



Regulatory, Policy and Legal Processes Guidance Note 6

October 2021

Contents

1. Background and Principles
2. Regulatory and Policy Processes
3. Legal Investigations, Disputes and Litigation Processes
4. Key Process Controls

Background and Principles

Background

The Commitments and the Governance Protocol strike a balance between greater Openreach independence and BT Group oversight. They:

- Were designed to address Ofcom's concerns in 2017 that *"BT had retained control of Openreach's decisions, while other telecoms companies have not been consulted sufficiently on investment plans that affect them"*.
- Ensure that BT Group and its directors can fulfil their legal, regulatory and fiduciary duties to be able to consolidate Openreach Limited within the BT Group plc accounts.
- Recognise the important role of the Openreach Limited Board, with the Openreach directors having legal, regulatory and fiduciary duties.

BT Group's Regulatory, Policy and Legal processes need to respect this balance. They:

- Acknowledge that an independent regulatory and public affairs capability is seen as an important part of delivering strategic independence for Openreach.
- Recognise BT Group's interest in decisions which have significant financial and/or reputational impacts on BT Group.
- Recognise BT Group's authority to make decisions on regulatory investigations and appeals given resulting liabilities are legally with BT plc.

This Guidance Note is part of a series to support how BT and Openreach colleagues work under the Commitments governance arrangements

Design Principles for Guidance Notes

Principles agreed between BT and Openreach	What this means in practice
Greater operational and strategic independence of Openreach	Ensuring that what we do gives effect to the aim of the Commitments in securing greater independence for Openreach from BT Group, treating Openreach differently where appropriate, and enabling Openreach to treat all its customers equally (see below)
Appropriate parent company economic control and oversight by BT	Recognition that BT remains one economic enterprise with one set of shareholders in which interest BT must act, and that finances need to be consolidated into one
Recognition of the important role of the Openreach board	Recognition of the role of the Openreach board in decision-making, provision of direction to, and oversight of, Openreach
Accountability	Clarity in roles, decision making and best practice governance. This includes recognition of the personal responsibility of everyone involved in the process for the effective and efficient working of the Commitments
Efficiency	Following a clear and agile process, capable of evolution and timely escalation routes
Simplicity	Acting in a way that avoids duplication, minimises complexity and gets things done
Equal treatment	Ensuring that what we do enables and encourages Openreach to address the needs of all Openreach customers equally
Transparency	Demonstrate we are acting and behaving in line with the Commitments, including to Ofcom and other CPs. This includes operation of process and controls in a way that is auditable and capable of assurance.

