



Notification of Contravention of General Condition 15 under section 96C of the Communications Act 2003

Notice served on British Telecommunications plc
("BT") by the Office of Communications ("Ofcom")

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Section 1

Notification to BT of contravention of General Condition 15 under section 96C of the Communications Act 2003

Section 96C of the Communications Act 2003

- 1.1 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 have 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, we are 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.
- 1.2 A Confirmation Decision:
- a) must be given to the person without delay;
 - b) must include reasons for the decision;
 - c) may require immediate action by the person to comply with requirements of a kind mentioned in section 96A(2)(d) of the Act,¹ 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 15

- 1.3 Section 45(1) of the Act gives Ofcom the power to set conditions, including general conditions, binding on the person to whom they are applied.
- 1.4 The Schedule to a Notification issued by the Director General of Telecommunications on 22 July 2003 under section 48(1) of the Act, which took effect from 25 July 2003, sets out the General Conditions of Entitlement (the “General Conditions” or “GCs”)

¹ Such requirements include those steps that Ofcom thinks should be taken by the person in order to comply with a General Condition, or to remedy the consequences of a contravention of a General Condition.

which apply to the Communications Providers (“CPs”) defined in each GC. The GCs have, from time to time, been amended.²

- 1.5 On 17 October 2012, Ofcom published a statement entitled “Review of Relay Services: Decision on the introduction of Next Generation Text Relay” (the “2012 Statement”).³ The 2012 Statement set out Ofcom’s decision to amend GC 15 in order to require CPs (both fixed and mobile) to provide access to their Subscribers to an improved form of relay service, referred to in that document and this Notification and accompanying Explanatory Statement as “Next Generation Text Relay” (“NGTR”). The 2012 Statement followed a detailed review of the provision of relay services in the UK, in the light of Ofcom’s obligations under European and domestic law, changes in user requirements, and technological developments since the then existing text relay service was introduced.
- 1.6 GC 15.3, as amended, requires CPs to ensure their subscribers have access to a text “Relay Service” approved by Ofcom. By a notification published with the 2012 Statement, Ofcom introduced a new GC 15.5, which provides that by no later than 18 April 2014 the Relay Service approved by Ofcom and provided by fixed and mobile CPs must have a number of defined characteristics and meet specified requirements.

Subject of this Confirmation Decision

- 1.7 This Confirmation Decision is addressed to BT Plc (“BT”), whose registered company number is 1800000. BT’s registered office is BT Centre, 81 Newgate Street, London, EC1A 7AJ.

Notification given by Ofcom under section 96A

- 1.8 On 3 December 2014, Ofcom issued a notification under section 96A of the Act (“the section 96A Notification”) to BT, stating that Ofcom had reasonable grounds for believing that from 18 April 2014, BT had contravened, and continued to contravene, GCs 15.3 and 15.5 by failing to provide a NGTR service in accordance with the requirements of GC 15.5.
- 1.9 The section 96A Notification set out that BT was, from 24 September 2014, providing a Relay Service to its Subscribers in accordance with most of the requirements of GCs 15.3 and 15.5, but that it was not, however, doing so in accordance with GC 15.5(e) in respect of some Braille reading equipment. The Notification set out that BT should, therefore, take steps to ensure it did so. It also set out that BT had not taken steps to remedy the consequences of its contravention and should do so.
- 1.10 The Notification also notified BT that Ofcom was minded to impose a penalty of £1 million on BT in respect of the contravention of GCs 15.3 and 15.5.
- 1.11 BT was given until 5.00pm on 9 January 2015 to make written representations to Ofcom about the matters set out in the section 96A Notification. BT also had the opportunity to make oral representations.

² A consolidated version of the General Conditions as at 26 February 2015 is available at: http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/CONSOLIDATED_VERSION_OF_GENERAL_CONDITIONS_AS_AT_26_FEBRUARY_2015_.pdf

³ Available at <http://stakeholders.ofcom.org.uk/binaries/consultations/relay-services-review-12/statement/statement.pdf>

- 1.12 BT provided written representations to Ofcom on 9 January 2015, and made oral representations on 20 January 2015.

Confirmation Decision

- 1.13 Having served the section 96A Notification on BT, which allowed it the opportunity to make representations, the period allowed for making representations having now expired, and having carefully considered BT's representations, Ofcom is satisfied that BT has, in one or more of the respects notified, been in contravention of a condition specified in the section 96A Notification (specifically GCs 15.3 and 15.5) between 18 April 2014 and 24 September 2014 (the "Relevant Period"). Therefore, Ofcom has decided to give BT a Confirmation Decision, and to impose a financial penalty, in accordance with section 96C of the Act. The reasons are set out in the remainder of this document (the "Explanatory Statement").

Steps that should be taken by BT

- 1.14 Ofcom agrees that BT should take the steps to which it committed in its written and oral representations to remedy the consequences of its contravention of GCs 15.3 and 15.5. Accordingly it should, as set out in those representations:
- a) provide the NGTR helpdesk and support facilities for the NGTR service;
 - b) make and publish on the NGTR website instructional videos for using the NGTR service;
 - c) hold the proposed "Train the Trainer"⁴ events on the accessing and use of the NGTR service; and
 - d) provide for distribution to end-users, by organisations represented on the NGTR Steering Board,⁵ of 500 smart devices to be used to access the NGTR service by those users.
- 1.15 On the basis it will take these steps, Ofcom does not impose on BT requirements to take remedial steps in line with section 96C of the Act.

Penalty

- 1.16 Ofcom has determined that a penalty of £800,000 be imposed on BT in respect of its contravention of GCs 15.3 and 15.5 during the Relevant Period.

Next Steps

- 1.17 BT has until 5.00pm on 15 April 2015 to pay Ofcom the penalty of £800,000

Interpretation

- 1.18 Words or expressions used in this Notification have the same meaning as in the GCs or the Act except as otherwise stated in this Notification.

⁴ As described in the accompanying Explanatory Statement.

⁵ Again, as described in the accompanying Explanatory Statement.

**David Clarkson (Competition Policy Director) and Yih-Choung Teh
(Competition Policy Director)**

as decision makers for Ofcom

16th March 2015

Section 2

Executive Summary

- 2.1 The remainder of this document is an Explanatory Statement in support of the Confirmation Decision Ofcom gives BT, under section 96C of the Act, in respect of its contravention of General Conditions (“GCs”) 15.3 and 15.5.
- 2.2 On 17 October 2012 Ofcom published a statement entitled “Review of Relay Services: Decision on the introduction of Next Generation Text Relay” (the “2012 Statement”).⁶ That set out Ofcom’s decision to amend GC 15 in order to require Communications Providers (“CPs”) (both fixed and mobile) to provide access to their Subscribers to an improved form of Relay Service, referred to as “Next Generation Text Relay” (“NGTR”). The 2012 Statement followed a detailed review of the provision of Relay Services in the UK, in the light of Ofcom’s obligations under European and domestic law, changes in user requirements, and technological developments since the existing text relay service was introduced.
- 2.3 GC 15.3, as amended, requires CPs to ensure their Subscribers have access to a Relay Service approved by Ofcom. By a notification published with the 2012 Statement, Ofcom introduced a new GC 15.5, which provides that by no later than 18 April 2014 the Relay Service approved by Ofcom and provided by fixed and mobile CPs must have a number of defined characteristics and meet a number of specified requirements. Those characteristics and requirements, which are the essential features of NGTR, help secure equivalence of access for disabled end-users as required by the Universal Service Directive (the “USD”).⁷
- 2.4 BT submitted an application to Ofcom for the approval of a NGTR service, and supporting documents, between August 2013 and November 2013. Ofcom assessed BT’s application and, in November 2013, we consulted on our proposal to approve BT’s proposed service under GC 15. Having carefully considered all responses, Ofcom approved BT’s proposed NGTR service on 6 March 2014.
- 2.5 On 16 April 2014, BT announced, via two BT owned and controlled websites,⁸ that it would be delaying the launch of its NGTR service. BT also wrote to a number of organisations, including Ofcom, informing them of the delay to the implementation of its service and referring them to the announcements which had been posted on the websites.
- 2.6 On 18 April 2014 no CPs’ Subscribers were able to access a Relay Service that complied with the requirements of GC 15.5. On 30 May 2014, Ofcom opened an enquiry into industry’s compliance with GCs 15.3 and 15.5.⁹ As part of that, we invited CPs to submit any representations they wished to make by 12 June 2014.¹⁰
- 2.7 Following consideration of the representations received, and with regard to our administrative priorities, on 24 June 2014 Ofcom opened an investigation (the

⁶ <http://stakeholders.ofcom.org.uk/consultations/relay-services-review-12/statement/>

⁷ http://europa.eu/legislation_summaries/information_society/legislative_framework/l24108h_en.htm

⁸ <http://www.textrelay.co.uk> and <http://ngts.org.uk>

⁹ Further information is available at: http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01101/

¹⁰ Only Communications providers with a market share of at least 4% and/or a universal service obligation were invited to make representations

“Investigation”) into BT’s compliance with GCs 15.3 and 15.5 from 18 April 2014. As part of the Investigation, we issued BT with two Information Requests (the “First” and “Second Information Requests,” and together, the “Information Requests”) under section 135 of the Communications Act 2003 (the “Act”).

- 2.8 Having carefully considered the information available to us, including BT’s responses to Ofcom’s Information Requests and additional comments it has submitted to us, Ofcom considered it had reasonable grounds for believing that, from 18 April 2014, BT had failed to provide a Relay Service in accordance with the requirements of GC 15.5 and, in a limited respect relating to certain Braille reading equipment, continued contravening GCs 15.3 and 15.5. Accordingly, on 3 December 2014, Ofcom issued BT with a Notification under section 96A of the Act (a copy of which is at Annex 1).
- 2.9 The section 96A Notification also notified BT that Ofcom was minded to impose on it a penalty of £1 million in respect of the contravention.
- 2.10 BT was given until 5.00pm on 9 January 2015 to make written representations to Ofcom about the matters set out in the section 96A Notification. BT provided its written representations on the 9 January 2015 (the “Written Representations”), a copy of which is at Annex 2. BT were also given an opportunity to make oral representations, which it did on 20 January 2015 (the “Oral Representations”), a transcript of which is attached at Annex 3 (together the “Representations”).
- 2.11 On 27 January 2015, Ofcom issued BT with a third information request under section 135 of the Act (a copy of which is attached at Annex 4) requesting further clarification on a number of issues (the “Third Request”). BT provided Ofcom with the information requested on 5 February 2015 (Annex 5).¹¹
- 2.12 Ofcom has carefully considered the Representations (including the clarifications received in response to the Third Request) and is satisfied that during the Relevant Period (18 April - 24 September 2014), BT failed to provide a Relay Service in accordance with the requirements of GC 15.5. Accordingly, BT contravened GCs 15.3 and 15.5. We are, however, not satisfied that BT contravened the requirements of those GCs after that date and so make no finding in that regard.
- 2.13 Ofcom also confirms its decision, in all the circumstances, to impose a penalty on BT in respect of its contravention of GCs 15.3 and 15.5 during the Relevant Period. The penalty shall be £800,000.
- 2.14 Ofcom’s judgment is that this penalty amount is appropriate and proportionate to the contravention in respect of which it is imposed. In making that judgment Ofcom has had regard to BT’s response to Ofcom’s First, Second and Third Information Requests, the Representations and Ofcom’s published Penalty Guidelines. The basis for Ofcom’s view is explained in Section 7 of this document.
- 2.15 BT has until 5.00pm on 15 April 2015 to pay Ofcom the penalty.

¹¹ This does not include all the documents BT provided with that Response, copies of which BT has and to which it was able to refer in its representations. Certain documents Ofcom refers to in this Explanatory Statement are included in specific Annexes

Section 3

Background

The statutory framework

3.1 Ofcom is the national regulatory authority for electronic communications networks and services. We have a number of duties and functions under the Act.

Ofcom's duties and functions

3.2 Ofcom's principal duty when performing our functions is set out in section 3(1) of the Act:

“(1) It shall be the principal duty of OFCOM, in carrying out their functions —

(a) to further the interests of citizens in relation to communications matters; and

(b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.”

3.3 Section 3(3) of the Act states that, in performing our duties under subsection (1), we must have regard, in all cases, to *“(a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and (b) any other principles appearing to us to represent the best regulatory practice.”* With that in mind, Ofcom has published a statement of regulatory principles.¹² These include that Ofcom will operate with a bias against intervention, but a willingness to intervene firmly, promptly and effectively where required; and strive to ensure our interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.

3.4 Section 3(4) of the Act, meanwhile, requires that Ofcom must also have regard, in performing our duties under section 3, to certain matters as appear to us to be relevant in the circumstances. These include, in section 3(4)(i), the needs of persons with disabilities, the elderly and those on low incomes.

3.5 Ofcom's functions, for present purposes, in performing which we must fulfil the duties above, and the powers we have to perform those functions are as follows. These provide the context for making and enforcing GC 15.

3.6 In accordance with the common regulatory framework for telecommunications at European Union level (the “EU framework”),¹³ and under section 45 of the Act, which is one of the domestic implementing provisions of the EU framework, Ofcom has the power to set (and the function of setting) GCs binding the persons to whom they are applied in accordance with section 46. Under section 46, a GC may be applied generally to every person providing an electronic communications network or electronic communications service, or to every person providing such a network or

¹² See: <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>

¹³ Comprising the Framework Directive 2002/21/EC, the Authorisation Directive 2002/20/EC, the Access Directive 2002/19/EC, the Universal Service Directive 2002/22/EC and the Privacy and Electronic Communications Directive 2002/58/EC.

service of a particular description specified in the GC. GCs can only contain provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64 of the Act and which are consistent with the EU framework.

3.7 The Schedule to a Notification issued by the Director General of Telecommunications on 22 July 2003 under section 48(1) of the Act, which took effect from 25 July 2003, sets out the General Conditions of Entitlement which apply to all CPs defined in each GC. The GCs have, from time to time, been amended.

3.8 Ofcom also has functions and powers relating to the enforcement of the GCs. Under section 96A, where Ofcom determines that there are reasonable grounds for believing that a person is contravening, or has contravened, a condition (other than an SMP¹⁴ apparatus condition) set under section 45, Ofcom may give that person a Notification. Section 96A(2) states:

“A notification under this section is one which-

(a) sets out the determination made by Ofcom;

(b) specifies the condition and contravention in respect of which that determination has been made;

(c) specifies the period during which the person notified has an opportunity to make representations;

(d) specifies the steps that Ofcom think should be taken by the person in order to-

(i) comply with the condition;

(ii) remedy the consequences of the contravention;

(e) specifies any penalty which Ofcom are minded to impose in accordance with section 96B;

(f) where the contravention is serious, specifies any direction which Ofcom are minded to give under section 100; and

(g) where the contravention relates to a condition set under sections 87 to 91, specifies any direction which Ofcom are minded to give under section 100A.”

3.9 As to the penalty that Ofcom may be minded to impose in connection with a Notification under section 96A, section 96B says:

“(1) This section applies where a person is given a notification under section 96A which specifies a proposed penalty.

(2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.

(3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.

¹⁴ “Significant Market Power”.

