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## **Confirmation Decision under section 96C of the Communications Act 2003 relating to contravention of General Condition 18**

Confirmation Decision served on GW Telecom Limited  
trading as Gateway Telecom by the Office of  
Communication

This version is non-confidential. Confidential redactions are indicated by [X].

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# Glossary

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“**the Act**” means the Communications Act 2003.

“**BT**” means British Telecommunications plc.

“**CP**” means Communications Provider.

“**the Customer**” means [§<].

“**Customer Letter(s) of Authorisation**” means the letter(s) from the Subscriber, Losing Party and/or Losing CP authorising the porting of a number, including the Subscriber’s name, address and account details, and their current and new CP details. A template of this document is included at 5.13 of the Manual (discussed at paragraphs 4.8-4.11 below).

“**Daisy**” means Daisy Group Limited.

“**Gaining CP**” means the Communications Provider with the network that the number is to be ported to.

“**Gaining Party**” means the reseller who is gaining the Subscriber’s number.

“**Gateway**” means GW Telecom Limited trading as Gateway Telecom.

“**the Handbook**” means BT’s “*Number Portability Handbook – IP Exchange*” dated 6 November 2014 (discussed at paragraphs 4.13-4.18 below). The relevant sections of the Handbook are included at Annex 12.

“**Losing CP**” means the Communications Provider with the network that the Number is to be ported from.

“**Losing Party**” means the reseller who is losing the Subscriber’s number.

“**the Manual**” means the Non-Geographic Number Portability End-to-End Process Manual<sup>1</sup> (discussed at paragraphs 4.6-4.7 below).

“**the Notification**” means the notification issued to Gateway on 24 November 2017 under section 96A of the Communications Act 2003.

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<sup>1</sup> See: [https://www.magrathea-telecom.co.uk/industry\\_porting/documents/NGNPE2E-Ops\\_Process-v13.3.pdf](https://www.magrathea-telecom.co.uk/industry_porting/documents/NGNPE2E-Ops_Process-v13.3.pdf)

**“the Number”** means the Customer’s non-geographic number, [§<].

**“Numbergroup”** means Numbergroup Network Limited.

**“Number Portability”** means a facility whereby Subscribers who so request can retain their telephone number on a Public Communications Network, independently of the person providing the service at the network termination point of a Subscriber provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan.

**“O-Bit”** means O-Bit Telecom, a CP acquired by Daisy in 2010.

**“Portability”** means any facility which may be provided by a Communications Provider to another Communications Provider enabling any Subscriber who requests Number Portability to continue to be provided with any Public Electronic Communications Service by reference to the same telephone number irrespective of the identity of the person providing such a service.

**“Public Electronic Communications Services”** means any electronic communications service that is provided so as to be available for use by members of the public.

**“Range Holder”** means the Communications Provider who has been allocated a range of numbers from Ofcom that includes the number to be ported.

**“Subscriber”** means any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services.

**“TalkTalk”** means TalkTalk Telecom Group plc.

# 1. Executive Summary

## Finding that Gateway has failed to comply with its Number Portability obligations

- 1.1 This document explains Ofcom’s decision to issue GW Telecom Limited trading as Gateway Telecom (“Gateway”) with a confirmation decision (“the Confirmation Decision”) under section 96C of the Communications Act 2003 (“the Act”). Ofcom has taken this decision, having allowed Gateway the opportunity to make representations about the matters set out in our 24 November 2017 notification under section 96A of the Act (“the Notification”), because we are satisfied that Gateway has contravened General Condition 18 (“GC18”) of the General Conditions of Entitlement<sup>2</sup> in various respects. The Confirmation Decision itself is at Annex 1.
- 1.2 Number Portability is an important tool that enables customers (“Subscribers”) to retain their telephone number(s) when they switch communications providers (“CPs”). The purpose of this mechanism is to foster customer choice by enabling Subscribers to move between CPs without the cost or inconvenience of changing their telephone number(s), thereby facilitating effective competition between providers.
- 1.3 GC18 sets out the requirements that CPs must meet when dealing with number porting requests, including providing Number Portability<sup>3</sup> within the shortest time possible and paying compensation if the porting process is abused or delayed. These regulations ensure that Subscribers can move freely between providers and take their number with them, which helps promote healthy competition in the market.
- 1.4 On 3 May 2017, Ofcom received a complaint submission from Numbergroup Network Limited (“Numbergroup”) that Gateway had failed to respond to a porting request in relation to a Subscriber, [X] (“the Customer”), who had requested to switch providers from Gateway to Numbergroup and retain their number, [X] (“the Number”). Numbergroup alleged that Gateway had refused to cooperate for several years, causing unnecessary delays and harm to the Customer<sup>4</sup>.
- 1.5 We opened an investigation on 25 May 2017, to consider whether there was or had been a contravention of Gateway’s obligations under GC18 (“the Investigation”). During the Investigation, we attempted to obtain information from Gateway to help us assess its compliance with GC18. However, Gateway failed to respond to our statutory information

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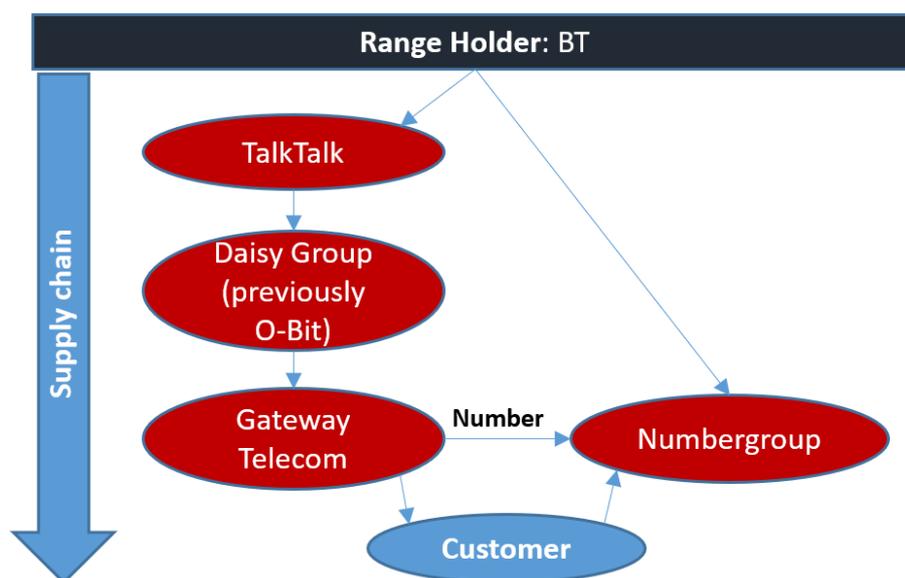
<sup>2</sup> A consolidated version of the General Conditions of entitlement is available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/86273/CONSOLIDATED\\_VERSION\\_OF\\_GENERAL\\_CONDITIONS\\_AS\\_AT\\_28\\_MAY\\_2015-1.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/86273/CONSOLIDATED_VERSION_OF_GENERAL_CONDITIONS_AS_AT_28_MAY_2015-1.pdf).

<sup>3</sup> “Number Portability” means a facility whereby Subscribers who so request can retain their telephone number on a Public Communications Network, independently of the person providing the service at the network termination point of a Subscriber provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan.

<sup>4</sup> A copy of the “Numbergroup Complaint Submission” is available at Annex 2.

requests or engage with Ofcom in a meaningful way, which caused difficulties throughout the Investigation. Consequently, Ofcom issued two confirmation decisions to Gateway under section 139A of the Act finding it to have breached its statutory information requirements and imposing financial penalties. This is explained in full in Section 3.

- 1.6 Therefore, Ofcom sought evidence and information from other parties. During the Investigation, we identified that there are further parties in the supply chain between BT<sup>5</sup> and the Customer. These are Daisy Group Limited (“Daisy”) and the Losing CP, TalkTalk Telecom Group plc (“TalkTalk”). The Number was exported from BT to TalkTalk in 2004, before later being sub-allocated to Daisy and resold to Gateway. The following diagram illustrates the Customer’s supply chain.



- 1.7 Having considered the information available to us from all the parties, we found there were reasonable grounds for believing that Gateway had contravened GC18 in various respects for all or part of the period 16 June 2015 to 24 November 2017 (“the Relevant Period”). We therefore issued Gateway with the Notification under section 96A of the Act on 24 November 2017 setting out Ofcom’s provisional finding that, from 16 June 2015 to the date of the Notification, Gateway had contravened GC18 in various respects.
- 1.8 Gateway was given the opportunity to make written and/or oral representations on the notified matters. However, it did not provide any written or oral representations to the Notification. Ofcom therefore issues this Confirmation Decision concluding that Gateway has breached GC18, for the reasons summarised below. The Confirmation Decision imposes a financial penalty and one required action on Gateway.
- 1.9 We have concluded that, during the period 16 June 2015 to 28 September 2017, Gateway failed to provide Portability as soon as was reasonably practicable on five occasions by failing to respond to four separate porting requests sent by BT (on behalf of Numbergroup)

<sup>5</sup> BT was allocated the Number by Ofcom as part of a batch of 0800 numbers.

in relation to the Number, and by failing to take the correct action in respect of the fifth porting request.

- 1.10 We have also concluded that, during the same period, Gateway failed to provide Number Portability to the Customer in the shortest time on five occasions, in respect of each of the Customer's porting request. Our Investigation discovered that the Customer's first porting request was originally submitted to Gateway in June 2015. Gateway's omissions therefore caused the Customer to be unable to switch providers for over two years<sup>6</sup>. The number was finally successfully ported on 28 September 2017, though this was facilitated by Ofcom, Daisy, TalkTalk and BT, rather than with Gateway's cooperation.
- 1.11 In addition, we have concluded that, for the period between 16 June 2015 and the date of the Notification (24 November 2017), Gateway contravened GC18.9 by failing to pay reasonable compensation to the Customer for what we consider to be an abuse of the porting process. Finally, we conclude that Gateway has contravened GC18.10 by failing to provide the Customer with clear, comprehensive and easily accessible information regarding how to access such compensation, as is required under its regulatory obligations, for the same period.

## Financial penalty and other required action

- 1.12 When Ofcom identifies a breach of a General Condition we may impose a financial penalty where we consider it appropriate and proportionate to do so.
- 1.13 In this case, Ofcom has decided to impose a penalty of £20,000 on Gateway in respect of its contraventions of GC18. This is the penalty that we specified in the Notification under section 96A of the Act. Gateway did not make any representations concerning the level of penalty, even though it had the opportunity to do so. Ofcom's view is that this penalty is appropriate and proportionate, reflects the seriousness of the contraventions, and deters further breaches of the General Conditions by Gateway and all other CPs. In taking this view, Ofcom has had regard to all the evidence referred to in this document and Ofcom's published Penalty Guidelines<sup>7</sup>. This is explained in full in Section 6.
- 1.14 Ofcom also directs Gateway to pay reasonable compensation of £1,000 to the Customer in light of what we consider to be Gateway's abuse of the porting process, to comply with GC18 and remedy the consequences of the contraventions. This requirement was set out in the Notification, under section 96A(2)(d) of the Act, and we received no representations from Gateway concerning our proposed imposition of this requirement.

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<sup>6</sup> This is except for a delay of less than three weeks in August 2015 that we have found was caused by Numbergroup submitting a porting request referring to a different telephone number. This request was subsequently resubmitted using the correct number. This is noted at paragraph 4.32.

<sup>7</sup> Penalty Guidelines, 3 December 2015: [http://www.ofcom.org.uk/content/about/policies-guidelines/penalty/Penalty\\_guidelines\\_2015.pdf](http://www.ofcom.org.uk/content/about/policies-guidelines/penalty/Penalty_guidelines_2015.pdf).

## 2. Regulatory framework

### Introduction

- 2.1 This section sets out the relevant regulatory obligations that apply to CPs in relation to the provision of Number Portability. It also summarises Ofcom’s investigation and enforcement powers.

### General Conditions

- 2.2 The General Conditions of Entitlement impose specific obligations on CPs offering Public Electronic Communications Services, including in relation to the provision of Number Portability.
- 2.3 General Condition (“GC”) 18 sets out CPs’ obligations in relation to Number Portability. These obligations are fundamental because they allow customers to retain their telephone number(s) when switching between CPs providing Public Electronic Communications Services. This mechanism is essential to promoting robust competitive conditions in the market, by making sure customers can shop around and move freely between providers.
- 2.4 GC18 implements Article 30 of the Universal Service Directive<sup>8</sup> and reflects changes introduced in 2011<sup>9</sup> as a result of the revised EU framework. The version of GC18 that is relevant for the purposes of our Investigation is set out in Ofcom’s Consolidated Version of the General Conditions dated 28 May 2015.<sup>10</sup> The relevant provisions of GC18 for the purposes of this case are:

*“18.1 The Communications Provider shall provide Number Portability within the shortest possible time, including subsequent activation, on reasonable terms and conditions, including charges, to any of its Subscribers who so request.”*

*“18.5 The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability as soon as is reasonably practicable in relation to that request on reasonable terms...”*

*“18.9 Where Communications Providers delay the porting of a Telephone Number for more than one business day or where there is an abuse of porting by them or on their behalf, they shall provide reasonable compensation as soon as is reasonably practicable to the Subscriber for such delay and/or abuse.”*

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<sup>8</sup> Member States are required to ensure the provision of number portability to subscribers pursuant to Article 30 of the Universal Services Directive (2002/22/EU) as amended by Directive 2009/136/EC.

