

# Transport and Environment Committee

10.00am, Tuesday, 21 March 2017

## Public Utility Company Performance 2016/17 Quarter 3 (October, November and December 2016)

Item number	8.2
Report number	
Executive/routine	Routine
Wards	All

### Executive Summary

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This report summarises the performance of Public Utility Companies (PUs) during the period October to December 2016 (Quarter 3), for the 2016/17 financial year.

The report comments on the performance and progress of the Citywide Network Team (formerly the Roadwork Support Team) including the Inspectors who, following the Transformation Programme, have now been employed on a permanent basis. These Inspectors assist with monitoring the performance of PUs and will continue the initiative of inspecting 100% of PU reinstatements.

This report also details the proposals for managing future PU performance.

### Links

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Coalition pledges	<a href="#">P28</a> , <a href="#">P33</a>
Council priorities	<a href="#">CP4</a> , <a href="#">CP12</a>
Single Outcome Agreement	<a href="#">SO4</a>

## Public Utility Company Performance 2016/17 Quarter 3 (October, November and December 2016)

### 1. Recommendations

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- 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.

### 2. Background

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- 2.1 The New Roads and Street Works Act 1991, as amended by the Transport (Scotland) Act 2005, gives statutory undertakers or Public Utilities (companies and private utility providers) responsibility for signing, lighting and guarding road works. The legislation also requires the road to be reinstated to prescribed standards upon completion of works.
- 2.2 The Transport and Environment Committee, at its meeting on [15 January 2013](#), agreed to receive quarterly Public Utility (PU) Performance Reports and instructed the Head of Planning and Transport to enhance the scrutiny and monitoring of all road works. The Committee also agreed to instruct the Head of Planning and Transport to take the lead in developing a revived Edinburgh Road Works Ahead Agreement (ERWAA).
- 2.3 This report provides an update on developments that have occurred during the three month period between October and December 2016.

### 3. Main report

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#### Performance

- 3.1 The performance of each PU is monitored daily by the Citywide Network Team (formerly the Roadwork Support Team), with reports compiled on a monthly and quarterly basis. The result of this monitoring is discussed at bi-monthly liaison meetings held with each PU, on a one to one basis.
- 3.2 Where a PU fails to meet the specified performance standards, as defined in the appropriate Code of Practice, the following staged procedure should be used:
  - 3.2.1 The Roadwork Authority issues a Notice of Failure to Achieve Performance (NFAP). This is the first stage of action in improving performance; and

- 3.2.2 The undertaker responds with an Improvement Plan – Stage 1.
- 3.3 In the event that the PU does not achieve the required level of improvement, the following actions are taken:
- 3.3.1 The Roadwork Authority issues an Improvement Notice (IN); and
- 3.3.2 The PU responds with an Improvement Plan – Stage 2.
- 3.4 Within five days of receiving the NFAP, the PU must verify and analyse the defect data (gathered from inspections and performance information), to establish appropriate improvement objectives. The PU should then prepare an outline Improvement Plan, designed to achieve the objectives, and forward this to the Roadwork Authority.
- 3.5 Following implementation of the Improvement Plan, if it becomes clear after three months that no practical improvement is being achieved, other measures may need to be considered such as:
- 3.5.1 escalation of the Improvement Plan monitoring to achieve a step change in performance;
- 3.5.2 involvement of a more senior level of management within both the PU and the Roadwork Authority; and
- 3.5.3 following an appropriate grievance and dispute process, civil and/or criminal remedies.
- 3.6 Where improvements are not achieved following a Stage 2 plan, a report, containing all relevant evidence of the PU's failure to comply with its duties under the New Roads and Street Works Act, can be submitted to the Office of the Scottish Road Works Commissioner for information. This has been carried out.
- 3.7 The figures and graphs referred to throughout this report are shown in Appendix 1.

### **Inspections**

- 3.8 The New Roads and Street Works Act 1991, as amended by the Transport (Scotland) Act 2005, makes PUs wholly responsible for the management of their road works. Councils, as Roadwork Authorities, are responsible for monitoring the performance of the PUs and are empowered to charge them for a number of sample inspections carried out to monitor the performance. The sample size that is currently chargeable is 30% of the total annual number of notices registered by PUs. Other inspections, carried out routinely by the Roadwork Authority, or in response to reports from the police or members of the public, may also be carried out. The cost of these inspections falls to the Council, unless a defect is found.
- 3.9 The two areas that are inspected and monitored closely are PU reinstatements and PU defective apparatus (manholes, toby covers, valve and inspection/access covers). A sample inspection of the traffic management used at live sites is also undertaken.

- 3.10 Target inspections are the other inspections carried out. They involve the Council investigating all new reinstatements, or those still within their two year guarantee period.
- 3.11 The total number of all inspections carried out in Quarter 3 was 7,288. The figures for Quarter 1, 2 and 3 are shown in Graph 3.11A. The numbers carried out in each month of Quarter 3 are shown in Graph 3.11B. The number of inspections carried out in Quarter 3 has reduced by 10.8% from those carried out in the same period in 2015/16. This is a result of the reduction in the total numbers of Inspectors from six to four. At the time of writing this report two vacancies remain to be filled however it is expected that all vacant Inspectors posts will be filled by March 2017.
- 3.12 The average pass rate for inspected reinstatements was 82.4%, against a minimum target of 90%, as shown in Table 3.12. This is an improvement in performance of 3% since Quarter 2.

