable customers

66 In December 2023 Government imposed a charter in relation to lifeline services for vulnerable customers on retail broadband providers followed by a charter for network providers in 2024.

67 When a pole is damaged and out of service PIA users have no information about the lead times and progress of the repair. This results in difficulties in managing customer expectations and being able to comply with the Government's expectations on communications with vulnerable customers.

68 When damage to a pole results in the loss of service, Openreach should be required to confirm within 24 hours its estimated or confirmed date for replacement of the pole. Openreach should also provide regular updates on the progress of the repair. This would allow PIA users to be able to communicate with end users and manage customer expectations.

4.3 Network adjustments

69 This section considers issues faced by PIA users in requesting Network Adjustments from Openreach.

4.3.1 *Network adjustment process*

70 PIA users acknowledge that Openreach has agreed to run a proof of concept trial to allow PIA users to conduct Network Adjustments (**NA**) without prior approval by Openreach and to invoice Openreach retrospectively. The NA process does need to be simplified to improve upon the current process (of around 5 days) where, for example, a blockage is found, reported and then the PIA user must wait for permission to fix the blockage in order to access the NA funding. This process is inefficient and means build teams having to leave a location and return later to provide the fix. The existing process incurs additional build costs for PIA users and delays the provision of service to customers.

71 Ofcom should ensure that Openreach proceeds with the proof of concept as soon as possible including consultation with its customers when designing the relevant rules. This change should reduce time to build and associated costs for PIA users. As noted in relation to the mapping tool, Openreach has used delay in PIA developments to buy time during which it gave itself an advantage over PIA users.

4.3.2 *Customer Committed Date (CCD)*

72 Openreach reports its performance every month and that shows that Openreach performs better for PIA users than it does for its own BT work. The report shows that the CCD is often met. However, the reality that PIA users face is that when Openreach cannot achieve a stated CCD, it simply moves the CCD to a later date which is achievable. The reasons that allow Openreach to move the CCD are set out in the contract. The experience of PIA users is that their expected date for the completion of work is frequently not met and Openreach simply “moves the goal post”. This means that there is not a meaningful way of being able to measure Openreach’s performance.

73 Openreach has said to PIA users that it is not possible to report a more realistic measure of performance as the original CCD gets overwritten when it is changed. However, PIA users understand that Openreach is able to report on the original CCD to Ofcom, therefore PIA users request that Ofcom ensures that Openreach discloses that performance measure to its customers.

4.3.3 A1024 process

74 The introduction of the A1024 App has been well received by PIA users. However, PIA users requested a 'feedback loop' for the resolution of A1024s raised. This request was not captured by Openreach and therefore was not part of the functionality delivered.

75 This means that there is a lack of incentive for PIA users to use the A1024 App. One PIA user described it as a "dead process", unless the A1024 relates to a health and safety issue. This is because PIA users raise defects through the App but receive no feedback from Openreach.

76 The A1024 process is a key tool for Openreach to ensure that it maintains a functional and safe network. Issues relating to the network that need the attention of Openreach should be a "shared incentive" for PIA users and Openreach.

77 The A1024 process should be a common and shared process driven by a shared incentive by Openreach and PIA users to improve the networks and ensure that health and safety conditions are upheld. Openreach should seek inputs from PIA users and carry out process improvements to ensure that the incentives for all parties are aligned.

4.3.4 D-pole process

78 PIA users have considerable issues with the management of the D-pole process. The repair or replacement of a D-pole by Openreach has a long lead time resulting in disruption to the network rollout of PIA users. The performance for D-Pole repair has a 'significant' level of regional variation which cannot be explained by terrain or local authority issues.

