

Transport and Environment Committee

10.00am, Thursday, 20 June 2019

Public Utility Company Performance and Road Work Co-ordination April to March 2018/19

Executive/routine	Executive
Wards	All
Council Commitments	19

1. Recommendations

- 1.1 It is recommended that the Transport and Environment Committee notes the report and the arrangements for securing an improved level of performance from all Public Utilities.

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Public Utility Company Performance and Road Work Co-ordination April to March 2018/19

2. Executive Summary

- 2.1 This report summarises the performance of Public Utility Companies (PUs) during the year 2018/19 from April 2018 to March 2019.
- 2.2 It also summarises and compares the full year and shows trend information from previous years.
- 2.3 Finally it summarises the major issues encountered during the previous year and the actions taken to address road work co-ordination issues.

3. Background

- 3.1 The New Roads and Street Works Act 1991 (NRSWA), as amended by the Transport (Scotland) Act 2005, gives statutory undertakers or PUs responsibility for signing, lighting and guarding road works and also requires the PUs to replace the roads and pavements to prescribed standards upon completion of their works.
- 3.2 Generally, PUs have a duty to place new, maintain and repair damage to, their equipment, pipes and cables, in the roads and pavements. This is usually undertaken by digging in the roads and pavements as the most efficient way of providing their services to customers.
- 3.3 Under Section 131 of NRSWA, road works authorities are empowered to carry out all necessary inspections to check whether or not PUs have complied with the duties placed on them regarding the reinstatement of the roads and pavements.
- 3.4 The reinstatement of the roads and pavements by PUs must be carried out to a standard, approved by Scottish Ministers; 'The Specification for the Reinstatement of Openings in Roads'. This specification details the type of materials to be used, the depths of layers to be used and how the performance of their work is measured.
- 3.5 The inspections carried out by the Council are done to a Code of Practice that only applies to Scotland. An agreement is in place whereby all PUs operating in Scotland have agreed to comply with the 'Code of Practice for Inspections'.

- 3.6 Inspections of PU work includes work while it is being carried out (live sites) and once the work or reinstatement is complete, up to the end of their guarantee period. The guarantee period currently lasts for a two year period.
- 3.7 Inspections are also carried out on PUs' defective apparatus or toby covers and manholes, where they have been identified as damaged or noisy.
- 3.8 The Council can also carry out investigatory works where there is a suspicion of work not being carried out to the required specification. Once a defect is identified, a follow up inspection is carried out every 17 days until the work is repaired to the satisfaction of the Council.
- 3.9 This report provides an update on the performance of PU work that has occurred during the 2018/19 year.

4. Main report

Inspections

- 4.1 Typically inspections of PU work will involve looking at the following during an inspection:
 - 4.1.1 Safe and proper traffic management used;
 - 4.1.2 Ramps and correct information signs used;
 - 4.1.3 Correct materials used;
 - 4.1.4 Surface profile;
 - 4.1.5 Line and level of the work;
 - 4.1.6 Compaction of materials;
 - 4.1.7 Sealing of joints, joints that have begun opening up;
 - 4.1.8 Edges of the patch proximity to others in the road or pavement;
 - 4.1.9 Settlement;
 - 4.1.10 Condition of any specialist surface treatments;
 - 4.1.11 All markings been replaced; and
 - 4.1.12 Cracking.
- 4.2 The total number of inspections carried out was 27,235 as shown in Graph 4.2.
- 4.3 The average pass rate for inspection of all reinstatements for all PUs was 88%, against a minimum target of 90%, as shown in Table 4.3.
- 4.4 The breakdown between each different inspection type carried out is shown in Table 4.4.

Sample Inspections (Statutory)

- 4.5 Statutory Inspections are a method by which a road works authority can regularly establish the performance of PUs. It involves inspection of a structured, random sample of works at various stages during the works and reinstatement guarantee period. These equate to 10% of live sites, 10% of completed reinstatements within six months of the work being completed and 10% of the completed reinstatements within three months prior to the end of their guarantee period. The numbers used are averaged over a three year period. A total number of 1,884 statutory inspections were carried out.
- 4.6 The average percentage pass rate for each PU, for statutory inspections was 87% as shown in Table 4.6 and Graph 4.6. Only SGN (Gas company) and Scottish Power Energy Networks (SPEN) achieved the target pass rate for all PUs of 90%.

Target Inspections (other than Statutory)

- 4.7 Target Inspections are those inspections other than statutory, including inspections undertaken by a road works authority as part of their checks that a PU has complied with their duty in respect to reinstatements. The number of non-statutory inspections carried out was 9,929.
- 4.8 The average percentage pass rate for target inspections for all PUs was 88%. The target pass rate for all PUs is 90%.

PU Defective Apparatus

- 4.9 The total number of outstanding defective apparatus by the end of March was 815. A breakdown for each PU is shown in Table 4.9 and Graph 4.9.
- 4.10 The two PUs with the largest number of defective apparatus that had not been repaired by the end of 2018/19, were Scottish Water and Virgin Media, with 297 and 291 defects outstanding respectively.
- 4.11 The first eight months of the year showed an increasing number of outstanding apparatus defects for each PU. In December an improvement was made by each PU. The total numbers outstanding at the end of the last four years are shown in Table 4.8 for comparison.

PU Defective Reinstatements

- 4.12 The total number of outstanding defective reinstatements by the end of March was 535. A breakdown for each PU is shown in Table 4.12 and Graph 4.12.
- 4.13 The PU with the largest number of outstanding defective reinstatements that had not been repaired by the end of 2018/19 was Scottish Water with 237 defects outstanding.

Fixed Penalty Notices (FPNs)

- 4.14 The total number of FPNs accepted by PUs was 607 as shown in Graph 4.14A. For comparison, the total number of FPN's for each PU at the end of the last four years are shown in Graph 4.14B.