### **Sample Inspections**

- 3.13 The total number of sample inspections carried out in Quarter 3 was 406, with the breakdown between each inspection type shown in Table 3.13.
- 3.14 The average percentage pass rate for each PU, at the end of Quarter 3, was 70% as shown in Table 3.14 and Graph 3.14. The target pass rate for all PUs is 90%. The low average result was due to no PU achieving the required 90% pass rate and CityFibre and Openreach achieving pass rates of only 25% and 63%.
- 3.15 The reinstatements that failed the Council's Sample Inspections have been passed to the relevant PU with requests to carry out remedial work to ensure the reinstatements meet the required specification.

### **Target Inspections**

- 3.16 The cumulative number of target inspections carried out in Quarter 3 was 2,187, with the breakdown between each inspection type shown in Table 3.13.
- 3.17 The number of inspections carried out in Quarter 3 shows an increase of 79 inspections, when compared to the number carried out in the same period in 2015/16, as shown in Graph 3.17.

### **Utility Defective Apparatus**

- 3.18 The total number of outstanding defective apparatus at the end of Quarter 3 was 714, an increase of 31 from the previous quarter. A breakdown for each PU is shown in Table 3.18. There was an increase in the number of outstanding defective apparatus of 26.4% when compared to the end of 2015/16 and an increase of 4.5% from the end of Quarter 2.
- 3.19 The PU with the largest number of defective apparatus continues to be Scottish Water, with 516 items, as shown in Graph 3.19. This represents an increase of 101 defects since the end of 2015/16 and an increase of 17 defects when compared to the end of Quarter 2.
- 3.20 The number of outstanding defective apparatus defects increased for each PU when compared to the previous quarter. SGN was the only PU to reduce the

number from the numbers in October and November. The number of defects for Scottish Water remains the highest of each of the other PUs. For comparison, the figures for the end of the last four years are shown in Table 3.20.

### **Utility Defective Reinstatements**

- 3.21 At the end of Quarter 3, the total number of outstanding defective reinstatements in Edinburgh was 1,064. A breakdown for each PU is shown in Table 3.21 and Graph 3.21.
- 3.22 Scottish Water continued to reduce the number of outstanding defective reinstatements by the end of Quarter 3. CityFibre became the PU with the largest number of defective reinstatements this quarter. The number of defects increased by 49% from the previous quarter. Scottish Water was the only PU that reduced the number of outstanding defects each month during Quarter 3.
- 3.23 SGN reduced the number of defective reinstatements between the beginning and end of Quarter 3. The number of outstanding defects since the end of 2015/16 has reduced by 57.1%.
- 3.24 Openreach showed an increase in the number of defective reinstatements of 61.6% when compared to Quarter 2.
- 3.25 Scottish Power Energy Networks (SPEN) and Virgin Media have also shown an increase in the number of defective reinstatements since Quarter 2 of 0.9% and 4% respectively.
- 3.26 CityFibre has shown a 49% increase in the number of defective reinstatements since Quarter 2, increasing from 192 to 286 defects. Regular meetings are held with CityFibre to discuss its proposals to remedy this situation.

### **Registration and Fixed Penalty Notices (FPNs)**

- 3.27 All road works on public roads must be registered on the Scottish Road Works Register (SRWR).
- 3.28 PUs are required to record all information relating to the works they wish to undertake and works that are underway. Roadwork Authorities are also required to record all information on works they wish to carry out. Developers, and others wishing to occupy or carry out works on public roads, must first obtain consents (Road Occupation Permits) from the Roadwork Authority. The Roadwork Authority is then responsible for the registration of these works.
- 3.29 Failure to comply with the above requirements is an offence. PUs, and those working under Road Occupation Permits, that commit such an offence, can discharge their liability through the payment of a Fixed Penalty Notice (FPN). Currently the Penalty is £120, which is reduced to £80 if paid within 29 days. A breakdown of FPNs accepted in Quarter 2 is shown in Graph 3.29.
- 3.30 The total number of FPNs accepted by PUs in Quarter 3 was 170. A further 44 FPNs were accepted by other agents in relation to Road Occupation Permits e.g. skips, scaffolding, etc.
- 3.31 The reasons for issuing a FPN were due to the following:

- 3.31.1 CityFibre commencing work after the scheduled start date and failure to permanently reinstate its interim temporary reinstatements within six months.
  - 3.31.2 Openreach notice to close or clear works was submitted late and did not permanently reinstate its interim temporary reinstatements within six months.
  - 3.31.3 SPEN undertook work prior to an agreed start date where no early start date was requested and the works closed notice was submitted late.
  - 3.31.4 Scottish Water commenced work without a notice or started late and did not register that work had been completed.
  - 3.31.5 SGN commenced work without a notice being submitted or their work started late.
  - 3.31.6 Virgin Media did not complete their interim reinstatements within the required six months.
- 3.32 These recurring issues have been raised with each PU and the Council has received assurances that training will be carried out to address these matters.