Regulatory and Policy Processes

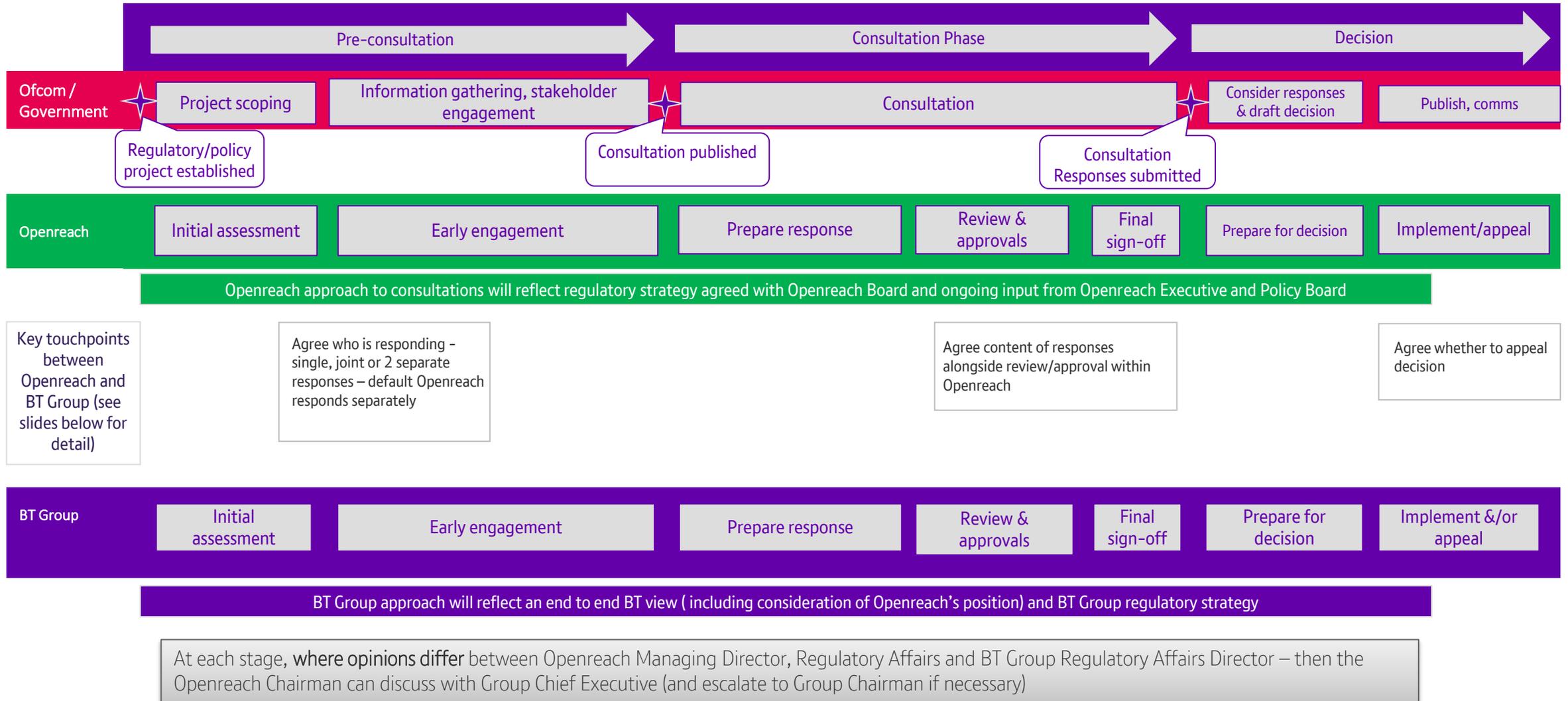
What to expect when engaging with Ofcom and Government

- **Openreach** has its own unique identity and speaks with its own voice with regulators and public policy makers – it always engages on areas affecting it (e.g. network build, future digital strategy and policy relating to fixed networks) and will have its own responses on any matters which relate to markets it operates in and/or may impact its performance against Openreach’s Annual Operating Plan (AOP) / Medium Term Plan (MTP).
- **BT Group** (as parent) can respond instead of, or as well as, Openreach:
 - on consultations about broader issues, future sector policy, regulatory or legislative models/market structures; or
 - in cases where the impact of an issue on Group affects shareholder interests and BT Group’s view may add an important perspective, or add information/evidence different from (or complementary to) that which Openreach has put forward.
- When BT responds as a **downstream customer** of Openreach, it does so separately from BT Group’s involvement in any Openreach response as parent company.
- Openreach will develop its own regulatory strategy each year, identifying priorities and the overall approach that will be taken to influence key decision makers and mitigate risks. The regulatory strategy will be discussed with and agreed by the Openreach Executive and Openreach Board. The detailed approach to be taken on specific regulatory policy consultations and investigations will be agreed by the Openreach Policy Board or other delegated decision-making bodies.
- Group Regulatory Affairs reviews Openreach’s regulatory strategy as agreed by the Openreach Board, and can provide input (as a parent or supplier) both on the development and delivery of this strategy, to ensure consistency with the overall BT Group Strategic Framework.
- Openreach Managing Directors for Regulatory or Corporate Affairs will consult with Group Regulatory or Group Corporate Affairs Directors on the approach Openreach plans to take in lobbying and influencing specific consultations. This is to allow BT (as parent company) to:
 - i) ensure consistency with other BT response(s);
 - ii) monitor and assess positioning, evidence and modelling;
 - iii) “organic” message co-ordination when this is appropriate (external messages will not necessarily be the same);
 - iv) policy alignment, in keeping with Openreach strategic independence.
- The **Openreach Board** will ensure the position taken by the Openreach executive is consistent with the letter and spirit of the Commitments.