- (4) *But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after—*
- (a) *the giving of a confirmation decision under section 96C(4)(c) which requires immediate action; or*
 - (b) *the expiry of any period specified in the confirmation decision for complying with a requirement so specified.*
- (5) *The amount of a penalty under subsection (4) is to be such amount not exceeding £20,000 per day as OFCOM determine to be—*
- (a) *appropriate; and*
 - (b) *proportionate to the contravention in respect of which it is imposed.”*

3.10 Section 97 is concerned with the amount of the penalty notified under section 96A (other than a penalty falling within 96B(4)). Section 97(1) says:

“The amount of a penalty imposed under section 96 or notified under section 96A (other than a penalty falling within section 96B(4)) is to be such amount not exceeding ten per cent of the turnover of the person's relevant business for the relevant period as OFCOM determine to be—

- (a) *appropriate; and*
- (b) *proportionate to the contravention in respect of which it is imposed.”*

3.11 Section 97(3) states the turnover of a person's relevant business for a period shall be calculated in accordance with any rules set out in an order made by the Secretary of State. It also says that such an order may provide for determining what is to be treated as the network, service, facility or business by reference to which the calculation of that turnover falls to be made. The Electronic Communications (Networks and Services) (Penalties) (Rules for Calculation of Turnover) Order 2003¹⁵ sets out rules governing the way in which the turnover of a relevant CP should be calculated for the purposes of section 97.

3.12 Section 97(5) states that, as far as relevant here, “relevant business” means (subject to the provisions of an order under section 97(3)) “.... so much of any business carried on by the person that consists in any one or more of the following:

- a) *the provision of an electronic communications network;*
- b) *the provision of an electronic communications service;*
- c) *the making available of associated facilities;*
- d) *the supply of directories for use in connection with the use of such a network or service; and*
- e) *the making available of directory enquiry facilities for use for purposes connected with the use of such a network or service.”*

¹⁵ See: <http://www.legislation.gov.uk/ukxi/2003/2712/contents/made>

- 3.13 Section 97(5) also states that, for present purposes, the “relevant period”, in relation to a contravention by a person of a condition set under section 45, means “...*the period of one year ending with the 31st March next before the time when notification of the contravention was given under section 96A.*”
- 3.14 Section 392(1) of the Act, meanwhile, requires Ofcom to publish a statement containing the guidelines we propose to follow in determining the amount of penalties imposed by us under provisions in the Act. Section 392(6) says Ofcom has a duty, in determining the amount of any penalty to be imposed by us under the Act to have regard to the guidelines contained in the statement for the time being in force.
- 3.15 Section 96C of the Act confers on Ofcom the power to issue a 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.
- 3.16 Ofcom may not give a confirmation decision to a person unless, after considering any representations, we are 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.
- 3.17 Section 96C(4) states:
- “A confirmation decision:*
- (a) must be given to the person without delay;*
 - (b) must include reasons for the decision;*
 - (c) may require immediate action by the person to comply with requirements of a kind mentioned in section 96A(2)(d), 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 under section 96A, or*
 - ii) such other 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.”*
- 3.18 It is the duty of the person to whom a confirmation decision is issued to comply with the requirements imposed by that decision. Ofcom may enforce those requirements in civil proceedings (for example, by way of an injunction).

Ofcom's penalty guidelines

- 3.19 On 13 June 2011, Ofcom published its current guidelines under section 392 (the "Penalty Guidelines").¹⁶ The Penalty Guidelines provide that:

"Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement."

They also set out examples of potentially relevant factors in the determination of a penalty, to which we return in section 7 below.

General Condition 15

- 3.20 The specific legislative provisions relating to GC 15 include the amended USD, the amended Framework Directive, section 51 of the Act, and the Universal Service Order¹⁷ (the "Order") as implemented by Ofcom.
- 3.21 Article 7(1) of the USD requires EU Member States to take specific measures to ensure that access to, and affordability of, a fixed Publicly Available Telephone Service ("PATS"), including voice telephony services, for disabled end users is equivalent to the level enjoyed by other end users. This requirement applies unless measures are taken pursuant to Article 23a of that Directive.
- 3.22 Article 23a was added in the most recent revisions to the EU framework. It obliges Member States to empower national regulatory authorities, such as Ofcom, to specify, where appropriate, requirements to be met by undertakings providing Publicly Available Electronic Communications Services ("PECS"), which again includes voice telephony services, to ensure that disabled end users have access to services of those undertakings equivalent to that enjoyed by the majority of end users. Likewise that those users benefit from the choice of undertakings and services available to the majority of end users.
- 3.23 In effect, Article 7 of the USD requires Member States to impose specific measures, such as legislation or Universal Service Conditions ("USCs") on designated service providers to secure the provision of equivalent access to and affordability of a fixed PATS service, unless those requirements are imposed by GC under Article 23a. Additionally, Article 23a means that Member States must empower their national regulatory authority to impose GCs for these purposes on any undertakings providing PECS. This means, where the regulator (in this case Ofcom) determines it is appropriate, GCs relating to equivalence of access and choice for disabled end users can be imposed on a wide range of CPs in relation to a range of services.
- 3.24 Article 1(1) of the USD sets out that that Directive provides for regulatory intervention to address the needs of end users, including those with disabilities, that the market does not satisfactorily meet:

¹⁶ The Penalty Guidelines are available at: <http://www.ofcom.org.uk/about/policies-and-guidelines/penalty-guidelines/>

¹⁷ SI 2003/1904 The Electronic Communications (Universal Service) Order 2003 (as amended by SI 2011/1209).

“Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services to end-users. The aim is to ensure the availability throughout the Community of good-quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end users are not satisfactorily met by the market. The Directive also includes provisions concerning certain aspects of terminal equipment, including provisions intended to facilitate access for disabled end-users.”

- 3.25 Recital 12 to the Citizens’ Rights Directive,¹⁸ the Directive amending the USD, expands upon the meaning and importance of the requirement of equivalence for disabled end-users in this context:

“Equivalence in disabled end-users’ access to services should be guaranteed to the level available to other end-users. To this end, access should be functionally equivalent, such that disabled end-users benefit from the same usability of services as other end-users, but by different means.”

- 3.26 Article 8 of the Framework Directive does likewise. It requires Member States to ensure that in carrying out the regulatory tasks specified in the EU framework, including the USD, national regulatory authorities like Ofcom are to take all reasonable and proportionate measures which are aimed at achieving a number of specified objectives. Those objectives include promoting competition for communications services by ensuring that users, including disabled users with special social needs, derive maximum benefit in terms of choice, price and quality; and promoting the interests of EU citizens by addressing the needs of specific social groups, including disabled users.
- 3.27 The EU framework provisions have been transposed in the UK under the Act and the Order. Consistent with the USD, the Order requires Ofcom to secure the provision of a text relay service through the imposition of USCs unless a GC has achieved the same effect. Article 3A of the Order provides that where Ofcom makes such a GC, it shall not impose a universal service obligation in respect of those matters.
- 3.28 Section 51(1)(a) of the Act provides that Ofcom can set GCs considered appropriate for protecting the interests of end users of PECS. Section 51(2)(c) of the Act states that this includes a power to set conditions for that purpose in relation to the provision of services to disabled end users.
- 3.29 Pursuant to the relevant EU and domestic provisions, Ofcom had until 2012 imposed a combination of USCs and GCs to mandate the provision of a Relay Service by all providers of fixed and mobile PATS.
- 3.30 The Relay Service at that time was operated by BT, enabling it and other CPs to fulfil their regulatory obligations. It worked by requiring a hearing impaired user wishing to call a hearing person via the service to dial a prefix before the other party’s number. This would automatically bring a relay assistant into the call. The hearing impaired person could then either talk or type out text on a text-only terminal (normally a textphone). The relay assistant would speak the typed text to the other party and type out words spoken by that party in response, with the text appearing on the hearing-impaired person’s terminal, and so on.
- 3.31 In our review prior to the publication of the 2012 Statement, Ofcom sought to assess whether these arrangements continued to provide equivalence of access to voice

¹⁸ Directive 2009/136/EC

telephony for end users with hearing and/or speech impairments in light of the relevant legal provisions, technological developments and changes in user needs. In the course of that review, we identified some shortcomings with the existing service. These included: the inability to interrupt and lack of a “real time” conversation leading to slow conversation speeds; the inability to express or detect emotion; lack of privacy owing to the presence of a relay operator; and the need for specialist equipment.

- 3.32 In light of these shortcomings, and as explained in the 2012 Statement, we made the changes to GCs 15.3 and introduced 15.5 as described in this Explanatory Statement. GC 15.3 now states:

“The Communications Provider shall ensure that such of its Subscribers who, because of their disabilities, need to make or receive calls in which some or all of the call is made or received in text format, are able to access and use a Relay Service, including the receiving of calls made by End-Users irrespective of whether such End-Users have a disability. Such Subscribers and End-Users, as the case may be, shall be charged for the conveyance of messages to which a Relay Service applies at no more than the equivalent price as if that conveyance had been made directly between the caller and the called person without use of a Relay Service. In making such charges, the Communications Provider shall apply a special tariff scheme designed to compensate Subscribers who, because of their disabilities, need to make calls to which a Relay Service applies for the additional time to make telephone calls using a Relay Service.”

- 3.33 GC 15.5 requires that:

“By no later than 18 April 2014 a Relay Service provided by the Communications Provider to its Subscribers pursuant to paragraph 15.3 must:

- (a) provide facilities for the receipt and translation of voice communications into text and the conveyance of that text to the terminal of End-Users of any provider of Publicly Available Telephone Services and vice versa;*
- (b) provide facilities for the receipt and transmission of voice communications in parallel with text communications, allowing both channels to work in tandem to deliver near synchronous voice and text;*
- (c) provide facilities for access to Emergency Organisations;*
- (d) subject to Conditions 3 and 13.1, be available for lawful use by End-Users at all times;*
- (e) be capable of being accessed by End-Users of the service from readily available compatible terminal equipment, including textphones, Braille readers, personal computers and mobile telephones;*
- (f) not prevent End-Users from communicating with other End-Users of other approved Relay Services;*
- (g) provide facilities to allow End-Users, who because of their disabilities need to make calls using a Relay Service, to receive incoming calls via the Relay Service, without the calling party needing to dial a prefix;*

- (h) *insofar as reasonably practicable, allow for communication between End-Users of the service at speeds equivalent to voice communications;*
- (i) *take measures to ensure the confidentiality of communications between End-Users of the service;*
- (j) *comply with any directions in respect of the service which Ofcom may make from time to time; and*
- (k) *be approved by Ofcom for the purposes of this Condition 15.5.”*

3.34 The characteristics and requirements for the Relay Service set out in GC 15.5, which are the essential features of NGTR, represent a significant technological improvement to the previous Relay Service. The new service still involves a relay assistant converting speech to text (and vice versa) in a similar way to its predecessor, but also enables conversations to take place over two channels at the same (or in near synchronous) time: a narrowband channel for the spoken element and a broadband channel for text, rather than a single channel occupied by speech or text. In this way, the service takes advantage of both voice and data connections to improve functionality. It provides users with the ability to increase conversation speeds, interrupt conversations and have two-way speech. It also allows users to benefit from the use of mainstream equipment such as PCs and tablets, rather than being restricted to specialist equipment such as textphones.

3.35 The specified requirements and characteristics in GC 15.5 go to securing equivalence of access for disabled End-Users as required by the USD, and which Ofcom concluded the then existing Relay Service no longer secured.

3.36 In the 2012 Statement, Ofcom emphasised the importance of the equivalence of access to telephony services for disabled End Users and of regulatory interventions in that connection. For example, in paragraph 2.6 we noted that:

“... growth in the availability and use of broadband and mobile data services, particularly email and mobile text messaging, has helped those with hearing and/or speech impairments to communicate. However, voice communication – i.e. the ability to make and receive a telephone call - remains crucially important, and the inability to access voice communications can be a barrier for these users. The importance of access to voice communications is recognised at a European level by the Universal Service Directive, which requires EU Member States to take action to secure access for disabled end users to telephone services (see below). In a number of EU and other countries, including the UK, governments and regulators have intervened to address this barrier by mandating the availability of relay services. These services enable users with hearing and/or speech impairments to make and receive voice calls using third party relay assistants. In the UK, under current requirements, fixed and mobile CPs are required to provide access for their customers to a text relay service.”

3.37 In paragraphs 4.129 and 4.130 of that statement, Ofcom concluded in respect of the shortcomings in the previous Relay Service, and of the need for an improved service in the form of NGTR to secure the necessary equivalence:

“4.129 Having given careful consideration to all of the consultation responses, including responses to both the 2011 and 2012 Consultations, and the evidence available to us, we have concluded that the existing text relay service suffers from a number of significant shortcomings, such that it is no

longer fit for purpose in securing equivalence of access for hearing and/or speech impaired end users.

4.130 As set out in this Statement we have therefore concluded that it is necessary to act to comply with our EU and domestic law obligations to secure equivalence of access and that the appropriate way of doing so is to proceed with our proposals for NGTR. We are satisfied, based on the available evidence and consultation responses, that NGTR will secure equivalence of access for disabled end users in a proportionate way having regard to what is technically practicable and achievable ...”

3.38 The effect of any failure, therefore, to provide a NGTR service in accordance with GCs 15.3 and 15.5 would be to deny affected Subscribers the required equivalence of access. They would be left in receipt of either no service at all or, to the extent the existing service continued to be provided, with making calls via a relay assistant over a single channel, without near synchronous voice and text over dual channels.

3.39 Having carefully considered consultation responses and evidence about the time appropriate for implementing the new obligations under the relevant GCs, Ofcom gave CPs 18 months to meet them. We concluded that this balanced the need for prompt action with the extent of the changes and the technical work they required. We said:

“4.124 Our aim is to ensure that NGTR is implemented as quickly as possible in order for its benefits to be realised by those with hearing and/or speech impairments. However, it is also necessary and important to take into account practicalities associated with implementing such a service efficiently and to ensure that NGTR is implemented to a high and robust standard.

4.126. We consider that 18 months remains an appropriate period for implementation of an NGTR service. This period takes into account the need to tender for customised solutions based on integrating new hardware and software with the existing service and appropriate testing of the service before it goes live to customers. This period also takes into account the need to ensure that there is no impact on emergency calls and the implementation period takes account of testing, with the existing text relay service remaining available until NGTR is offered. It similarly takes account of the time that will be required to secure Ofcom’s approval of a NGTR service.”

BT’s NGTR service

3.40 BT initially applied to Ofcom for the approval of a NGTR service in August 2013. BT’s application led to a series of correspondence between Ofcom and BT with additional information and undertakings being required from BT to support the application. BT’s final submission in support of its application was made on 20 November 2013. On the basis of the information provided, Ofcom consulted on our proposal to approve BT’s proposed service on 28 November 2013. On 6 March 2014, Ofcom approved that service. We did so on the basis, amongst others, of undertakings from BT as to the compliance of its service with the requirements of GC 15.5.

The enquiry

3.41 On 1 April 2014, BT informed Ofcom that it had discovered a problem during testing in relation to the voice quality of 999 emergency calls using its NGTR service. It said

these were unlikely to be fully resolved by 18 April. On 16 April BT confirmed to Ofcom, and issued a public statement advising that, owing to safety issues, it would not be launching its NGTR service on 18 April.