### **Improvement Plans**

- 3.33 Scottish Water, SGN, SPEN, Openreach and Virgin Media were served with a Stage 2 Improvement Notice on 8 June 2015. The Stage 2 Improvement Plans submitted and implemented by each PU were monitored for 12 weeks up to 31 October 2015. The changes made to working practices were a permanent change and continued beyond the end of the monitoring period. The performance data collected from Sample Inspections, used in the determination of the outcome of any improvement, was only available from the Scottish Road Works Register at the end of Quarter 3 (December 2015).
- 3.34 The assessment covers the performance of each PU during the 12 week period of its Improvement Plan and their performance figures for the 12 month period from 1 October 2014 to 30 September 2015. It also considers the commitment from each PU to achieve the required improvement in performance and reduction in legacy defects.
- 3.35 Following analysis of the performance figures for each PU, all five PUs failed to show any significant improvement in performance. A report, on each PU's failure, has been passed to the Scottish Road Works Commissioner for his information. Each PU's performance data was included in the report together with performance information since the end of the official monitoring period. This report detailed their failure to comply with duties under the New Roads and Street Works Act 1991 and, in particular, their failure to achieve satisfactory levels of performance.
- 3.36 A meeting took place with the Scottish Road Works Commissioner on 23 January 2017 where the performance of both the Council and PUs was discussed in detail.
- 3.37 The next actions to be taken regarding poorly performing PUs will follow the guidance given in Chapter 8.5 of the Code of Practice for Inspections. This involves raising a civil and/or criminal remedy following an appropriate grievance

and dispute process. The grievance and dispute process is documented in the Code of Practice for Dispute Resolution and Appeals.

### **The Edinburgh Road Works Ahead Agreement (ERWAA)**

- 3.38 A report outlining the new working arrangements for the ERWAA was submitted to, and approved by, the Transport and Environment Committee on [18 March 2014](#).
- 3.39 The ERWAA was signed on 31 January 2017. The PUs that joined the Council in signing the agreement were SGN, Scottish Water and CityFibre.
- 3.40 Openreach stated they had recently appointed a new contractor and wanted to ensure that their new supplier was fully embedded before consideration to signing the ERWAA could be made. They will however, look to review this in six months time, at which point they should be in a position to provide the Council with a final response.
- 3.41 Virgin Media replied stating that a copy of the ERWAA was currently sitting with their legal team and it was hoping to review their position within the next few months.
- 3.42 SPEN stated that, while recognising the importance of working collaboratively, being a national business it was not practical for them to enter into local agreements and as such SPEN would not be signing the Agreement. While they will continue to deliver existing commitments and targets in accordance with the requirement of national legislation, their organisation is constantly striving to continuously improve service to their customers. On that basis it is their intention to review their performance against the parameters of the ERWAA on a periodic basis.

### **Actions from January 2017 Committee**

- 3.43 In response to action 1, to agree that at least 10% of future inspections are on 'Category A' inspections (ie during the actual roadworks). This is already undertaken as part of the Sample Inspection process and results can be seen in Table 3.12.
- 3.44 In response to action 2, to agree an evaluation of the equality implications of roadworks would be included in future reports. This report is mostly a statistical report on the performance of PUs and is not intended to report on the operational activities of each PU. When site Traffic Management is undertaken the Council ensures that the Temporary arrangements comply with the Safety at Street Works and Road Works a Code of Practice.
- 3.45 When the Locality teams discuss working arrangements with PUs, the impact on all protected characteristics are taken into account and any requirements specific to a site is discussed with PUs or their contractors.
- 3.46 A positive equalities impact of the inspection of PU operations is that, with the regular inspection of PU reinstatements and defects on the road network, will ensure road surfaces are maintained to a satisfactory standard. This affects people

from the following protected characteristics; Age, Disability, Pregnancy Maternity and Children.

3.47 An Equalities Impact Assessment is undertaken for each report to Committee.

#### **4. Measures of success**

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- 4.1 Improved performance in the key areas reported will be measured by greater public satisfaction with:
- 4.1.1 the planning, co-ordination and delivery of road works across the city;
  - 4.1.2 the quality of information supplied to people who live in, work in, or visit Edinburgh; and
  - 4.1.3 the quality and longevity of PU reinstatements.
- 4.2 It is intended to issue Customer Satisfaction cards in locations where major schemes of work have been undertaken by PUs. Following the Transformation Programme, this should now be carried out by Business Support Services. Discussions are taking place to agree procedures for taking this forward.

#### **5. Financial impact**

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- 5.1 The revenue streams associated with sample and repeat inspections of failed PU reinstatements did not achieve the budget of £215,229 for Quarter 3. The total fees received from inspection of the failed reinstatements amounted to £149,728 at the end of December 2016. This was as a result of late submissions to the Council's payments unit and it is anticipated that the annual projected fee recovery will be achieved.
- 5.2 The number of failures found, through sample and target inspections of PU reinstatements during Quarter 1, 2 and 3 amounts to £503,244 (£36 per eligible inspection). Some of the failed inspections have yet to be accepted by PUs. It is within their right to decline failures and this results in meetings being held to discuss each of the failures placed onto the Scottish Road Works Register.
- 5.3 The revenue associated with FPNs exceeded the budget (April to December), of £45,446 with the total revenue from the charges levied of £53,557 being achieved.