Things to keep in mind

- **Avoid surprises** – ensure early engagement and sight of headline positions and intended response (in line with the Commitments), particularly where the consultation and response could affect the strategic interests of BT Group and/or Openreach.
- **Be careful when sharing information:** this must be in line with the rules around managing Openreach Customer Confidential Information (CCI) and Commercial Information (CI).
- Remember that the timeline of Openreach and BT Group’s work will not always be aligned. If that is the case, consider how best to ensure timely communication between BT Group and Openreach. **Managing the timing and sequencing of touchpoints** between BT Group and Openreach will help minimise the risk of issues arising at the last minute.
- **Engage Investor Relations early** so they can prepare messages to investor audiences.
- This GN captures most common processes and touchpoints between Openreach and BT Group – but it is not exhaustive. **If in doubt, check at the start of the process.**

Responding to consultations – process overview



Detail: Pre-consultation

Early discussions should take place between Openreach and BT Group to:

- Identify if the consultation (and which aspects) are likely to be relevant to Openreach or BT (as parent) or both.
- Identify delivery teams in Openreach and BT (including use of BT experts as suppliers).
- Agree governance (RAPID) including information management and role of Openreach Board.
- Ensure appropriate engagement of the Regulatory and Policy Coordination Group (RPCG) – e.g., communication, input, aligning responses and how it sits alongside specific project steering groups.

In the lead up to, or once the consultation is published, Openreach will develop a plan and approach to its response separately. This will be reviewed by the Openreach Exec/Policy Board (and Openreach Board if needed) before engaging with BT Group.

If a BT Group response is required, a plan will be prepared including delivery teams and governance structure, and shared with RPCG. It may be the case that BT Group seeks input from Openreach (as parent) to develop Group positions, but always in line with the rules around managing Openreach Customer Confidential Information (CCI) and Commercial Information (CI).

Detail: Consultation

BT Group and Openreach will:

- Consider respective milestones and timeframes and ensure these are transparent to everyone.
- Regularly engage and consult with one another in a manner that gives the other sufficient time to provide considered input, and accounts for consultation timeframes.
- Generally conduct separate engagement with Ofcom and Government, but keep each other informed and share feedback in a timely manner.
- In some cases it may be more efficient and appropriate to have joint engagement with Ofcom and policy makers, depending on the subject.

BT Group and Openreach **will flag any regulatory or reputational risks** to one another in a timely manner. This is typically through engagement between Openreach Managing Director for Regulatory/Corporate Affairs and BT Group Regulatory/Corporate Affairs Director (or between Openreach and BT Regulatory/Economics/Corporate Affairs teams).

Communications and Implementation

Communications

- Internal communications and external media are planned and conducted separately, but closely coordinated (e.g. through press teams co-ordinating overall messaging).
- There is a single briefing for Investor Relations and ExCo usually prepared by BT Group, with input from Openreach. In some cases the briefings will be prepared by Openreach and reviewed by BT Group especially where Openreach are leading on the detail of the consultation.
- Ad-hoc enquiries are handled separately but coordinated. BT Group involvement is needed to ensure Openreach messaging to the investor community is consistent.
- Consider if and when to publish responses. This will be decided by Group Regulatory/Corporate Affairs Director (BT) and MD Regulatory/Corporate Affairs (Openreach).

Implementation

- BT Group consults with Openreach to inform its evaluation of the practicality of transferring newly deregulated products (and management of associated assets) to a division other than Openreach.

Legal Investigations, Disputes and Litigation Processes

How to approach investigations, disputes and litigation

Openreach Limited trades on behalf of BT plc. All activities or investigations and resulting liabilities are legally with BT Group. For this reason it is expected that:

- **Openreach flags early any risk** of disputes, investigations and litigation to BT Group General Counsel and BT Group Regulatory Affairs Director to enable BT Group Legal to protect BT Group in light of its legal and fiduciary obligations.
- Openreach General Counsel (or delegate) **consults BT Group General Counsel** (or delegate) at the beginning on who will lead on the dispute, investigation or litigation.