- 3.42 Ofcom had met and communicated regularly with BT (and other stakeholders) between October 2012 and April 2014, but these were the first indications Ofcom had from BT that it was unlikely to, or would not, meet the 18 April deadline.¹⁹ This led to Ofcom opening an enquiry into all relevant CPs' compliance with GC 15.
- 3.43 Although BT no longer has a regulatory obligation to provide a wholesale Relay Service, Ofcom understood from discussions with industry on the implementation of NGTR that all other CPs intended to provide their Subscribers with access to an approved Relay Service by entering into wholesale agreements with BT for access to its service. Therefore BT's was, and still is, the only Relay Service approved by Ofcom. As that service did not come into operation on 18 April 2014, no CP was, as of that date, providing a Relay Service to its Subscribers as required under GCs 15.3 and 15.5.
- 3.44 On 30 May 2014, Ofcom opened our enquiry. As part of it, CPs²⁰ were invited to make representations on the steps they had taken to comply with the relevant conditions by 18 April 2014.
- 3.45 In their representations, the CPs other than BT advised Ofcom that they had received assurances from BT about wholesale access to its approved NGTR service and its availability from 18 April 2014. They entered contractual arrangements with BT for such access. On the basis of these, and the reasonable reliance we consider CPs placed on them, and taking into account our administrative priorities as set out in our Enforcement Guidelines,²¹ we decided against taking further action against these other CPs.
- 3.46 We also decided, in light of its position and again having taken into account our administrative priorities, to open an investigation (the "Investigation") into BT in respect of its compliance with GCs 15.3 and 15.5. We opened the Investigation on 24 June 2014.
- 3.47 Thereafter, Ofcom has taken the investigative steps described in section 4 of this document. BT, meanwhile, took steps towards complying with GCs 15.3 and 15.5. These include, Ofcom understands from BT:
- resolving many of the problems with the voice quality of emergency service calls by the end of May 2014;
 - trials and piloting of the NGTR service and associated software applications (including, for a period, operating the NGTR service in parallel with the old Relay Service and routing some relay calls via the former (some using its full functionality and others not));

¹⁹ We note in this regard that, in submissions it has made to Ofcom in this matter (see Annex 13), BT has contended, "... *BT had a reasonable expectation that it would deliver NGTR on time right up until March 2014. It was only at this time, during the pilot phase of the project, that issues affecting the voice quality of emergency calls on NGTR became evident.*"

²⁰ Communications providers with a market share of at least 4% and/or a universal service obligation

²¹ http://stakeholders.ofcom.org.uk/binaries/consultations/draft-enforcement-guidelines/annexes/Enforcement_guidelines.pdf

- phasing out the old Relay Service, turning it off on 11 September 2014 and routing all relay calls via the NGTR service from that date; and
- launching its NGT Lite²² software applications by 24 September 2014.

²² The name of the software application BT makes available for using its NGTR service.

Section 4

The Investigation and the section 96A Notification

4.1 The Investigation examined BT's compliance with its obligations under GCs 15.3 and 15.5 from 18 April 2014.

Information gathering

4.2 An Information Request was sent to BT on 7 August 2014 (Ofcom's "First Information Request"). Ofcom amended this Request on 10 September 2014. Ofcom received BT's response (BT's "First Response") on 12 September 2014. A second Information Request (the "Second Information Request") was issued to BT on 22 October 2014. Ofcom received BT's response on 31 October 2014 (BT's "Second Response").

The First Information Request

4.3 The First Information Request required BT to provide information, by no later than 12 September 2014, about the processes and procedures it adopted to deliver its NGTR service to its Subscribers by 18 April 2014 in accordance with GCs 15.3 and 15.5. The information required covered two periods: 17 October 2012 (the date of Ofcom's 2012 Statement) to 18 April 2014; and 18 April to 7 August 2014 (the date of the Information Request). A copy of the First Information Request is at Annex 7.

4.4 The First Information Request was broken down into four main categories and required certain specified documents and information within each:

- i. NGTR project planning and management;
- ii. NGTR project delivery;
- iii. use of text relay; and
- iv. BT's turnover.

4.5 Following discussions with BT about the number of documents falling within the First Information Request and BT's undertaking to provide us with documents setting out the findings of its internal review of its NGTR delivery project ("BT's internal review"), Ofcom decided to amend that Request (reserving the right to require further information as we considered appropriate in light of BT's internal review findings). On 10 September an amended First Information Request was issued to BT, a copy of which is at Annex 8.

BT's response to the First Information Request

4.6 A copy of BT's First Response is at Annex 9.²³ It included:

- BT project management documents;

²³ This does not include all the documents BT provided with that Response, copies of which BT has and to which it was able to refer in its representations. Certain documents Ofcom refers to in this Explanatory Statement are included in specific Annexes.

- the conclusions of BT's internal review;
- a detailed timeline for the project;
- an organogram showing the locations and roles of the core NGTR project team;
- slide packs relating to BT's tendering process for the development and delivery of the NGTR system, BT's statement of requirements and emails referring to delays in the project;
- information on the number of text relay users and text relay traffic; and
- turnover for BT and each of the BT divisions responsible for NGTR.

4.7 On 17 September 2014, BT wrote to clarify an aspect of its response regarding the role of one of its members of staff. This addendum is also attached at Annex 10.

The Second Information Request

4.8 The Second Information Request, a copy of which is at Annex 11, required information on the roles and responsibilities of the senior managers involved in BT's NGTR project and information about the dates the service became available to its Subscribers. In particular, documents and/or information about:

- the roles and responsibilities of the senior managers referred to in BT's First Response;
- the delay in delivery of the NGTR service (sent directly to or from senior managers);
- the dates BT considers the NGTR service became fully compliant with GCs 15.3 and 15.5; and
- the dates BT's NGT Lite software application became available on various platforms.

4.9 The Request also invited BT to comment on the capability of its NGTR service for use with Braille readers in light of the requirements of GC 15.5(e). In it, Ofcom noted that, *"If, instead, BT wishes to challenge this point [that the service was incapable of use with Braille readers], it should also provide us, please, with relevant documents that record whether or not the system works with Braille readers and when it did or will do so."*

BT's Response to the Second Information Request

4.10 A copy of BT's Second Response is at Annex 12.²⁴ It included:

- confirmation that no specific roles and responsibilities were allocated to senior managers in relation to BT's NGTR delivery project;

²⁴ This does not include all the documents BT provided with that Response, copies of which BT has and to which it was able to refer in its representations. Certain documents Ofcom refers to in this Explanatory Statement are included in specific Annexes

- documents sent to and from the senior managers referring to delays in delivery of the project;
- documents setting out BT's view that its NGTR service was fully operational and compliant with GCs 15.3 and 15.5 by 24 September 2014; and
- the dates between 4 and 22 September 2014 when the NGT Lite software application became available for download and use by all BT Subscribers.

4.11 BT also commented on the capability of its service for use with Braille readers.

BT's additional comments

4.12 On 17 November 2014, BT voluntarily provided Ofcom with "additional comments" it considered would be, "... *helpful and relevant to Ofcom's investigation*" (BT's "Additional Comments"). A copy is at Annex 13.

4.13 BT's Additional Comments included submissions on:

- "Events leading up to the delayed launch of NGTR;"
- "Mitigation and successful launch of NGTR;"
- "Consequences of delay;" and
- "Lack of justification for sanctions."

Notification under section 96A of the Act

4.14 On the basis of the facts before it, Ofcom was satisfied that BT is (and was in the Relevant Period) a CP which provides Public Electronic Communications Services to Domestic and Small Business Customers and, as such, it falls within the definition of a CP for the purposes of GC 15.

4.15 Further, on the basis of the information gathered above, Ofcom determined that it had reasonable grounds for believing that from 18 April 2014 BT had contravened, and continued to contravene, GCs 15.3 and 15.5 by failing to provide a Relay Service in accordance with the requirements of GC 15.5.

4.16 BT was given until 5.00pm on 9 January 2015 to make Written Representations to Ofcom about the matters notified, and it did so on that date. BT was also given the opportunity to make the Oral Representations, which it did on 20 January 2015. BT's Representations are considered in Sections 6 and 7 of this Explanatory Statement.

The Third Information Request

4.17 Following BT's Representations, on 27 January 2015, Ofcom issued a Third Information Request (Ofcom's "Third Information Request"), a copy of which is at Annex 4. It required confirmation of a number of points raised in the Representations. In particular, documents and/or information about:

- BT's turnover for the relevant period;
- the various steps BT submitted that it had taken to remedy the consequences of the contravention; and

- the compliance review BT is undertaking to ensure future compliance with General Conditions.

BT's Response to the Third Information Request

4.18 A copy of BT's Response (the "Third Response") is at Annex 5.²⁵ It included:

- BT's turnover for each of BT and the BT divisions responsible for NGTR and the calculations of the turnover figures;
- papers, documents and emails relating to the NGTR Steering Board,²⁶ and BT's the proposals for resourcing the NGTR helpdesk, amendments to the NGTR website, the creation of instructional videos and the distribution to relevant end-users of smart devices; and
- documents relating to BT's compliance review.

4.19 Separate to the formal request, Ofcom also requested that BT set out in writing the undertakings or assurances it was prepared to give Ofcom about the steps it will take (or has or is taking) with regard to Braille reading equipment, and the timetable for doing so. BT responded to Ofcom on 17 February 2015 (a copy of which is attached at Annex 6). Its response included:

- a list of the actions BT has taken to date to improve usability of NGTR when used with certain Braille reading equipment;
- a summary of BT's activity to improve usability of the NGTR service for Braille reading equipment; and
- a commitment to play its part in delivering a mobile-compatible version of the NGT Lite application for Braille reading equipment users in due course.

²⁵ The annex does not include all the documents BT provided, copies of which it has. Other documents BT provided and to which Ofcom refers to in this Explanatory Statement are included in specific annexes.

²⁶ A board BT established in May 2014, comprising representatives from stakeholder groups, including the major deaf organisations, Ofcom and the industry representative bodies for purposes including sharing information and experiences of NGTR

Section 5

Application of General Condition 15 to BT

- 5.1 BT is subject to the requirements of GCs 15.3 and 15.5.
- 5.2 As set out in those conditions, they apply in respect of the provision of voice telephony services by “Communications Providers” to their “Subscribers.” GC 15.11(a) defines a Communications Provider for GC 15 purposes as “a person who provides Publicly Available Telephone Services.” As set out in Part 1 of the GCs, “Publicly Available Telephone Service means, “a service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan.” A Subscriber for the purpose of GC 15 is defined at GC 15.11(g) as, “an End-User who is party to a contract with the Communications Provider for the provision of Publicly Available Telephone Services.”
- 5.3 There is no doubt BT is a Communications Provider providing Publicly Available Telephone Services to its Subscribers. Its website, for example, states:
- “BT is one of the world’s leading communications services companies, serving the needs of customers in the UK and in more than 170 countries worldwide.”*
- Our main activities are the provision of fixed-line services, broadband, mobile and TV products and services as well as networked IT services.*
- In the UK we are a leading communications services provider, selling products and services to consumers, small and medium sized enterprises and the public sector.²⁷*
- 5.4 It is, therefore, subject to the requirements of GCs 15.3 and 15.5 in respect of the Relay Service it is required to provide to its Subscribers.

²⁷ See: <http://www.btplc.com/Thegroup/Ourcompany/index.htm>

Section 6

Evidence of contravention

- 6.1 This Section sets out the bases on which Ofcom, having carefully considered the Representations, is satisfied that BT contravened GCs 15.3 and 15.5 in the Relevant Period.
- 6.2 GC 15.3 requires a CP to provide access to its Subscribers to a “Relay Service.” GC 15.11 sets out that a Relay Service means any service which:
- i) has been approved by Ofcom to be a text relay service for the purposes of GC 15; and
 - ii) as of 18 April 2014 complies with the requirements of GC 15.5.
- 6.3 As set out elsewhere in this document, GC 15.5 specifies the characteristics and requirements an Ofcom approved Relay Service must have and meet from 18 April 2014.
- 6.4 On 6 March 2014, Ofcom approved BT’s proposed NGTR service for the purposes of GC 15. Accordingly, as long as BT provided that service to its Subscribers from 18 April, and the service continued to meet the requirements of GC 15.5, BT would have been complying with its obligations under GCs 15.3 and 15.5.
- 6.5 BT, however, failed to launch its NGTR service as required on 18 April 2014. BT’s failure is demonstrated, for example, by the following announcement BT placed, on 16 April 2014, on websites it owns or controls, and as set out in BT’s First Response:²⁸

“BT apologises to customers who were expecting the launch of the Next Generation Text (NGT) Relay service this week. We have had to postpone the launch of the service, for people with hearing and speech impairments, because of a safety issue.

Recent final testing of the new NGT Service revealed a problem with the quality of emergency calls that could have put users at risk. We have therefore postponed the launch of the new app until we have resolved this important issue.

BT is committed to improving text relay, which it has run for more than 20 years. The existing service will continue to serve customers until the launch of Next Generation Text Relay, which will offer an easier and more natural way for people with hearing and speech impairments to communicate and will be available via an app for smartphones and tablets.

Work is continuing to understand the issue, including live call testing with help from the Text Relay user base. Undertaking this user testing with as extensive a mix of end-user equipment and originating network is critical. We continue to welcome interested parties that would like to make calls using the test version of the downloadable NGT app. Interest can be expressed by [clicking here](#).

²⁸ <http://www.textrelay.co.uk> and <http://ngts.org.uk>

Please be assured this is not a decision we have taken lightly and we are doing all we can to understand the underlying issues so the new service can be launched as soon as possible.”

- 6.6 BT's First Response also set out the additional steps BT took to announce the failure to launch its NGTR service:

“This [the announcement quoted above] coincided with BT simultaneously writing privately to a number of organisations informing them of the delay to the implementation of NGTR and referring them to the announcements which had been posted on the websites.

BT also notified affected wholesale CPs via its BT Wholesale webportal. A number of targeted newsletters also provided ongoing updates as well as discussions/updates at a number of external events and conferences, which gave the same message.”²⁹

- 6.7 Following 18 April, as described in its First Response, BT conducted trials of its NGTR service in which some of its Subscribers made and received calls using the trialed service (some using its additional functionality).³⁰ It also turned off the old Relay Service on 11 September and, from that date, routed all relay calls via the new service.

- 6.8 As BT acknowledged in its response to question 3 in the Second Response and in documents it provided therein, however, the NGTR service only became available at least purportedly in accordance with all the requirements of GC 15.5 (see below) on 24 September 2014 (versions of its NGT Lite software application having become available on various platforms on dates throughout September 2014).

- 6.9 In particular, BT said:

“Within the [relevant part of the response] is an email from Colin Lees to stakeholders dated 25 September 2014 (titled: “NGTR Trial Steering Board - Update & Feedback on steering board actions”). This stakeholder email provides confirmation that all the NGT Lite apps were launched in the public domain by that date and the trial registration process was no longer necessary to use the NGTR service.

As such, we believe the NGTR service was fully compliant with General Conditions 15.3 and 15.5, fully operational and in use for all relevant users by 24 September 2014, (the day before Colin Lees’ confirmatory email).”

- 6.10 BT's Representations did not challenge that it contravened the requirement to provide the NGTR service from 18 April 2014. On the contrary, they acknowledged and apologised for the contravention. On the basis of all its admissions, Ofcom is satisfied BT was in contravention of GCs 15.3 and 15.5 from that date until 24 September 2014.

- 6.11 BT's Representations did, however, challenge Ofcom's determination in respect of the continuing contravention of those conditions in respect of Braille reading equipment. The Representations included submissions to these effects:

- issues relating to the use of BT's NGTR service with Braille reading equipment arose from the incompatibility of third party devices and software,

²⁹ See Annex 9, BT Response to question 2 (page 10 - 11)

³⁰ See Annex 9, BT's response to question 3 (page 11 – 15)

and BT's obligations do not extend to ensuring the compatibility of such devices and software; and

- Ofcom provides insufficient evidential basis for finding any continuing contravention.