<sup>9</sup> *Changes to General Conditions and Universal Service Conditions: implementing the revised EU Framework*, 23 May 2011: <http://stakeholders.ofcom.org.uk/consultations/gc-usc/statement>

<sup>10</sup> Consolidated Version of General Conditions as at 28 May 2015:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0031/85972/CONSOLIDATED\\_VERSION\\_OF\\_GENERAL\\_CONDITIONS\\_AS\\_AT\\_28\\_MAY\\_2015.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0031/85972/CONSOLIDATED_VERSION_OF_GENERAL_CONDITIONS_AS_AT_28_MAY_2015.pdf)

*“18.10 The Communications Provider shall set out in a clear, comprehensive and easily accessible form for each Subscriber how Subscribers can access the compensation provided for in paragraph 18.9 above, and how any compensation will be paid to the Subscriber.”*

- 2.5 GC18.11(b) defines a “Communications Provider” as “a person who provides an Electronic Communications Network or an Electronic Communications Service”.
- 2.6 “Subscriber” is defined in GC18.11(n) as “any person with a number or numbers from the National Telephone Numbering Plan who is party to a contract with the provider of Public Electronic Communications Services for the supply of such services in the United Kingdom.”<sup>11</sup>
- 2.7 GC18.11(h) sets out the definition of “Number Portability” as “a facility whereby Subscribers who so request can retain their Telephone Number on a Public Communications Network, independently of the person providing the service at the Network Termination Point of a Subscriber provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan”.
- 2.8 In addition, “Portability” is defined at GC18.11(k) as “any facility which may be provided by a Communications Provider to another Communications Provider enabling any Subscriber who requests Number Portability to continue to be provided with any Public Electronic Communications Service by reference to the same Telephone Number irrespective of the identity of the person providing such a service”.

## Ofcom’s investigation and enforcement powers

- 2.9 Sections 96A to 96C of the Act set out Ofcom’s enforcement powers in cases where we determine there are reasonable grounds for believing that a person is contravening, or has contravened a General Condition of Entitlement.<sup>12</sup>
- 2.10 Section 96A provides for Ofcom to issue a notification setting out Ofcom’s preliminary view of the alleged contravention. The notification will include, amongst other things:
- i) the steps which Ofcom considers should be taken to comply with the relevant requirement and to remedy the consequences of the contravention;
  - ii) the period within which the subject of the investigation may make representations in response to Ofcom’s preliminary views; and
  - iii) details of any penalty that Ofcom is minded to impose for the alleged contravention in accordance with section 96B of the Act.

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<sup>11</sup> Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement, 25 May 2011, inserted references to ‘numbers in the National Telephone Numbering Plan’ and ‘Public Electronic Communications Services’ (Notification published on 9 July 2012). See: <http://stakeholders.ofcom.org.uk/consultations/gc-usc/statement>

<sup>12</sup> These sections do not apply in relation to contraventions which occurred before 26 May 2011.

## Confirmation Decision

2.11 Section 96C of the Act provides that, on expiry of the period allowed for representations, Ofcom may either:

- i) issue a confirmation decision, confirming the imposition of requirements on the subject of the investigation and/or the giving of a direction to them, or both, in each case in accordance with the notification under section 96A, including, where relevant, the imposition of the penalty specified in the section 96A notification or a lesser penalty; or
- ii) inform the person we are satisfied with their representations and that no further action will be taken.

## 3. The Investigation

### Introduction

- 3.1 In this section, we explain our decision to investigate and outline the information we gathered during our Investigation.

### The decision to investigate

- 3.2 Ofcom received a complaint submission from Numbergroup on 3 May 2017 (“the Numbergroup Complaint Submission”), regarding Gateway’s failure to respond to a porting request in respect of the Customer’s non-geographic 0800 number. Numbergroup explained that they had submitted the Customer’s request to move providers to Gateway “*numerous times*”, but Gateway had not taken the appropriate steps to process the porting request<sup>13</sup>. A copy of the Numbergroup Complaint Submission is provided at Annex 2.
- 3.3 On 9 May 2017, Ofcom sent a copy of the Numbergroup Complaint Submission to Gateway for comment. Gateway confirmed receipt of this on 11 May and indicated it would reply in due course.<sup>14</sup> Despite being reminded,<sup>15</sup> no response was received from Gateway.
- 3.4 We take compliance with GC18 seriously, as Number Portability is of fundamental importance to ensuring customers can move freely between providers, and promoting competition in the market between providers. Ofcom’s regulation of number porting, including by imposing and monitoring regulatory obligations and taking enforcement action, is therefore of critical importance to the communications market and to citizens and consumers. Given this, we considered it appropriate to take further action and subsequently opened the Investigation on 25 May 2017.

### Gateway’s engagement with Ofcom

- 3.5 During the Investigation, Ofcom issued two information requests to Gateway under section 135 of the Act (as detailed below), and sent other email reminders and updates. Except for one telephone call in which Gateway stated it would provide the requested information and two very brief emails which did not include any substantive content (received on 22 June 2017 and 20 October 2017), Ofcom has not received any further contact from Gateway.
- 3.6 Gateway has therefore failed to engage properly with Ofcom during this Investigation. In particular, Gateway has demonstrated a severe lack of cooperation by failing to provide the information we requested to consider its compliance with GC18, despite being under a legal obligation to do so. We have obtained information from alternative sources to enable

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<sup>13</sup> Annex 2, Numbergroup Complaint Submission, page 1.

<sup>14</sup> Annex 3, Email from Gateway to Ofcom dated 11 May 2017.

<sup>15</sup> Annex 4, Email from Ofcom to Gateway dated 16 May 2017.

us to further our Investigation. However, this has extended the length of the Investigation and caused Ofcom to use significantly more resource. We remind Gateway, and indeed all other CPs, that they are required by law to respond to information requests made under section 135 of the Act, and failure to do so may result in the imposition of financial penalties. Ofcom's information gathering powers are provided so that we can carry out our functions as efficiently and effectively as possible, and we take a failure to respond very seriously.

- 3.7 Due to Gateway's failure to respond to our statutory information requests, Ofcom has issued two confirmation decisions to Gateway under section 139A of the Act, finding Gateway to have contravened its information requirements and imposing financial penalties. This is detailed further below.

## Information gathering

- 3.8 As part of our Investigation, we used our powers under section 135 of the Act to seek information from Gateway, Numbergroup, BT, TalkTalk, Daisy and the Customer to help us assess whether there are reasonable grounds to conclude that Gateway contravened GC18. We set out in Section 4 the factual information, provided by Numbergroup, BT, TalkTalk, Daisy and the Customer, that we rely on in this Confirmation Decision.

## Information from Gateway

- 3.9 We sent Gateway an information request under section 135 of the Act on 30 May 2017, requesting all copies of the Customer's porting request received since August 2015 and all correspondence (including emails) relevant to the Customer's porting requests. We also asked Gateway for all documents that describe or relate to its implementation of a service establishment process (in line with section 5 of the Non-Geographic Number Portability End-to-End Process<sup>16</sup> ("the Manual")) and a standard process for handling porting requests. Finally, we asked Gateway for details of its turnover, its financial accounts and confirmation as to whether it remains operational as a CP.
- 3.10 At Gateway's request, we extended the response deadline to 16 June 2017.<sup>17</sup> However, we did not receive any of the requested information by the extended deadline. On 21 July 2017, we issued a Confirmation Decision under section 139A of the Act to Gateway confirming that Ofcom had determined that Gateway had contravened the information requirements imposed by section 135 of the Act.<sup>18</sup> Ofcom has imposed a total penalty of £10,200 in respect of this first information breach. A copy of this Confirmation Decision can be found at Annex 6.
- 3.11 We sent Gateway a second information request under section 135 of the Act on 9 August 2017, requesting some further details, including why the Number had been taken out of

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<sup>16</sup> See: [https://www.magrathea-telecom.co.uk/industry\\_porting/documents/NGNPE2E-Ops\\_Process-v13.3.pdf](https://www.magrathea-telecom.co.uk/industry_porting/documents/NGNPE2E-Ops_Process-v13.3.pdf)

<sup>17</sup> Annex 5, Email from Ofcom to Gateway dated 12 June 2017.

<sup>18</sup> See: [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01201](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01201)

service in August 2016, how much the Customer had paid for Gateway's service, whether any compensation had been paid in respect of the Customer's porting request and correspondence relating to Ombudsman Services' investigation into the Customer's porting request.

- 3.12 On 22 August 2017, Gateway's [redacted] telephoned Ofcom's Sheryl Willson to request a further copy of our first and second information requests, which were sent by email the same day.<sup>19</sup> We asked Gateway to respond immediately if it needed additional time to supply the requested information. However, we did not receive any further response to our second information request and have not, to date, received any of the requested information.
- 3.13 As we did not receive a response, we issued a further Confirmation Decision under section 139A of the Act to Gateway on 20 October 2017, confirming that Ofcom had, for a second time, determined that Gateway had contravened the information requirements imposed by section 135 of the Act. Ofcom imposed a total penalty of £4,950 in respect of this second information breach. A copy of this Confirmation Decision can be found at Annex 8.

### Information from Numbergroup

- 3.14 We sent Numbergroup an information request on 30 May 2017, requesting any correspondence relating to the Customer's porting request dated 4 January 2017 that was not previously provided in the Numbergroup Complaint Submission to Ofcom. We also asked for all copies of the Customers' previous porting requests and all associated correspondence since August 2015. Numbergroup responded to our information request on the same day ("the Numbergroup First Response"). A copy can be found at Annex 9.
- 3.15 We sent Numbergroup a second information request on 28 July 2017, requesting information about how much Numbergroup had offered to charge the Customer for its services, and requesting any relevant porting requests and correspondence dating back to January 2015. Numbergroup responded to our information request on 2 August 2017 ("the Numbergroup Second Response"). A copy can be found at Annex 10<sup>20</sup>.
- 3.16 We requested further clarification from Numbergroup about its services, which it emailed to us on 9 August 2017 ("the Numbergroup Third Response"). A copy of this email can be found at Annex 11. Further clarification from Numbergroup is contained in Annex 25.
- 3.17 Numbergroup also provided us with information on the final porting of the Number, which is contained in Annex 22.

### Information from BT

- 3.18 We sent an information request to BT on 30 May 2017. We asked BT for all copies of the Customer's porting requests and all relevant correspondence since 1 August 2015, and

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<sup>19</sup> Annex 7, Email from Ofcom to Gateway dated 22 August 2017.

<sup>20</sup> Copies of the attachments have not been included as they are duplicates of the Numbergroup First Response.

asked BT to confirm it is the “*Range Holder*” for the Customer’s number, as defined in the Manual. The relevant sections of the Manual are outlined below at paragraphs 4.6-4.7.

- 3.19 We also asked BT which ‘scenario’ the Customer’s porting request falls within, as per BT’s “*Number Portability Handbook – IP Exchange*” dated 6 November 2014, Version 16 (“the Handbook”), the relevant sections of which are provided in Annex 12.<sup>21</sup> Finally, we asked BT what steps it would expect the losing CP to take in relation to porting requests, and to supply any standard supporting documents.
- 3.20 BT responded to our information request on 13 June 2017 (“the BT First Response”). A copy can be found at Annex 13<sup>22</sup>. We asked BT for clarification on some aspects of the BT First Response on 15 June 2017, and BT responded again on 20 June 2017 (“the BT Second Response”). A copy of this can be found at Annex 14.
- 3.21 We found it necessary to clarify some additional points in relation to the BT Second Response and emailed some further queries to BT on 23 August 2017. BT subsequently responded on 30 August 2017 (“the BT Third Response”). A copy of this can be found at Annex 15. We also emailed BT about the final porting of the Number and a copy of its response is contained in Annex 27.
- 3.22 Finally, we issued a second statutory information request to BT on 1 November 2017. We asked BT to confirm whether it had received Gateway’s completed Customer Letter of Authorisation and, if so, to provide a copy. BT’s response (“the BT Fourth Response”) can be found at Annex 28.

### Information from TalkTalk

- 3.23 We sent TalkTalk an information request on 19 June 2017. We asked for all TalkTalk’s terms of business agreement(s) with O-Bit and Daisy relevant to the Number, information on why the Number was no longer in service and further documents, correspondence and details relevant to our Investigation. TalkTalk responded to our information request on 26 June 2017 (“the TalkTalk First Response”). A copy can be found at Annex 16.
- 3.24 We subsequently emailed TalkTalk on 28 June 2017 to request clarification on the cessation of the number. TalkTalk responded to us on 29 June 2017 (“the TalkTalk Second Response”). A copy of this email can be found at Annex 17.
- 3.25 TalkTalk also provided us with information on the final porting of the Number, which is contained in Annex 24 and 26.

### Information from Daisy

- 3.26 We sent Daisy an information request on 19 June 2017. We asked for Daisy’s terms of business agreement(s) with TalkTalk and Gateway, information on why the Number is no longer in service and some additional documents, correspondence and details relevant to

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<sup>21</sup> Annex 12, The Handbook, Section 5, sets out seven import and five export scenarios that are covered by the IP Exchange service. This is discussed below at paragraphs 4.13-4.18.

<sup>22</sup> We have removed all duplicate documents from Annex 13.

our Investigation. Daisy responded to our information request on 23 June 2017 (“the Daisy Response”). A copy can be found at Annex 18.

- 3.27 We asked Daisy for clarity on the date it acquired the Number, and its response is contained in Annex 23.
- 3.28 Ofcom also corresponded with Daisy regarding progressing the porting of the Number (“Daisy Porting Correspondence”). Copies of these emails are provided in chronological order in Annex 19.