#### **6. Risk, policy, compliance and governance impact**

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- 6.1 There is a risk that the condition of the road network could deteriorate if the 100% inspection of PU reinstatements is not maintained. If 100% inspections are not undertaken, there is a risk that defects would not be found and responsibility for their repair would fall to the Council.



- 6.2 Where the Council has made significant investment in road improvements, there is a risk that the road network may deteriorate following reinstatements that have not been carried out to the agreed standards.
- 6.3 There is a risk of reduced revenue, if the number of inspections is less than that estimated at the beginning of the year.
- 6.4 There is a risk of lack of improvement by poor performing PUs. This is currently being addressed by the use of formal Improvement Plans, as specified in Code of Practice for Co-ordination of Works in Roads.

## **7. Equalities impact**

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- 7.1 This report is reporting on statistical information only and gives an update on the performance and actions relating to Public Utilities only.
- 7.2 It is believed there will be no enhancement or infringement of rights through the purpose of this report. There are no equalities impacts arising from this report.

## **8. Sustainability impact**

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- 8.1 There are no sustainability impacts arising from this report.

## **9. Consultation and engagement**

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- 9.1 Individual Liaison meetings are held every two months with representatives from all of the major PUs. Specific performance issues and improvement requirements are discussed at these meetings.
- 9.2 Throughout the year the Council was represented at all relevant Committees (detailed below), as required within the Code of Practice for the Co-ordination of Works in Roads.
  - 9.2.1 The Roads and Utilities Committee Scotland (RAUCS) where all Roads Authorities and PUs are represented together with representatives from Transport Scotland and the office of the Scottish Road Works Commissioner.
  - 9.2.2 The South East of Scotland Roads and Utilities Committee (SERAUC) where representatives from the City of Edinburgh, Midlothian, East Lothian, West Lothian and Scottish Borders Councils attend, together with representatives from all PUs.
  - 9.2.3 The Local Roads and Utilities Committee (LRAUC) is also known as the Local Co-ordination meeting. This includes representatives from every function and service within Place that has an involvement in roadworks or road occupation eg Lothian Buses, every Utility, Edintravel and the Tram Team.

## 10. Background reading/external references

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- 10.1 [Quality of Utility Company Reinstatements – Item 5.16, Transport and Environment Committee, 18 June 2012.](#)
- 10.2 [Code of Practice for Inspections, 3rd edition, approved by the Roads Authority and Utility Committee Scotland, November 2012.](#)
- 10.3 [Code of Practice for the Co-ordination of Works in Roads, version 1.0, April 2013.](#)

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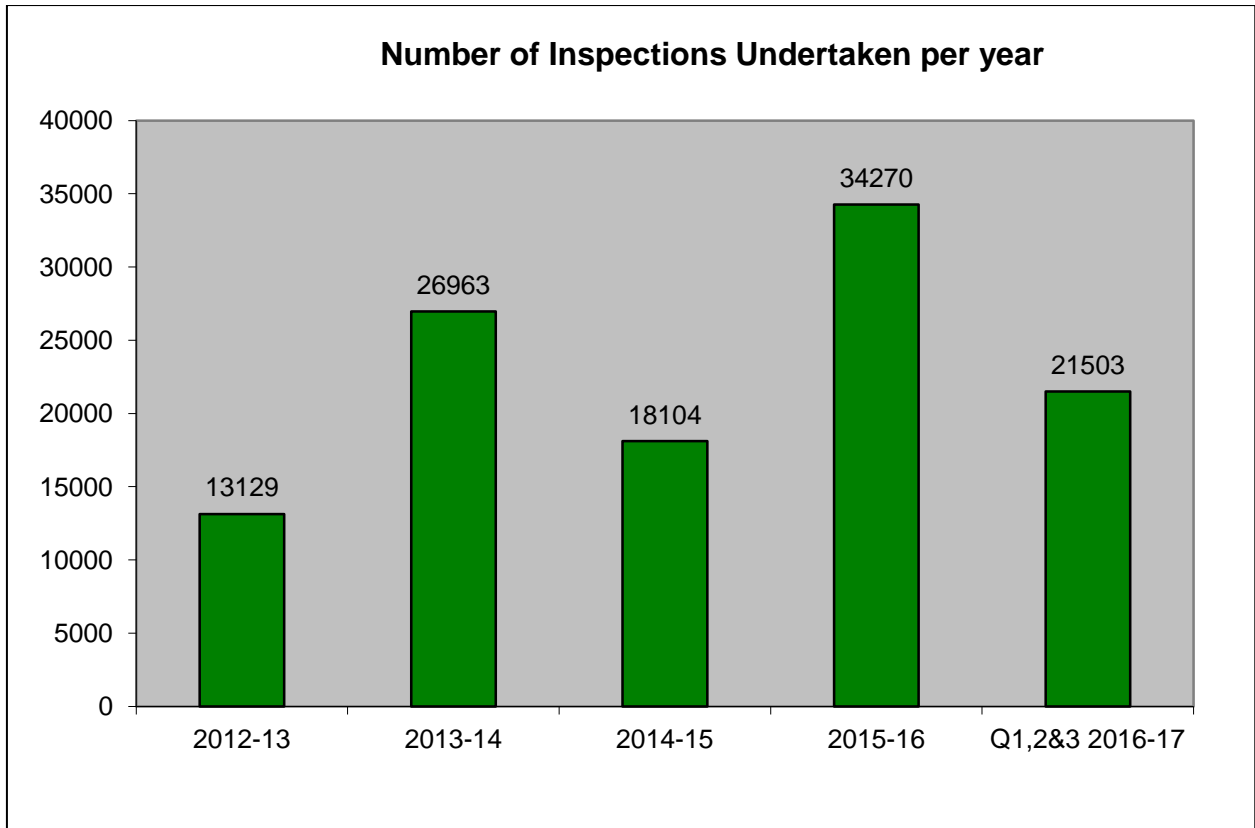
## 11. Links