6.12 BT also said, without prejudice to these primary submissions, that it had taken and/or was taking these steps in respect of Braille reading equipment:

“Completion of a snagging list and agreement of suitable fixes with the NGTR supplier, DSPG

BT'S investigation to identify the main causes of dissatisfaction to determine whether these can be resolved and where feasible, assign ownership to achieve this

Exploring the option for developing JAWS compatible scripts in order to improve the Accessibility Bridge

Publicise Best Practice to key industry players Publicise interface data (subject to all necessary licence approvals)”

6.13 It also gave Ofcom, in its letter of 17 February 2015, “... an assurance that it will do the following (to the extent that these actions are within BT's reasonable control):

- *We will develop the necessary fixes for Windows desktop.*
- *We will test the fixes with identified Braille reader end users through a robust programme.*
- *We will work with [redacted] to drive up the testing volumes (by both calls and the number of testers) where possible to help prove the effectiveness, usability and resilience of the software.*
- *We will publish specific user instructions on the website, giving details of JAWS settings required.*
- *We will formalise agreement with [redacted] for enhanced user support.*
- *We will train the relevant BT helpdesk staff in agreed procedure for assisting deafblind users and where necessary escalating to [redacted].*
- *We commit to completing these activities by 1 October 2015.”*

6.14 Additionally, it further, “... committed to playing our part to deliver a mobile-compatible version of the NGT Lite app for Braille reader users in the near future and we will work with Ofcom and [redacted] to agree a suitable timeframe within which to achieve this aim. Subject to the caveats above, we are planning towards completion of this activity by April 2016.” BT submitted that its total costs for all these measures in respect of Braille reading equipment would be not less £[redacted].

6.15 Ofcom has carefully considered BT's Representations and its undertakings. We do not necessarily accept BT's interpretation of its obligations in respect of “readily

available compatible terminal equipment” under GC 15.5(e). The GC does not relieve BT of any obligations with regard to the compatibility of its NGTR service with readily available devices and software. However, we also agree that, in this case, the evidence does not support a finding that Ofcom is satisfied BT is contravening GCs 15.3 and 15.5 in respect of Braille reading equipment.

- 6.16 Accordingly, and without prejudice to any future consideration of the scope of the provisions, we make no finding to that effect. We note the undertakings BT has given. We understand these to involve commitments to (i) ensuring that the NGT Lite application for Windows PCs and laptops will work with current versions of “JAWS” software; and (ii) working towards the delivery of an appropriate mobile version of the NGT Lite application for Braille reading equipment users. We expect BT to comply with these. If it does not, this would be one circumstance in which Ofcom may consider the matter further.

Conclusions on BT’s compliance with GC 15

- 6.17 On the bases described, Ofcom is satisfied BT contravened GCs 15.3 and 15.5 by failing to provide its Subscribers with a Relay Service in accordance with GC 15.5 during the Relevant Period. We make no finding in any other respect.

Section 7

Ofcom's Decision to Impose a Penalty

Introduction

- 7.1 The following explains Ofcom's decision to impose a penalty of £800,000 on BT. It explains why we consider a penalty to be appropriate and our judgment that the amount is appropriate and proportionate to the contravention in respect of which it is imposed.
- 7.2 The matters to which we have had regard include:
- the findings of contravention set out in section 6 above;
 - Ofcom's published Penalty Guidelines in force under section 392 of the Act;
 - BT's turnover; and
 - BT's Representations in relation to the imposition and amount of a penalty.
- 7.3 BT's Representations covered a range of matters set out in the section 96A Notification. We have carefully considered all of them, but consider some to have more merit than others. In certain cases the credit BT sought for its actions had already, to varying degrees, been given in our provisional penalty assessment. Our judgment is that a substantial financial penalty, at least in absolute terms, should be imposed for all the reasons that follow.
- 7.4 In particular, a key point BT appears to contend is that its contravention of GCs 15.3 and 15.5 was a one-off incident caused by a combination of unpredictable factors, resulting only in a delayed launch of its NGTR service, which was ready to be launched on time save in one small respect, and caused only limited harm.
- 7.5 Ofcom acknowledges and gives BT credit in respect of a number of points. However, GCs 15.3 and 15.5 impose compulsory requirements in pursuit of the important public policy objective of securing equivalence of access to and function of relevant services. BT had 18 months to comply with them. It failed because in this case it did not employ the proper, effective project structures, processes and practices, with due rigour, to deliver its NGTR service to its Subscribers on time. It appears to have subordinated its NGTR project to its corporate re-organisation, notwithstanding the importance of the regulatory obligations involved.
- 7.6 BT's failure meant a group of vulnerable users were denied the opportunity of equivalence of access and function. This is a serious and sizeable contravention for which a substantial penalty, having a deterrent effect for breaches of that nature, for BT and other CPs, is warranted.
- 7.7 Even so, we have reduced the amount of the penalty we were provisionally minded to impose mainly on account of BT's Representations about:
- steps it has taken and plans to take to remedy the consequences of its contravention;
 - steps BT has taken to comply with GCs 15.3 and 15.5 since April 2014;

- the limits to the practical harm arising from the contravention; and
- BT's record in providing services to disabled users and in regulatory compliance.

The Penalty Guidelines and relevant factors

7.8 As set out in our Penalty Guidelines, Ofcom will consider all the circumstances of a case in the round in order to determine the appropriate and proportionate amount of any penalty. The particular factors we have considered in this case are:

- a) our duties under section 3(3) of the Act, to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
- b) the central objective of imposing a penalty, which is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive for compliance, having regard to the seriousness of the infringement;
- c) the following additional factors which appear to us to be relevant:
 - i) the size and seriousness of BT's contravention;
 - ii) the degree of harm, actual or potential, caused by that contravention;
 - iii) the duration of the contravention;
 - iv) any gain (financial or otherwise) made by BT as a result of the contravention;
 - v) whether, in all the circumstances, BT took appropriate steps to prevent the contravention (and whether it continued, or timely and effective steps were taken to end it, once BT became aware of it);
 - vi) any steps BT has taken for remedying the consequences of the contravention;
 - vii) the extent to which the contravention occurred intentionally or recklessly, including the extent to which senior management knew, or ought to have known, it was occurring or would occur;
 - viii) the extent to which BT has co-operated with the Investigation;
 - ix) whether BT has a history of contraventions;
 - x) the extent to which earlier cases set a precedent for any penalty that might be imposed on BT; and
 - xi) the extent to which the level of penalty is proportionate, taking into account BT's size and turnover.

7.9 We have had regard to the need for transparency in applying the Penalty Guidelines, particularly as regards the weighting of the factors considered. Likewise to BT's co-

operation with the Investigation, noting that the Penalty Guidelines say Ofcom may increase a penalty where the regulated body does not co-operate fully.

Turnovers for relevant business

- 7.10 In its First Response BT stated its turnover for relevant business in the relevant period (1 April 2013 to 31 March 2014), which it was required to provide in line with the relevant statutory provisions, was £18,287m. In its Third Response it said that turnover figure, provided on the same basis, was in fact £[redacted]. It also made submissions, both in its Representations and its Third Response, about the appropriate turnover figures Ofcom should take into account in assessing any penalty.
- 7.11 We have taken these figures into account both as a consideration of the maximum penalty Ofcom may impose and a factor in assessing the appropriateness and proportionality of the penalty imposed. Without prejudice to any questions about the calculations BT has used in providing its turnover and the accuracy of its responses to statutory information notices, Ofcom has for present purposes taken BT's turnover, for the purpose of identifying the maximum penalty that may be imposed in line with the relevant statutory provisions, to be the lower figure of £[redacted].
- 7.12 The maximum penalty Ofcom may impose on BT, in accordance with section 97 of the Act, is therefore £[redacted]. We assess further below the appropriate turnover figures we use in reckoning the penalty.

Penalty assessment

- 7.13 The following paragraphs set out our judgments, in light of all relevant matters, to impose a penalty and its amount. We start by considering the need for a penalty and its amount in light of the objective of deterrence, since BT made Representations that either no penalty or a substantially lower penalty than that proposed is necessary on that account. We then assess other factors in light of our Penalty Guidelines.

Imposing a penalty, deterrence, size and seriousness of contravention

Provisional position

- 7.14 In the section 96A Notification, Ofcom set out provisional views that we should impose a penalty and that its amount should create a deterrent effect, taking into account the size and seriousness of BT's contravention. We were minded to do so on the bases of:
- the nature and purposes of the requirements of GCs 15.3 and 15.5 as specific regulatory interventions to secure equivalence of access to services for vulnerable users for whom the market would not provide;
 - the 18-month period BT had to comply with its obligations;
 - the nature of BT's failure to comply; and
 - the need to impose a penalty deterring contraventions of that nature and to incentivise compliance with the regulatory framework.

BT's Representations

- 7.15 BT made Representations that Ofcom should not impose any penalty. It made submissions to that effect based on its commitments to and exemplary records of (i) providing services to disabled end-users; and (ii) regulatory compliance. In support of these positions, it also relied on submissions about the steps it had taken since April 2014 to introduce its NGTR service by September that year, its compliance reviews and steps it was taking or would take to remedy the consequences of the contravention by encouraging take-up of the service.
- 7.16 It said that all these matters demonstrated that it is a business committed to regulatory compliance which does not need a penalty to deter non-compliance. It similarly submitted that no penalty was required to encourage other CPs to comply with GCs 15.3 and 15.5 because they had entered into wholesale arrangements with BT in respect of its NGTR service.
- 7.17 These Representations supplemented BT's earlier submissions, in its Additional Comments, that it, "... *at all times acted in good faith and considers that its actions were reasonable in the circumstances and, further, that the mitigation action that was taken, together with the lack of tangible harm, means that any form of Ofcom financial penalty would not be warranted in this instance.*"
- 7.18 BT also submitted in the alternative that, if Ofcom decided to impose a penalty, Ofcom "... *substantially overstates the nature and extent of the contravention,*" and the proposed penalty "*far outstrips*" that sufficient and appropriate to have a deterrent effect. It said that, in all the circumstances, the fact of Ofcom imposing any penalty would secure such an effect, and that an excessive penalty would have the unintended consequence of deterring BT or other CPs from taking on complex and challenging projects that benefit consumers.

Ofcom's assessment and decision

- 7.19 Having carefully considered BT's submissions, Ofcom agrees that, as set out in the section 96A Notification, BT has a record of providing services for disabled end-users and has not previously been the subject of formal Ofcom findings of contravention of the GCs or other regulatory provisions.
- 7.20 These points, and some of the steps BT has taken since April 2014 to comply with GCs 15.3 and 15.5 and remedy consequences of their contravention, indicate a level of commitment to regulatory compliance that we agree we should take into account in considering the need for a penalty having a deterrent effect. For the reasons that follow, we do not agree with BT that no penalty is appropriate in light of these factors. Our judgment is that a penalty with significant deterrent element should be imposed. However, we do consider that these factors should be reflected in our assessment through a moderate reduction in the amount of the penalty from the level we originally proposed (noting that some account of those matters was already taken in our provisional assessment).
- 7.21 In reaching this view, we are mindful of the need to strike a fair balance between the objective of deterrence and the size and seriousness of BT's contravention. In particular, in light of the requirement of proportionality, of the need for the penalty to reflect the size and seriousness of the contravention and BT's culpability in it, as well as having an appropriate deterrent effect. Whilst there should be a relationship between these factors, however, it is not necessarily a linear one. Some factors may weigh more heavily than others in Ofcom's judgment.

- 7.22 We take into account, first, the general nature of the GCs. They are a set of regulatory interventions and rules in the electronic communications sector applying where, amongst other things, such intervention is appropriate for protecting the interests of end-users. It is imperative to the effective functioning of the relevant markets, in the interests of consumers, that all CPs comply with them.
- 7.23 More specifically, GCs 15.3 and 15.5 are rules specifying requirements in relation to the provision of services to disabled end-users. They created new regulatory requirements designed to secure equivalence of access to fixed and mobile voice services for a whole class of vulnerable end users (a majority of whom in the UK are BT Subscribers – see below). As set out in section 3 above, Ofcom made those rules because the existing text relay service no longer secured such equivalence for relevant end users and changes were necessary to secure that objective.
- 7.24 As also set out in section 3 above, the fundamental legislative framework for electronic communications services recognises that that class of end users are liable to suffer in-equivalence of access to, and function of, such services, which the market will not necessarily address. We note, in that connection, the contents of BT’s slides of 1 March 2012 relating to the tendering of services to develop and deliver NGTR (see Annex 14), provided to us as part of the First Response, which say:

“[<].”

- 7.25 We also take account that Ofcom gave CPs 18 months to meet their new obligations. This recognised their extent and the technical work their implementation required. In our view, BT therefore had sufficient opportunity to comply with its obligations by the 18 April 2014 deadline.
- 7.26 By not providing a NGTR service to its Subscribers by and from 18 April 2014, BT failed totally to comply with an important regulatory requirement having had considerable time to ensure it did comply. We consider that the nature and importance of the rules, and the nature of BT’s failure, means the contravention is serious and warrants a substantial penalty to reflect and deter that kind of contravention and to protect consumers under the regulatory regime.
- 7.27 In reaching that view, we have had regard to the contention in BT’s Additional Comments that:

“Aside from the voice quality issues associated with the emergency service, NGTR was ready for launch by 18 April 2014 deadline. Emergency call volumes account for only approximately [<]% of all call volumes for the service. In effect NGTR was therefore all but ready to be launched on 18 April 2014. This clearly does not represent a material breach on BT’s part of its obligation to provide a NGTR service by 18 April 2014. BT had complied with this obligation and it was only the risk to personal safety that led BT to take the socially responsible decision not to launch any part of NGTR, though it could well have done so.”

- 7.28 Likewise, BT’s reiteration of a similar point in its Representations:

“Ofcom substantially overstates the nature and extent of the contravention when it states that: “BT failed totally to comply with a fundamental regulatory requirement.” This statement is in direct contradiction of Ofcom’s acknowledgment that: “BT had developed a NGTR service compliant in most respects with the requirements of GC15.5.

BT maintains that NGTR was ready for launch pending resolution of the voice quality issues in relation to emergency calls....”

- 7.29 We acknowledge that BT had developed a NGTR service compliant in most respects with the requirements of GC 15.5 and give it credit for that (as well as, as set out later in this document, steps it took to prevent its contravention of the relevant GCs). We would have considered imposing a higher penalty had its service been deficient in more respects. Even so, a number of points are relevant.
- 7.30 First, we note that elsewhere in its Additional Comments BT has submitted that many of the issues relating to voice quality in emergency calls were resolved by the end of May 2014. BT did not launch its NGTR service in purported compliance with GCs 15.3 and 15.5 until almost four months later, however. That indicates it was not as close to being ready for launch as BT suggests.
- 7.31 Second, the requirements of GC 15.5 are cumulative. Had BT launched its defective service on 18 April, as well as presenting a potentially serious risk, it would still have been in contravention of GCs 15.3 and 15.5 (with a degree of seriousness commensurate with the importance of a defect in respect of emergency calls).
- 7.32 Third, and in any event, because of the important defect for which it is responsible, BT did not launch that service at all (however close to readiness it may otherwise have been). Ofcom’s assessment is that BT did not in this case employ the proper, effective project structures, processes and practices to deliver its NGTR service to its Subscribers by the regulatory deadline. This is shown by the admissions it makes in the findings of its internal review (see Annex 15 and further below). It is similarly demonstrated by, for example, the email of 15 January 2015 from BT’s Chief Information Officer, Colin Lees, who assumed responsibility for BT’s NGTR project in April 2014 when the contravention occurred, to colleagues undertaking a compliance review (see Annex 16).
- 7.33 That email sets out the process used by BT’s Business CIO team for technology delivery projects. It identified a number of processes designed to identify and address risks to project delivery at early stages and includes the comment that, *“Post the issue with text relay, the same governance principles were applied to that programme.”*
- 7.34 The evidence suggests that BT did not apply to the NGTR project the same processes and practices, with the same rigour and efficacy, as it would a commercial project with commercially driven deadlines. In this regard, we note that in its Written Representations BT said, *“BT does have processes in place to manage projects of this nature but recognises that our processes failed on this occasion.”*
- 7.35 Given the nature, purpose and importance of the requirements of GCs 15.3 and 15.5, it is correspondingly important that it should have applied such processes and practices with appropriate rigour and effect. BT’s failure to do so resulted in contraventions which are substantial and serious breaches that go to the heart of the system of regulation by the GCs. In principle, this warrants a significant penalty to deter breaches of that character.
- 7.36 We have also taken into account BT’s Representations that (i) an excessive penalty may deter BT and other CPs from taking on projects like NGTR; and (ii) no penalty is necessary to deter other CPs from breaching the relevant GCs on account of their wholesale arrangements for NGTR with BT. As to the first of these, our assessment is that an appropriate penalty will operate as an incentive for all CPs to comply with

all of their regulatory obligations, not deter them from undertaking projects to which obligations apply. As to the second, such a penalty is similarly an incentive for other CPs to maintain their wholesale arrangements with BT, or to make other arrangements, to ensure they meet their obligations.