- 79 In providing service to a customer, PIA users can come across a D-pole that needs to be replaced as a 'Network Adjustment'. If Openreach does not complete the Network Adjustment in the time required by the PIA user, then the PIA user is unable to plan a date to complete its customer order or continue deployment if the pole is intended for network extension. The PIA user is not the cause of the Openreach asset requiring replacement and in some cases the requirement is for health and safety reasons. However, it is the PIA user that incurs the cost for the replacement of the Openreach asset.
- 80 In cases where a pole is replaced but the PIA user no longer requires the Network Adjustment, as the customer may have cancelled its order owing to delays, then that full cost burden still falls to the PIA user.
- 81 Ofcom should require Openreach to engage with PIA users to review the D-pole process. Reduction in the time to replace a D-pole should reduce the requirement for PIA users to cancel the Network Adjustment. Openreach should review its policy to charge PIA users for D-pole replacements when a delay has been incurred.
- 82 INCA recognises the 'tour of duty' initiative that has been taken by Openreach to address the replacement of D-poles. The reality of the situation is that there are several thousand D-poles in Openreach's estate and limited resources to replace them. Openreach needs to consider a more collaborative process to ensure that PIA user's timeframes can be more readily met. In doing so, Openreach needs to ensure that there is no discrimination of any kind in deciding which D-poles are replaced as well as focussing on replacing as many poles as possible in a shorter timeframe.
- 83 Ofcom should require Openreach to allow PIA users to replace D-poles under strict rules and guidelines.
- 84 In order to understand the scale of this issue Ofcom should require Openreach to provide reporting on the performance of the repair and replacement of D-poles.
- 85 In addition, it is not feasible for smaller PIA users to participate in the 'tour of duty'. This creates discrimination against those users who remain facing long delays in D-pole replacements.

4.3.5 Closing of NOIs

- 86 There are NOIs where a PIA user cannot complete its build owing to outstanding Network Adjustments to be completed by Openreach. This inability to close NOIs puts pressure on PIA users who cannot reclaim approved SPO funding whilst the NOI remains open, and they would have to pay the full cost to cancel any Network Adjustments to allow an NOI to be closed.
- 87 PIA users could move a Network Adjustment to another NOI. However, this option is not available due to Openreach system limitations.
- 88 Ofcom should require Openreach to review its processes to allow Network Adjustments to be transferred or cancelled free of charge to allow NOIs to be closed.

4.4 Claims and damages

- 89 This issue relates to damage to Openreach's network caused by PIA users when carrying out work within Openreach's network as well as damage caused to the networks of PIA users.

4.4.1 Management of damage claims

- 90 The management of claims for damages to Openreach's network has been described as "lofty". Limited protocols exist for the management of these claims and the process mainly sits within the Openreach legal function, which has limited knowledge or understanding of Openreach's infrastructure.
- 91 This difficult administrative process results in significant additional time and costs for PIA users and therefore some PIA users may not be logging such damages with Openreach.
- 92 Once a PIA user has logged the date and time of a damage there is often an extended period of time before a claim is raised by Openreach. In some cases, this time has been between 2 and 3 years. This delay creates issues for the PIA user to collect relevant evidence to dispute the Openreach claim, as build teams have

moved on or even stopped working for the PIA user. In addition, it is also likely that other parties have accessed the relevant part of Openreach's network since the original incident, making it difficult or even impossible to prove how the original damage was caused and by which operator.

93 Openreach's ability to threaten termination of PIA access often results in PIA users just paying the damage claimed by Openreach, despite knowing that it does not reflect the damage caused. This creates a feeling of a "no win" scenario for PIA users against the dominance of Openreach and is an incentive to not report damage when it occurs.

94 Openreach's approach to these incidents is as a "dominant" operator and its actions tend to "wear down" the PIA users. There is no defined process for PIA users to challenge damage claims and this has a significant impact on small PIA users with a small or no legal team. To the best of our knowledge, no cases have to date been taken to court; INCA understands that this is due to PIA user concerns of not being able to access PIA during that process.

95 There is an urgent requirement for a significant review of the claims and damages process to ensure that Openreach undertakes a "timely" process to allow PIA users a fair opportunity to respond to claims and to allow the evidence to be provided to Openreach. Other process improvements needed for claims and damages include the provision of a transparent reporting process for the ongoing management of damage reports and the introduction of a standardised referencing system within Openreach to allow the effective management and challenge of claims by PIA users. Currently a common referencing does not exist, which makes it difficult for PIA users to engage with Openreach to challenge claims.

4.4.2 *Damage to PIA users' assets*

96 The process that supports the reporting by PIA users of damage to PIA users' assets caused by Openreach is broken, as the email address provided by Openreach for that purpose simply bounces the emails back to the sender. This needs to be addressed urgently.

97 PIA users are also concerned that there is not a process for Openreach to self-report damage to PIA users in a timely manner, similar to that for PIA users to report damage caused by them to Openreach. In some cases, Openreach does not present evidence of any damage it has caused until 2 years after the damage occurred. The lack of reciprocity of such fundamental processes evidences the large gap in accountability between Openreach and PIA users. This is a long way from satisfying NUD requirements, never mind equivalence.

98 Ofcom should ensure that Openreach works with PIA users to create reciprocal and transparent damage reporting and claims processes.