- 4.15 Since 2015 there has been an improvement year on year in the number of Noticing Failures by PUs which is reflected by a reduction in the number of FPN's issued.
- 4.16 The PUs issued with the most Penalty Notices during this period were Virgin Media and SPEN with 29.3% and 20.6% of the total number respectively.

Notices to work

- 4.17 The total number of individual locations on the road network, where a PU informed the Council of their intention to undertake work in 2018/19, was 12,893. A comparison of the total numbers for the previous four years is shown in Graph 4.17.

Performance - Improvement Plans

- 4.18 The five major PUs in Edinburgh are: Scottish Water; SPEN; SGN; Openreach; and Virgin Media. They were each served with an Improvement Notice in November 2014. This involves requesting that each PU submits a plan, within five days of receiving the notice, detailing how they are going to address the required improvements.
- 4.19 Performance is measured against a minimum pass rate of 90% for live site inspections, carried out while PU work is being carried out prior to reinstatement. Checks include:
- 4.19.1 Signs are correctly placed;
 - 4.19.2 Cones are correctly placed;
 - 4.19.3 There is a temporary pedestrian crossing, if required;
 - 4.19.4 There is an information board erected; and
 - 4.19.5 Correct material is being used as backfill and is compacted properly.
- 4.20 Performance is also checked on the standard of repairs and reinstatements carried out.
- 4.21 The pass rates for each of the five PUs since being served the Improvement Notice are shown in Table 4.21 and should be measured against a minimum target of a 90% pass rate.
- 4.22 The analysis of the performance monitoring figures and regular meetings with each PU has determined that there is no consistent reason for the poor performance. The results at the end of measurement period for each PU are shown in Graphs 4.22A and 4.22B.
- 4.23 A PU will only be removed from the Improvement Notice monitoring when they have achieved a sustained improvement above 90% for two consecutive quarters (a period of six months).

Performance - For Live Site, Sample (Category A) Inspections

- 4.24 SPEN showed an improvement in their performance from September to December 2018, reaching just above the minimum target of 90%. Their performance was measured at the end of the year using Target Inspection information. They did not sustain the improvement and therefore remain on the Improvement Notice for Sample A Inspections.
- 4.25 Scottish Water showed a reduction in performance between November 2014 and March 2016. There was an improvement in performance between March 2016 and March 2018, however this reduced to 67.5% by December 2018. By March 2019, their performance had improved to 72.1%. Scottish Water has not achieved the minimum target performance of 90% during the last four years.
- 4.26 SGN showed a fall in performance from November 2014 to June 2015. From June 2015 to December 2018 they demonstrated an improvement, exceeding the target pass rate from March 2018. Sustained performance together with an average pass rate of 91% mean SGN have been removed from their Improvement Notice, however performance will continue to be monitored.
- 4.27 Openreach has shown a fall in performance between November 2014 and October 2015 with the lowest figure being 39.5%. They showed an improvement between March 2016 to December 2018 where they achieved a 100% pass rate, however this reduced to 72% by March 2019.
- 4.28 Virgin Media showed a fall in performance from November 2014 and March 2018 with the lowest pass rate of 47%. This improved to 50% in September 2018 and increased to 100% by December 2018. This fell to 70.6% by the end of March 2019.

Performance - For Reinstatement, Sample (Category B&C) Inspections

- 4.29 SPEN were not on an Improvement Plan for Reinstatements and have shown performance consistently above the required 90% minimum target.
- 4.30 Scottish Water showed a fall in performance from November 2014 to October 2015. There has been an improvement in their performance from October 2015 to December 2018 where they achieved performance above the minimum of 90%. The performance dropped to 84.6% at March 2019. With an average pass rate of 85% this has resulted in them remaining on the Improvement Notice.
- 4.31 SGN showed a fall in performance between November 2014 and March 2016. They have shown fluctuating performance below 90% between March 2016 and September 2018, however performance improved since then. They achieved a 92% pass rate in December 2018 and 95.7% at end of March 2019. Sustained performance together with an average pass rate of 91% SGN mean have been removed from their Improvement Notice.

- 4.32 Openreach's performance has fluctuated between November 2014 and March 2019 and has not achieved the minimum requirement of 90% during this period. There was an improvement in performance of 18.3% in the last quarter to their current 88.3% pass rate.
- 4.33 Virgin Media's performance has also fluctuated from their 91.3% pass rate in November 2014 to the 85.4% pass rate in March 2019. During this period they have not managed to achieve the minimum 90% pass rate.

General

- 4.34 The PUs that are remaining on an Improvement Notice have shown some improvement in performance for short periods, however this has not been sustained to the satisfaction of the Council during the past four years.
- 4.35 The discussions with each of the PUs concerned has resulted in changes to their Improvement Plans and in some cases to the contractors they have employed.
- 4.36 Of the options available to the Council two have already been utilised:
- 4.36.1 Escalation of the improvement plan monitoring to achieve a step change in performance has been undertaken. This has demonstrated insufficient improvement; and
 - 4.36.2 Involvement of a more senior management from both the PU and the Council took place early in the improvement notice issue. This also has shown little or no significant improvement in performance.
- 4.37 The third option available to the Council is to raise a grievance and dispute against each of the PUs failing to show improvement, under the Code of Practice for Dispute Resolution and Appeals, for their failure to comply with Sections 119, 124 and 130 (2) of the New Roads and Street Works Act 1991.
- 4.38 Following an appropriate grievance and dispute process the Council can raise civil and/or criminal remedies.