- 7.37 As to the size of BT's contravention, whilst we note that GCs 15.3 and 15.5 are designed to protect a whole class of vulnerable end users, we take account also that BT's obligations, and accordingly its contravention, only extend to those amongst that group who are its Subscribers. Even so, the number of such Subscribers is considerable and, even taking account of BT's Representations that the practical effects of its contravention were limited, the magnitude of its contravention is accordingly significant. We make that assessment as follows.
- 7.38 In Question 3 of the First Information Request, Ofcom required BT to provide information relating to the numbers of BT Subscribers using text relay services in periods before and after 18 April 2014. BT told Ofcom it was unable to provide this information³¹ and instead provided information confirming that between 18 April and 29 August 2014 all end users of text relay services made around [X] calls using those services, generating [X] minutes of text relay traffic.
- 7.39 BT had previously (in July 2013) told Ofcom, based on interconnect data for June 2013, that the eight largest CPs other than BT pay [X]% of the costs of relay services. On that basis, we had inferred that BT pays the other [X] and that its Subscribers therefore make a corresponding proportion of calls using the service. In its Representations, BT said that the proportion of relay service users who were its Subscribers has now fallen to [X]%.
7.40 We accept that lower figure for the purposes of this assessment. Whilst we do not rely on this as a precise quantification, the figures would suggest that somewhere in the order of [X] relay calls generating approximately [X] call minutes are likely to have been made by BT Subscribers between 18 April and 29 August 2014. Using the figures provided by BT, we estimate that a further [X] minutes of such calls were made between 29 August and 23 September 2014.
- 7.41 We acknowledge BT's Representations that around [X] users used the full functionality of its NGTR service during the summer 2014 trials and that [X]% of all relay calls over that summer were made via the NGTR platform (though without using the NGT Lite application and so only with the same functionality as the old relay service). We also note BT's submissions to the effect that, as at the date of the Representations, only around [X] people were using the NGT Lite application and the full functions of the NGTR service (noting also that documents BT provided in its Third Response³² suggest BT's NGT Lite application had been downloaded [X] times).
- 7.42 We agree these points limit practical effects arising from BT's contravention. Had the NGTR service been in place since April, the number of users would likely still have been limited. We agree the penalty should be reduced, again moderately, in reflection of this.
- 7.43 Nevertheless, Ofcom's assessment was and is not based simply on this aspect of harm. Each BT Subscriber with a hearing disability should have had the opportunity

³¹ And this aspect of the Request was one of those changed in the amended First Information Request.

³² See BT's CIO Steering Board papers for meeting in November 2014 and January 2015

since April to make and receive calls using a NGTR service that secured equivalence of access in line with the compulsory requirements of the USD and GCs 15.3 and 15.5. On the basis of the numbers of relevant calls and minutes described, a significant number were denied that opportunity in respect of a significant number of calls and minutes. The penalty continues to reflect this.

- 7.44 On all these bases, given the equivalence of access to relevant services denied to its Subscribers, BT's contravention is intrinsically serious, as well as having significant dimensions. Our judgment is that there is a need for a penalty that punishes that kind of contravention and demonstrates to BT and other CPs that such a serious contravention has serious consequences. This is a material incentive for compliance: to put in place processes and systems to secure compliance and to emphasise that, if CPs do not, or they do not work, there will be regulatory consequences (even where steps are subsequently taken to secure compliance and remedy the effects of non-compliance).
- 7.45 Such a penalty would, in our view, help to secure Ofcom's duty to further the interests of citizens and consumers by helping to foster compliance with regulatory conditions. We consider it is proportionate to the nature and seriousness of BT's contravention to impose such a penalty in this case, and that that penalty is targeted at a case in which that action is appropriate.

Degree of harm, actual or potential, caused by the contravention

Provisional position

- 7.46 Ofcom's provisional view, in the section 96A Notification, was that, BT's contravention denied its Subscribers the ability to make and receive calls using a service that secures equivalence of access and function for them. Thereby, it caused significant harm in principle which should be reflected in a substantial penalty.

BT's Representations

- 7.47 In its Representations, BT submitted that Ofcom wrongly relied on nebulous and unquantifiable harm in principle. It said its contravention gave rise to a limited degree of social welfare loss only, because:
- there was no financial harm;
 - its Subscribers now only comprise [X]% of NGTR users;
 - only around [X]% of relay users do so via the NGT Lite application, with most using legacy equipment without the full functionality of the NGTR service;
 - many who would have used the full NGTR service from April had access to it in BT's trial; and
 - from April 2014 many calls were routed via the NGTR platform (albeit not in conjunction with the NGT Lite application, and therefore not using the full NGTR functionality).
- 7.48 BT also commented on Ofcom's provisional assessment of financial harm, of £90,000, arising from the contravention. It said, "... *The proposed penalty of 1 million is over 11 times the amount of the purported harm. This is clearly disproportionate. Whilst BT recognises that it is within Ofcom's power to weight*

factors when calculating a penalty, the penalty should bear reasonable correlation to the harm caused, so as not to be entirely disproportionate.”

- 7.49 These Representations supplemented BT’s earlier Additional Comments. In particular, BT referred to a, “.... lack of tangible harm” and contended that its contravention had “minimal impact.” It noted that:

“BT ensured that the legacy Text Relay service continued to be available both before and after 18 April 2014. As mentioned above, it is only recently that the Text Relay service has been phased out and NGTR phased in. The failure to provide NGTR by 18 April 2014 would have had a more serious effect had there been no Text Relay facility operating already. The only harm that can be said to have occurred is that some end users have been precluded from taking advantage of new facilities slightly earlier.”³³

Ofcom’s assessment and decision

- 7.50 Ofcom acknowledges that relevant BT Subscribers were not left without the ability to make and receive calls at all. BT’s old text relay service remained in operation and/or, for trial purposes, some calls were routed via the NGTR service, some with and some without its additional functionality, even while that service was not generally fully available after 18 April.
- 7.51 Further, to the extent that BT’s reference to a lack of tangible harm means a lack of financial harm, Ofcom agrees. Applying the methodology we used in the 2011 Consultation to estimate lost consumer and externality benefits, and applying a slight adjustment following BT’s representation that its Subscribers now only comprise [x%] of NGTR users, would produce an estimate of lost benefits, and corresponding financial harm, arising from the contravention of only around £70,000.³⁴
- 7.52 We gave BT credit in respect of each of these matters in our provisional penalty assessment. We made clear we agreed there was a lack of financial harm attached to BT’s contravention, and we placed very limited weight on such harm in our assessment. We noted that the proposed penalty would have been substantially higher had no relay service been available since 18 April and/or had BT’s contravention caused its Subscribers more significant financial harm. Ofcom has nevertheless given careful consideration to BT’s Representations about the lack of financial harm and its relationship with the penalty.
- 7.53 We place weight on the point that financial harm is only one type of harm to which a contravention may give rise. There may be other types of harm, particularly where, as here, the relevant rule seeks to protect interests other than relevant end-users’ financial interests and pursues public policy objectives.
- 7.54 In this regard, the harm caused by BT’s contravention is that each of its hearing-impaired Subscribers were denied the opportunity to make and receive calls using a service that secures for them equivalence of access to and function of telephone services, despite the compulsory nature of the rules and whether they wanted to

³³ Page 7 of BT’s additional comments (Annex 13)

³⁴ The methodology assumes that [x%] Subscribers using NGTR services would have residual hearing and speech and may be able to make 80% faster calls using those services. It values the saved time at (for 2014 purposes) £6.54/hour. Applying the formula around [x%] * 80% suggests [x%] of the estimated [x%] minutes of relay calls between 18 April and 23 September 2014 could have been avoided, producing estimates of consumer and externality benefits of around £70,000 lost as a result of BT’s contravention.

obtain the benefit of the new service or not. Other than those using the NGT Lite application as part of BT's summer 2014 trial, each subscriber was left with the ability, at least until 24 September, only to make calls using a text relay service (whether the old service or using the NGTR platform without the NGT Lite application, and so without its full functionality) that no longer secured such equivalence. Notwithstanding the lack of significant financial harm, this harm in principle is another factor which, in Ofcom's judgment, should be reflected in a substantial penalty.

- 7.55 We note the following in our assessment of this harm. As alluded to in section 3 above, as part of the consultation leading to the 2012 Statement (the "2011 Consultation"),³⁵ Ofcom collected research to better understand the needs and wishes of disabled end users when accessing communications services. This indicated that text relay remains a valuable service for many users with hearing and/or speech impairments.³⁶ Whilst other means now play an important role in meeting users' communications needs, based on the evidence a text relay service remains important to ensure that hearing and/or speech impaired users are able to communicate with others by voice telephony on an equivalent basis.
- 7.56 The research also identified areas, to which we again allude in section 3, where disability stakeholders considered improvements could be made to the old relay service, including: the inability to interrupt and lack of "real time" conversation; the inability to express or detect emotion; the lack of privacy owing to the presence of a relay operator; and the lack of access to equipment and flexibility in choice of communications methods and devices used.
- 7.57 This was part of the evidence that led to Ofcom's conclusions about the need for an improved relay service to secure equivalence. The NGTR service required by GCs 15.3 and 15.5 was designed to address these weaknesses. For so long as, and to the extent that, BT fails to provide that service, those weaknesses remain.
- 7.58 We recognise, the above notwithstanding, that the limited take up of the NGT Lite application by disabled end-users places some limit on the practical harmful effects of BT's contravention. In forming this view, we take into account BT's submissions to the effects that: (i) [X] or so users had use of the full functionality of the NGTR service in summer 2014 as part of BT's trial; (ii) [X] or so users were making use of that service as at the date of BT's Representations (though noting again other indications that the NGT Lite application had been downloaded [X] times); and (iii) around [X]% of relay calls were still made using legacy devices without full NGTR functionality.
- 7.59 On that account, we agree there should be another moderate reduction in the penalty from the level provisionally proposed. That said, we consider that reduction should itself be subject to limits.
- 7.60 In particular, at the hearing of its Oral Representations, BT acknowledged that the take up of the NGTR service might be expected to follow an "S Curve." That is, where the take-up starts slowly before a period of more rapid growth. It acknowledged that its failure to launch the service on time meant this growth may have been delayed:

³⁵ At http://stakeholders.ofcom.org.uk/binaries/consultations/review-relay-services/summary/relay_services.pdf

³⁶ <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/ofcom-relay-services/>

“One might say there’s always a curve of take-up and we’re behind where we should be on the curve but this is about a kick-start to that curve.”

- 7.61 This falling behind the expected take-up curve is reflected in the kinds of steps BT is now having to take to remedy the consequences of its contravention (for which steps we give it due credit as set out in this document). As it said of those steps:

“... We think by, you know, effectively [~~×~~] the number using the applications that’s a way, if you like, of catching up on the S-curve adoption that you get on new technologies and trying to recover some of that”

- 7.62 On those footings, the practical effects of BT’s contravention are not as limited as BT contends. They do place some constraint on the penalty Ofcom imposes, but we consider that the contravention gave rise to significant harm in principle, given the public policy objectives of the relevant rules and the compulsory manner in which they give effect to those objectives. In any event, we note that the central objective of the penalty is to deter future non-compliance, and not simply a reflection of the actual or potential harm caused. The penalty takes account of all these points.

The duration of the contravention

Provisional view

- 7.63 The provisional view Ofcom put to BT in the section 96A Notification was that BT’s contravention between 18 April and 24 September was, in the circumstances and given the importance of GCs 15.3 and 15.5, a significant period to which weight should be attached in the penalty calculation. We also said that any penalty in respect of a continuing contravention to the date of the section 96A Notification should be modest.

BT’s Representations

- 7.64 In its Representations, BT re-iterated submissions it had previously made in its Additional Comments that it quickly took a number of steps to come into compliance with the relevant GCs. In those comments BT said, *“Given that NGTR is now fully operational only a matter of months after the delayed launch, it is clear that the period of time during which the service was delayed has been short....”* It also said it launched its NGTR service, *“... within six months [of the 18 April 2014 deadline].... leading to only minimal delays in the rollout,”* and that, *“...Looked at over the entirety of the development period (2012-2014), the delay which occurred is not material.”* BT described that, in what it says was this short period of contravention, it, *“... initiated a phased implementation of NGTR.”*

Ofcom’s assessment and decision

- 7.65 As set out in section 6 above, BT failed from 18 April 2014 to provide a NGTR service in accordance with GCs 15.3 and 15.5. That failure lasted until at least certain dates in September 2014 when BT’s NGT Lite software application became widely available to Subscribers for download. On BT’s own admission it only became compliant with the relevant GCs on 24 September. On those bases, it contravened GCs 15.3 and 15.5 for just over five months, defined in this document as the Relevant Period. Ofcom does not find that BT continues to contravene those GCs in respect of Braille reading equipment.

- 7.66 We acknowledge and give BT credit that it has taken a number of steps towards compliance. We do not agree with it, however, that the period of its contravention is “short,” “minimal,” or “not material.” Given its seriousness, we consider that the five month period of contravention to 24 September 2014 is another factor to which we should attach weight in our assessment of a substantial penalty. In our judgment, it is a significant period, given the importance of the rules, and the equivalence they seek to secure, and the 18-month period BT was given to comply with them (amounting to almost one-third of that period).
- 7.67 In taking that view, we also give BT credit that the contravention was not longer and that it undertook trials of, and routed some relay calls via, its NGTR service during the period of contravention. Had the period been longer and or the effects of the contravention not been mitigated, Ofcom would have imposed a significantly bigger penalty.
- 7.68 We also acknowledge that the amount of the final penalty should be reduced from that proposed on account that Ofcom does not find BT in continuing breach in relation to Braille reading equipment. That reduction is modest, nonetheless, on the basis that, as we made clear in the section 96A Notification, only a modest sum had been attributed to the continuing matter.

Any gain (financial or otherwise) made by BT as a result of the contravention

- 7.69 We have considered whether in not complying with GCs 15.3 and 15.5, BT raised any additional revenue or saved any costs. Having done so, we do not consider that BT made any gains we should weigh as a factor in any penalty (which would have been higher had BT made significant gains).

Whether in all the circumstances BT took appropriate steps to prevent the contravention (and took timely steps to end it once it became aware)

Provisional position

- 7.70 In the section 96A Notification, Ofcom’s provisional view was that BT had failed to take steps incumbent upon it to ensure its contravention did not occur and which it had ample opportunity to take. We noted certain matters, relating to BT’s project planning and resourcing, the frankness in its internal review document (see Annex 15) about the shortcomings in its NGTR project and the steps it had taken since April to address them, that we considered to BT’s credit. But, we said we were minded to regard BT’s failure to prevent the contravention as a highly significant factor in our reckoning of a substantial penalty.

BT’s Representations

- 7.71 BT noted the credit Ofcom said it was minded to give to BT on the accounts above. The Written Representations said, “*BT requests that Ofcom ascribe greater value to the steps taken by BT.*” It also re-iterated in both its Written and Oral Representations that its original project plans provided for trial periods, that its project team had identified and addressed risks of delay during that project and, right up until problems with 999 calls emerged in April 2014, genuinely believed BT would launch its NGTR service by the 18 April regulatory deadline.
- 7.72 In its Written Representations, BT said it, “... *considers that the delay in launch of NGTR was the one-off result of a combination of unpredictable factors. BT does have processes in place to manage projects of this nature but recognises that our*

processes failed on this occasion.” In its Oral Representations, BT also described changes it has made to its regulatory management structure and the regulatory compliance review it initiated in December 2014 and conducted in January 2014 and 2015.

