



**Notification of a contravention  
of General Condition 11 under  
section 96C of the  
Communications Act 2003**

Notice served on Plusnet Plc ("Plusnet") by the Office  
of Communications ("Ofcom")

Date: 22 March 2017

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## Section 1

# Executive summary

- 1.1 This (“Explanatory Statement”) explains Ofcom’s confirmation decision to Plusnet Plc (“Plusnet”) under section 96C of the Communications Act in respect of its contravention of General Condition (“GC”) 11.1 (the “Confirmation Decision”). The Confirmation Decision itself is at Annex 1.
- 1.2 Ofcom has determined that Plusnet breached GC 11.1 and has imposed a penalty of £880,000 on it in respect of the period 26 May 2011 to 3 September 2015.
- 1.3 GC 11.1 prohibits a communications provider (CP) from rendering inaccurate bills to its subscribers of services, such as phone and broadband services. This is important because it ensures consumers receive the services they pay for and are charged correctly for them.
- 1.4 On 14 March 2016, Plusnet’s metering and billing Approval Body TÜV SÜD BABT (BABT) notified Ofcom about an error in Plusnet’s billing process. This appeared to have resulted in Plusnet billing a number of customers for a phone or broadband service after it had ceased to provide such service to them.
- 1.5 Following an enquiry period, Ofcom opened an investigation into Plusnet’s compliance with GC 11 on 27 May 2016. As part of the investigation, Ofcom issued Plusnet with two Information Requests under section 135 of the Act. Ofcom has carefully considered Plusnet’s response to these notices and the information and evidence available to us.
- 1.6 Plusnet’s response explained that the error was a result of the relevant line identifier information in a cease notification it received from BT Wholesale or Openreach not matching a line identifier in its own databases. This caused the notification to become “orphaned”, such that the line remained active in Plusnet’s systems, and Plusnet continued to bill the affected customers.
- 1.7 On the basis of the information and evidence gathered as part of the investigation, Ofcom determined that we had reasonable grounds for believing that between 7 March 2008 and 3 September 2015 Plusnet contravened GC 11.1 by rendering bills to a total of 1,025 Plusnet customers that did not accurately reflect the true extent of the services that had been provided to them during that period. As a result, Plusnet overcharged these customers a total of £584,739.87. Accordingly, we decided to issue Plusnet with a notification under section 96A of the Act on 13 February 2017 (the “section 96A Notification”).
- 1.8 Ofcom noted that Plusnet has remedied the contravention for the full period of the contravention (7 March 2008 to 3 September 2015) by taking steps to identify all affected customers and to attempt to reimburse those customers for the charges they incurred for services that Plusnet had ceased to provide. As a result, and because of the way the statutory scheme applies in relation to historic contraventions which pre-date the introduction of sections 96A to 96C of the Act on 26 May 2011, Ofcom is only able to consider the period of the contravention from 26 May 2011 for the

purpose of issuing a Notification under section 96A of the Act.<sup>1</sup> Therefore, the relevant period for the purpose of the section 96A Notification was 26 May 2011 to 3 September 2015 and this is also the relevant period for the purpose of Ofcom's Confirmation Decision.