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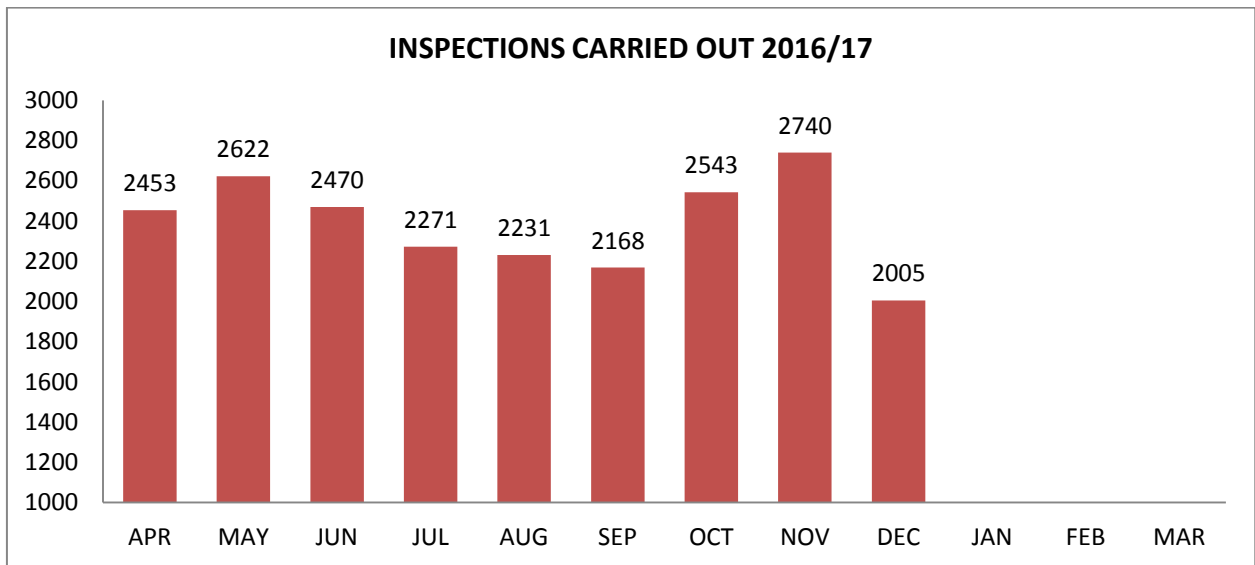
<b>Coalition pledges</b>	P28 - Further strengthen links with the business community by developing and implementing strategies to promote and protect the economic well being of the city. P33 - Strengthen Neighbourhood Partnerships and further involve local people in decisions on how Council resources are used.
<b>Council priorities</b>	CP4 - Safe and empowered communities CP12 - A built environment to match our ambition
<b>Single Outcome Agreement</b>	SO4 - Edinburgh's communities are safer and have improved physical and social fabric.
<b>Appendices</b>	Appendix 1 - Utility Company Performance Information 2016/17

## APPENDIX 1

Graph 3.11A



Graph 3.11B



In Quarter 3 there were 7,288 inspections carried out. The estimated target of 20,000 inspections will be achieved this year.

Table 3.12

Average pass rate for ALL PUs

	No of Failures	% Pass Rate
SAMPLE INSPECTIONS	94/406	76.8%
Category A	48/127	62.2%
Category B	33/157	79%
Category C	13/122	89.3%
TARGET INSPECTIONS	390/2187	82.2%
Category A	11/51	78.4%
Category B	303/1241	75.6%
Category C	76/895	91.5%
DEFECTIVE REINSTATEMENTS	425/2415	82.4%