- 7.73 Of the former, it said it had, with effect from 19 January 2014, allocated personal management responsibility for its Business division’s regulatory compliance to its General Counsel for that division. It also said he had in turn appointed a “Head of Regulatory” for BT Business. BT said it:

“... felt it was very important that we should have a dedicated business lead going forward so we’ve got clear responsibility and accountability. Now, it’s true to say that this appointment is not just because of NGTR; but NGTR I think certainly weighed very heavily in our minds when we were coming to a conclusion that that was the right thing to do for the business going forwards.”

- 7.74 Of the latter, BT said it had established the review:

“... in order to review what learnings we can take from this case; not just for BT Business but also any lessons that we can apply across the wider BT group as well. [to] ... make recommendations for improving the monitoring of progress against regulatory obligations so that in future we have earlier warning of where problems have arisen, we have earlier senior-level escalations and so therefore in the future hopefully where issues do arise we should have been addressing them earlier and therefore hopefully have fixed them such that we still met the date.”

Ofcom’s assessment and decision

- 7.75 We have carefully considered whether BT took appropriate steps to prevent its contravention.
- 7.76 Generally speaking, CPs’ compliance with the GCs that apply to them is a fundamental and on-going obligation, and is the responsibility of each CP. It is important that compliance is part of the ordinary course of a CP’s business.
- 7.77 Specifically, given the importance of GCs 15.3 and 15.5, their public policy objectives, and the time BT was given to comply with its obligations, it was imperative that BT complied. It was incumbent upon it to take steps to ensure the contravention did not occur and it had the opportunity to ensure it did not do so. It failed. This is reflected in the admissions BT makes in its internal review findings in Annex 15. In Ofcom’s judgment, this is a highly significant factor in our reckoning of a substantial penalty.
- 7.78 As set out in the section 96A Notification, we note that BT formulated a Statement of Requirement for NGTR in advance of Ofcom’s 2012 Statement, had a project plan (Annex 17) and its NGTR project organogram indicates its deployment of considerable resources (Annex 18). We note, too, the considerable general project management process documents it supplied with its First Response and draw no inference that BT’s project or compliance processes were generally endemically flawed.
- 7.79 Similarly, we have taken full account of the submissions BT has made in its Additional Comments. In this regard, BT said:

“Launching NGTR has been a complex project. As far as we are aware, no other comparable IT software or telecommunications platform like it exists anywhere else in the world. ...

Work began proactively on the project in February/March 2012, well in advance of Ofcom finalising the technical requirements for NGTR. In an effort to progress matters as soon as possible, an Invitation to Tender (ITT) for external suppliers was drafted in anticipation of Ofcom’s confirmation of the technical requirements for NGTR and the required delivery date. Once Ofcom confirmed the technical requirements/delivery date for NGTR (in October 2012), work began on finalising the ITT. In tandem internal processes to secure budget for the project were also initiated (including the preparation of a business case), and it was when this funding was confirmed (in March 2013) that the internal technical delivery team began their substantive work on developing NGTR - the end to end solution design was developed and a supplier chosen in response to the ITT.”

- 7.80 Each of these matters goes some way to BT’s credit. So, too, do the facts it was candid in its admissions in its internal review and has taken steps since April 2014 to comply with GCs 15.3 and 15.5. In this regard, we have taken full account of BT’s submissions on pages 5 and 6 of its Additional Comments (Annex 13)³⁷ and in its Representations about the steps it has taken and their timing. Likewise, the steps it has taken to re-organise the regulatory management structure within its Business Division and its regulatory compliance review, albeit the latter appears only to have been initiated after Ofcom served the section 96A Notification on BT. Absent these matters, Ofcom would have been minded to impose a more substantial penalty.
- 7.81 Even so, what BT has done since April is to devote sufficient resources and priority to ensure it comes into compliance with GC 15 and has a structure in place to comply with the GCs. Whilst these steps are, of course, welcome, they should have been in place all along. That they are only occurring after BT committed a serious breach and after taking a further five months to comply with the relevant GCs is significant, given that BT already had 18 months to do so (and the importance of the obligations here).
- 7.82 Moreover, that the contravention occurred despite the planning, resourcing and processes referred to demonstrates their inefficacy in this case. The admissions made in the internal review findings acknowledge that appropriate preventative steps were not taken. So, too, does BT’s admission that, *“...our processes failed on this occasion.”*
- 7.83 Together with other evidence, those admissions also demonstrate that BT was aware of the risk of a contravention – a failure to launch the service by the deadline (even if not that it would be attributable to a problem with emergency calls) – well before it occurred, but did not take appropriate and effective measures to prevent it. The evidence supports this conclusion notwithstanding BT’s submission that its project team took steps to address the risks of delays as they arose and consequently genuinely believed the risks were addressed and would not crystallise in the deadline being missed.
- 7.84 Slide 1 of BT’s internal review makes these admissions about the reasons for the contravention:

³⁷ Beneath the heading, “3. *Mitigation and successful launch of NGTR*”

“In order to ensure that our recovery plan for the next generation text relay service succeeds it is important that we review, & understand the issues that caused the initial failure to launch.

There is no single area that has caused the failure to launch the new service. In summary the key areas were:-

- 1. Delays incurred throughout the implementation plan which the teams worked to absorb believing the end date was not negotiable.*
- 2. Lack of effective governance & escalation procedures to address delays.*
- 3. Missed impacts in terms of the e2e service/ solution – specifically the GLOW interface and 999 interactions.*
- 4. Live trial period too short Vs complexity of the new service – this is a factor of 1.*
- 5. Complexity emerged during build – this is a world first.*
- 6. Scientific voice quality testing was not performed until issues were reported in live pilot.*
- 7. Underlying lack of clarity on product/ P&L ownership.”*

7.85 BT's First Response also included the following about its failure to comply with GCs 15.3 and 15.5 on time:

“As Ofcom will be aware, the NGTR service was developed against a backdrop of a major internal restructuring within BT. BT Retail (which had responsibility for the delivery of NGTR at the outset of the project) was split into BT Business and BT Consumer during the development phase for NGTR and significant changes were made to senior personnel, as well as internal reporting structure and governance functions across the businesses. These changes had a direct impact on the NGTR project.”

7.86 BT supplemented this in its Additional Comments:

“A Project Team and Steering Group were also established to run the project. The development phase, however, coincided with one of the most significant organisational restructures in BT's recent history. As explained in BT's S135 Response Letters, 'BT Retail' was split into two separate trading divisions during the course of 2013/14: 'BT Business' and 'BT Consumer'. When the split into Consumer and Business occurred, different aspects of the NGTR project fell into a number of different areas across Consumer and Business. As a consequence there were some significant personnel changes to the NGTR project team following the corporate re-organisation and these (together with the technical complexities of this ground breaking project) unfortunately resulted in delays to the project's implementation and progress.”

7.87 Generally, each of these admissions indicates that, despite its Representations, BT did not in this instance employ the appropriate personnel, project planning, risk mitigation and delivery processes to ensure it complied with the relevant regulatory obligations. Rather, and while we make no suggestion BT's contravention was deliberately intended, we judge that its NGTR project was not run well enough and

prioritised enough, and that it was aware of the risks of delays but did not take delays seriously enough and deal with them effectively enough, to ensure the regulatory deadline was met.

- 7.88 Considering some of these matters more specifically, our further assessment, having carefully considered all BT's submissions, is as follows.

Delays

- 7.89 BT's admissions about delays are borne out in other evidential documents, notwithstanding the submissions in the Additional Comments about the alacrity with which the project commenced and in the Representations. For example, BT's "Overview of the NGTR project timeline" (Annex 17) records that "E2E solution design" was delayed by up to four months, as was BT's business case, BT financial approval was delayed by four and a half months, and the placing of the contract with its development and delivery supplier was delayed by six months. Cumulatively, the document records, the pre-technical delivery phase of the project was delayed by six months. It further records that in the technical delivery phase, data centre deployments and testing were delayed by up to three months.

- 7.90 An email of 14 February 2013 from BT's [redacted] to, amongst others, its Directors of Customer Service for BT Retail and of Retail Regulation, respectively, Warren Buckley and Greg Mook (in Annex 19), meanwhile, says:

"Need to highlight a risk which has come to light today regarding the supplier delivery of the Next Generation Text Service....."

.... Unfortunately our preferred supplier has responded today suggesting that they will no longer be able to meet the delivery date of April 14 as set out by Ofcom. They have suggested that they would only be in a position to replace the current functionality by May 2014 and deliver full functionality to ensure compliance by the end of September 2014...."

These delivery dates obviously mean that we would be non-compliant come April 14....."

.... Warren – given your involvement and personal commitment to Ofcom, I wanted to make you aware of the situation asap....."

- 7.91 Similar points are reflected in slide 5 of BT's 'Sign Off Next Generation Text Relay Service' dated 7 March 2013, included in the First Response,³⁸ which states:

"Discussions have been held with DSPG since business case approval and these have led to a revised plan designed to achieve Ofcom functionality by April 2014 (See Back Up slide 4 for full details), however;

- *DSPG must start work by mid-March (15th) in order to deliver on time*
- *Anything past this date will mean BT non-compliance and an inability to deliver the basic functionality and therefore incur risk of incurring fines by Ofcom*
- *[redacted]"*

³⁸ See Annex 20

- 7.92 BT's awareness of the risk of late delivery is also borne out, for example, in emails of 23 and 24 September and 23 October 2013 involving BT's project manager, [redacted].³⁹ In the former, he told colleagues:

"....Next Generation Text Service is a regulatory project driven by an Ofcom [sic].....

Failure to meet this date has severe financial penalties for BT (up to 10% of Group turnover) but also implications of a similar nature for other CP's who are relying on the service that BT provides. It also carries Group reputational risk given our commitment to deliver to both Ofcom and the wider industry.

There is a REAL risk that continued delay in getting network access for Text Relay will result in us missing our committed delivery date to Ofcom. The services being offered are based on a completely new build and are therefore untested other than in vendor lab conditions, not subject to BT security and firewall policies, C7 connectivity and protocols etc ."

- 7.93 In the latter, he said:

"The core issue is that DSPG are getting nervous about hitting the delivery dates for NGTS in April due to delays in providing them with access to their NGTS nodes across our CIN...

My personal view is that a 5 week delay should not jeopardise the whole plan but I do recognise that our delivery timescales were already tight due to delayed financial approvals, not helped by network design constraints on resource and ownership and now on technology issues preventing connection and builds."⁴⁰

- 7.94 These documents demonstrate that delays were occurring right from the project's outset.⁴¹ They also indicate – notwithstanding BT's submission made several times in its Additional Comments and the Representations to the effect that BT had a genuine and reasonable belief its NGTR service would be launched on time – that BT knew about the delays across the lifetime of the project and about the risk of late delivery they created.

- 7.95 As to the effect of these delays, the cover letter to BT's First Response states, to the same effect as BT's Representations, that:

"As issues arose during the build and implementation period, those individuals involved in the project strove to adapt the project plan such that the 'go-live' date for NGTR would still be met on time. Although these issues impacted the remaining available time for live-testing, until the significant issue with voice quality of emergency calls was identified in the final testing phase immediately prior to the proposed launch date, BT anticipated that the NGTR service would be launched by the required date."

³⁹ Annex 21, Email chains 'Enhancing Text Relay Functionality NGTS – Priority escalation' – 23/24 September and annex 22 'Text Relay Issues – DSPG' – 21/23 October

⁴⁰ Annex 22, Text Relay Issues – DSPG, Email from [redacted] on 23 October 2013

⁴¹ Notwithstanding that, in respect of the delay referred to in [redacted]'s 14 February email, her further email of 6 March 2013 to Warren Buckley and Greg Mook, amongst others, suggested BT had found a solution to avoid that delay. In that regard, we note that the slides described in paragraph 7.54 say BT's supplier, "...must start work by mid-March (15th) in order to deliver on time." BT's "Overview of the NGTR project timeline" (Annex 17), however, indicates that the contract with the supplier did not begin until April and the "project kick off workshop" was held after that. In other words, further delay occurred immediately.

- 7.96 Ofcom acknowledges BT's submissions that it did take some steps to address risks of delay (though it has, at best, provided only limited evidence in their support). We reflect an amount of credit for that in the penalty. However, Ofcom's principal consideration in this connection is that, despite knowing of the delays and the risks, BT under-estimated their effects (a point borne out if BT maintained a genuine belief it would meet the deadline for providing its NGTR service). It did not in fact take effective steps to adapt the project plan throughout the relevant period and to prevent the effects of the delays on its compliance with the relevant GCs. This view is borne out by [X]’s assessment in the email described above and the failure to meet the regulatory deadline that in fact transpired.
- 7.97 Rather, the effect of the delays was, as the admissions in BT's internal review state, that testing of the new system was delayed and occurred in a compressed time, with voice quality testing only occurring in a live pilot. In that event, BT did not have time to fix problems revealed by the testing (which was the point of doing it in the first place). This appears to be the same finding BT made in its internal review (annex 15). Point 1 of the findings notes that, *“Delays incurred throughout the implementation plan which the teams worked to absorb*” Point 4 notes the consequences of this, *“Live trial period too short Vs complexity of the new service – this is a factor of 1.”* It also chimes with the admission BT made in its Oral Representations that, *“... one of the particular problems here is that we didn't detect the problems that we had in the program early enough to fix them in order that we could still meet the date.”* The penalty reflects these points.

Failure to effectively escalate issues

- 7.98 BT has provided Ofcom with evidence that shows its staff sought to escalate within its organisational structure some of the difficulties arising in its NGTR project and to secure their prioritisation within the organisation. We take account in this regard of slide 8 of the internal review recording the escalation and mitigation of certain risks identified in the project (see Annex 15). Likewise, that in the emails dated 14 February 2013, 23 - 24 September 2013 and 21 – 23 October 2013, in Annexes 19, 21 and 22, BT officers and its NGTR development and delivery supplier sought to escalate concerns about delays. Similarly, BT has submitted in its Additional Comments that, *“The project team... escalated the issue with the voice quality on emergency service calls as soon as it was apparent that this could not be resolved prior to the 18 April.”* These points go to BT's credit.
- 7.99 However, whilst BT was aware of and sought to escalate certain difficulties and risks, it appears, from the evidence provided to us, to have failed in a number of respects actually to escalate, and/or to take effective steps to address, them. This evidence is consistent with BT's admission in the internal review of the, *“Lack of effective governance & escalation procedures to address delays.”* The penalty also reflects these important failings.
- 7.100 For example, the emails of 23 and 24 September record that escalation was sought, not that it occurred. The chain effectively ends with BT's [X] asking, *“What more do I need to do to make this happen?”* This is so notwithstanding that the warning from [X], to which she was responding, referred, as noted above, to, *“...a REAL risk that continued delay in getting network access for Text Relay will result in us missing our committed delivery date to Ofcom.”*
- 7.101 The emails of 21 – 23 October, meanwhile, note that BT's supplier at least held the view on 21 October 2013 that, *“.... it would be almost impossible to meet Ofcom delivery deadline [sic]....”* In response, BT's [X], made the comments quoted that a

“.... A 5 week delay should not jeopardise the whole plan....” despite also referring to, “.... delivery timescales [being] ... already very tight.” At best, this suggests an approach to risk escalation that did not attach enough weight to the risk and ensure effective resolution. At worst, that the escalation went no further up or along the organisational structure chain despite the gravity of the risk referred to. Either way, the risk materialised and BT missed the regulatory deadline.