Lane Rental and Permit Schemes

- 4.39 Legislation does not currently exist in Scotland to support or facilitate Lane Rental and Permit Schemes.
- 4.40 Lane Rental schemes were piloted from 2012 in London and Kent. Following a consultation in 2017, the UK Government has decided to allow other local authorities in England to bid for and set up Lane Rental schemes as a way of reducing the impact of street works on the busiest roads at the busiest times. This applies to English Highway Authorities only. Legislation does not currently exist in Scotland to facilitate or allow Lane Rental and Permit Schemes.
- 4.41 In England the potential benefits for a Highway Authority introducing a Lane Rental and Permit schemes are centred around the increased capability to coordinate and control activities on their network. By effectively operating a permit scheme a Local Authority should be able to minimise the inconvenience and impact associated to

badly controlled road works; thereby improving journey times; reducing congestion and ensuring the protection of the infrastructure.

- 4.42 The New Roads and Street Works Act 1991 (NRSWA) (UK Legislation) places a duty on road authorities to coordinate activities (works) of all kinds on the road under the control of that Authority. The Transport (Scotland) Act 2005 and the associated Regulations widened this NRSWA coordination duty to provide further provision for the control and co-ordination of road works and for the enforcement of the duties placed on those who carry them out.
- 4.43 The Transport (Scotland) Act 2005 Part 2 contains provisions to improve the quality of and co-ordination of road works. It established a Scottish Road Works Commissioner to monitor the quality of road works at a national level across roads authorities and PUs, drive and promote improvements and impose penalties for poor performance. New and enhanced duties are placed on roads authorities and PUs to co-ordinate and plan their works via the Scottish Road Works Register. The Act also provided for an increase in the levels of fines of specified offences and provided road works authorities with the authority to issue fixed penalty notices for certain offences.
- 4.44 The Roads Authority and Utility Committee Scotland (RAUCS) has produced, in collaboration with Scottish Government, PUs and the Scottish Road Works Commissioner, a wide ranging number of Codes of Practices, Specifications, Directives and Advice Notes. Each roads authority and PU working in Scotland must follow these documents.
- 4.45 Lane Rental does not provide any tools that do not already exist in Scotland as powers already exist to allow local authorities in Scotland to manage and co-ordinate road works. This is through the Scottish Road Works Register and Noticing schemes with oversight provided by the Scottish Road Works Commissioner.
- 4.46 There are additional powers relating to road work co-ordination, that are currently being considered by Scottish Government, following consultation on the Transport Bill that will assist in managing the road network and PUs operations on it. These include the introduction of Quality Plans, additional powers to the areas of responsibility of the Scottish Road Works Commissioner, extend the use of FPNs and extending the reinstatement guarantee period from two to six years.

5. Next Steps

- 5.1 Continue to inspect 100% of PU reinstatements that are on the public road network, to report all defects found during the guarantee period, and to ensure proper responsibility for defects is identified and that the repair of any defect will not fall to the Council.
- 5.2 To continue to use the formal Improvement Plan process, as specified in Code of Practice for Inspections.

- 5.3 To meet with Senior Managers of each poorly performing PU and discuss their intentions to ensure improvement that has so far not been achieved.

6. Financial impact

- 6.1 The projected revenue streams associated with sample and repeat inspections of failed PU reinstatements and FPN's was £354,473 during 2018/19. The total revenue from the charges levied for these activities was £422,890.
- 6.2 The difference between the two amounts is mostly due to backdated and previously unpaid revenue sought from some PUs.
- 6.3 The ultimate aim when compliance is achieved, is to reduce the revenue to an amount that is only for Statutory Inspections.

7. Background reading/external references

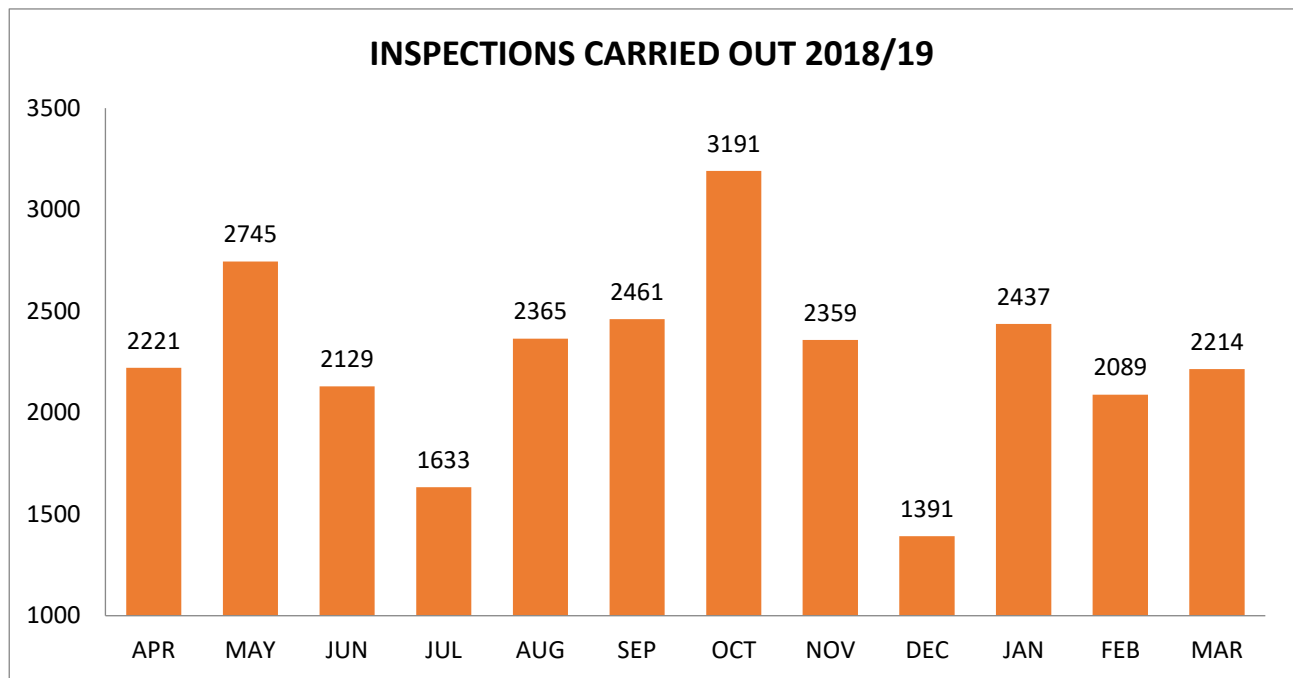
- 7.1 [Code of Practice for Inspections, 3rd edition, approved by the Roads Authority and Utility Committee Scotland, November 2012.](#)
- 7.2 [Code of Practice for the Co-ordination of Works in Roads, version 1.0, April 2013.](#)