### Information from the Customer

- 3.29 We also sent an information request to the Customer on 13 July 2017. We asked the Customer for information regarding their decision to move the Number from Gateway to Numbergroup, what they paid Gateway for its services, the Number being taken out of service and whether compensation had been paid.
- 3.30 The Customer responded on 24 July 2017 (“the Customer First Response”). A copy can be found at Annex 20.
- 3.31 We asked the Customer for clarification on their response in an email dated 12 September 2017. The Customer responded on the same day (“the Customer Second Response”). A copy of the Customer Second Response can be found at Annex 21.

### Ofcom’s provisional conclusions

- 3.32 On 24 November 2017, Ofcom sent Gateway a notification under section 96A of the Act (“the Notification”). The Notification set out Ofcom’s provisional finding that Gateway had failed to meet the obligations imposed on CPs under GC18 in relation to Number Portability. Specifically, we provisionally concluded that, between 16 June 2015 and 28 September 2017, Gateway had:
- i) failed to provide Portability to Numbergroup as soon as was reasonably practicable, by failing to respond to the first four porting requests and by failing to take the correct action in respect of the fifth porting request; and
  - ii) impeded the Customer from switching providers to Numbergroup for over two years and, consequently, failed to provide Number Portability to the Customer in the shortest possible time in respect of five porting requests.
- 3.33 In addition, between 16 June 2015 and the date of the Notification (24 November 2017), we provisionally found that Gateway had:
- i) failed to pay reasonable compensation to the Customer as soon as was reasonably practicable for what we considered to be an abuse of the number porting process; and
  - ii) failed to provide clear, comprehensive and easily accessible information to the Customer regarding how they could access such porting compensation.

## Confirmation Decision

- 3.34 The Notification explained Ofcom's provisional view that Gateway should pay the Customer reasonable compensation of £1,000 in light of what we found to be an abuse of the porting process, in order to come into compliance with GC18.9. Furthermore, it set out Ofcom's provisional view that it would be appropriate and proportionate to impose a penalty in respect of the GC18 contravention.
- 3.35 The Notification gave Gateway the opportunity to make written and/or oral representations on the notified matters. However, Gateway did not respond to the Notification. Ofcom has therefore concluded that it is satisfied that Gateway has breached GC18. Accordingly, Ofcom has issued this Confirmation Decision under section 96C of the Act.

## 4. Relevant facts

### Introduction

- 4.1 This section sets out our understanding of the relevant facts from the evidence we have gathered in our Investigation. We set out in Section 5 why our assessment of the evidence leads us to conclude that Gateway has contravened GC18.

### Number Portability

- 4.2 Number Portability is the facility that allows customers to change providers whilst keeping their telephone number(s). Keeping the same telephone number can be an important consideration for many customers when thinking about switching providers, as changing telephone numbers can be inconvenient, time-consuming and potentially costly.
- 4.3 Number Portability is therefore an important mechanism in ensuring effective competition in the telecoms sector. It promotes customer choice and reduces barriers to switching providers by taking away any unnecessary inconvenience and cost in changing telephone numbers. Given this, it is crucial that the process for porting numbers is easy, reliable and convenient.
- 4.4 In practice, number porting generally operates in the following way:
- i) the Subscriber decides to switch providers and agrees the services they require from the Gaining CP;
  - ii) the Gaining CP or Gaining Party, who generally takes responsibility for managing the process, will submit a porting request to the Losing CP (and any Losing Party or Parties) requesting the Customer Letter(s) of Authorisation from each party in the supply chain;
  - iii) upon receipt of the Customer Letter(s) of Authorisation, necessary validation checks will be completed and the network connection will be made ready for use by the Subscriber;
  - iv) the port will be completed and the *Range Holder* will begin 'onward routing' any calls received on the Subscriber's telephone number to the Gaining CP's network; and
  - v) the Subscriber will begin receiving telephone services from the Gaining CP whilst retaining their telephone number(s), and will stop receiving services from the Losing CP.
- 4.5 There is industry-wide guidance in place in the Manual to support efficient Number Portability processes for geographic and for non-geographic numbers. As the Number is a non-geographic number, we outline below the process for non-geographic portability as set out in the Manual.

## The industry guidance

### The Non-Geographic Number Portability End-to-End Process Manual

4.6 The Manual, prepared by the Number Portability Commercial Forum, sets out industry guidance for CPs to follow when establishing processes for Number Portability between CPs in relation to non-geographic numbers. Whilst the Manual is not legally binding on CPs, it remains relevant to our analysis as it supports the terms of the General Conditions by establishing an industry-wide agreed process for porting non-geographic numbers between CPs.

4.7 The Manual describes the process for handling porting requests that applies when there are multiple parties in the supply chain, and notes, *“End Users have the right to port their numbers, regardless of the chain of supply”*. The key parts of the process are set out as follows:

*“9.1.5: If the Gaining Party is not the GCP[“Gaining CP”], they should submit the porting request to the GCP, with all the Customer Letter(s) of Authorisation, through their normal rout [sic] of sale (i.e. as if the Gaining Party was connecting an “own” number). It must be the GCP that makes the final porting request to the Range Holder / Host.*

...

*9.1.9: If the Losing Party is not the Range Holder/Host, then the Gaining Party shall obtain all Customer Letter(s) up to and including the Subscriber....*

*9.2.1: Where there is a chain of supply from the End User to the LCP [“Losing CP”], every affected party in the Losing Party Supply chain must complete the following action:*

*Validate the Letter of Authorisation completed by its customer.*

*Complete and sign the Letter of Authorisation.*

...

*9.2.2: Outlined below are the steps required to complete the process:-*

...

*The Losing Party must reply within two working days of receipt of the request to confirm if the details on the Customer Letter of Authority are correct or not. If they are correct the Losing Party will return a copy of the Customer Letter to the Gaining Party with its own letter of authorisation showing its [sic] their own customer details.*

*The Gaining Party is required to collate all letters from the Losing Party supply chain, including the Losing Party entity that is directly billed by the*

*LCP. The GCP requires the detail from this directly billed party to arrange the port with the LCP. This accords with the validation criteria documented in this manual....”<sup>23</sup>*

## The Customer Letter of Authorisation

- 4.8 The “Customer Letter of Authorisation” is defined in the Manual as “The letter (containing the information detailed in 15.13 and, wherever possible, on headed paper) from the Customer authorising the porting of a Number”. In addition, “Customer” is defined as “The Subscriber, or a Reseller who has a contractual relationship with the Subscriber, who may authorise the porting of a Number”<sup>24</sup>.
- 4.9 The Manual provides a blank Customer Letter of Authorisation that CPs can use for the porting process. It is given as a guide but details the information that must be obtained from the customer. This includes the Subscriber’s name, address and account details, and their “Current Communications Provider Details” and “New Communications Provider Details”<sup>25</sup>.
- 4.10 As such, in circumstances where the Losing Party is not the Losing CP, the details of the Losing CP will be set out on the Customer Letter of Authorisation that is returned to the Gaining Party by the Losing Party. Upon receipt, the Gaining Party is then able to identify the Losing CP and request a completed Customer Letter of Authorisation from this entity, which the Gaining Party is required to submit to the Gaining CP to successfully complete the porting request.
- 4.11 If the Losing Party does not complete the form showing the details of the Losing CP, the Gaining Party can face difficulties in identifying the Losing CP, obtaining the necessary Customer Letter(s) of Authorisation and progressing the porting request for the Subscriber.

## BT’s IP Exchange

- 4.12 The process from the Manual, as set out above, is varied on the Gaining Party or Gaining CP side where that party is using BT Wholesale’s IP Exchange Service to facilitate the port.
- 4.13 BT offers a Number Portability service to its wholesale customers who use its IP Exchange product. The details of this service are set out in the Handbook. The Handbook states that “The IP Exchange number porting service will manage the importation and exportation of numbers on behalf of our customers as detailed in section 5”<sup>26</sup>.
- 4.14 Accordingly, the porting process is varied due to BT acting on behalf of its wholesale customer in arranging number porting. BT submits and collects the relevant Customer Letters of Authorisation, acting on behalf of its wholesale customer. Once BT has all of the

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<sup>23</sup> The Manual, paragraphs 9.2.1-3.

<sup>24</sup> The Manual, paragraph 2.1.1.

<sup>25</sup> The Manual, paragraphs 15.13.1-2.

<sup>26</sup> Annex 12, the Handbook, section 4.

relevant letters, it can then process and arrange the port. In this case, BT was acting on behalf of Numbergroup in attempting to arrange the Customer's port.

- 4.15 Section 5 of the Handbook lists the categories of numbers that can be supported by the IP Exchange service. BT confirmed to us that the Customer's Number falls within the category, 'Import Scenario 2'<sup>27</sup>, which is: "A BT telephone number, previously exported to another CP's network, is to be ported to IP Exchange", and so is therefore supported by the IP Exchange service.
- 4.16 BT informed us that the Handbook sets out the procedure BT and BT's IP Exchange customers should use to comply with the provisions of the Manual, when using the IP Exchange service.<sup>28</sup> The Handbook states that the following process for non-geographic numbers applies: "Orders are submitted by email to *wolverhamptonnumberportability@bt.com* on the relevant letterhead paper with the appropriate supporting documentation as provided in Section 12".<sup>29</sup> BT has confirmed that this documentation consists of "the gaining resellers' request and the signed Letter of Authorisation on letter-headed paper",<sup>30</sup> as required by the Manual.
- 4.17 We asked BT to clarify the precise process to be followed, and it informed us that it requires each party in the chain of supply to validate, complete and sign a Customer Letter of Authorisation.<sup>31</sup> BT noted, "The process relies upon this compliance as without the completion of the information requested by BT, BT does not know who the next party is that it should request validation from".
- 4.18 Additionally, BT noted, "If any party within the chain fails to complete the steps necessary within the LOA, the chain will break down and the port request will fail because BT is reliant on that information being provided in order to know which Communications Provider it must contact next."<sup>32</sup>

### Summary of steps required in reseller scenario involving BT's IP Exchange

- 4.19 In summary, to comply with the relevant sections of the Manual in a reseller scenario such as the Customer's in this case, where the Gaining Party is using BT's IP Exchange to facilitate the port, the following steps are required to successfully port a Subscriber's existing number to a new provider:
- i) the Gaining Party initiates the process by submitting a porting order to BT at , including the signed Customer Letter of Authorisation on letterheaded paper;
  - ii) BT, acting on behalf of the Gaining Party, then sends the completed Customer Letter of Authorisation to the first Losing Party in the supply chain;

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<sup>27</sup> Annex 12, the Handbook, section 5.

<sup>28</sup> Annex 14, BT Second Response, page 1.

<sup>29</sup> Annex 12, the Handbook, section 7.5.1.

<sup>30</sup> Annex 14, BT Second Response, page 1.

<sup>31</sup> Annex 14, BT Second Response, page 2.

<sup>32</sup> Annex 14, BT Second Response, page 2.

- iii) the Losing Party replies to BT within two working days of receipt to confirm if the details on the Customer Letter of Authorisation are correct or not;
- iv) if the details are correct, the Losing Party completes the Customer Letter of Authorisation, including confirming the Losing CP's details, and returns it to BT with its own Customer Letter of Authorisation on its headed paper showing its details;
- v) BT completes the above process with all parties in the supply chain between the Subscriber and Losing CP; and
- vi) BT, acting in its capacity as the Range Holder, completes the port.

4.20 We note the different roles played by the entities in the Customer's supply chain below.

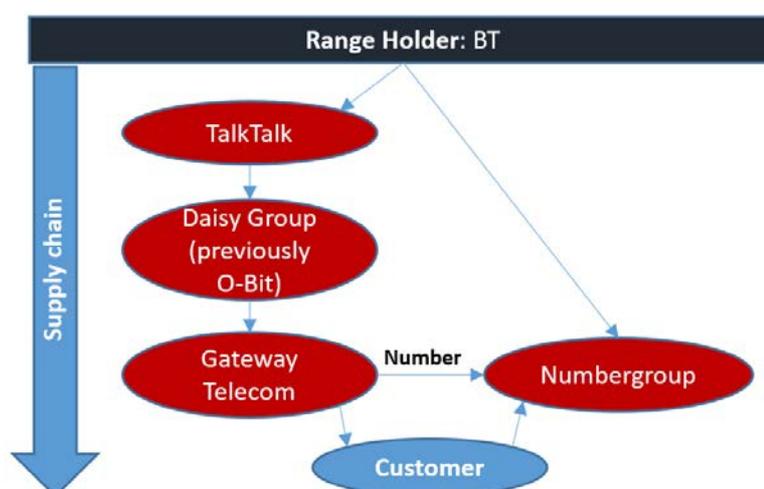
## The Customer's supply chain

4.21 The Number is a six-digit non-geographic 0800 number. BT is the Range Holder for the number range that includes the Number. The Number was originally allocated to BT by Ofcom, and was then exported from BT to TalkTalk in February 2004.<sup>33</sup> TalkTalk has stated that the Number was then sub-allocated to O-Bit (now Daisy<sup>34</sup>) before subsequently being resold to Gateway.

4.22 Therefore, the parties in the Customer's supply chain at the time of the Customer's port request were:

- **BT** – Range Holder
- **TalkTalk** – Losing CP
- **Daisy** – Losing CP
- **Gateway** – Losing Party

4.23 A diagram of the supply chain is shown below:



<sup>33</sup> Annex 15, BT Third Response, page 4.

<sup>34</sup> Annex 18, Daisy Response, page 1, which confirmed that Daisy acquired O-Bit in 2010, merging officially in 2013.