7.102 Additionally, and more generally, we also note that slide 8 of BT’s internal review acknowledges that some matters were not escalated successfully. It says, “Some delays were escalated successfully and some were outside of our control and impacted on our delivery timeline.”⁴²

Lack of overall project responsibility and ownership

7.103 In this respect, in addition to BT’s admission above, we note that in its First Response BT said of the steps it had taken to comply with GCs 15.3 and 15.5 after 18 April 2014:

“Post April BT has committed significant senior resource by the appointment of Colin Lees, BT Business Chief Information Officer, who is now responsible for assuring delivery of the new service.”

7.104 Mr Lees role and responsibility from April 2014 was also the subject of a number of submissions in BT’s Representations.

7.105 This seems to contrast with position prior to 18 April 2014, in which no senior officer appears to have been assigned specific responsibility for assuring delivery of BT’s NGTR service, as opposed to the general responsibility that attaches to a range of projects within a senior officer’s role. This would have been an important element in ensuring successful delivery of BT’s project and preventing the contravention. Its omission is reflected in the penalty.

7.106 In particular, in the First Response, BT stated:

“In terms of key personnel during the period 17 October 2012 to 18 April 2014, we would invite Ofcom to note that Warren Buckley was the key, senior person engaged in the NGTR project as Director, Customer Service within BT Retail. Warren left the project in August 2013⁴³ just before BT Retail split into BT Business and BT Consumer, Graham Sutherland became Chief Executive Officer for BT Business in September 2013 and is now a member of BT’s Operating Committee, reporting directly to BT Group’s Chief Executive, Gavin Patterson. Graham has been leading BT’s engagement with one key stakeholder Deaf Access to Communications, since May 2014 and appointed his Chief Information Officer, Colin Lees, to lead the PIR and launch project in April 2014.”

7.107 In light of this statement, in the Second Information Request Ofcom required BT to provide, “....copies of any documents that set out the specific roles and responsibilities of Warren Buckley, Graham Sutherland, Greg Mook and Colin Lees in relation to the delivery of the NGTR service.” In the Second Response BT told us:

⁴² Annex 15

⁴³ BT later clarified to Ofcom that Warren Buckley started a new post in BT’s Openreach division in October 2014.

“Typically, BT does not separately define the roles and responsibilities of senior managers within specific projects and proposition plans. These roles are generally limited to acting as points of escalation, upward dissemination of information, budget sign-off etc. As such, they form part of the day-to-day responsibilities of any senior manager within BT without the need for this to be set out specifically or independently as part of the various projects that will be running at any given time within their area of business leadership. We would refer Ofcom to the comments made in relation to Question 2 in the cover note of the first Section 135 Notice. This set out the roles and responsibilities in relation to the NGTR project for each of the individuals named within Question 1 above.

Consequently, there are no documents that individually identify the roles and responsibilities of each of the named individuals specifically in relation to the NGTR project.”

7.108 This lack of direct senior management responsibility is corroborated by documents BT provided with the Second Response in respect of senior managers’ involvement in managing the risks of the NGTR project. One notable point is that these documents include 16 spanning March 2012 to February 2013, eight from February 2014 and March 2014 and 73 for the period between 7 April 2014 and 17 April 2014. There are none, however, for the period between February 2013 and February 2014, despite the risks of late delivery highlighted between other BT colleagues in that period and noted elsewhere in this document.

7.109 These documents include, for example, the following emails in Annex 12:

i) of 14 April from Graham Sutherland saying:

“Did not realise we had a problem of this scale - have we got our best people on this and when will we have some clarity.”;

ii) of the same date from Colin Lees in which he says:

“I will confirm the technical ownership and that the right people are on it.

Once we have resolved the near term issue I will also understand why this was not raised with us sooner.”;

iii) again of the same date from Colin Lees saying:

“Greg

Who are you working with on the technical delivery?

Who committed? My initial digging has uncovered a lack of clarity on ownership.”;
and

iv) of 16 April from Graham Sutherland stating:

“We inherited this on 1 Apr without realising we had a major regulatory issue.”

Impact of BT's internal restructuring

7.110 As to BT's comments in its First Response and its Additional Comments about the effects of its re-structuring on its NGTR project, above, we note that BT supplemented these in its Oral Representations:

".... you will have seen from the evidence that we have submitted that there are a number of unique and specific circumstances that came together that led to the failure, the missed launch date, and they include things like significant re-organisation happening at the same time"

7.111 Unless specifically regulated, BT is free to structure its business how it wishes. That, however, is subject always to its compliance with its regulatory obligations, not vice versa. However it organises its business, it is BT's responsibility to comply with its obligations before, during and after any changes. We note that BT also said in its Oral Representations, "We're certainly not blaming the re-organisation." It is clear enough, however, that BT did sub-ordinate its NGTR project to the restructuring. That its restructuring adversely affected its compliance with GCs 15.3 and 15.5 is therefore, in our assessment, a matter that increases rather than mitigates its culpability and is a further factor weighing in favour of a substantial penalty.

7.112 On all the above bases, Ofcom's view is that BT did not take appropriate steps to prevent its contravention of GCs 15.3 and 15.5. This is a significant factor in our decision that we should impose a substantial penalty.

Whether in all the circumstances BT took appropriate steps to remedy the consequences of the contravention

Provisional position

7.113 Ofcom's provisional view was that, as BT did not appear to have taken steps to remedy the consequences of the contravention, this was a matter tending to add to the penalty Ofcom should impose. We acknowledged that, in its Additional Comments, BT submitted that it, "... *took immediate steps to remedy the situation and continued to provide the legacy Text Relay service.*" We noted that the steps to which BT referred, however, were matters that went to its coming into compliance with GCs 15.3 and 15.5 and to mitigating the harm arising from their contravention, for which we were proposing to give it due credit in our penalty assessment. They were not steps BT had taken to remedy the consequences of its contravention of the relevant GCs.

7.114 Ofcom also noted that there may be some difficulty for BT effectively to remedy those consequences. What affected BT Subscribers lost was the benefits of NGTR and the equivalence of access the service should have provided to them. Our provisional view was that BT could, but did not seem to have, made any attempts to remedy the consequences by, for example, making compensation or ex gratia payments to affected Subscribers.

BT's Representations

7.115 In its Representations BT made a number of submissions about the steps it had taken to remedy the consequences of its contravention. It said it had considered whether giving financial compensation to affected Subscribers was the best remedy. It said it had concluded that it was not, in light of matters including the difficulty in identifying those Subscribers and quantifying their loss.

7.116 BT said that, instead of giving small amounts of financial compensation to a small number of Subscribers, it considered a better way of remedying the consequences of its contravention is to take steps to increase users and 'kick-start' the take-up of its NGTR Service. It outlined a number of steps it had taken or intended to take, which it submitted went beyond the requirements of the GCs:

- it has invested around £[<] in an enhanced relay service help-desk available to NGTR users, increasing its staffing from around [<] staff to [<];
- it has invested around £[<] in re-designing its NGTR website;
- it has invested and/or will invest around £[<] in making “how to use NGTR” videos to go on the NGTR website;
- it has established the NGTR Steering Board, comprising of representatives from stakeholder groups, including the major deaf organisations, Ofcom and the industry representative bodies for purposes including sharing information and experiences of NGTR , at a cost to it so far of £[<];
- together with the charity, [<], it will be holding “Train The Trainer” sessions in which people will be trained on how to help users download and set up the NGT Lite application; and
- it proposed to provide, free, smart devices for relevant charities to distribute to 500 end-users.

7.117 In its Oral Representations, BT estimated the costs of the latter two measures at around £[<].

7.118 In its Third Response (Annex 5), BT provided further information about the costs of some of these steps. It submitted that the cost of the steps in the first three bullets totalled £[<], comprising £[<] in respect of the help-desk, £[<] in respect of the NGTR website and £[<] for the videos. It also provided a document setting out the commitment it made to members of the NGTR Steering Board to provide 500 smart devices for end-users.

Ofcom’s assessment and decision

7.119 Ofcom agrees with BT’s view that the steps it has taken and committed to take provide an appropriate means of addressing the consequences of its contravention. That contravention denied relevant end-users the opportunity to use the NGTR service. The measures it has put in place seek to enable more of them to use that service. Ofcom also agrees that the relevant steps represent in some aspects significant commitments by BT going beyond the minimum requirements of GC15 and we take particular account of the costs of these. On these grounds, we make a material reduction, in the order of the £[<] costs of steps going beyond GC15’s requirements, to the penalty. That said, the credit due to BT and the reduction in the penalty is limited by the following matters.

7.120 First, as BT acknowledged in its oral Representations, “.....a lot of the service that we are providing around the service you would provide as part of a wrap for any service.” There are a number of reasons why this might be so. For example, BT is subject to an obligation to provide its services with reasonable care and skill. Provision of customer services such as an adequate help-desk and website might go to discharging this. Even if that is not so, BT might expect to provide these things as

matters of its ordinary standard of service. A help-desk and website, for example, allow customers to report faults and enable BT to address them. And, as BT's business proposal document relating to the help-desk, provided to Ofcom as part of its Third Response (see Annex 23), makes clear, *".... the BT Brand is at risk if a quality service isn't delivered for NGTR and its associated services."*

7.121 Second, BT has certain relevant regulatory obligations. GC 15.11 requires that:

"The Communications Provider shall take all reasonable steps to ensure that the services which it provides in order to comply with the obligations contained in paragraphs 15.1 to 15.9 above are widely publicised, taking into consideration the need to disseminate information in appropriate formats through appropriate channels for disabled End-Users."

7.122 This does not specifically require BT to operate a help-desk, nor a website nor to provide instructional videos. But, those are all means which can contribute to meeting that obligation and BT both provided a help-desk and the NGTR website prior to the contravention.

7.123 GC15.5(k), meanwhile, requires that a NGTR service provided by a CP to its relevant Subscribers must be approved by Ofcom. Ofcom has specified a number of Key Performance Indicators such a service must meet to obtain Ofcom's approval. Again, none of these require BT to provide a help-desk, a website or instructional videos. But, as BT's help-desk business proposal document (Annex 23) also makes clear:

"Although there isn't a regulatory obligation to provide a helpdesk the expectation is clear, along with the understanding that a Relay provider's failure to achieve their obligatory KPIs would result in Ofcom's withdrawal of approval for that service provider....."

..... Although weekly call volumes remain at [X], without this support the impact of failed calls or customer queries via the relay, can have a detrimental effect on the Centre's ability to achieve its regulated obligatory KPIs."

7.124 Third, some of the steps appear to have been taken only belatedly and/or in response to Ofcom's service of the section 96A Notification. Some, indeed, appear only to be proposals put together at a belated stage, not steps BT has (yet) taken to remedy the consequences of its contravention.

7.125 For instance, in its Additional Comments of 17 November 2014, making a number of submissions in mitigation, BT made no mention of the instructional videos, the 'Train the Trainer' sessions or the proposal to distribute 500 free smart devices. In addition, the Third Information Request required BT to provide documents relating to each of these matters. None BT provided in response (Annex 5) referred to any of the matters prior to November 2014.

7.126 The first document BT has provided which refers to any of these matters is its presentation slides to the NGTR Steering Board in November 2014, which referred to the videos only. The undated invoices BT provided for work relating to those videos, meanwhile, all referred to such work in January 2015.

7.127 As to the training sessions and smart devices, BT's business proposal document, also provided with the Third Response, is also undated. Its contents, however – the milestone dates proposed, for example – tend to suggest it was prepared in

December 2014, at the earliest, or January 2015. BT provided no documents suggesting the proposals were put to the NGTR Steering Board or otherwise put in process before the Board meeting of 28 January 2015. And, none of the sessions nor distribution of the devices has yet occurred.

- 7.128 Ofcom therefore welcomes BT's commitments on each of these matters. On the strength of them we give it significant credit and a reduction in the penalty. But, that credit and that reduction is nonetheless limited on the accounts that BT would to some extent have taken similar steps anyway and/or only took them some time after the contravention (and, in some cases, has not yet taken them). The credit and accompanying reduction in the penalty would have been greater had all the steps been taken specifically to remedy the consequences of the contravention and/or more quickly.

The extent to which the contravention occurred intentionally or recklessly, including the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur

Provisional position

- 7.129 Ofcom's provisional view was that BT's contravention did not occur intentionally or recklessly, and for that we gave it credit in our assessment of the proposed penalty. We also considered, however, that some of its senior managers either were or should have been aware of the general risks of contravention and should have acted accordingly and more effectively to mitigate them. We proposed that this was something that should contribute to the reckoning of a substantial penalty.

BT's Representations

- 7.130 BT's Representations noted the credit Ofcom proposed to give it in this regard. They contained no other submissions.

Ofcom's assessment and decision

- 7.131 We do not have evidence that BT intentionally or recklessly contravened GCs 15.3 and 15.5, in the senses of either seeking explicitly or deliberately to do so or of blindness to the risks of contravention or wilful disregard of them. We acknowledge that it was working, albeit in a flawed way, with the intention it would meet the 18 April 2014 deadline. Likewise that, on realising that it would miss that deadline, it has sought to comply with its obligations, working with Ofcom and other stakeholders as appropriate.
- 7.132 We also take account in this connection that, as BT points out in its Additional Comments and its Representations, when ultimately faced with the decision about whether to launch its NGTR service on 18 April with a deficiency in respect of emergency calls, BT made a responsible choice in not launching that service. This, together with the assessment in the previous paragraph, is something to which we give BT considerable credit in our penalty assessment. Had BT's contravention been intentional or reckless in the sense described, we would have imposed a much higher penalty.
- 7.133 Even so, we have regard to the nature of the GCs, and of GCs 15.3 and 15.5 in particular. They are regulatory obligations fundamental to a regulated CP's business and it has a corporate responsibility to meet them.

- 7.134 In that connection, documents BT provided in the Second Response indicate that Warren Buckley, Graham Sutherland and/or Greg Mook BT's Director, Customer Service for BT Retail, CEO for BT Business and Director of Retail Regulation, respectively, were made aware of some of the risks of BT's contravention.
- 7.135 One example is in BT's NGTR business case approval presentation of January 2013. It notes as a "Risk" that, "*Failure to agree the business case quickly as will put the implementation date of April 2014 at considerable risk*" [sic] (Annex 24). Another is the email of 14 February 2013 from [redacted] to, amongst others, Warren Buckley and Greg Mook (in Annex 19), described above, warning them of the risk of delayed compliance.
- 7.136 Ofcom acknowledges that that these do not relate to the specific risk that materialised in respect of emergency calls. Likewise that the business case was agreed in January 2013 (albeit four months later than originally planned)⁴⁴ and the specific risks [redacted] highlighted appeared to have been worked around a month later (albeit that further delays occurred immediately).⁴⁵
- 7.137 Nonetheless, documents like these demonstrate some knowledge on the part of BT's senior managers that high risks of late delivery against a tight timetable were arising at different times in the NGTR project. This is difficult to reconcile with the submission in BT's Additional Comments, and the highlighted words in particular, that:
- "As explained above, up until the very last moment, BT believed it would be launching NGTR on the 18 April 2014. The problems with the emergency service only came to light very close to the deadline. **Up until this point there had been no indication that NGTR would not be ready. Given this there is no way that senior management could have known, or acted recklessly as to whether, a breach would occur.**"*
- 7.138 We acknowledge that other documents provided in the Second Response do suggest a more limited involvement and awareness on the part of senior managers. These include, again for example, the emails referred to in paragraph 7.70 above and that of 13 April 2014 from BT's [redacted] to Greg Mook (in Annex 12) which says:
- "I don't know how aware Graham is of either Next Gen Text or our current Text Relay service. This makes it a little difficult to know how much background detail to provide so I've opted in favour of an assumed knowledge of very little."*
- 7.139 The fact, as noted above, that BT's Second Response contained no relevant documents from between February 2013 and February 2014 is also notable in this regard.
- 7.140 Given the nature and importance of BT's obligations in this matter, however, and the knowledge senior managers should have derived from the business case approval presentation and emails like [redacted]'s in February 2013, this lack of senior management involvement in connection with, and awareness of, the risk of contravention is itself also a shortcoming on BT's behalf which we take into account.