8. Appendices

- 8.1 Appendix 1 – Supporting Evidence Tables and Graphs

APPENDIX 1 – Supporting Evidence Tables and Graphs

Graph 4.2



In 2018/19 there were 27,235 inspections carried out.

Table 4.3

Average pass rate for ALL PUs

	No of Failures	% Pass Rate
INSPECTIONS	1,434 / 11,113	87.1%
Category A (during work)	140 / 864	83.8%
Category B (within 6 months of Completion)	878 / 5,818	84.9%
Category C (within 3 months of end of guarantee)	416 / 5,131	91.9%
DEFECTIVE REINSTATEMENTS	1,294 / 10,949	88%

The target minimum pass rate for all PUs is 90%.

Table 4.4

Number of inspections for ALL PUs

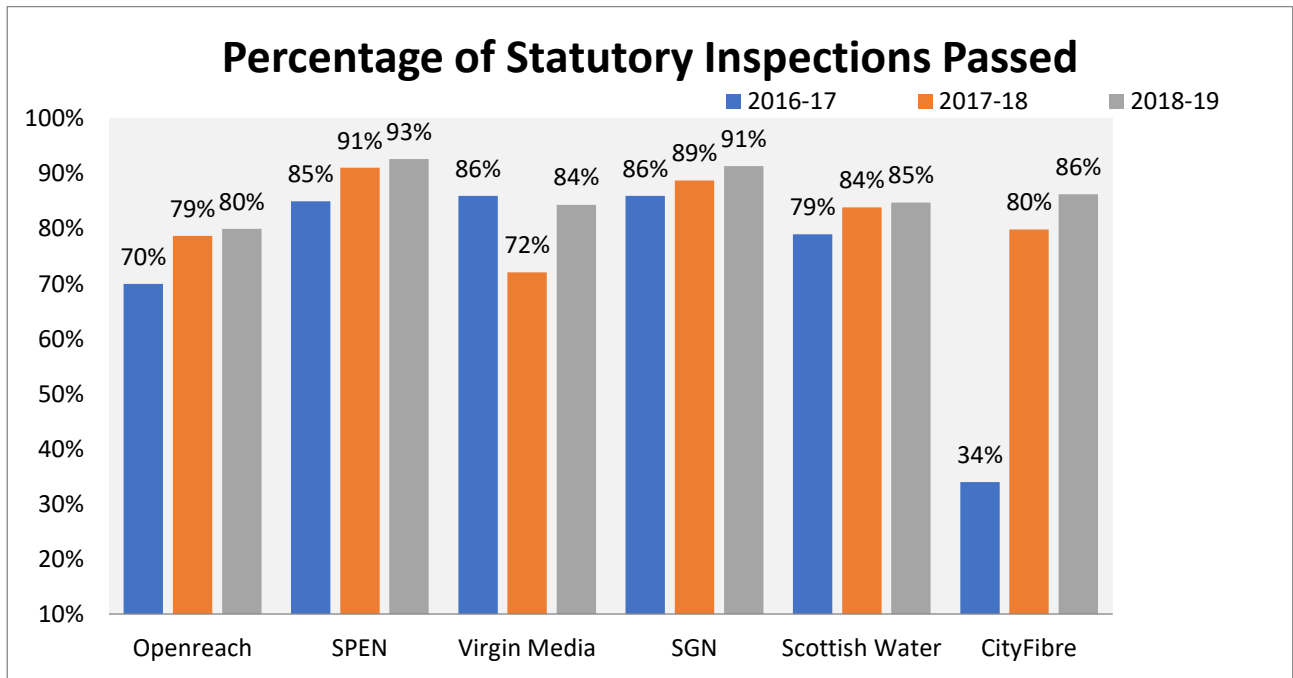
TYPE	CATEGORY A	CATEGORY B	CATEGORY C	OTHER INSPECTIONS	TOTAL
	Inspections during the progress of the works.	Inspection within six months of the work being completed.	Inspection within three months of end of guarantee period.		
SAMPLE & TARGET INSPECTIONS	864	5818	5131		11813
DEFECTIVE APPARATUS				946	946
DEFECTIVE REINSTATEMENT				12,339	12,339
INSPECTIONS RELATED TO CORING				1,199	1199
OTHERS				938	938
TOTAL	864	5,818	5,131	15,422	27,235

Table 4.6

The table below shows the average percentage pass rate for Sample Inspections for each PU during 2018/19. The target minimum pass rate for all PUs is 90%.

	Openreach	SPEN	Virgin Media	SGN	Scottish Water	Average
Pass Rate	80%	93%	84%	91%	85%	87%

Graph 4.6



Only SPEN and SGN managed to achieve the minimum pass rate but no other PU achieved the target pass rate of 90% by the end of 2018/19. All PUs showed an improvement from the previous year.

Table 4.9

The table below shows the comparison of the numbers of outstanding defective apparatus for each PU over the past four years.

PU	End of 2015/16	End of 2016/17	End of 2017/18	End of 2018/19
Openreach	45	72	109	80
SGN	11	15	47	69
SPEN	15	29	54	78
Scottish Water	415	530	677	297
Virgin Media	79	94	199	291

Graph 4.9

The graph below shows the comparison of the numbers of outstanding defective apparatus for each PU during 2018/19.