- 4.24 We asked Gateway the date on which it acquired the Number. However, it did not respond to our information request. Whilst Daisy cannot provide the precise date, it informed us that the Number was allocated to Gateway prior to the date when Daisy acquired O-Bit in 2010 and was then added to Daisy's billing system in November 2013.<sup>35</sup>
- 4.25 It is not clear when the Customer began using the Number or became a customer of Gateway. The earliest correspondence Ofcom has seen between Gateway and the Customer is the Customer's written request to port the Number to Numbergroup on 29 September 2014.<sup>36</sup>

## The porting requests

- 4.26 This section sets out the details and chronology of the five porting requests made by the Customer in their efforts to transfer their Number from Gateway to Numbergroup.

### The first request (September 2014 – July 2015)

- 4.27 The Customer has stated that their porting request was first submitted to Gateway on 22 January 2015.<sup>37</sup> The Customer emailed Numbergroup on 5 October 2016, noting: *"I started the process to port the number back in January 2015 but the company is refusing to co-operate and is continuing to charge their extortionate rates"*.<sup>38</sup> In addition, an email from Numbergroup to Gateway dated 19 April 2017 states that Numbergroup *"first submitted a port request from January 2015 to move this number"* to its network.<sup>39</sup>
- 4.28 Numbergroup submitted a porting request to BT on 14 May 2015.<sup>40</sup> Documents provided by the Customer include a photo of a Customer Letter of Authorisation signed on 22 January 2015.<sup>41</sup> BT noted that the form was over three months old and requested a new one, which Numbergroup obtained and sent to BT on 18 May 2015.<sup>42</sup>
- 4.29 BT provided an email dated 4 June 2015 in which it first sent the Customer's porting request to Gateway.<sup>43</sup> This was to the email address [redacted]@gatewaytelecom.co.uk. An internal BT email from July 2015 states that BT called Gateway on 12 June 2015 after receiving no response to the request and were provided with a new email address, [redacted]@gatewaytelecom.co.uk, to which BT re-sent the porting request.<sup>45</sup> BT has provided a

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<sup>35</sup> Annex 23, Email from Daisy to Ofcom dated 19 July 2017.

<sup>36</sup> Annex 20, Customer First Response, page 3.

<sup>37</sup> Annex 20, Customer First Response, page 1.

<sup>38</sup> Annex 9, Numbergroup First Response, page 10.

<sup>39</sup> Annex 9, Numbergroup First Response, page 16.

<sup>40</sup> Annex 13, BT First Response, pages 11-12.

<sup>41</sup> Annex 20, Customer First Response, page 15-16.

<sup>42</sup> Annex 13, BT First Response, page 10.

<sup>43</sup> Annex 15, BT Third Response, page 5.

<sup>44</sup> Annex 13, BT First Response, page 15.

<sup>45</sup> Annex 13, BT First Response, page 15.

further internal email from 12 June 2015 asserting that it had contacted the “*Losing Provider*”, i.e. Gateway, that day to chase the request.<sup>46</sup>

- 4.30 We have not been provided with a copy of the email from BT to Gateway dated 12 June 2015. However, having considered the contents of the contemporaneous emails provided by BT, we have concluded that Gateway first received the Customer’s porting request from BT to the email address [X]@gatewaytelecom.co.uk on 12 June 2015.
- 4.31 BT later sent another email<sup>47</sup> to this address chasing a response on 14 July 2015, but the request was eventually closed due to no response. BT emailed Numbergroup to confirm the request had been closed on 29 July 2015.<sup>48</sup>

### The second request (August 2015 – September 2016)

- 4.32 A second request was made in August 2015. In response to an email from the Customer, Numbergroup indicated that this second porting request had been previously submitted with an incorrect number, but was amended and re-submitted to BT on 20 August 2015.<sup>49</sup> BT informed Numbergroup on 28 August 2015 that the request had been passed to “[X]” [sic] at Gateway.<sup>50</sup>
- 4.33 BT chased Gateway on 17 September 2015.<sup>51</sup> However, the request was subsequently closed on 1 October 2015 due to Gateway’s failure to respond. BT’s internal emails suggest Gateway had told them a request had not been received, as one internal department emailed another asking “*do you have a copy of the email or the email address for [X] as he’s stating he’s not received this.*”<sup>52</sup>
- 4.34 In November 2016, the Customer was informed of the failure of the second porting request<sup>53</sup> and Numbergroup sent further Customer Letters of Authorisation to the Customer to be completed.<sup>54</sup> Between January 2016 and April 2016, the Customer engaged with Gateway and ceased paying their bills in an attempt to resolve the porting issue.<sup>55</sup> The Customer made a payment to Gateway on 20 April 2016 on the basis that the porting request would be actioned.<sup>56</sup>
- 4.35 Further discussions occurred between the Customer and Gateway until May 2016.<sup>57</sup> The Customer appears to have ceased paying bills for a second time and, on 25 August 2016,

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<sup>46</sup> Annex 13, BT First Response, pages 7-8.

<sup>47</sup> Annex 15, BT Third Response, pages 7-8.

<sup>48</sup> Annex 13, BT First Response, page 5.

<sup>49</sup> Annex 9, Numbergroup First Response, page 4.

<sup>50</sup> Annex 13, BT First Response, page 4.

<sup>51</sup> Annex 13, BT First Response, page 2.

<sup>52</sup> Annex 13, BT First Response, page 1.

<sup>53</sup> Annex 20, Customer First Response, page 7.

<sup>54</sup> Annex 9, Numbergroup First Response, page 7.

<sup>55</sup> Annex 20, Customer First Response, pages 11-28.

<sup>56</sup> Annex 20, Customer First Response, pages 4-5.

<sup>57</sup> Annex 20, Customer First Response, pages 29-34.

Daisy received a request from Gateway to take the Number out of service. This was completed on the same day.<sup>58</sup>

### The third request (October 2016 – February 2017)

- 4.36 The Customer sent an email to Numbergroup on 5 October 2016 asking for their number to be ported away from Gateway. Numbergroup replied the following day asking the Customer to complete a further Customer Letter of Authorisation.<sup>59</sup> A subsequent email attaching the Customer Letter of Authorisation was sent by Numbergroup to the Customer on 29 November 2016.<sup>60</sup> The Customer replied with a completed form on 6 December 2016.<sup>61</sup>
- 4.37 On 4 January 2017, Numbergroup submitted the third porting request to BT<sup>62</sup> with an updated Customer Letter of Authorisation.<sup>63</sup> BT responded to inform Numbergroup that it had passed the request to the “reseller”.<sup>64</sup> BT chased Gateway on 17 January 2017<sup>65</sup> and then closed the request on 6 February 2017 due to no response having been received from the “losing provider”.<sup>66</sup>
- 4.38 The Number, which had been suspended by TalkTalk in August 2016, was disconnected from its geographic routeing number on 21 January 2017. TalkTalk however confirmed that what had happened to the Number “has nothing to do with the actual porting of the number”.<sup>67</sup>

### The fourth request (March 2017 – April 2017)

- 4.39 On 15 March 2017, Numbergroup submitted another porting request to BT. The email also refers to Numbergroup having “spoken to [X] at Gateway who said he had not received any communication from BT previously regarding this port.”<sup>68</sup> As a result, Numbergroup also directly submitted the porting form to Gateway.<sup>69</sup> Gateway replied, stating that “as soon as BT get in touch with us, we shall complete”.<sup>70</sup> BT confirmed receipt of the request and passed it to Gateway on 20 March 2017.<sup>71</sup>

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<sup>58</sup> Annex 18, Daisy Response, pages 26-27.

<sup>59</sup> Annex 20, Customer First Response, pages 52-53.

<sup>60</sup> Annex 20, Customer First Response, page 65.

<sup>61</sup> Annex 9, Numbergroup First Response, page 11.

<sup>62</sup> Annex 13, BT First Response, page 19.

<sup>63</sup> Annex 9, Numbergroup First Response, page 13.

<sup>64</sup> Annex 13, BT First Response, pages 24-25.

<sup>65</sup> Annex 15, BT Third Response, page 11.

<sup>66</sup> Annex 13, BT First Response, pages 32-33.

<sup>67</sup> Annex 17, TalkTalk Second Response, page 1.

<sup>68</sup> Annex 9, Numbergroup First Response, page 14.

<sup>69</sup> Annex 2, Complaint Submission, pages 6-7.

<sup>70</sup> Annex 2, Complaint Submission, page 23.

<sup>71</sup> Annex 15, BT Third Response, page 13.

- 4.40 Numbergroup updated the Customer on 29 March 2017, stating that contact had been made with Gateway, who said they would “*approve the order by the end of today*”.<sup>72</sup> BT chased the request on 4 April 2017<sup>73</sup>, and Numbergroup emailed Gateway on 5 April 2017 stating it had “*spoken to [Gateway] twice regarding this and [Gateway] promised to confirm the order*”. Gateway replied to this email stating “*please email me over what needs to be done*”, to which Numbergroup responded explaining BT would have sent an email regarding the request.<sup>74</sup>
- 4.41 BT<sup>75</sup> and Numbergroup<sup>76</sup> both chased the request on 11 April 2017 and Numbergroup followed this with two emails on 19 April 2017.<sup>77</sup> The Customer, responding to Numbergroup’s update, stated:
- “This is exactly what they were doing with me. It’s ridiculous how they are holding customers to ransom I just need my number back. I don’t know how OFCOM are going to fine them they don’t seem to be afraid of any organisation and in the meantime I’m losing potential customers”*<sup>78</sup>
- 4.42 On 24 April 2017, BT emailed Numbergroup informing it that the request had been closed as they had not had a response from the “*losing provider*”. Numbergroup then submitted its complaint to Ofcom on 3 May 2017.

### The fifth request (June 2017 – September 2017)

- 4.43 Numbergroup continued to make attempts to progress the Customer’s porting request after it brought its complaint about Gateway to Ofcom. BT confirmed receipt of a porting request from Numbergroup on 1 June 2017, which was passed to Gateway on 2 June.<sup>79</sup>
- 4.44 During Ofcom’s Investigation, discussions were held between the parties in the supply chain. Daisy confirmed that Gateway was contacted several times throughout June and requested to complete a Customer Letter of Authorisation.<sup>80</sup> Gateway informed Daisy that it had not been able to contact the Customer since October 2016<sup>81</sup> and appears to have suggested to Daisy there was no evidence of a porting request being made by Numbergroup.<sup>82</sup>
- 4.45 In response to Ofcom’s information request, Daisy sent us a copy of a Customer Letter of Authorisation signed by [S<] on Gateway headed paper, dated 21 June 2017, authorising

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<sup>72</sup> Annex 9, Numbergroup First Response, page 15.

<sup>73</sup> Annex 13, BT First Response, page 35.

<sup>74</sup> Annex 2, Complaint Submission, pages 14–16.

<sup>75</sup> Annex 15, BT Third Response, page 15.

<sup>76</sup> Annex 2, Complaint Submission, 17–18.

<sup>77</sup> Annex 2, Complaint Submission, 20–22.

<sup>78</sup> Annex 9, Numbergroup First Response, page 18.

<sup>79</sup> Annex 13, BT First Response, page 48.

<sup>80</sup> Annex 19, Daisy Porting Correspondence, page 1.

<sup>81</sup> Annex 19, Daisy Porting Correspondence, page 10.

<sup>82</sup> Annex 24, Email from TalkTalk to Ofcom dated 21 June 2017.

the porting of the Number<sup>83</sup>. In an email sent by Daisy to Gateway on 22 June 2017, Gateway was informed that the Customer Letter of Authorisation had to be returned to Numbergroup and BT<sup>84</sup>. After two further requests by Daisy, Gateway emailed Daisy on 11 July 2017 indicating the Customer Letter of Authorisation had been sent. However, Numbergroup informed Ofcom in an email dated 4 August 2017 that nothing had been received from Gateway in relation to the port<sup>85</sup>.

- 4.46 Daisy continued to chase Gateway throughout August. On 25 August 2017 Gateway emailed Daisy stating the Customer Letter of Authorisation was “*sent quite a while back*” and expressed surprise it had not been received. Daisy replied on the same day asking for a copy of Gateway’s email and chased this again on 4 September 2017. Gateway did not respond.
- 4.47 On 8 September 2017, Ofcom suggested Daisy send the completed Letter of Authorisation to both BT and Numbergroup so that the Customer’s port could be completed<sup>86</sup>. Daisy sent its own completed Customer Letter of Authorisation to both BT and Numbergroup on 14 September 2017<sup>87</sup>. The document was resent to BT on 20 September 2017 as the address field had to be corrected<sup>88</sup>. The final party in the chain, TalkTalk, submitted its completed Customer Letter of Authorisation shortly thereafter<sup>89</sup>. As a result, the Number was ported to BT’s network on 28 September 2017<sup>90</sup>, on an exceptional basis and to avoid further delay, without Gateway’s document.

## The Customer’s loss

- 4.48 The Customer provided Ofcom with bills from Gateway for the months of April and October 2016, showing they were charged £24.60 per month for line rental and £9.00 for not paying via Direct Debit.<sup>91</sup> Numbergroup has informed Ofcom that it offered the Customer line rental at a price of £9.00 per month and did not charge a fee for customers who did not pay via Direct Debit.<sup>92</sup>
- 4.49 It appears that, for line rental alone, the Customer was paying around £15.60 more per month to Gateway than it would have been paying to Numbergroup if the porting requests had been successful – i.e. a total of at least £421 in the 27 months during which Gateway failed to provide Number Portability in accordance with its obligations.
- 4.50 In addition to the differences in charges, the Customer has outlined in a letter to Ofcom that the suspension of the Number (for three months at the beginning of 2015 and again from August 2015 onwards) has caused a significant loss of business. The Number in

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<sup>83</sup> Annex 19, Daisy Porting Correspondence, page 3.

<sup>84</sup> Annex 18, Daisy Response, page 39.

<sup>85</sup> Annex 22, Email from Numbergroup dated 4 August 2017.