⁴⁴ See BT's "Overview of the NGTR project timeline" in Annex 17

⁴⁵ See slide 5 of BT's 'Sign Off Next Generation Text Relay Service' dated 7 March 2013 in Annex 20 and BT's "Overview of the NGTR project timeline" in Annex 17.

7.141 On these bases, BT's senior managers like those referred to either were or should have been aware of the general risks of contravention and should have acted accordingly and more effectively to mitigate them. Our assessment is that this is something that should contribute to the reckoning of a substantial penalty.

Co-operation with Ofcom's investigation

7.142 BT has co-operated with Ofcom's investigation. We also note that the opening statement of the executive summary of BT's Additional Comments is that, "*BT acknowledges that it did not deliver NGTR in accordance with the timescale set out in General Condition 15.5 and BT would like to apologise to all stakeholders for this failure.*" BT re-iterated both this acknowledgement and the apology in its Representations. Both are to BT's credit and we are not minded to increase any penalty on account of any lack of co-operation with us.

Whether BT has a history of contraventions

7.143 BT does not have a history of contraventions of the GCs which have been notified to it under section 96A of the Act. We agree that, as BT submits in its Additional Comments and its Representations, in the specific context of providing services to disabled end-users, BT has complied with a number of regulatory obligations and provided a number of services. Accordingly, BT's past record is not an aggravating factor Ofcom considers should be reflected by an increased penalty. We have considered above, in the context of our objective of deterrence, the effect of BT's track-record on our penalty assessment.

Precedents

Provisional position

7.144 The section 96A Notification referred to two previous Ofcom enforcement cases, against TalkTalk Telecom Limited and Tiscali U.K. Limited and against Hutchinson 3G UK Ltd (trading as "Three UK"), both of which we describe below. The provisional view we set out was that BT's contravention was more closely analogous to the TalkTalk case than the Three case. We referred to the analogy in the TalkTalk case's serious, systemic and procedural aspects and proposed that on those bases it offered a much stronger guide as to the appropriate and proportionate penalty to impose on BT.

BT's Representations

7.145 BT submitted in response that neither the TalkTalk nor Three case, "*... offers any precedential value.*" It disputed Ofcom's characterisation of BT's contravention as a "total failure" to comply with a GC and submitted that its case should be distinguished from the TalkTalk case on the grounds that TalkTalk's contravention:

- was a "*... "systemic" failure in the sense of deep rooted issues rather than isolated incidents...*," whereas BT's is, "*... a one-off project which took place alongside a major re-organisation of the business, rather than a systemic failing based on flawed processes...*";
- was, "*... a large and serious contravention affecting 62,055 actual end-users, whereas in the BT case, the size of the class of end-user affected is much smaller and indeterminate..... it is inaccurate to state that the delay in the launch of NGTR affected "a whole class of vulnerable BT subscribers"....*";

- “... continued for much longer than the BT contravention” (over two years compared to 5 months);
- “... took senior management much longer to remedy the breach, partly because of its systemic nature....”; and
- is, “.... inappropriate ... when considering a suitable reference point for calculating the appropriate penalty [to impose on BT].”

Ofcom’s assessment and decision

7.146 Ofcom has further considered, in light of BT’s Representations, the parallels with the TalkTalk and Three cases.

7.147 The first case related to TalkTalk and Tiscali’s contravention of GC11.1 (inaccurate billing).⁴⁶ Ofcom imposed a penalty of £1,524,728 on the former and £1,512,392 on the latter for their billing of 62,055 customers between 1 January and 1 November 2010 for services not provided.

7.148 This was, and remains, the highest penalty Ofcom has imposed for contravention of the GCs. It reflects that the contraventions were large, serious and systemic; that they arose out of company-wide procedural flaws and failures to take appropriate preventative steps; and occurred (and continued) with the knowledge of the TalkTalk Group’s senior management. It also reflects the significant financial harm caused to consumers and the companies’ financial gains (prior to remedying the contravention). Those factors contributed to Ofcom’s judgment that penalties of those significant amounts would have appropriate deterrent effect and reflect the companies’ culpability.

7.149 The second case relates to Ofcom’s enforcement action against Three for contravening GC 14. Three failed to have and comply with procedures that conform to the Ofcom Approved Code of Practice for Complaints Handling (in Annex 4 to GC14) when handling complaints made by domestic and small business customers. In particular, it adopted a different definition of “complaint” to that prescribed in GC 14.4.

7.150 Ofcom agrees with BT’s submissions about some of the differences between its contravention and those in these cases and about the consequent limits in their precedent value. In particular, that the TalkTalk case involved far greater financial harm to consumers and financial gain to the CPs involved. Likewise, that their contraventions lasted longer and it took their senior management longer to take steps to comply with the relevant GC. However, Ofcom did not, and does not, seek to draw parallels in these aspects of the contraventions.

7.151 Ofcom also agrees, in light of BT’s Representations about the number of disabled end-users affected by its contravention, that the practical effects of that contravention are more limited than in the TalkTalk case. We agree, too, that the systemic failings in the TalkTalk case were likely more deep-rooted. Those aspects of the parallels between the cases are therefore less strong than we provisionally considered and we reflect that in the penalty.

⁴⁶ See http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01051/

- 7.152 There are, nevertheless, broad parallels between the following aspects of the TalkTalk contraventions and BT's. First, both, arose out of failures in systems and/or processes (rather than, for example, misconduct or failings of individuals), albeit in different ways (and we note that in other parts of its Representations BT has acknowledged the failings of its processes in its case). Second, both are serious contraventions.
- 7.153 In the TalkTalk case that seriousness arose case because of the number of consumers affected, the financial harm and the duration. In BT's it arises because of the matters set out in this document such as the public policy objectives involved, the denial of the opportunity of equivalence of access to a whole class of consumers (save those involved in trials), the time BT was given to comply with its obligations, its failure to take effective steps to prevent its contravention and its failure to launch a service at all by the regulatory deadline.
- 7.154 In our judgment, there is on these bases a degree of comparability between the two cases, at least in the sense that both have aspects supporting the imposition of a substantial penalty. On that footing, the TalkTalk penalty offers some guide to the penalty in BT's case. We agree the parallels have limits, as stated. For that reason, the penalty imposed on BT is smaller than that in the TalkTalk case.
- 7.155 In that latter regard, we note the penalties on TalkTalk and Tiscali represented 0.7% of their relevant turnovers, whereas in BT's case the penalty of £800,000 represents [3<] % of its relevant turnover.⁴⁷ This acknowledges both the similarities and differences in the cases.

Ofcom's conclusions on the penalty amount

- 7.156 Considering all of the above in the round, the penalty Ofcom imposes on BT is £800,000. This is a reduction of £200,000 on the penalty we were provisionally minded to impose, taking account of the credit we give to BT in light of all of its submissions and Representations.
- 7.157 We have taken account in making our assessment and drawing our conclusions of submissions such as this BT made in its Written Representations:
- "BT does not consider that the proposed penalty strikes a fair balance between the size and seriousness of the contravention and BT's culpability as well as having appropriate deterrent effect. Ofcom has overemphasised the size of the contravention and the scale of the penalty is far in excess of what is required to ensure deterrence, on the part of BT and indeed the industry at large, and incentives to comply with General Conditions and General Condition 15 in particular."*
- 7.158 Likewise, that BT has made a number of submissions about its turnover by which it is appropriate for Ofcom to assess the penalty. In particular, submissions to the effects that:
- Ofcom should only take into account BT's turnover of £[3<] directly associated with its text relay service, meaning the maximum penalty permissible is £[3<];
 - alternatively, the turnover taken into account should be that of its BT Business Division (£[3<] omitting overseas revenues), and that pro-rating the proposed

⁴⁷ Or [3<] % of the alternative turnover figure BT put forward (see below)

penalty to that turnover should produce a penalty of £[<] from which should then be deducted substantial sums in respect of those matters for which Ofcom should give BT credit; or

- further alternatively, to the extent Ofcom considers BT's (PLC) turnover relevant, it should omit overseas revenues, and that pro-rating the proposed penalty to that turnover should produce a penalty of £[<], from which again should then be deducted substantial sums in respect of those matters for which Ofcom should give BT credit.

7.159 Having carefully considered these, and all other submissions and Representations, Ofcom's judgment is that the level of the penalty is appropriate and proportionate to the contravention in respect of which it is imposed. Ofcom's objectives in setting it are:

- to impose an appropriate and proportionate sanction that reflects the seriousness and significance of BT's contravention of GCs 15.3 and 15.5 and its culpability; and
- to deter BT and other CPs from contravening the GCs, and GCs 15.3 and 15.5 in particular.

7.160 Ofcom's assessment is that a penalty of £800,000 secures these objectives in a proportionate way. It reflects each of the factors described in more detail above.

7.161 In particular, that, whilst BT's contravention caused limited direct financial or otherwise quantifiable harm and it made no material gain from it, it has contravened in a fundamental way regulatory rules which are a specific regulatory intervention imposed in light of requirements of the EU framework. Those rules are designed to protect a vulnerable class of end-users, by securing for them equivalence of access to services (or at least the opportunity of such equivalence), in circumstances where the market is unlikely satisfactorily to do so. BT had 18 months to comply with those rules and failed to take appropriate steps to ensure it did so, not launching any NGTR service at all by the regulatory deadline. Its failure is therefore large and serious and, in our regulatory judgment warrants, as a matter of principle, a substantial penalty deterring contraventions of that nature.

7.162 The amount of the proposed penalty is, nonetheless, smaller than it might otherwise have been since Ofcom has, as set out above, also taken full account in this exercise of our judgement that BT:

- i) took some steps to prevent the contravention of GCs 15.3 and 15.5 (albeit ineffectively);
- ii) did not intentionally or recklessly contravene those conditions;
- iii) caused end-users more limited practical effects than we set out in our provisional assessment;
- iv) took a number of steps from April 2014 to comply with the relevant GCs;
- v) has taken or is proposing to take a number of steps to remedy the consequences of its contravention, including some it would not otherwise have taken and/or which go beyond the requirements of GC15;

- vi) has a track-record of providing services to disabled end-users and no history of notified contraventions of the GCs, supporting the view that the need for the deterrent effect of a penalty is more limited in its case than it might otherwise have been; and
 - vii) co-operated fully with our investigation.
- 7.163 Ofcom gives BT particular credit in respect of the points iii – vi, v most particularly, on account of which the penalty is a 20% reduction on that we were originally minded to impose.
- 7.164 In making this judgment, we also take a step back from looking just at individual factors set out in our penalty guidelines. We make our assessment of the penalty that would provide an overall reflection of all the factors and circumstances in an appropriate and proportionate way, to secure the aim of deterring breaches of the regulatory regime and ensuring compliance. On that basis, we take the view that the overall effect of factors like those in paragraph 7.161 warrants a penalty of the level imposed, notwithstanding the points in paragraph 7.162.
- 7.165 In taking that view, we have regard to BT's size and relevant turnover and its submissions and Representations in this respect. BT's turnover is relevant in two respects. First, the statutory maximum penalty Ofcom may impose. Second, as a consideration in the level of the penalty required to reflect the nature and scale of the contravention and secure the objective of deterrence.
- 7.166 As to the first, this is a matter of a statutory calculation of the turnover of the person in contravention of the relevant condition. In this case, that is BT and it is appropriate to consider BT's turnover. We do not agree with BT that the appropriate turnover to consider for the purposes of the statutory maximum penalty is limited either to the turnover directly associated with BT's text relay services, or the BT Business Division. As such, there is no question of the penalty coming anywhere near the statutory limit. As to the second, the question Ofcom considers is the setting of a penalty at a level sufficient, and appropriate in the all circumstances, to impress upon BT (and other CPs) the nature and scale of the contravention and to incentivise compliance with GCs 15.3 and 15.5, while being mindful of the resources that are likely to be available to BT in meeting its regulatory obligations and paying the penalty. In that regard, again the turnover of BT as the person in contravention is relevant. The resources available to it to meet its obligations and pay the penalty are not limited to those of its BT Business Division, still less only those associated with its relay service. The relevant resources are not affected, for the purposes of this regulatory judgment, by the way its operations are organised and structured.
- 7.167 On that footing, the relevant turnover is very substantial, being £[>]m (or £[>]m even were overseas revenues omitted). Those figures reflect that BT is a very large CP with a substantial and continuing presence in relevant telecommunications markets. A penalty of £800,000 is, in our judgment, an appropriate and proportionate amount in all the circumstances, and in light of our objective to deter BT, and other providers, from relevant contraventions, taking full account of all its resources.
- 7.168 We have considered whether Ofcom could achieve the same effect with a smaller penalty. We think it a reasonable judgment that smaller penalties for a contravention of this nature by an entity such as BT, would significantly risk providing inadequate deterrent to such a contravention, both to BT and other providers. A smaller penalty would in our view be unlikely to impress upon them that contravening important regulatory obligations will have material consequences, and so would be unlikely to

have the appropriate constraining effect on their conduct that we are seeking to achieve.

Section 8

Conclusions and action required by BT

Contraventions of General Condition 15

8.1 On the basis of the evidence and reasoning contained in this Explanatory Statement, Ofcom is satisfied that from 18 April 2014 to 24 September 2014 BT contravened GCs 15.3 and 15.5. It has done so to the extent set out in this document.

Steps that should be taken by BT

8.2 BT should now take the steps to which it committed in its Representations, and summarised in section 1 above, to remedy the consequences of its contravention. The penalty Ofcom imposes is reckoned on that basis and gives BT significant credit on the account that it will fulfil those commitments.

Penalty

8.3 For the reasons set out in this document, Ofcom imposes a penalty of £800, 000 on BT in respect of its contravention of GCs 15.3 and 15.5. BT has until 5.00pm on 15 April 2015 to pay that penalty.

Annex

List of Annexes

Annex 1	Section 96A Notification issued to BT on 3 December 2014
Annex 2	BT's Written Representations of 9 January 2015
Annex 3	Transcript of BT's Oral Representations of 20 January 2015
Annex 4	Ofcom's Third information request to BT 27 January 2015
Annex 5	BT's Third Response dated 5 February 2015
Annex 6	BT letter to Ofcom dated 17 February 2015
Annex 7	Ofcom's First Information Request to BT on 7 August 2014
Annex 8	Amended First Information Request to BT on 10 September 2014
Annex 9	BT's First Response (12 September 2014)
Annex 10	BT clarification letter of 17 September 2014
Annex 11	Ofcom's Second information request to BT on 21 October 2014
Annex 12	BT's Second Response (31 October 2014)
Annex 13	BT's Additional Comments dated 17 November 2014
Annex 14	Sign On – Text Relay Service System (1 March 2012)
Annex 15	Next Generation Text Relay – Weekly Update (Post Implementation Review)
Annex 16	Email from Colin Lees on 15 January 2015
Annex 17	Overview of the NGTR Project Timeline
Annex 18	NGTR Project Organogram
Annex 19	Email of 14 February 2013 from [redacted]
Annex 20	BT's 'Sign Off Next Generation Text Relay Service' dated 7 March 2013
Annex 21	Emails dated 23 and 24 September on Enhancing Text Relay Functionality
Annex 22	Emails to and from [redacted] on Text Relay Issues – DPSG, 16 - 23 October 2013
Annex 23	BT's Helpdesk Business Proposal
Annex 24	NGTR Business Case