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

Table 3.13

Number of inspections for ALL PUs

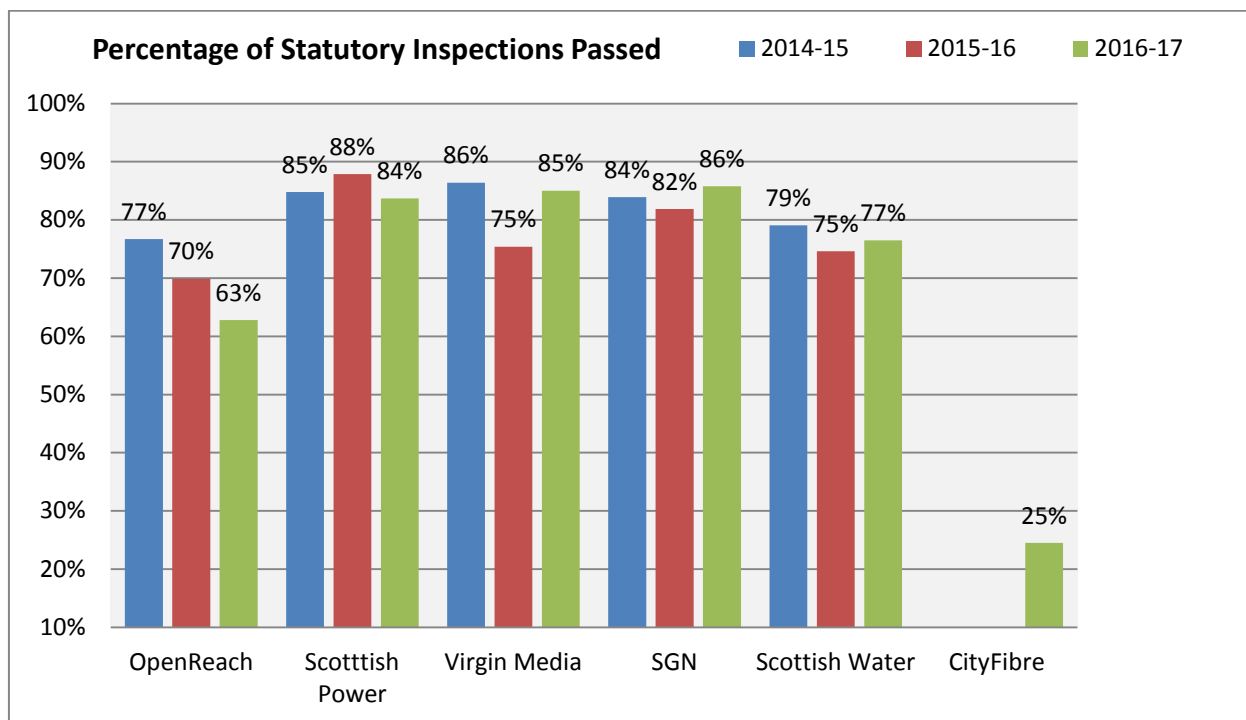
TYPE	CATEGORY A	CATEGORY B	CATEGORY C	OTHER INSPECTIONS	TOTAL
	Inspections during the progress of the works.	Inspection within six months of the work being completed.	Inspection within three months of end of guarantee period.		
SAMPLE INSPECTION	127	157	122	-	406
TARGET INSPECTION	51	1241	985	-	2187
DEFECTIVE APPARATUS	-	-	-	141	141
DEFECTIVE REINSTATEMENT	-	-	-	4199	4199
INSPECTIONS RELATED TO CORING	-	-	-	122	122
OTHERS	-	-	-	233	233
TOTAL	178	1398	1017	4695	7288

Table 3.14

The table below shows the average percentage pass rate for Sample Inspections for each PU during Quarter 3. The target minimum pass rate for all PUs is 90%.

	Openreach	SPEN	Virgin Media	SGN	Scottish Water	City Fibre	Average
Pass Rate	63%	84%	85%	86%	77%	25%	70%

Graph 3.14



No PU achieved the target pass rate of 90% by the end of Quarter 3.