- 1.9 The section 96A Notification set out Ofcom's provisional finding that Plusnet had contravened GC11.1 and that Ofcom was minded to impose a penalty in respect of its contravention during the period 26 May 2011 to 3 September 2015. During this period Plusnet overcharged 1,025 customers a total of £530,775.44. It further notified Plusnet that Ofcom was minded to require Plusnet, to the extent it has not already taken them, such steps as are necessary for ensuring that when rendering a Bill to a customer, the amount stated fully represents and does not exceed the true extent of the services actually provided to them. As Plusnet had already taken action to remedy the consequences of the contravention the section 96A Notification did not identify any further steps Plusnet could reasonably be expected to take in this regard.
- 1.10 The section 96A Notification gave Plusnet the opportunity to make written and/or oral representations about all the notified matters. Ofcom also wrote to Plusnet on 28 February 2017 outlining a procedure under which Plusnet could enter into a settlement agreement on the basis of its admission as to the matters notified to it in the section 96A Notification. Pursuant to that procedure, on 3 March 2017, Plusnet wrote to Ofcom and confirmed it was prepared to agree to the settlement requirements set out in Ofcom's letter.
- 1.11 On 20 March 2017, Plusnet wrote to Ofcom:
- admitting liability in relation to the nature, scope, and duration of the contravention set out in this document;
  - confirming its acceptance that this document would be published, being a formal finding of contravention against it;
  - confirming that it would pay the penalty set out in this finding;
  - confirming its acceptance that it will no longer benefit from the settlement discount to that penalty if it appeals the decision or it fails to comply with the requirements of the settlement; and
  - confirming that it would accept a streamlined administrative process for the disposition of this matter.
- 1.12 On the basis of the information and evidence set out above, and the admissions Plusnet has made, Ofcom is satisfied that Plusnet contravened GC11.1 during the period 7 March 2008 to 3 September 2015 by rendering bills to a total of 1,025 Plusnet customers that did not accurately reflect the true extent of the services that had been provided to them during that period.

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<sup>1</sup> Sections 94 to 96 of the Act apply in respect of contraventions that occurred before and up to 26 May 2011. Ofcom could only consider taking enforcement action under these sections if Plusnet had not already taken the action referred to in paragraph 1.8 and in circumstances where Ofcom had required it to take steps under a notification given in accordance with section 94 of the Act to remedy the contravention and it had failed to take those steps. Sections 96A to 96C apply in relation to any contravention that occurred on or after 26 May 2011 and, in relation to a continuing contravention, the period of contravention from that date. For further details, see paragraphs 4.14 to 4.18 below.

- 1.13 Ofcom's judgment is that a penalty of £880,000 is appropriate and proportionate to impose for the period from 26 May 2011 through 3 September 2015 (which, as explained above, is the relevant period of the contravention for the purpose of the Confirmation Decision). In taking that view, we have had regard to all evidence relevant to this time period referred to in this Explanatory Statement, together with Ofcom's published penalty guidelines (the "Penalty Guidelines"). The penalty Ofcom imposes is lower than it otherwise would have been because of the settlement agreement Plusnet entered into with us, thereby saving the public money and resources that would have been required to complete the case. The basis for Ofcom's view as to the amount of the penalty is explained in Section 4.
- 1.14 GC11.1 is an important consumer protection provision. It reflects the fundamental premise that consumers should be billed accurately and that they should only be billed for services that are actually being provided. Plusnet billed customers for services they had ceased subscribing to as a result of a failure to have effective controls in place to prevent the billing error from occurring and continuing throughout the period 26 May 2011 to 3 September 2015. These failings, together with the number of customers affected mean that the contravention was serious. The period of contravention between 26 May 2011 and 3 September 2015 was significant not only because of its length (over four years) but also because the vast majority of harm from the contravention as a whole occurred during this latter period.

## Section 2

# The Investigation

## Referral from BABT

- 2.1 On 14 March 2016, BABT,<sup>2</sup> the body which approves Plusnet's metering and billing system for the purposes of GC 11.4, notified Ofcom of an Extraordinary Performance Failure ('EPF')<sup>3</sup> by Plusnet in relation to that system.
- 2.2 The EPF notification form stated: *"In April 2015, during a routine asset reconciliation of our customer base, we found a discrepancy where a Plusnet customer had a chargeable account but their broadband service was not live".* The notification explained: *"The issue was data integrity in our customer management system, called Workplace. The KCI could not be matched to the Workplace account because the CLI did not match the Broadband End User ID."*<sup>4</sup>
- 2.3 The EPF Notification added that investigation and analysis undertaken by Plusnet between April 2015 and September 2015 identified a total of 1,025 customers affected by the billing error. The bulk of these customers either last contacted Plusnet or used their broadband/telephone service between 2010 and 2013 with the balance in 2008 (55 customers), 2009 (82 customers).<sup>5</sup> Plusnet said it suspended billing for all 1,025 accounts from 3 September 2015.<sup>6</sup>