<sup>86</sup> Annex 19, Daisy Porting Correspondence, page 24.

<sup>87</sup> Annex 19, Daisy Porting Correspondence, page 27.

<sup>88</sup> Annex 28, BT Fourth Response, page 6.

<sup>89</sup> Annex 26, Email from TalkTalk to Ofcom dated 25 September 2017.

<sup>90</sup> Annex 27, Email from BT to Ofcom, dated 25 September 2017.

<sup>91</sup> Annex 20, Customer First Response, page 26.

<sup>92</sup> Annex 25, Email from Numbergroup to Ofcom dated 17 August 2017.

question is used by the Customer on all its advertising and the Customer has suggested that it has lost potential customers.

- 4.51 We understand that Gateway took the decision to suspend the Number because the Customer had ceased to pay for Gateway's services. Although we understand that the Customer's non-payment was driven by Gateway's failure to port the Number in compliance with its obligations under GC18, we consider the non-payment a contractual matter between Gateway and the Customer and outside the scope of our Investigation under GC18. Accordingly, we did not carry out further detailed investigation into these purported losses.

## Complaint to Ombudsman Services

- 4.52 In May 2016, the Customer submitted a complaint to the Ombudsman Services about Gateway's refusal to port their number.<sup>93</sup> On 30 September 2016, the Ombudsman Services sent the Customer its final decision, a copy of which can be found at page 59 of Annex 20. The decision found that the charges the Customer had refused to pay Gateway were valid as the Customer had been provided with a service during that time, the time taken for the porting request was excessive and Gateway's failure to action the request represented a shortfall in customer service.
- 4.53 The Ombudsman Services' proposal to resolve the matter included to instruct Gateway to confirm in writing they would complete any subsequent porting request submitted to them, provide a written apology to the Customer and pay £250 to the Customer as a gesture of goodwill. The Customer did not accept the findings of the Ombudsman Services<sup>94</sup> and Ombudsman Services subsequently confirmed to the Customer that its decision was not legally binding on Gateway.<sup>95</sup>

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<sup>93</sup> Annex 20, Customer First Response, page 35.

<sup>94</sup> Annex 20, Customer First Response, page 66.

<sup>95</sup> Annex 20, Customer First Response, page 69.

## 5. Analysis and evidence of contravention

### Introduction

5.1 This section sets out our reasons, including the evidence on which we rely, for concluding that Gateway has contravened its regulatory obligations under GC18.

### Applicability of GC18

5.2 For Gateway to fall within the requirements to provide Number Portability in accordance with GC18, two conditions must be satisfied:

- i) Gateway must be a “*Communications Provider*” for the purposes of GC18; and
- ii) The Customer must be a “*Subscriber*” for the purposes of GC18.

5.3 We consider these conditions in turn below.

### Gateway is a “Communications Provider”

5.4 The General Conditions define “*Communications Provider*” as “*a person who provides an Electronic Communications Network or provides an Electronic Communications Service*”.

5.5 Section 32(1) defines “*electronic communications network*” as “*a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description*”. We consider that Gateway’s activities do not fall within this definition as they are not providing a transmission system for the transmission of signals.

5.6 Section 32(2) defines “*electronic communications service*” as “*a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service*”.

5.7 As a reseller of Daisy, Gateway was using Daisy’s services (which Gateway had resold to the Customer) to route inbound telephone calls to the Number to the Customer’s geographic telephone number. The Wholesale Agreement between Daisy and Gateway states that “*O-bit [Daisy] shall provide the Services pursuant to the terms and conditions contained herein*”.<sup>96</sup> The “*Services*” are defined as “*all those services provided or to be provided by O-Bit [Daisy] pursuant to this Agreement being Outbound Traffic Routing and/or Inbound Traffic Routing, including data services...*”.<sup>97</sup>

5.8 Ofcom therefore concludes that Gateway was providing an “*electronic communications service*” to the Customer by conveying calls to the Number to their geographic number. It is irrelevant that the service was being provided on a reseller basis and it was not Gateway itself conveying the signals. It is Gateway who was providing the Customer the “*service consisting in... the conveyance*” of calls to their geographic number. Gateway was using

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<sup>96</sup> Annex 18, Daisy Response, page 9.

<sup>97</sup> Annex 18, Daisy Response, page 8.

Daisy's wholesale services to fulfil its contract to the Customer (during the periods the Number was in operation).

## The Customer is a Subscriber

- 5.9 CPs are only obliged to provide Number Portability under GC18.1 to their "*Subscribers*", defined as "*any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services*". "*Public Electronic Communications Services*" is defined by section 151 of the Act as "*any electronic communications service that is provided so as to be available for use by members of the public*".
- 5.10 It must therefore be found (i) that Gateway is a provider of Public Electronic Communications Services and (ii) that the Customer is a party to a contract with Gateway.
- 5.11 First, the definition of Public Electronic Communications Services is wide, covering any electronic communications service that is provided for use by the public. We have concluded that Gateway's service, in arranging routing of 0800 calls to the Customer's geographic number, falls within this wide definition – as we have found above, it is an electronic communications service as it involves the transmission of electronic signals (using Daisy's traffic routing services). In addition, it is widely offered to the public, as demonstrated by the content on Gateway's website, which invites potential customers to call Gateway for a quote for non-geographic 0800 number services.
- 5.12 We therefore conclude that Gateway is a provider of Public Electronic Communications Services.
- 5.13 We have subsequently considered whether the Customer is a party to a contract with Gateway, for the purposes of being a "*Subscriber*". While we have not seen a contract between Gateway and the Customer, we have seen a number of invoices that Gateway sent to the Customer during the period since June 2015. In addition, in June 2017, Gateway completed and sent to Daisy a Customer Letter of Authorisation, including the Customer's account details. This demonstrates to Ofcom that Gateway considered the Customer to be one of its Subscribers until the port of the Number. The combination of available evidence satisfies Ofcom that the Customer was a party to a contract with Gateway for the Relevant Period.
- 5.14 The Customer did not pay for Gateway's services for a period of time, leading to the Number being taken out of service. However, we are satisfied, due to the Customer Letter of Authorisation that Gateway completed and sent to Daisy in June 2017, that it considered its contract with the Customer was ongoing, and we have seen no evidence to suggest that position changed in the period from June 2017 to 28 September 2017 when the number was ported.
- 5.15 As the two pre-conditions are satisfied, we have concluded that Gateway was required to provide Number Portability in line with GC18. We have therefore proceeded to assess Gateway's compliance with GC18.

## Our approach to assessing compliance with GC18

- 5.16 GC18 requires CPs to provide Number Portability within the shortest possible time as well as setting out rules on porting processes and compensation (amongst other things).
- 5.17 To assess Gateway's compliance with GC18 during the Relevant Period, we have examined each of the following in turn:
- a) whether Gateway provided Portability as soon as reasonably practicable and on reasonable terms upon receipt of BT's five porting requests, in line with GC18.5;
  - b) whether Gateway therefore provided Number Portability to the Customer, who had requested to port the Number to Numbergroup, within the shortest possible time, as required under GC18.1;
  - c) whether Gateway's actions constitute a delay and/or an abuse of the porting process and, if so, whether Gateway should have paid reasonable compensation to the Customer as soon as was reasonably practicable, in line with GC18.9; and
  - d) whether Gateway provided clear, comprehensive and easily accessible information to the Customer regarding how to access porting compensation, as required by GC18.10.

## Contravention of GC18

- 5.18 In summary, we have found that we are satisfied that Gateway has breached its GC18 obligations. Specifically, between 16 June 2015 and 28 September 2017, we consider Gateway has:
- i) failed to provide Portability as soon as was reasonably practicable on five occasions by failing to respond to the first four porting requests, and by failing to take the correct action in respect of the fifth porting request; and
  - ii) failed to provide Number Portability to the Customer in the shortest possible time on five occasions, in respect of five separate porting requests.
- 5.19 In addition, between 16 June 2015 and the date of the Notification (24 November 2017), Gateway has:
- i) failed to pay reasonable compensation to the Customer as soon as was reasonably practicable for what we consider to be an abuse of the number porting process; and
  - ii) failed to provide clear, comprehensive and easily accessible information to the Customer regarding how they could access such porting compensation and how any compensation would be paid.

## Gateway did not provide Portability as soon as was reasonably practicable upon receipt of the request

- 5.20 GC18.5 places an obligation on CPs, upon request from another CP, to “*provide Portability as soon as is reasonably practicable in relation to that request on reasonable terms*”.
- 5.21 For the purposes of GC18, “*Portability*” means any facility which may be provided by one CP to another CP enabling any customer who requests Number Portability to continue to be provided with a communications service by reference to the same telephone number irrespective of the person providing such a service.<sup>98</sup> Consequently, it is a broad term, covering any actions or processes that result in the successful porting of a telephone number, including the actions required of Gateway to complete the Customer’s port as set out in the Manual.
- 5.22 For each of the five porting requests, we have considered whether Gateway provided Portability as soon as reasonably practicable upon receipt of BT’s requests, to assess whether it acted in line with GC18.5. In doing so, we have looked at the steps taken by Gateway in response to the porting requests, the timeframe in which Gateway took these steps and the nature of the steps taken, and considered whether its actions were reasonable. We expect all CPs, including Gateway, to respond to their customers’ porting requests as soon as reasonably practicable.
- 5.23 As part of our assessment, we have examined whether Gateway followed the processes as set out in the Manual. The Manual is relevant to our assessment of this case, as it sets out the industry-wide agreed processes that CPs should ideally follow to ensure Number Portability runs efficiently and smoothly for Subscribers. Under this process, the Losing Party should reply to BT’s porting request within two working days of receipt with a validated and completed Customer Letter of Authorisation. This allows BT, in facilitating the porting process, to identify and contact any further entities in the supply chain, obtain their completed and validated Customer Letter(s) of Authorisation and subsequently arrange the final port.
- 5.24 As we set out in Section 4, a total of five porting requests were sent to Gateway. We have therefore considered Gateway’s actions for each of the five porting requests.

### First porting request

- 5.25 In Section 4, we set out our position that Gateway first received the Customer’s completed porting request on 12 June 2015. Whilst we do not have the 12 June 2015 email itself, contemporaneous internal and external emails from BT sufficiently demonstrate to us that it first sent Gateway the Customer’s porting request on that date<sup>99</sup>. Gateway did not respond to the Customer’s porting request at all, and the Customer’s first porting request was subsequently closed by BT<sup>100</sup>.

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<sup>98</sup> See General Condition 18.11(k).

<sup>99</sup> Annex 13, BT First Response, pages 7-8, 15.

<sup>100</sup> Annex 13, BT First Response, page 5.

5.26 We have therefore concluded that Gateway did not provide Portability as soon as was reasonably practicable for the first porting request.

### Second porting request

5.27 Numbergroup sent the second request to BT citing an alternative number, but this was later amended to the Number and resubmitted on 20 August 2015<sup>101</sup>. We have seen evidence that BT chased Gateway for a response on 17 September 2015<sup>102</sup>. However, Gateway did not respond to the second request and it was closed by BT on 1 October 2015.

5.28 As Gateway failed to respond to the second porting request, we have concluded that it did not provide Portability as soon as was reasonably practicable.

### Third porting request

5.29 A third porting request was submitted to BT by Numbergroup on 4 January 2017<sup>103</sup>. Again, BT chased Gateway for a response via email on 17 January 2017<sup>104</sup>. As Gateway did not respond, BT closed the request and notified Numbergroup of this on 6 February 2017<sup>105</sup>. Again, Gateway failed to respond to the third porting request.

5.30 As a result, we have concluded that it did not provide Portability as soon as was reasonably practicable.

### Fourth porting request

5.31 BT emailed Gateway with a fourth request on 20 March 2017<sup>106</sup>, before chasing for a response on 4 April 2017<sup>107</sup>. Numbergroup<sup>108</sup> and BT<sup>109</sup> both chased Gateway again for a response. The request failed again due to Gateway's lack of response. During this request period, Gateway emailed Numbergroup to ask what it needed to do, to which Numbergroup responded with further detail regarding the request<sup>110</sup>. Although Gateway's email suggests it may not have understood the process, the evidence then demonstrates that it did not take any subsequent action in relation to this porting request, including ensuring it was following the appropriate process to allow Numbergroup to take over the Number.

5.32 As Gateway did not take any action to progress the Customer's port in relation to the fourth porting request, we have concluded that it did not provide Portability as soon as was reasonably practicable.

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<sup>101</sup> Annex 9, Numbergroup First Response, page 4.

<sup>102</sup> Annex 13, BT First Response, page 2.

<sup>103</sup> Annex 13, BT First Response, page 19.

<sup>104</sup> Annex 15, BT Third Response, page 11.

<sup>105</sup> Annex 13, BT First Response, pages 32-33.

<sup>106</sup> Annex 15, BT Third Response, page 13.

<sup>107</sup> Annex 13, BT First Response, page 35.

<sup>108</sup> Annex 2, Numbergroup Complaint Submission, pages 17-18.

<sup>109</sup> Annex 15, BT Third Response, page 15.

<sup>110</sup> Annex 2, Complaint Submission, pages 14-16.