Graph 3.17

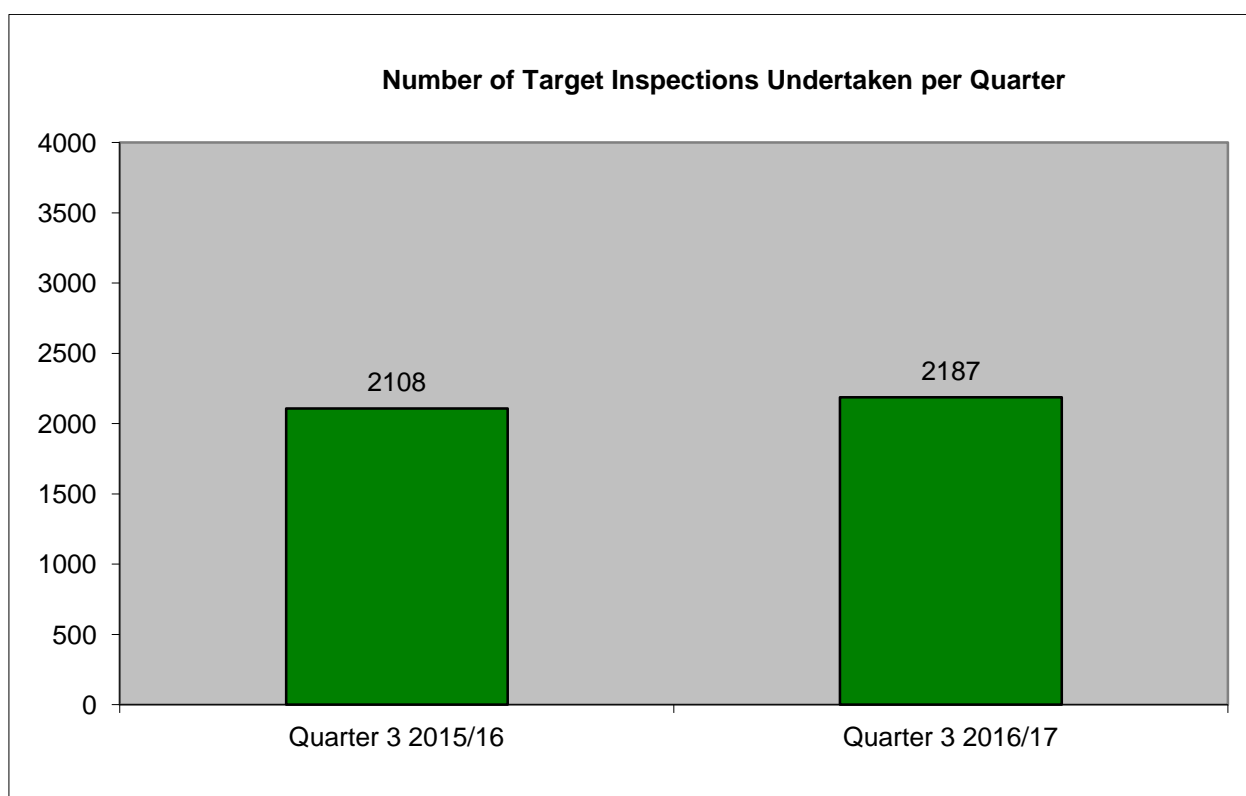
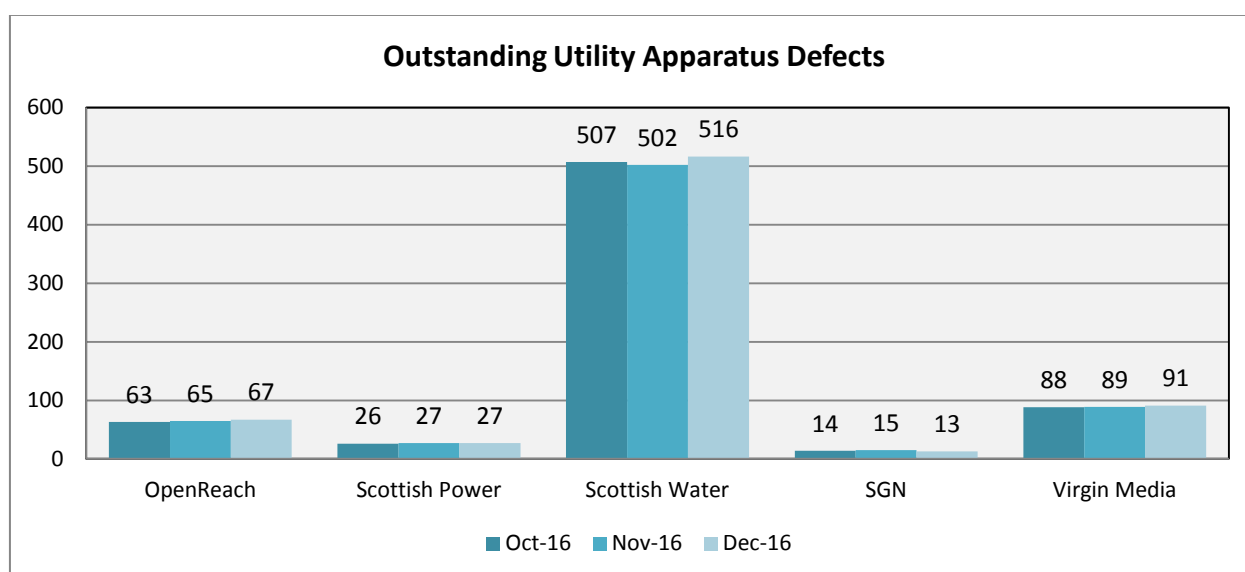


Table 3.18

The total number of outstanding Defective Apparatus for the last 4 Quarters is shown below.

Utility	Q4 (2015/16)	Q1 (2016/17)	Q2 (2016/17)	Q3 (2016/17)	Difference Q2 to Q3
SGN	11	14	10	13	3 (30%)
Scottish Water	415	482	499	516	17 (3.4%)
Openreach	45	56	64	67	3 (4.6%)
SPEN	15	19	25	27	2 (8%)
Virgin Media	79	82	85	91	6 (7.1%)
Totals	565	653	683	714	31 (4.5%)

Graph 3.19



The number of outstanding defects for Scottish Water (at 516) remains a long standing issue, which has been raised as a specific concern and included in their Stage 2 Improvement Notice.

Table 3.20

The table below shows the comparison of the numbers of outstanding defective apparatus for each PU over the past four years, measured at the end of each year and Quarter 3 of 2016/17.

PU	End of 2012/13	End of 2013/14	End of 2014/15	End of 2015/16	Quarter 3 of 2016/17
Openreach	53	51	144	45	67
SGN	22	8	21	11	13
SPEN	8	5	26	15	27
Scottish Water	582	470	462	415	516
Virgin Media	27	19	20	79	91