Specifically in relation to litigation, including appeals:

- Decisions on whether to launch formal litigation including appeals will require **joint consideration** by BT Group and Openreach.
- For litigation (including appeals) the BT Group CEO is the decision-maker (although this may be delegated to Group General Counsel), taking into account the views of Openreach.
- Openreach General Counsel is responsible for recommending litigation related to substantive matters falling entirely within the AOP and without broader BT Group impact (though the agreement of appropriate Legal Directors in Openreach and BT Group must still be sought).
- For matters that have an impact outside the Openreach AOP, the recommendation will be made by the relevant Legal Director in BT (with the agreement of the Openreach General Counsel where a matter relates to Openreach).

When Openreach manages cases

- **Openreach** will manage disputes, investigations and appeals on Openreach customer or operational issues falling entirely within the AOP that do not give rise to wider Group impacts. Openreach can draw on the support of BT Legal and BT Economics, acting in a supplier capacity.
- **Group Litigation** will manage commercial litigation in their capacity as a supplier, other than the litigation handled by the Openreach Network Legal Team given that Openreach otherwise does not have its own litigation team.
- **Openreach keeps BT Group informed** of approach and developments, and works with BT Group GC or delegate (as per Agency Services Agreement).
- **BT (as parent) may seek greater oversight** and influence, including assuming full responsibility for conduct, of cases which have an impact on BT Group i.e. fall outside the AOP, or may have significant reputation or financial impact on BT Group generally. In this case, Openreach must take action as BT Group reasonably requires and allow BT Group to take over a case if they think it necessary to do so.
- Even if a case raises legal, fiduciary or regulatory obligations questions for BT Group (given the size of the risk or nature of the issue) and could lead to litigation or statutory accounting risk, **Openreach can settle without BT Group prior approval** where the settlement falls within its Customer Facing DoA and relates to a matter on which Openreach is the agreed lead.

Key Process Controls

Process Controls

Area	Objectives	Controls
Engagement	Ensure BT Group isn't able to unduly influence Openreach's Commercial Policy and its ability to treat all customers equally.	BT's ability to review and intervene in Openreach's development of regulatory and public policy positions is limited (e.g. to review positioning and evidence, to ensure effective co-ordination with other BT responses and to ensure aligning with the overall BT Group Strategic Framework and that BT Group fulfils legal and regulatory obligations).
	Avoid the risk that BT and Openreach have sub-optimal relationships with Government or Ofcom because of lack of co-ordination (ensuring that compliance responsibilities are still respected).	BT and Openreach may liaise on engagement with Government and Ofcom, confirming who is leading on issues, sharing calendars to ensure visibility, and via monthly touchstone meetings.
	Ensure that BT plc as the parent company has sufficient opportunity to protect itself to fulfil its legal, regulatory and fiduciary duties.	Openreach Legal ensures that BT Group Legal is kept informed and provided sufficient opportunity to protect BT plc in light of its legal and fiduciary duties.
Information sharing	Ensure stakeholders can have confidence that downstream BT is not gaining an unfair advantage as a result of the engagement between BT Group and Openreach and the fact that some Group people act as suppliers to Openreach.	<ul style="list-style-type: none"> The relevant Directors ensure that any sharing of Openreach CCI and/or CI with BT Group is in line with the Commitments and only to the extent necessary for BT to fulfil its parent company functions or act in a supplier capacity . The relevant Directors ensure where necessary that information flows between BT and Openreach are tracked and documented through a specific Project Disclosure. If CI or CCI is provided by Openreach to BT Group individuals who are not permitted by an ISA or on the Project Disclosure list, Openreach should make a separate Disclosure or ask that the recipient is added to the Project Disclosure group before the information is shared. All transactions should be stored centrally for compliance and audit purposes.
Supplier roles	Openreach can choose to use BT Group expert functions (such as economists or lawyers), as a supplier, to develop its response(s).	If any BT Group function is engaged by Openreach as a supplier to assist with the development of a response, the relevant Directors in that function will ensure that the individuals acting in a supplier capacity do not also advise or support any other CFUs on the same matter.

Evidence will be sought by Commitments Assurance Office (CAO) and Commitments Monitoring Office (CMO) to confirm the above controls, and underlying principles are respected.