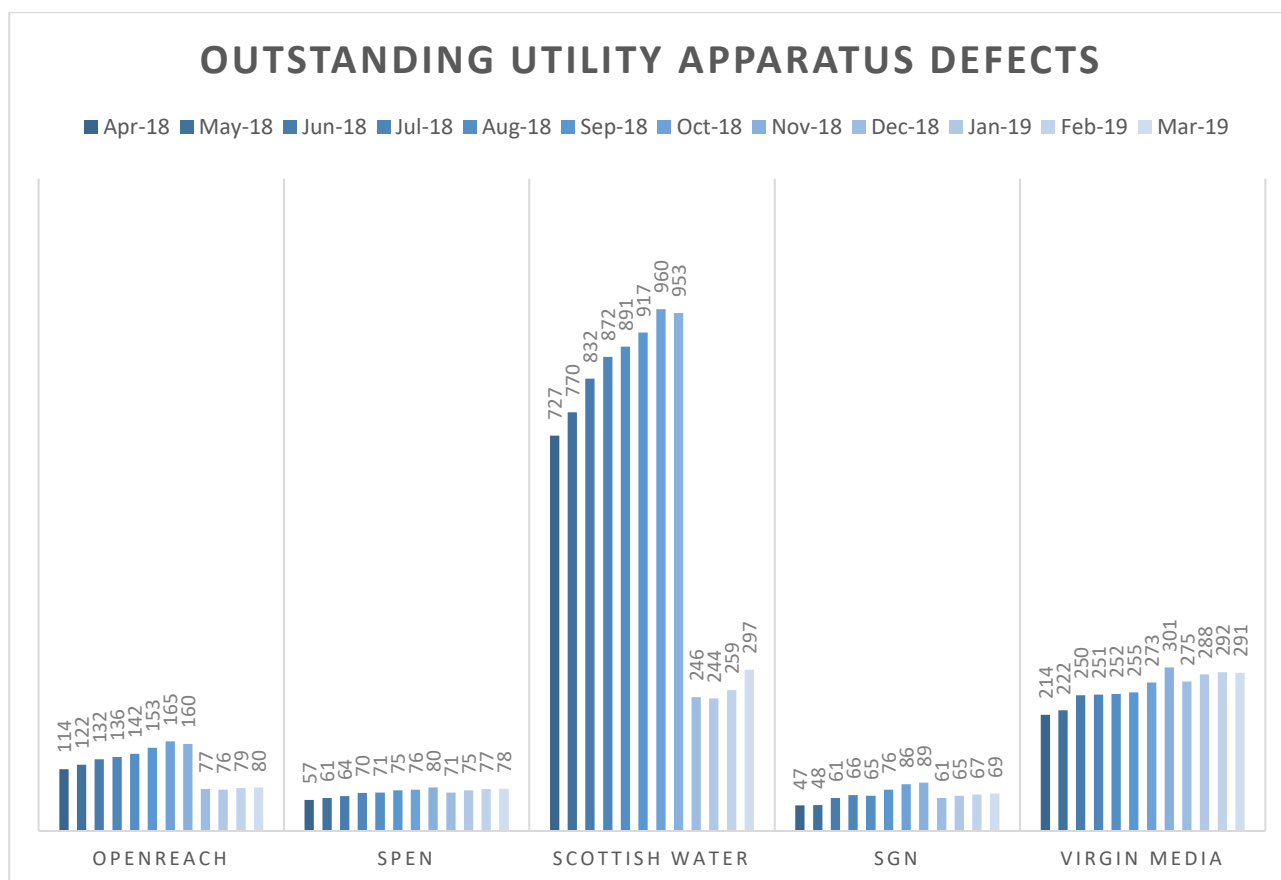


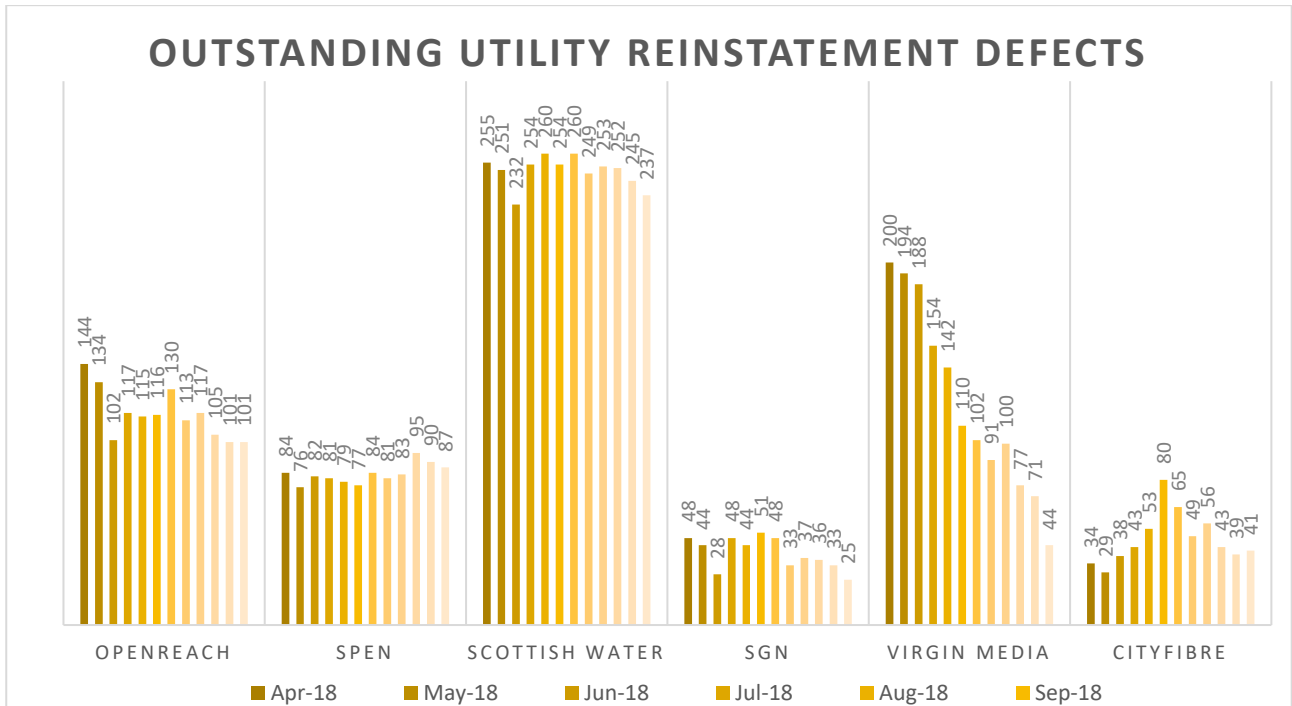
Table 4.12

The table below shows the comparison of the numbers of outstanding defective reinstatements for each PU over the past four years.

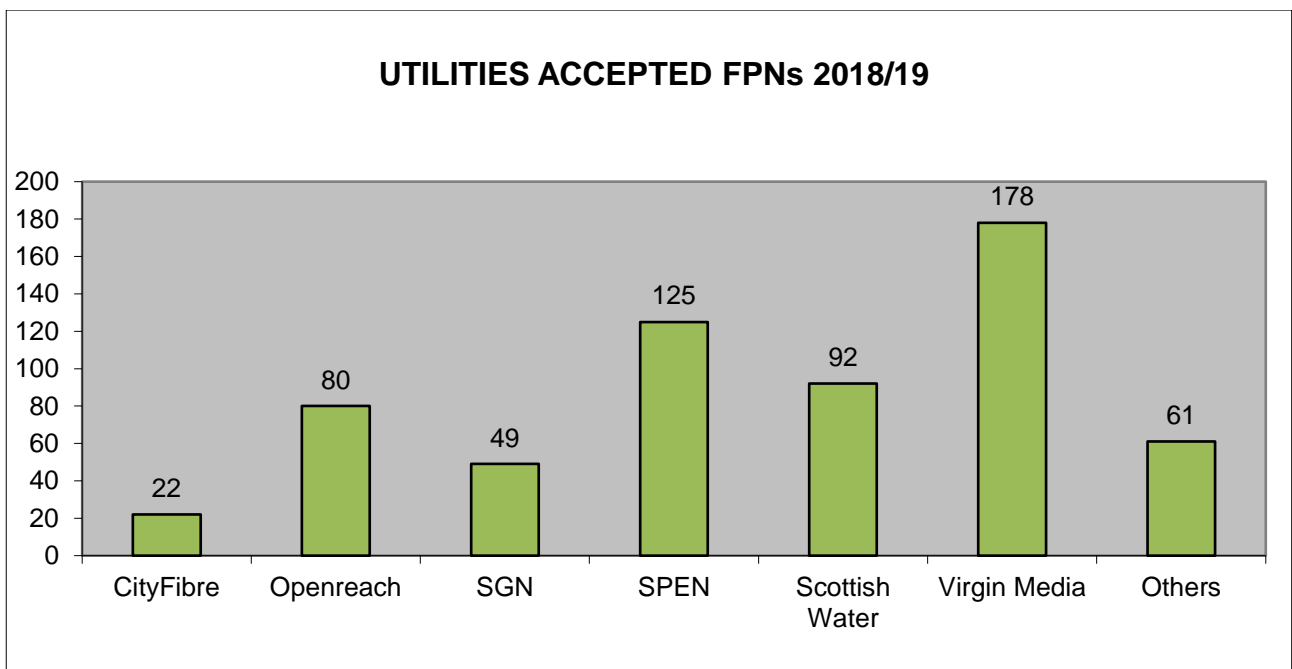
PU	End of 2015/16	End of 2016/17	End of 2017/18	End of 2018/19
Openreach	182	125	138	101
SGN	91	44	79	25
SPEN	124	107	81	87
Scottish Water	344	229	239	237
Virgin Media	165	223	197	44
CityFibre	44	270	41	41

Graph 4.12

The graph below shows the comparison of the numbers of outstanding defective reinstatements for each PU during 2018/19.