4.4.3 *Dispute resolution for damage claims*

99 PIA lacks a timely and effective dispute resolution process. Openreach often does not respond to disputes raised and PIA users believe that this may be due to the disputes being handled outside the PIA team.

100 Ofcom should require that Openreach works with PIA users to design an effective and reciprocal dispute resolution process. Such a process should provide clear dispute resolution steps, with provisions for escalation and should be based on a defined timescale.

4.4.4 *Invoicing of damage claims by Openreach*

101 When Openreach raises a claim against a PIA user for damages incurred to its network the PIA user does not receive an invoice for the damage at the same time. Often there is a delay of 1 to 2 years between the claim and the invoice. Further, in many cases, evidence is not provided to the PIA user to support the claim (or invoice).

102 Many PIA users have to closely monitor and manage their costs and budgets. If they are not aware of the financial value of a pending claim from Openreach, this can cause the PIA user to be unable to meet such liability.

103 This overall process needs to be reviewed with regulatory scrutiny applied by Ofcom, potentially through the OTA. PIA users need clarity about any liabilities for

damage caused at the earliest time possible with maximum times to be applied and enforced for the claims and invoicing process.

- 104 Openreach should ensure the quality of the “customer experience” that it provides to the PIA users. The setting of SLAs to support key processes which are then under the oversight of the OMU should ensure that industry as a whole can measure whether the services provided by Openreach are improving or declining.

4.4.5 *The risk of contract suspension*

- 105 Whilst it will take time to introduce true equivalence,¹⁵ it is important that there is a ‘level playing field’ in terms of behaviour and consequences. Openreach could stop a PIA user from building its network, whereas the corresponding consequences for Openreach for similar behaviour would be the re-training of an Openreach individual. Openreach has now agreed to implement a more graduated approach to dealing with breaches of the contract by PIA users but as yet we are not aware of any changes which would provide a corresponding increase in accountability on Openreach. Ofcom should monitor progress with this activity and hold Openreach accountable for delivering speedy progress.

- 106 Openreach has the right to block PIA users for continued use of the PIA product for what could be considered a relatively minor breach of compliance with the PIA processes. Whilst it is acknowledged that Openreach has to date not exercised that right, that threat of it happening is material to PIA users. Suspension of PIA access should be applied only to the most serious of safety related breaches. Openreach does not risk being blocked from using its own physical infrastructure if a sub-contractor breaches a minor administrative rule. For example, for a PIA user, Openreach can block access for non-safety related matters e.g. failing to record at least 90% of “whereabouts” information (i.e. recording when PIA user staff were working in or on Openreach’s network).

¹⁵ And INCA understands that full equivalence many never be implemented.

- 107 Whilst the need to enforce breaches against the terms of the contract is recognised, PIA users require that enforcement should be proportional and should not put a PIA user at risk of being blocked from access to PIA products owing to a ‘minor’ or accidental breach.
- 108 Ofcom should require that Openreach works with PIA users to design enforcement measures that are a graduated and proportionate and a transparent and predictable escalation path. PIA users have proposed an industry Health and Safety Board that would help support PIA users with the lack of equivalence and accountability of Openreach.

4.5 Billing for PIA products

- 109 Billing is identified by PIA users to be a “clunky” process and one that is prone to errors. Issues such as billing for the wrong amount and a case where a PIA user has had a direct debit applied for another PIA user’s invoice. Transparency of invoicing provided by Openreach is difficult and means that PIA users have difficulty in reconciling invoices.
- 110 Generally, PIA billing is seen to be extremely complicated, “bitty and cumbersome” and therefore it is very difficult to understand what is being billed and reconcile that with what the PIA user believes it has consumed. Often there can be several thousands of pounds grouped as “Miscellaneous” on an invoice. Significant effort is required to productise PIA to make it the equivalent of a commercial product and the quality of billing for PIA is an essential element of that commercialisation process.
- 111 Whilst the PIA product has some SLAs, Openreach does not provide SLAs for many of the ‘commercial’ interactions with PIA users, for example SLAs for the PIA invoicing process. These issues are not ones that can be addressed as part of the monitoring of Openreach’s adherence to the principle of “no undue discrimination”, these are issues pertaining to the commercial contract between Openreach and a PIA user. Processes relating to commercial contracts should have appropriate SLAs

and SLGs. The absence of such performance measures is evidence that Openreach does not treat PIA users as commercial customers for PIA services.

- 112 Ofcom should require Openreach to consult with PIA users on how it can implement improvements to its process for the billing of PIA products. Openreach should focus on its customers' requirements as well as the commercialisation of the overall PIA management and billing process.