### Fifth porting request

- 5.33 A final request was sent to Gateway by BT on 2 June 2017<sup>111</sup> (which is after the matter was brought to Ofcom’s attention in May 2017). Gateway subsequently sent Daisy a Customer Letter of Authorisation dated 21 June 2017<sup>112</sup>. However, this was sent to the wrong party (Daisy). In keeping with the industry process, Daisy informed Gateway that it needed to send this document to BT and Numbergroup<sup>113</sup>. Despite Gateway indicating to Daisy on 11 July 2017 that the Customer Letter of Authorisation had been sent to the “*gaining provider*”,<sup>114</sup> Numbergroup later informed Ofcom that it had not received anything from Gateway<sup>115</sup>. BT confirmed it had not received a completed Customer Letter of Authorisation from Gateway at any point<sup>116</sup>.
- 5.34 In this instance, Gateway made some attempt to progress the Customer’s request by completing the Customer Letter of Authorisation. However, there is no evidence that it was sent to the correct party. This is despite Gateway telling Daisy that this had been done.
- 5.35 In any event, we do not consider that it was sent as soon as was reasonably practicable. The porting request was sent to Gateway on 2 June 2017 and they appear not to have made any attempt to progress it until 21 June 2017, upon being prompted by Daisy. Given that it was simply a matter of completing a form, we do not accept that this was a reasonable timeframe to complete this action. We have therefore concluded that it did not provide Portability as soon as was reasonably practicable.
- 5.36 With the assistance of Daisy, TalkTalk and BT, the Number was finally ported on 28 September 2017<sup>117</sup>. However, it was Daisy that had to send BT and Numbergroup its completed Customer Letter of Authorisation, and Gateway had no involvement in completing the port. This was undertaken on an exceptional basis due to Gateway’s lack of response and to avoid any further delay to the Customer.

### Summary of assessment

- 5.37 For each one of the five porting requests, we have concluded that Gateway did not act in accordance with GC18.5. In fact, it completely failed to respond to the first four porting requests. In respect of the fifth, it did eventually complete the relevant Customer Letter of Authorisation, but this was not done within a reasonable timeframe.

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<sup>111</sup> Annex 13, BT First Response, page 48.

<sup>112</sup> Annex 19, Daisy Porting Correspondence, page 3.

<sup>113</sup> Annex 18, Daisy Response, page 39; Annex 22, Email from Numbergroup dated 4 August 2017.

<sup>114</sup> Annex 19, Daisy Porting Correspondence, page 5.

<sup>115</sup> Annex 22, Email from Numbergroup to Ofcom dated 4 August 2017.

<sup>116</sup> Annex 28, BT Fourth Response, page 3.

<sup>117</sup> Annex 27, Email from BT to Ofcom, dated 25 September 2017.

- 5.38 In addition, Gateway's failure to follow the agreed industry process in respect of the fifth porting request caused a breakdown in the process and an unnecessary barrier to the Customer's ability to switch providers.<sup>118</sup>
- 5.39 This protracted matter has resulted in repeated emails and telephone calls to Gateway from BT, Numbergroup, Daisy and the Customer. In most cases, Gateway simply failed to respond. Where Gateway did respond, the content of its emails was limited and not particularly helpful. We have therefore found that Gateway failed to properly engage in discussions about the porting process, in order to provide Portability of the Number to Numbergroup.
- 5.40 Therefore, we have concluded that the evidence indicates that Gateway either failed to respond to the Customer's porting request at all (in the case of the first, second, third and fourth request) or, where it did respond, it did so in a way that failed to progress porting request (in the case of the fifth request). This has directly led to the Customer being unable to switch providers for over two years.
- 5.41 For the reasons set out above, we have therefore concluded that Gateway did not provide Portability to Numbergroup as soon as was reasonably practicable upon receipt of each of the five requests, and in each case that Gateway therefore contravened GC18.5.
- 5.42 Gateway was obliged to comply with GC18, and ought to have informed itself of its obligations. If Gateway was unclear on the Number Portability process, it had the option of engaging with BT or Numbergroup at any time from the Customer's first porting request to clarify what was required, and it failed to do so. Overall, Gateway had many opportunities to provide Portability of the Number to Numbergroup, given the five porting requests that it received. However, it failed to take the requisite action to enable the porting of the Number.

### **Gateway did not provide Number Portability to the Customer within the shortest possible time**

- 5.43 GC18.1 sets out a general requirement that CPs must "*provide Number Portability within the shortest possible time... to any of its Subscribers who so request*". We have therefore assessed, taking account of our findings set out above, whether Gateway provided Number Portability to the Customer within the shortest possible time.
- 5.44 The phrase "*within the shortest possible time*" was included in GC18.1 from May 2011 to implement the USD Directive<sup>119</sup>, replacing the previous requirement to provide porting "*as*

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<sup>118</sup> If Gateway had responded to confirm that Daisy was its supplier, BT would have then been able to submit the Customer Letter of Authorisation to Daisy for completion and validation. Upon receipt of the completed letter from Daisy, BT would have contacted TalkTalk and repeated the process. Once all the completed and validated Customer Letters of Authorisation had been received, BT, acting in its capacity as Range Holder, would have then been able to arrange the Customer's port. BT commented that: "... *In this instance, Gateway Telecom's failure to respond to the LOA meant that no other parties could be contacted to enable the request to move forward.*" (Annex 14, BT Second Response, page 2.)

<sup>119</sup> Member States are required to ensure the provision of number portability to subscribers pursuant to Article 30 of the Universal Services Directive (2002/22/EU) as amended by Directive 2009/136/EC.

*soon as is reasonably practicable*". When Ofcom made this change, we interpreted "*within the shortest possible time*" to mean the same as "*as soon as is reasonably practicable*", which is "*that porting be undertaken in as short a time as possible while taking into account the practicalities of porting*".<sup>120</sup>

- 5.45 Therefore, the issue for us to consider is whether Gateway provided Number Portability to the Customer in short a time as possible, taking into account the practicalities of porting and the administrative tasks involved. As noted above, we have taken 12 June 2015 to be the first date that Gateway received the Customer's first porting request.<sup>121</sup> There were then four subsequent porting requests relating to the Number, as detailed above.
- 5.46 In order to progress each of the Customer's five porting requests, Numbergroup required Gateway to submit a completed and validated Customer Letter of Authorisation to BT. The first copy of a Customer Letter of Authorisation completed by Gateway that we have been provided with is dated 21 June 2017<sup>122</sup>, over two years since 12 June 2015, the date we have concluded the first request was received. As we have seen above, it took a further four requests for Gateway to complete this Customer Letter of Authorisation.
- 5.47 Having completed the Customer Letter of Authorisation, Gateway then failed to send it to the right entity. This document was sent by Gateway to Daisy. Daisy subsequently emailed Gateway on 22 June 2017 to inform Gateway that this needed to be returned to Numbergroup and BT. However, as we noted at 5.33, it does not appear that Gateway took this action.
- 5.48 The action required by Gateway to respond to any one of the Customer's porting requests was simply filling in the Customer Letter of Authorisation and sending this back to BT. Our view is that this could have been completed in response to any of the requests (preferably the first) within the Manual's two working day deadline, or reasonably shortly thereafter if there was some unexpected delay or issue at Gateway.
- 5.49 We have not been presented with any representations as to why Gateway took over two years, and four subsequent porting requests, to complete a Customer Letter of Authorisation, and why it then failed to send the completed Customer Letter of Authorisation to Numbergroup and/or BT for each porting request.
- 5.50 Ofcom has therefore concluded that Gateway failed to take the appropriate action to provide porting to the Customer within the shortest time possible as required under GC18.1, on five separate occasions for each of the Customer's porting requests.

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<sup>120</sup> Paragraph 10.13 - [https://www.ofcom.org.uk/data/assets/pdf\\_file/0027/37746/statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0027/37746/statement.pdf)

<sup>121</sup> See paragraphs 4.27-4.31.

<sup>122</sup> Annex 19, Daisy Porting Correspondence, page 3.

## **There was an abuse in the porting process by Gateway that required reasonable compensation to be paid to the Customer**

- 5.51 GC18.9 requires reasonable compensation to be paid as soon as is reasonably practicable where a CP has delayed the porting of a number for more than one business day or where there is an abuse of porting by them or on their behalf. As such, we have considered:
- i) whether Gateway caused a delay of more than one business day in porting the Customer's number; and/or
  - ii) whether Gateway's actions led to an abuse of porting.
- 5.52 As we set out at paragraphs 4.52-4.53, Ombudsman Services awarded the Customer £250 compensation in respect of the delays caused by Gateway. However, the Customer chose not to accept Ombudsman Services' decision.
- 5.53 We assess in more detail below whether Gateway should have paid reasonable compensation to the Customer.

### **Did Gateway cause a delay of more than one business day in porting the Customer's number?**

- 5.54 We have first considered whether Gateway caused a delay of more than one business day in porting the Number which would require the payment of compensation, in line with the obligation set out in GC18.9. In doing so, we have specifically considered when the one business day deadline is triggered.
- 5.55 When Ofcom made changes to the General Conditions in May 2011 (including revising GC18 to reflect changes made to the EU Framework), we included a requirement under GC18.3(b) that, for fixed porting, numbers and their subsequent activation shall be completed within one working day "*once all necessary validation processes have been completed...*".<sup>123</sup>
- 5.56 As such, the one business day deadline only comes into effect once the relevant validation processes have been completed. In this instance, the Customer's porting request was submitted by Numbergroup to Gateway via BT's IP Exchange service five times since 12 June 2015. Gateway failed to respond appropriately to the request by validating and completing the Customer Letter of Authorisation until 21 June 2017. Even once it had done so, Gateway's failure to return the Customer Letter of Authorisation to BT, as repeatedly requested, resulted in BT (on behalf of Numbergroup) being unable to complete the necessary validation processes with Gateway, and subsequently with Daisy and TalkTalk.
- 5.57 On the basis that all necessary validation processes had not been completed for the Customer's porting request, we have therefore concluded that the one business day deadline was not activated for the purposes of GC18.9. Whilst we remain of the view that Gateway did cause a significant delay in the Customer's porting request being completed, we do not rely on the first limb of GC18.9 as the basis for compensation being payable

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<sup>123</sup> Paragraph 10.54 - [https://www.ofcom.org.uk/data/assets/pdf\\_file/0027/37746/statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0027/37746/statement.pdf)

under GC18.9. We have therefore gone on to consider the second limb of GC18.9 - whether Gateway's actions constitute an "abuse of porting".

### Did Gateway's actions lead to an abuse of porting?

5.58 GC18.9 requires reasonable compensation to be paid where there has been an abuse of porting by a CP or on their behalf.

5.59 When the changes to the GCs were made in May 2011, some respondents to the earlier consultation sought additional guidance from Ofcom on the interpretation of what is meant by an 'abuse' of porting.<sup>124</sup> We decided it would be beneficial to provide some further clarification, and so included the following guidance (emphasis added):

*"... We consider that an abuse of porting is likely to include circumstances where CPs fail to adhere to the documented industry agreed porting processes insofar as the subscriber does not receive the porting service that they would have received had the process been properly complied with... That is not to say that in every instance where industry processes are not adhered to, and this impacts on the overall porting experience for the consumer, that compensation should be paid, particularly where the delay occurs as a result of the consumer or force majeure. However, we consider that industry processes are a good benchmark from which to consider whether an abuse has occurred."*<sup>125</sup>

5.60 Consistent with the above, we therefore consider that a key factor in determining whether there has been an abuse of the porting process is whether a CP has acted in line with the documented industry agreed porting process, which is the process as set out in the Manual.

5.61 To summarise, in order to comply with the provisions of the Manual, Gateway should have completed and validated the Customer Letter of Authorisation and returned this to BT within two working days from receipt (for each request).

5.62 Having reviewed the evidence and information, we have found that Gateway failed to respond to this initial request, and all subsequent requests, within the two working day deadline set out in the Manual. Indeed, Gateway's actions are so far removed from the timeframes set out in the Manual, they appear to represent a disregard for the industry guidance. As such, we have concluded that Gateway failed to act in line with the industry agreed porting processes as set out in the Manual.

5.63 We have also examined the wider circumstances of the case and considered whether Gateway's deviation from the Manual was a reasonable course of action or a matter out of its direct control. This forms part of our assessment of whether Gateway's failure to act constitutes an abuse for which compensation should be paid to the Customer under GC18.9.

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<sup>124</sup> Paragraph 10.64 - [https://www.ofcom.org.uk/data/assets/pdf\\_file/0027/37746/statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0027/37746/statement.pdf)

<sup>125</sup> Paragraph 10.65 - [https://www.ofcom.org.uk/data/assets/pdf\\_file/0027/37746/statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0027/37746/statement.pdf)

- 5.64 As discussed at paragraphs 3.9-3.13, Gateway has not responded to our information requests and so has not provided us with any representations on why it did not respond to the porting requests. Nevertheless, we have received responses to our information requests from the other CPs in the supply chain which we have carefully considered.
- 5.65 Based on the evidence provided to us, we have found that Gateway repeatedly failed to progress the Customer's porting requests, despite several requests to port having been made to them. Furthermore, we consider it significant that this failure persisted for over two years. We have found no reason to conclude that the delay was either caused by another party or was out of Gateway's control.
- 5.66 Accordingly, we have concluded that Gateway's failure to adhere to the processes set out in the Manual and failure to respond in a reasonable timeframe, or at all, constitutes an abuse for the purposes of GC18.9.

### **Conclusions on Gateway's compliance with GC18.9**

- 5.67 As we have set out above, we have concluded that Gateway's actions constitute an abuse of the porting process for which it should have paid the Customer reasonable compensation as soon as reasonably practicable, in accordance with GC18.9.