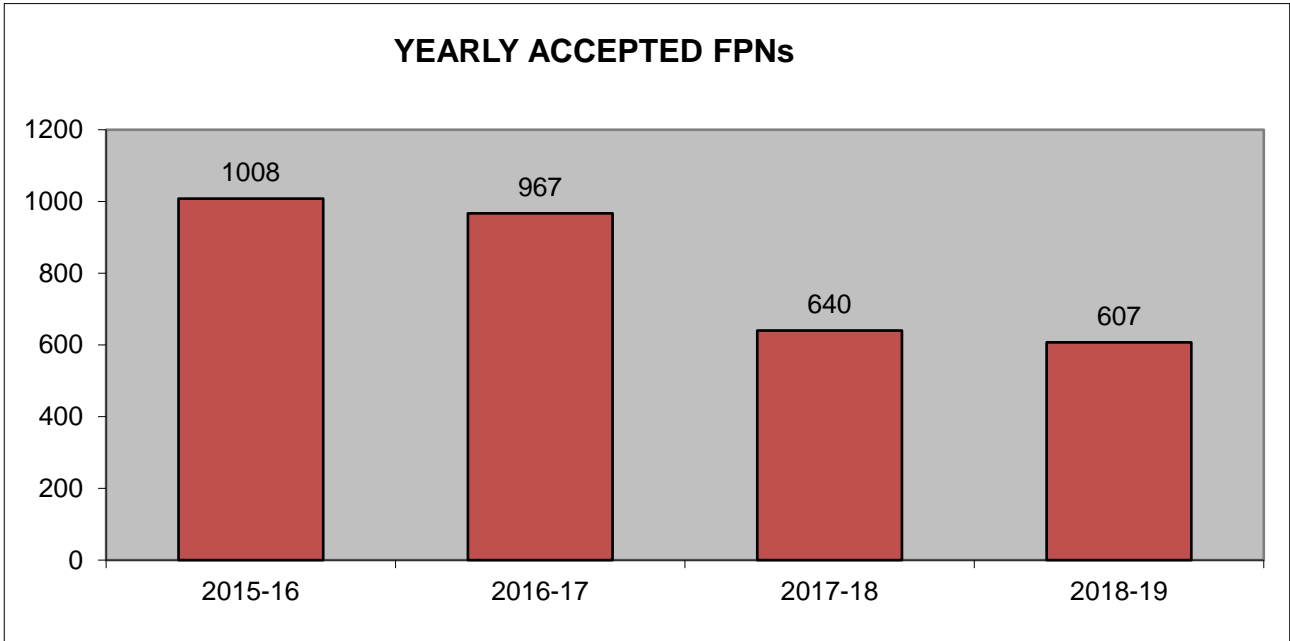


Graph 4.14A



Virgin Media, Scottish Water and SPEN were issued with the highest number of Fixed Penalty Notices in 2018/19. This was due to their notices not being closed on time and/or no notice being received for their work.

Graph 4.14B



Virgin Media and SPEN had the most FPN's issued during 2018/19: The reasons for the issue of an FPN were excavations being temporarily reinstated with the permanent reinstatement not completed within the statutory six month period; notices not being closed on time; leaving traffic signs and barriers on site once the work was complete; and no notice given for the work carried out.