4.6 Equivalence of Inputs

- 113 In the 2018 Wholesale Local Access Market Review (WLAMR)¹⁶ Ofcom decided not to introduce PIA on an EOI basis as it deemed it preferable to introduce an improved NUD-based PIA product quickly instead of requiring Openreach to re-engineer its internal processes and systems to create an EOI based product. Ofcom reconfirmed that approach in the 2021 WFTMR:

"Our decision reflects the fact that Openreach has been extensively using its physical infrastructure to supply a broad range of services over many decades. To implement full EOI today would therefore require extensive re-engineering with the associated disruption and cost. However, given the importance of PIA, Openreach should be able to demonstrate that any difference between its own use and use by other providers is justified. In practice, imposing an EOI obligation on Openreach in relation to PIA would require it to alter its organisational structure to separate the part which uses PIA as an input from that which supplies and manages PIA. We consider that this would be disruptive (impacting on availability of key services at a crucial time for network rollout) and would increase Openreach's costs".¹⁷

- 114 Flaws in the design of the systems and processes used by Openreach to provide PIA products means that there are significant differences between how PIA users and Openreach make use of the same physical infrastructure.

¹⁶ Wholesale Local Access Market Review, Markets, market power determination and remedies, 28 March 2018

¹⁷ WFTMR final statement, 18 March 2021, Volume 3, Paras 3.75 – 3.76.

- 115 It is difficult to quantify the level of discrimination. As Openreach does not use the same PIA products that it provides to PIA users, there is no direct comparison between the products to allow equivalence to be measured. In addition, because Openreach does not make use of the PIA products it does not have a commercial incentive to improve the product.
- 116 Openreach's IRO provides limited details on Openreach's use of its infrastructure. PIA users do not have the insight into how Openreach provides access to its infrastructure internally and therefore it is very difficult for PIA users to quantify the level of undue discrimination it faces.
- 117 The IRO should make clear the differences between how access to its infrastructure is provided within Openreach and to PIA users. A statement of "non-equivalence" should form the starting point for consideration of actions that Openreach should take to provide EOI to PIA users.
- 118 Ofcom, in its WFTMR decision, limited EOI requirements to new and upgraded systems and processes. Many of the changes implemented by Openreach are adjustments and upgrades to existing systems and processes, but none have been identified at becoming EOI compliant. The small number of new systems and processes (and Apps) that have been developed have also not sought to achieve EOI compliance, and PIA users have become involved at a stage too late to make that happen.
- 119 Absent of Ofcom requiring Openreach to use the same PIA products as it provides to PIA users (which would deliver equivalence) it is crucial that Ofcom ensures that Openreach reviews its processes, systems and PIA products to reduce the degree of discrimination currently faced by PIA users. PIA users are willing to work with Openreach in order for it to understand PIA user requirements.
- 120 Ofcom should require Openreach to provide documented justification every time it takes a decision to amend an existing system or process, or it designs a new system or process that does not provide EOI.

- 121 Ofcom should ensure that Openreach provides a greater degree of transparency of information to ensure that it complies with the no undue discrimination obligation. Without EOI the comparison of PIA products is very difficult. This is one reason why the move towards EOI is critical for PIA users.

4.7 Expand the scope of the Openreach Monitoring Unit

- 122 Without appropriate service level in place to support the commercial agreement Openreach's incentives are not aligned with those of PIA users.
- 123 Ofcom should require Openreach to address the timeliness and simplification of its commercial processes and to ensure that transparency principles are applied to processes in the form of meaningful and reportable SLAs. SLAs should be agreed between PIA users and Openreach and form part of Openreach's Key Performance Indicators monitored by Ofcom's OMU. In addition, such SLAs should also have associated Service Level Guarantees (**SLGs**) that form part of the Reference Offer between PIA users and Openreach.

5 Conclusion

- 124 Significant progress has been made to make the PIA product consumable at scale, but the systems and processes to support the product are burdensome for PIA users and create a material incremental administrative overhead.
- 125 Progress made to date has been largely due to the significant efforts by the OTA and PIA users themselves. Ofcom has not taken an active role in the implementation and enforcement of the WFTMR PIA provisions.
- 126 The differences between how Openreach and PIA users consume the passive infrastructure remain material and result in PIA users being disadvantaged in their network deployments relative to Openreach.

127 INCA calls on Ofcom to take positive action within the remaining nearly two years of the WFTMR to deliver the improvements described in this document and to positively enforce the EOI provisions clearly stated in the WFTMR.