### **Gateway did not provide clear, comprehensive and easily accessible information to the Customer regarding how to access porting compensation and how any compensation would be paid**

- 5.68 GC18.10 requires CPs to set out to its customers in a clear, comprehensive and easily accessible form how they can access the compensation provided for in GC18.9, and how any such compensation will be paid. Compliance with GC18.10 is important as it requires CPs such as Gateway to supply appropriate information to its customers, so they are aware of their right to compensation and are able to exercise that right in the event there is a delay or abuse in the porting process.
- 5.69 During our Investigation, we asked Gateway whether it provided the information about compensation to the Customer at any point. Gateway did not respond to our information request, and so made no representations on this point. We have seen no other evidence showing that Gateway provided any such information to the Customer.
- 5.70 We have also asked the Customer whether they had received any such information on compensation from Gateway at any point. The Customer has confirmed that they did not receive any documents or information from Gateway regarding access to compensation relating to number porting<sup>126</sup>.
- 5.71 Finally, we reviewed Gateway's website at [www.gatewaytelecom.co.uk](http://www.gatewaytelecom.co.uk), and did not find any relevant information about compensation.

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<sup>126</sup> Annex 20, Customer Second Response, page 1.

5.72 Given the above, we have concluded that Gateway has breached GC18.10 by failing to provide clear, comprehensive and easily accessible information to the Customer on how they could access compensation in the event of an abuse or delay in the porting process, and how such compensation would be paid.

## Conclusions on a breach of GC18

5.73 Based on the analysis and evidence set out above, we have concluded that Gateway has failed to comply with the relevant requirements of GC18 during the Relevant Period.

5.74 During the period 16 June 2015 to 28 September 2017, we consider:

- i) Gateway failed to provide Portability as soon as was reasonably practicable on five occasions, by failing to respond to the first four porting requests, and by failing to take the correct action in respect of the fifth; and
- ii) failed to provide Number Portability to the Customer in the shortest possible time on five occasions, in respect of five separate porting requests.

5.75 During the period 16 June 2015 to the date of the Notification (24 November 2017), we consider:

- i) Gateway failed to pay reasonable compensation to the Customer as soon as was reasonably practicable for what we consider to be an abuse of the number porting process; and
- ii) finally, Gateway has failed to provide clear, comprehensive and easily accessible information to the Customer regarding how they could access such compensation and how any compensation would be paid.

5.76 Given the above, we are satisfied that Gateway has contravened GC18. We set out in Section 6 below why it is appropriate for Ofcom to impose a penalty on Gateway in relation to this contravention.

## 6. Penalty and remedy

- 6.1 This section sets out the penalty we have decided to impose on Gateway, and the remedial step we require Gateway to take.

### Summary of penalty

- 6.2 Ofcom has decided to impose a penalty of £20,000 on Gateway for its contravention of GC18. This was the level of penalty that we specified in our Notification under section 96A of the Act. Gateway made no representations to us concerning the proposed penalty and took no steps to remedy the consequences of the contravention following our Notification under section 96A. Our view is that the penalty of £20,000 would be appropriate and proportionate to the contravention for the reasons discussed below.
- 6.3 Our penalty decision aims to incentivise Gateway and the wider industry to comply with their regulatory obligations, and is guided by our principal duty of furthering the interests of citizens and consumers. We explain our reasoning below.

### Consideration of whether to impose a penalty

- 6.4 When considering whether to set a penalty, we considered a number of factors in accordance with the Penalty Guidelines.<sup>127</sup>
- 6.5 **The importance of the Number Portability process to consumers.** As mentioned above, Number Portability is a particularly important mechanism in ensuring effective competition in the telecoms sector, which promotes customer choice and reduces barriers to consumers' ability to switch providers. Given this, it is crucial that the process for porting numbers is easy, reliable and convenient.
- 6.6 **Gateway's disregard for the porting process.** As detailed in Section 4 and 5, Gateway failed to respond to four formal porting requests submitted between June 2015 and March 2017, and took incorrect action in relation to the fifth porting request, submitted on 2 June 2017. These requests were chased by BT, Numbergroup and by the Customer, and some of these communications were acknowledged by Gateway from the fourth request onwards. Some emails indicate Gateway had confirmed to Numbergroup they would complete the request but did not do so.<sup>128</sup> Furthermore, when Gateway communicated with the Customer during the period that the number was taken out of service, the Customer made clear their desire to port their Number. Despite indicating it would do so, Gateway appeared to take no action to process the Customer's requests.<sup>129</sup>

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<sup>127</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/96101/Penalty-guidelines-2015-Section-392-of-the-Communications-Act-2003.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/96101/Penalty-guidelines-2015-Section-392-of-the-Communications-Act-2003.pdf)

<sup>128</sup> Annex 2, Numbergroup Complaint Submission, pages 12, 13, 23.

<sup>129</sup> Annex 20, First Customer Response, pages 13, 29.

6.7 **The experience of the Customer.** The Customer states they expressed a desire to have the Number ported away from Gateway in September 2014. It is clear that the Customer has taken steps for over two years to try to move away from Gateway including chasing for responses, non-payment of invoices and attempting to resolve the dispute using an ADR service. The Customer appears to have been paying far more for their services from Gateway than they had been offered by Numbergroup.

## Level of penalty

- 6.8 Ofcom finds that it is appropriate to impose a penalty upon Gateway. Any penalty has to be proportionate in its amount. In specifying the level of the penalty in our Notification under section 96A of the Act we had regard to the Penalty Guidelines.<sup>130</sup> The guidelines require the penalty to be sufficiently high to have an appropriate impact on the regulated body at an organisational level, change the conduct of the regulated body and bring it into compliance.
- 6.9 The guidelines state that there is not necessarily a direct linear relationship between the size and turnover of the regulated body and the level of the penalty. While a body with a larger turnover might face a larger penalty in absolute terms, a body with a smaller turnover may be subject to a penalty which is larger as a proportion of its turnover, for example. Ofcom will impose the penalty which is appropriate and proportionate, taking into account all the circumstances of the case in the round together with the objective of deterrence.
- 6.10 Ofcom may also consider, amongst other things, the seriousness of the contravention; the degree of harm caused by the contravention and/or any gain made by the regulated body as a result of the contravention; steps taken to prevent the contravention, to end it once the regulated body became aware, or to remedy the consequences of the contravention; any history of contraventions; and the level of co-operation with the investigation on the part of the regulated body.
- 6.11 In line with the Penalty Guidelines, having considered all the circumstances of this case in the round, and taking into account that we received no representations from Gateway on our proposal to impose a penalty or as to the level of the penalty, and that Gateway took no steps to comply with GC18 or to remedy the consequences of the contravention following our Notification under section 96A, we have decided to impose a penalty of £20,000. We consider that this figure is appropriate and proportionate for the reasons set out below.

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<sup>130</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/96101/Penalty-guidelines-2015-Section-392-of-the-Communications-Act-2003.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/96101/Penalty-guidelines-2015-Section-392-of-the-Communications-Act-2003.pdf). Under section 96B (2) of the Act, Ofcom has discretion to impose a separate penalty in respect of each contravention. In the present case, Ofcom considers it appropriate to impose a single penalty on Gateway for all of the contraventions in view of the fact that the contraventions were all related.

## Ofcom's penalty guidelines

### The seriousness and duration of the contravention

- 6.12 Ofcom considers all breaches of the General Conditions to be a serious matter. In Section 4, we set out the importance of General Condition 18 in ensuring Number Portability operates efficiently to enable effective competition in the telecoms sector.
- 6.13 Ofcom has found that Gateway has breached GC18 from 16 June 2015 onwards, after failing to complete five porting requests sent by BT in relation to the Number. Gateway eventually completed a Customer Letter of Authorisation following the fifth porting request, although this was not sent as soon as reasonably practicable (nor to the appropriate party). However, the porting of the Number has now been completed despite Gateway failing to follow the correct process. As such, it was not Gateway's actions that formally ceased the contravention. Nevertheless, Ofcom views the contravention as having ended in September 2017 when the Number was successfully ported to Numbergroup. This puts the period of contravention at 27 months.

### The degree of harm caused by the contravention and any financial gain made by Gateway

- 6.14 Ofcom has not been contacted by any other customers of Gateway regarding Number Portability. Therefore, as far as we are aware, the contraventions identified in this Confirmation Decision apply only to one number held by one customer.
- 6.15 As we discuss below, there is evidence to suggest that the Customer was paying more for Gateway's service than what it would have paid had it been able to port the Number to Numbergroup. The Customer has also argued that their business has been affected by the suspension of the Number, as potential customers will not have been able to make contact. The suspensions were outside the scope of our Investigation and we have not considered them.
- 6.16 Ofcom has also taken into account the considerable administrative burden Gateway's failures have placed on the Customer. Since September 2014, the Customer has sent at least 40 emails and letters to Gateway, Numbergroup, the Ombudsman Services and Ofcom in an attempt to resolve the matter. This would have taken up a considerable amount of the Customer's time, and caused them inconvenience.
- 6.17 Gateway's actions which have led to the harm discussed below have been considered as exacerbating factors by Ofcom when determining the amount of the penalty. The harm described above also informed Ofcom's decision to require Gateway to pay £1,000 in compensation to the Customer. This is explained below.
- 6.18 Furthermore, Ofcom takes account of the fact that by failing to engage in the porting process, Gateway continued to make money from a customer that had followed the appropriate steps to leave Gateway's services.

## The extent to which the contravention was deliberate or reckless

- 6.19 Failing to engage in the porting process as a result of not receiving porting requests from BT, Numbergroup or the Customer could be considered an accidental, reckless or deliberate breach. In determining whether Gateway's lack of engagement in the porting process was deliberate, it is important to look at whether Gateway was aware of the Customer's desire to have the Number ported.
- 6.20 From the evidence Ofcom has seen, it is clear that formal porting request emails were being sent by BT to [redacted]@gatewaytelecom.co.uk from 12 June 2015 onwards.
- 6.21 Throughout 2016, the Customer was engaging almost exclusively with [redacted] at Gateway using the above email address or via letter.<sup>131</sup> The Customer's intention to port the Number is explicit<sup>132</sup> and Gateway's responses indicated it would deal with the porting request.<sup>133</sup>
- 6.22 In relation to the fourth request, Numbergroup submitted the porting requests directly to Gateway as well as to BT.<sup>134</sup> Gateway received the request and replied to Numbergroup, indicating that they would engage with it.<sup>135</sup> For example, in an email dated 16 March 2016, Gateway stated *"as soon as BT get in touch with us, we shall complete."* We have not seen any evidence of Gateway processing the request.
- 6.23 Given the period of the contravention identified above, the explicit nature of the Customer's intentions and the number of Gateway responses to porting requests from Numbergroup and the Customer, it cannot be argued that Gateway were unaware of the porting requests. Moreover, the fact that Gateway responded on a number of occasions<sup>136</sup> saying that it would take the necessary action, but in each case there is no evidence that it did, suggests that Gateway's lack of engagement in the porting process was deliberate. Ofcom considers this to be an exacerbating factor in determining the level of penalty.

## Whether the contravention continued once Gateway became aware of it

- 6.24 On 17 January 2017, BT sent an email to [redacted]@gatewaytelecom.co.uk chasing the fourth porting request. In this email, BT explicitly remind Gateway of their obligations under GC18. Gateway should have already been aware that failing to provide Portability in the shortest time possible could be considered a breach of GC18, but Ofcom has taken into account this explicit reminder when considering whether the contravention continued once Gateway became aware of it.

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<sup>131</sup> Two emails were sent to [redacted]@gatewaytelecom.co.uk on 27 January 2016 and 25 November 2016 and some emails were sent to billing@gatewaytelecom.co.uk, though [redacted] was replying from this mailbox. See Annex 20, Customer First Response, pages 11-16, 23-24, 29-32, 34, 64.

<sup>132</sup> Annex 20, Customer First Response, pages 4, 11-12, 14, 17-18, 28-29, 30, 32-33.

<sup>133</sup> Annex 20, Customer First Response, pages 13 and 29.

<sup>134</sup> Annex 9, Numbergroup First Response, page 14; Annex 2, Complaint Submission, pages 6-7.

<sup>135</sup> Annex 2 Complaint Submission, pages 6-7, 12-13, 15-16, 23-24; Annex 9, Numbergroup First Response, page 15.

<sup>136</sup> Annex 2, Complaint Submission, pages 12, 13, 23; Annex 20, First Customer Response, pages 13, 29.

- 6.25 Ofcom engaged with Gateway during the enquiry phase that preceded the Investigation in May 2017, after the fourth porting request had failed. Ofcom sent a copy of Numbergroup's complaint to Gateway, which was confirmed as received.
- 6.26 After the Investigation was opened on 24 May 2017, a fifth porting request was submitted by Numbergroup to BT.<sup>137</sup> At this point Daisy chased Gateway to complete a Customer Letter of Authorisation. Gateway completed the Customer Letter of Authorisation on 21 June 2017 but, despite informing Daisy it had done so, appears to have failed to send this letter to either Numbergroup or BT.
- 6.27 As such, Ofcom concludes Gateway's breach of GC18 continued after it was made aware that its actions could be considered a contravention and that this breach continued until September 2017 when actions taken by Ofcom, Daisy, Talk Talk, BT and Numbergroup resulted in the successful porting of the Number.

### **The extent to which Gateway co-operated with our Investigation**

- 6.28 Gateway failed to respond to Ofcom during the enquiry phase and has continually failed to engage with Ofcom throughout the Investigation. Ofcom sent two information requests to Gateway under section 135 of the Act, neither of which has been responded to. This failure to respond has been the subject of two Confirmation Decisions under section 139A of the Act and Gateway has incurred penalties for its continued non-compliance.
- 6.29 Gateway's failure to co-operate has proven an obstacle to conducting this Investigation, not least in relation to the setting of the financial penalty (discussed below at paragraphs 6.34-6.38). This has had a significant impact on the resource required for this Investigation and has materially hindered Ofcom in carrying out its regulatory functions.