## Ofcom Enquiry

- 2.4 GC11 sets out general conditions relating to metering and billing. In particular, GC11.1 requires CPs to render accurate bills to their customers. The EPF notification raised questions about Plusnet's compliance with this condition, which states:
- "The Communications Provider shall not render any Bill to an End-User in respect of the provision of any Public Electronic Communications Services unless every amount stated in that Bill represents and does not exceed the true extent of any such service actually provided to the End-User in question."*
- 2.5 Ofcom therefore opened an enquiry on 4 April 2016, writing to Plusnet and expressing concern that it had charged customers for broadband and/or telephone services that Plusnet had ceased to provide for a significant period of time. The purpose of the enquiry was to seek to establish whether there was a case to answer

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<sup>2</sup> GC 11.4 places an obligation on CPs who provide Publicly Available Telephone Services and have a relevant turnover exceeding £40m (GC 11.3) to apply to an Approval Body for approval of their Total Metering and Billing System.

<sup>3</sup> Annex 2, EPF Notification Form dated 13.03.16

<sup>4</sup> KCI stands for "Keep the Customer Informed", which is a notification provided by BT Wholesale or Openreach to Plusnet. KCIs included cease notifications, as well as many other kinds of notifications. CLI standards for Calling Line Identification.

<sup>5</sup> Annex 3, Plusnet response to Ofcom enquiry dated 15 April 2016, paragraph 5, page 5. Plusnet's Response to Ofcom's First Information Request clarified there were 114 affected customers who ceased their service in 2010.

<sup>6</sup> Plusnet in their response to Ofcom's Section 135 request for information clarified that they suspended billing for 300 customers from an earlier date of 20 May 2015, paragraph 1, second bullet

and, if so, whether it would be consistent with Ofcom's administrative priorities to carry out a formal investigation.

- 2.6 Plusnet was given an opportunity to make representations and did so on 15 April 2016 ("Enquiry Response"). Plusnet explained the cause of the error:

*"The reason the error occurred was because, in the case of each account, the line identifier information contained in the cease notification (called a Keep the Customer Informed, or KCI) we received from BT Wholesale (in the case of broadband) and Openreach (in the case of telephone) did not match the line identifier information in our database. This was due to errors in our data."*<sup>7</sup>

- 2.7 Plusnet explained further:

*"When the customer accounts were originally set up, the circuit IDs and CLIs would have been manually entered and in all 1,025 cases, the wrong circuit ID or CLI was inputted, i.e. a wrong character was entered or in some cases an extra character. As a result, the circuit ID or CLI in the KCI did not match a circuit ID or CLI in our database and the line remained active in our systems, with billing continuing for those customer accounts"*<sup>8</sup>.

- 2.8 Plusnet explained that KCIs relating to broadband and telephone line ceases are just one of many kinds of KCIs received by Plusnet from BT Wholesale and Openreach on a daily basis, some of which are actionable (in the case of ceases), and others of which are not. Plusnet stated:

*"KCIs have particular tags which allow Plusnet's systems to know whether the information in the KCI is actionable or not."*

*"In the case of actionable KCIs relating to ceased lines, Plusnet's systems look to match the line identifier information in the KCI – circuit IDs in the case of broadband lines and CLIs (Calling Line Identification) in the case of telephone lines – to a circuit ID or CLI in Plusnet's database. Where the circuit ID or CLI is matched, a "ticket" is created and a Plusnet advisor then manually ceases the relevant line in our systems, which stops us billing the account. Where there is no match, the KCI is considered "orphaned" by Plusnet's systems and goes into what we refer to as a "bucket". The overwhelming majority of KCIs in the bucket are non-actionable KCIs and are periodically deleted"*<sup>9</sup>.