Graph 4.17

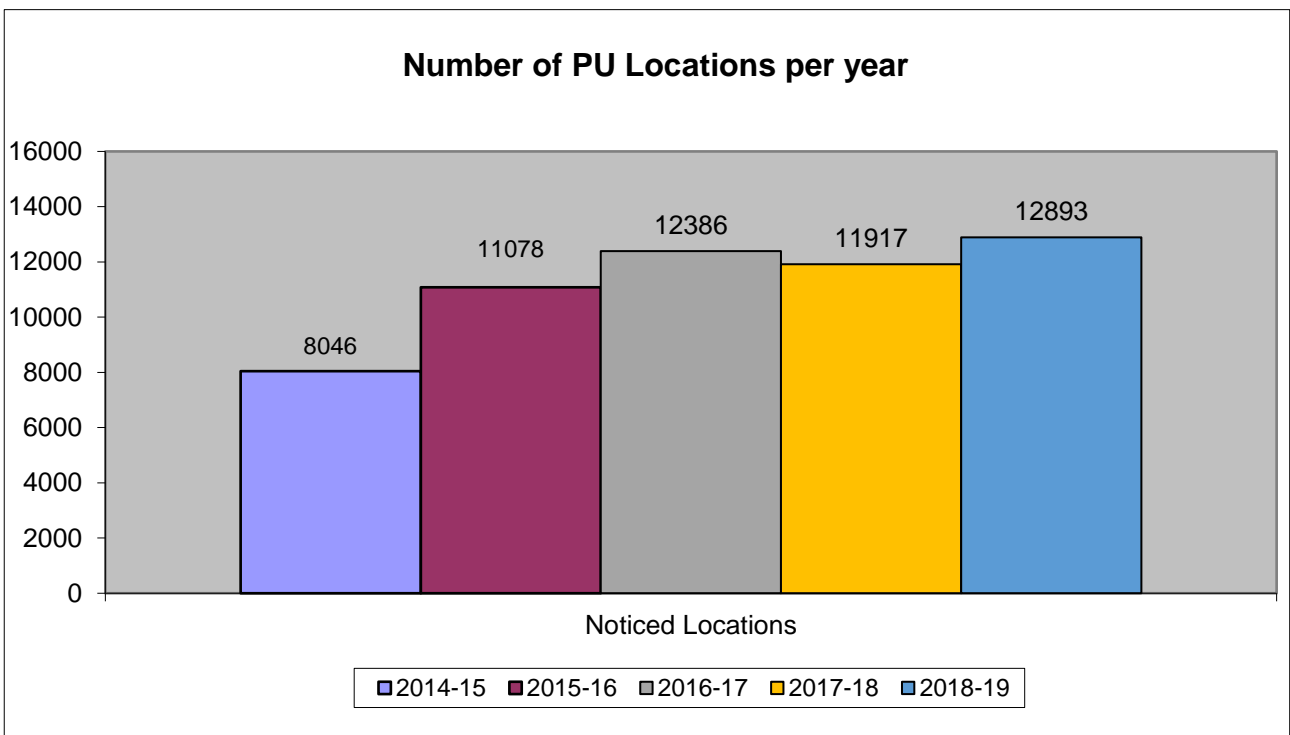


Table 4.21

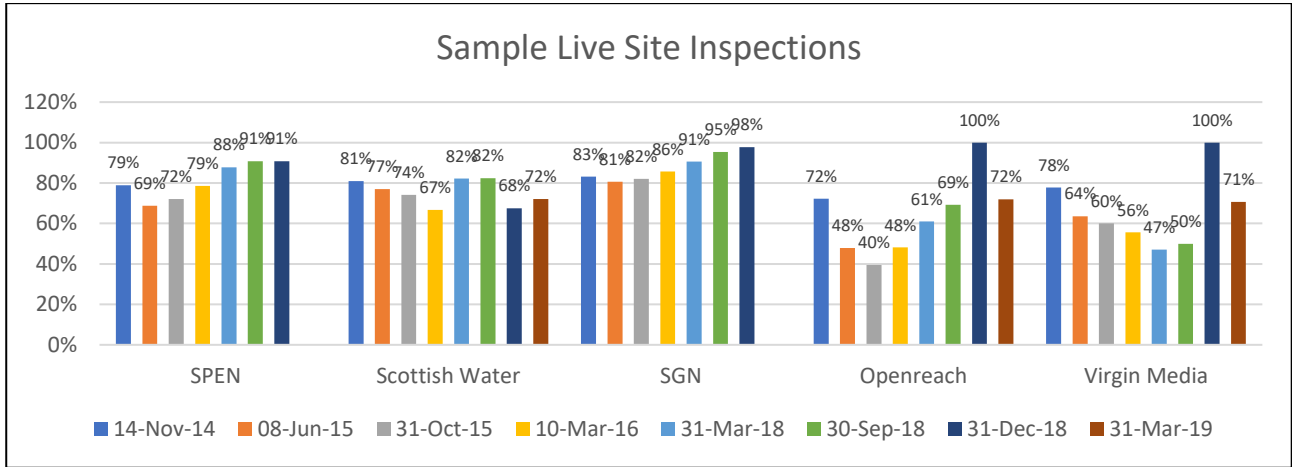
The percentage pass rate for each PU that has been placed on a Staged Improvement Notice.

Quarters used to gather performance information		Q 3-4 12/13 & Q 1-2 13/14	Q 1-4 14/15	Q 3-4 2014 & Q 1-2 2015	Q 1-4 15/16	Q 1-4 17/18	Q 1-2 18/19	Q 3 18/19	Q4 18/19
PU	Insp Type	At Stage 1 Notice on 14 Nov 2014	At Stage 2 on 8 June 2015	At end of Period 31 October 2015	At 10 March 2016	At 31 March 2018	At 30 Sept 2018	At 31 Dec 2018	At 31 Mar 2019
SPEN	Sample A	78.9%	68.8%	72.1%	78.6%	87.8%	90.8%	90.8%	85% <i>Targets</i>
	Sample B & C	91.6%	92.8%	92.1%	93.0%	92.1%	94.4%	93.3%	92.6%
Scottish Water	Sample A	81.0%	77.0%	74.2%	66.7%	82.2%	82.4%	67.5%	72.1%
	Sample B & C	82.0%	80.1%	77.4%	78.5%	84.8%	90.8%	93.4%	84.6%
SGN	Sample A	83.1%	80.6%	82.0%	85.7%	90.6%	95.3%	97.7%	N/A
	Sample B & C	85.9%	85.6%	84.0%	80.5%	88.0%	84.1%	92.0%	95.7%
Openreach	Sample A	72.2%	47.8%	39.5%	48.2%	61.0%	69.2%	100%	72.0%
	Sample B & C	84.3%	80.7%	80.5%	80.5%	88.0%	82.3%	70.0%	88.3%
Virgin Media	Sample A	77.8%	63.6%	60.0%	55.6%	47.0%	50.0%	100%	70.6%
	Sample B & C	91.3%	87.3%	77.1%	78.4%	85.0%	87.0%	86.1%	85.4%

The target minimum pass rate for all PUs is 90%.

Graph 4.22A

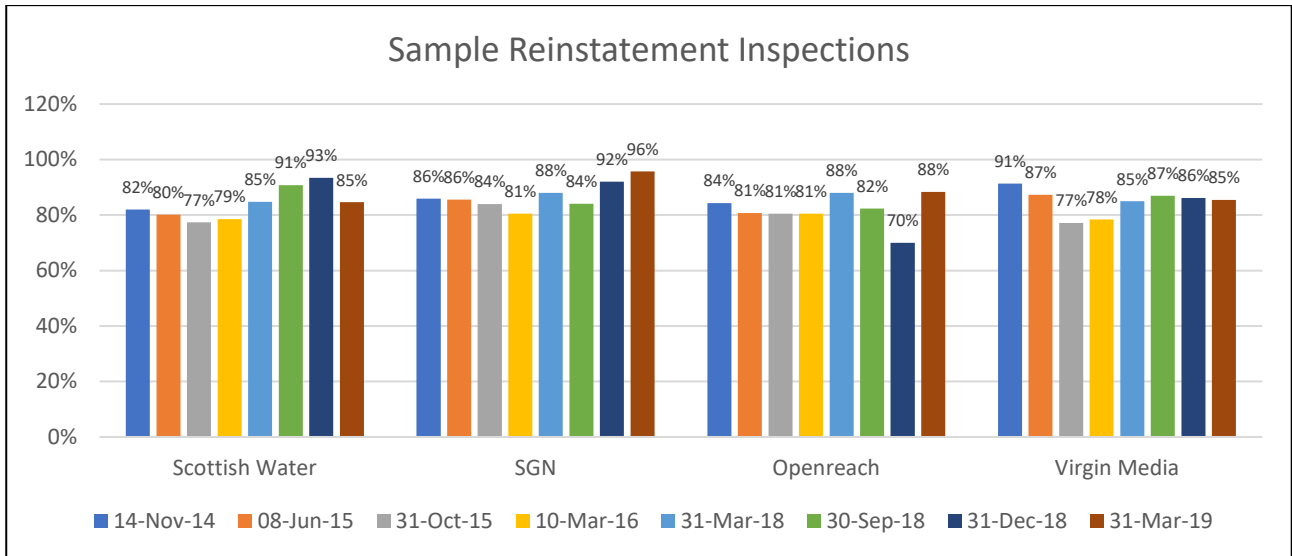
The percentage Sample Live Site Inspection of Traffic Management, pass rate for each PU that has been placed on a Staged Improvement Notice.



The target minimum pass rate for all PUs is 90%.

Graph 4.22B

The percentage Sample Reinstatement Inspection pass rate for each PU that has been placed on a Staged Improvement Notice.



The target minimum pass rate for all PUs is 90%.