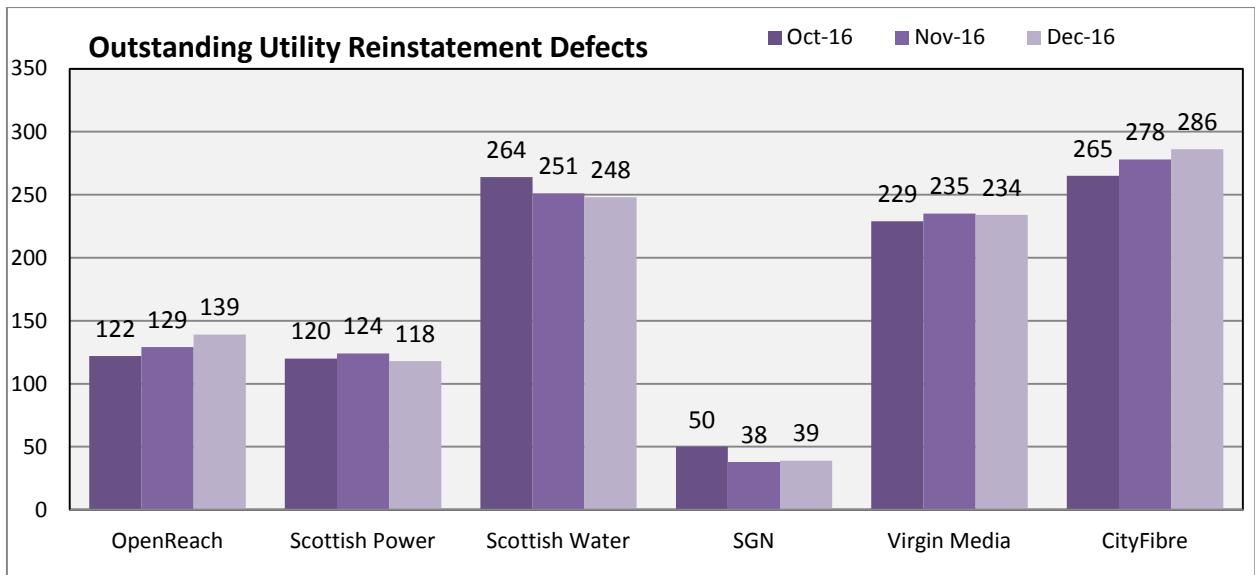
Table 3.21

The total number of outstanding Defective Reinstatements for each quarter, for each PU, is shown below:

Utility	Q4 (2015/16)	Q1 (2016/17)	Q2 (2016/17)	Q3 (2016/17)	Difference Q2 to Q3
SGN	91	60	55	39	-16 (-29.1%)
Scottish Water	344	332	266	248	-18 (-6.8%)
Openreach	182	108	86	139	53 (61.6%)
SPEN	124	133	117	118	1 (0.9%)
Virgin Media	165	230	225	234	9 (4%)
CityFibre	44	161	192	286	94 (49%)
Totals	950	1024	941	1064	123 (13.1%)

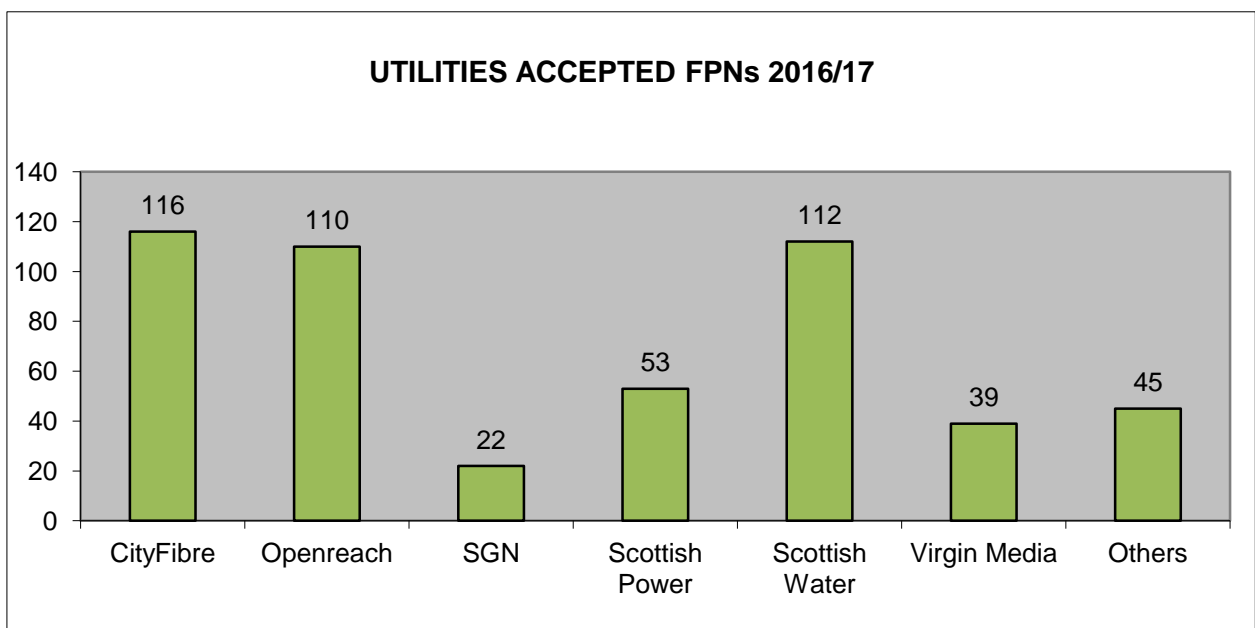


Graph 3.21



The number of outstanding defective reinstatements has increased during Quarter 3.

Graph 3.29



CityFibre, Scottish Water and Openreach were issued with the highest number of Fixed Penalty Notices in Quarter 3.