### **The extent of senior management knowledge**

- 6.30 Information from Companies House lists [X] as the Director of GW Telecom Limited. [X] was listed as the Secretary of GW Telecom Limited from 1 September 2011 to 2 May 2017. [X] is also listed as the Director of Gateway Mobile Connections Limited, a company owned by GW Telecom Limited. Ofcom has made a reasonable assumption that [X] as listed on these official documents is the same person as [X], the Gateway employee who has been involved in the Customer's attempts to port the Number as described above. It is clear that both [X] and [X] hold positions at Gateway at the senior management level or above.
- 6.31 As noted above, Ofcom considers the period of the breach to begin on 16 June 2015, two working days after BT sent the porting request to [X], by email to his address: [X]@gatewayelecom.co.uk. As noted at paragraphs 4.30 – 4.31, the evidence suggests that the initial porting request was submitted to this email address. It appears that all

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<sup>137</sup> Annex 13, BT First Response, pages 46-47.

subsequent requests and emails from both BT and Numbergroup were sent to this email address.

- 6.32 The Customer's, BT's and Numbergroup's engagement with Gateway was almost exclusively with [X]. In respect of the fourth porting request, along with submitting the documents to BT as per the porting process, Numbergroup also submitted the porting documents directly to [X], sent Gateway follow-up emails and spoke to them on the phone. Ofcom has corresponded with Gateway via emails and calls to [X] and via letters to [X] sent to Gateway's registered address. Ofcom has no evidence to suggest that [X] was aware of the contravention until the point at which a notice was sent to him that Ofcom had opened the Investigation.
- 6.33 Ofcom is of the opinion that [X] has been aware of the Customer's intention to port their number since at least June 2015 and would have been aware of Gateway's potential contravention of GC18 from 17 January 2017 at the latest. [X] was sent a letter upon the opening of the Investigation on 24 May 2017 informing Gateway of the potential breach of GC18, so this is the date from which we find he should have been aware of Gateway's potential contravention.

### Gateway's financial position

- 6.34 Section 97 of the Act provides that a penalty may be such amount not exceeding ten per cent of the notified person's turnover for relevant business for the relevant period as Ofcom determine to be appropriate and proportionate to the contravention for which it is imposed. In this Investigation, the relevant business is GW Telecom Ltd (company number 07414362). The relevant period is usually the last full financial year before the Notification, so the 2016/17 financial year.
- 6.35 As detailed in Section 3 above, Ofcom requested information about Gateway's turnover in its initial information request dated 30 May 2017. Gateway acknowledged receipt of this information request but failed to respond to it. As a result, in order to determine a proportionate penalty, Ofcom has had recourse to the limited information available in the public domain about GW Telecom Limited's financial position.
- 6.36 Companies House shows GW Telecom Ltd's micro accounts made up to 31 October 2016 as being overdue. The last micro company accounts were submitted on 25 July 2016 and made up to 31 October 2015. These show Gateway's assets at that time as £208,328. The accounts also show Gateway as having capital and reserves at that time of -£57,687.
- 6.37 Gateway has a number of wholly owned subsidiary companies. Two of these companies, Gateway Finance Management Limited and Gateway Mobile Connections Limited, were dissolved in 14 November 2017. A third company, Gateway Sales and Marketing Limited, entered voluntary liquidation on 15 June 2017 at the insistence of creditors. None of these subsidiary companies appears to provide services that would be taken into account as part of the 'relevant business' so we do not consider their financial position further.

## Conclusion on penalty amount

6.38 Given the limited information Ofcom has about Gateway's financial position; the importance of GC18; the level of harm caused to the consumer by Gateway's actions; and the length, seriousness and deliberate nature of the contravention, and in light of the fact that Gateway made no representations and took no steps to comply with GC18 or to remedy the consequences of the contravention following our Notification under section 96A, Ofcom concludes that a figure of £20,000 is appropriate and proportionate in this case.

## Remedy

6.39 Under section 96A (2) of the Act, Ofcom can specify the steps it thinks should be taken by a CP to come into compliance with a GC and remedy the consequences of a contravention. In our Notification under section 96A of the Act, we therefore considered what steps Gateway should take to come into compliance with GC18. Gateway made no representations to us in response to the section 96A Notification.

6.40 Accordingly, in line with our provisional conclusion in the section 96A Notification, we have concluded that, as there has been an abuse of the porting process, we consider that Gateway should have paid the Customer reasonable compensation as soon as reasonably practicable. As we have found that it has not done so, we conclude it is now appropriate for Gateway to pay the Customer reasonable compensation in order to come into compliance with GC18.9.

6.41 We have examined all the evidence and facts of the case and direct Gateway to pay the Customer £1,000. In setting this sum, we have taken account of the factors set out below.

6.42 The evidence suggests that there is a difference in price between Gateway's and Numbergroup's services, of at least £421 in the period since 16 June 2015. The evidence that Ofcom has seen suggests that the Customer was paying around £15.60 more per month to Gateway than it would have been paying to Numbergroup. If we multiply £15.60 by 27 (the number of months this matter has taken), this equals £421.20.

6.43 We have also taken into account the inconvenience and frustration suffered by the Customer because of Gateway's omissions, as evidenced in the correspondence we have reviewed. This includes the Customer having to send over 40 emails. Finally, we have borne in mind the length of time that has elapsed since the Customer's first porting request.

6.44 Taking these factors together, we now direct Gateway to pay reasonable compensation of £1,000 to the Customer to bring its actions in line with its obligations under GC18.9<sup>138</sup>.

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<sup>138</sup> Our May 2011 statement called for an industry-wide compensation scheme to be implemented by industry. This has not emerged. In the absence of such a scheme, our view, as set out in our May 2011 statement was that "each CP should be able to comply with the requirement to provide compensation for delays or abuse of porting through its standard complaint handling channels on a case by case basis in the first instance" (paragraph 10.102). We remain of this view, and so consider Gateway is responsible for the compensation in this instance. See:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/37746/statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/37746/statement.pdf)

## 7. Conclusions and action required by Gateway

### Contravention of GC18

- 7.1 Based on the evidence and reasoning contained in this document, Ofcom determines that during the period from 16 June 2015 to 28 September 2017, when porting finally occurred (although facilitated by Daisy, TalkTalk and BT rather than by Gateway), Gateway contravened GC18.1 and GC18.5 and, from 16 June 2015 to the date of the Notification (24 November 2017), Gateway contravened GC18.9 and GC18.10.

### Steps that should be taken by Gateway

- 7.2 The step that Ofcom considers Gateway should take to comply with the requirements of GC18 is to pay reasonable compensation of £1,000 to the Customer in light of what we find to be Gateway's abuse of the porting process.
- 7.3 Within one calendar month of this Confirmation Decision being issued, Gateway should provide confirmation to Ofcom that the above step has been completed and provide evidence that payment has been made to the Customer.

### Penalty

- 7.4 For the reasons set out in this document, Ofcom is imposing a penalty of £20,000 on Gateway in respect of its contravention of GC18. This must be paid within one calendar month of the date of issue of this Confirmation Decision.

## List of Annexes

Not included in non-confidential version.

# A1. Confirmation Decision to Gateway of a contravention of General Condition 18 under S96C of the Communications Act 2003

## Section 96C of the Communications Act 2003

- A1.1 Section 96C of the Communications Act 2003 (the “Act”) allows the Office of Communications (“Ofcom”) to issue a decision (a “Confirmation Decision”) confirming the imposition of requirements on a person where that person has been given a notification under section 96A of the Act, Ofcom has allowed that person an opportunity to make representations about the matters notified, and the period allowed for the making of representations has expired. Ofcom may not give a Confirmation Decision to a person unless, having considered any representations, it is satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 96A.
- A1.2 A Confirmation Decision:
- a) must be given to the person without delay;
  - b) must include the reasons for the decisions;
  - c) may require immediate action by the person to comply with the requirements of a kind mentioned in section 96A(2)(d) of the Act,<sup>139</sup> or may specify a period within which the person must comply with those requirements; and
  - d) may require the person to pay:
    - i) the penalty specified in the notification issued under section 96A of the Act, or
    - ii) such lesser penalty as Ofcom consider appropriate in light of the person’s representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, and may specify the period within which the penalty is to be paid.

## General Condition 18

- A1.3 Section 45(1) of the Act gives Ofcom power to set conditions, including General Conditions (GCs), which are binding on the person to whom they are applied.
- A1.4 On 22 July 2003, shortly before the coming into force of the relevant provisions of the Act, the Director General of Telecommunications (the Director) published a notification in accordance with section 48(1) of the Act entitled *‘Notification setting general conditions*

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<sup>139</sup> Such requirements include those steps that Ofcom thinks should be taken by the person in order to remedy the consequences of a contravention of a condition.

## Confirmation Decision

*under section 45 of the Communications Act 2003*.<sup>140</sup> Under Part II of the Schedule to that notification, the Director set (among others) General Condition 18 (GC18), which took effect on 25 July 2003.<sup>141</sup>

A1.5 On 29 December 2003, Ofcom took over the responsibilities and assumed the powers of the Director, and notifications made by the Director are to have effect as if made by Ofcom under the relevant provisions of the Act.

A1.6 The relevant sections of GC18<sup>142</sup> require that:

*“18.1 The Communications Provider shall provide Number Portability within the shortest possible time, including subsequent activation, on reasonable terms and conditions, including charges, to any of its Subscribers who so request.”*

*“18.5 The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability as soon as is reasonably practicable in relation to that request on reasonable terms...”*

*“18.9 Where Communications Providers delay the porting of a Telephone Number for more than one business day or where there is an abuse of porting by them or on their behalf, they shall provide reasonable compensation as soon as is reasonably practicable to the Subscriber for such delay and/or abuse.”*

*“18.10 The Communications Provider shall set out in a clear, comprehensive and easily accessible form for each Subscriber how Subscribers can access the compensation provided for in paragraph 18.9 above, and how any compensation will be paid to the Subscriber.”*

A1.7 Sections 96A to 96C of the Act give Ofcom the powers to take action, including the imposition of penalties, against persons who contravene, or have contravened, a condition set under section 45 of the Act.

## Subject of this Confirmation Decision

A1.8 This Confirmation Decision is addressed to GW Telecom Limited trading as Gateway Telecom (“Gateway”), whose registered company number is 07414362. Gateway’s registered office is 253 Alcester Road South, Birmingham, West Midlands, B14 6DT.

## Notification given by Ofcom

A1.9 On 24 November 2017, Ofcom gave Gateway a notification under section 96A of the Act (“the Notification”) as Ofcom had reasonable grounds for believing that Gateway had

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<sup>140</sup> Available at:

[http://www.ofcom.org.uk/static/archive/oftel/publications/eu\\_directives/2003/cond\\_final0703.pdf](http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/cond_final0703.pdf).

<sup>141</sup> A consolidated version of the General Conditions is available at:

[http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/GENERAL\\_CONDITIONS\\_22Sept2014.pdf](http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/GENERAL_CONDITIONS_22Sept2014.pdf).

<sup>142</sup> GC18 was amended by Ofcom on 26 May 2011 following EU revisions made to article 23 of Directive 2002/22/EC (the Universal Services Directive). GC18 has not been subsequently revised prior to the apparent breach.

## Confirmation Decision

contravened GC18. Specifically, Ofcom provisionally concluded that between 16 June 2015 and 28 September 2017, Gateway had contravened GC18.1 and GC18.5, and between 16 June 2015 and the date of the notification (24 November 2017), Gateway had contravened GC18.9 and GC18.10.

- A1.10 The Notification specified the penalty that Ofcom was minded to impose on Gateway in respect of the contravention of GC18. The Notification also allowed Gateway the opportunity to make representations to Ofcom about the specified matters.

## Confirmation Decision

- A1.11 The period allowed for making representations has now expired. Gateway did not provide any representations in response to the Notification.

- A1.12 As such, for the reasons set out in this document, we are satisfied that Gateway has contravened GC18. Specifically, between 16 June 2015 and 28 September 2017, we consider Gateway has:

- a) failed to provide Portability as soon as was reasonably practicable on five occasions by failing to respond to the first four porting requests, and by failing to take the correct action in respect of the fifth; and
- b) failed to provide Number Portability to the Customer in the shortest possible time on five occasions, in respect of the five porting requests.

- A1.13 In addition, between 16 June 2015 and the date of the Notification (24 November 2017), Gateway has:

- a) failed to pay reasonable compensation to the Customer as soon as was reasonably practicable for what we consider to be an abuse of the number porting process; and
- b) failed to provide clear, comprehensive and easily accessible information to the Customer regarding how they could access such compensation and how any compensation would be paid.

- A1.14 Ofcom has therefore decided to give Gateway a Confirmation Decision, to impose a requirement to comply with GC18 and remedy the consequences of the contravention, and to impose a financial penalty, in accordance with section 96C of the Act. The reasons are set out in the document to which this Confirmation Decision is annexed.

## Requirement

- A1.15 The step that Ofcom requires Gateway to take to comply with the requirements of GC18 and remedy the consequences of the contravention is to pay reasonable compensation of £1,000 to the Customer in light of what we consider to be Gateway's abuse of the porting process.
- A1.16 Within one calendar month of this section 96C Confirmation Decision being issued, Gateway should provide confirmation to Ofcom that the above step has been completed and provide proof of payment to the Customer.

## Penalty

- A1.17 Ofcom has determined that Gateway must pay a penalty of £20,000 in respect of its contravention of GC18.
- A1.18 Gateway has until 23 February 2018 to pay Ofcom the penalty. If it is not paid within the specified period, it can be recovered by Ofcom accordingly.

## Interpretation

- A1.19 Words or expressions used in this Confirmation Decision have the same meaning as in the GCs or the Act except as otherwise stated in this Confirmation Decision.



**Simon Leathley**

**Legal Director**

**as decision maker for Ofcom**

**23 January 2018**