- 2.9 Plusnet acknowledged its governance and control systems were deficient in allowing the error to occur, stating:

*"We acknowledge that this lack of proactive asset management was a control weakness in our systems and governance"*<sup>10</sup>.

- 2.10 Plusnet explained that it first became aware of the overcharging in April 2015,<sup>11</sup> when it undertook an asset reconciliation between Plusnet's records and BT Wholesale data, as part of a project (referred to as Project Tapir), to close some of Plusnet's

<sup>7</sup> Annex 3, Plusnet response to Ofcom enquiry dated 15 April 2016, paragraph 1, page 2

<sup>8</sup> *ibid*, paragraph 5, page 2

<sup>9</sup> *ibid*, paragraphs 3 and 4, page 2

<sup>10</sup> *ibid*, paragraph 2, page 3

<sup>11</sup> Plusnet did note a discrepancy in December 2014 but was not clear about the cause

virtual ISP (vISP) accounts.<sup>12</sup> This identified a customer who was showing as having a chargeable broadband asset on Plusnet systems, but who had no active Plusnet broadband line on the BT Wholesale database.

- 2.11 Plusnet said that this led it to examine a wider sample of accounts, where it discovered that the customer account was not an isolated case. Further investigation identified an additional 183 vISP accounts that were being billed but had no active broadband lines, all due to circuit ID errors in Plusnet's database. Plusnet confirmed incorrect circuit IDs or CLIs in their database was the sole cause of the billing error.
- 2.12 Plusnet explained that it then undertook an investigation of its entire customer base between April 2015 and September 2015. To attempt to identify all customers potentially affected by the error, it examined customers who showed as "active" in its database (and were being billed) but had not used their broadband or phone over the previous 12 months or longer (on the assumption that this would indicate the customer was no longer using the service).<sup>13</sup> For customer accounts captured, Plusnet then checked BT Wholesale and Openreach data to determine whether the broadband or telephone lines were active with Plusnet. This revealed 1,025 accounts where the broadband or telephone line with Plusnet had ceased.
- 2.13 As part of its investigation of its entire customer base, Plusnet said it identified around 77,000 accounts (in addition to the 1,025) that had either incorrect circuit IDs or CLIs (which it said have since been corrected). It confirmed, however, that all of these 77,000 accounts still had active Plusnet lines and were not affected by the billing error.<sup>14</sup> Plusnet advised Ofcom that from September 2015 onwards it has been checking usage data over the previous 180 days or more and had not identified any further customers affected by the error.
- 2.14 In relation to the monitoring, risk management and escalation processes Plusnet had in place up to September 2015 to identify and mitigate the risk of billing errors occurring, Plusnet stated that:
- "we conducted daily checks and analysis of our billing records and reports to prevent over-billing. When a billing issue was identified, an incident would be raised via our management process and the matter was investigated as a priority".<sup>15</sup>*
- 2.15 Plusnet advised that it had no limitations in its record systems that prevented it from identifying customer accounts affected by the billing error.
- 2.16 It stated that its own record systems, however, were limited in enabling it to calculate refunds for customers who had ceased service more than two years ago. This was because BT Wholesale and Openreach's records only show the cease dates for two years.
- 2.17 Plusnet explained that its process for calculating refunds for the 1,025 affected customers was as follows: "(1) check the available BT Wholesale and Openreach data for an actual cease date; and (2) where a ceased date was not identifiable - (i) check our system to see when the customer last had contact with Plusnet, whether

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<sup>12</sup> In the case of a vISP, Plusnet provides broadband and/or telephone service to a customer under a different brand name

<sup>13</sup> Annex 3, Plusnet response to Ofcom enquiry, paragraph 4, page 3

<sup>14</sup> *ibid*, paragraph 1, page 4

<sup>15</sup> *ibid*, paragraph 2, page 4



by phone, email, letter or other means (our retention period for these records is four years) and (ii) check when the customer last used their broadband and telephone service (the records for which go back to Plusnet's inception.)"<sup>16</sup> Once Plusnet had both sets of contact and usage data, it calculated the refund based on the earliest date (so the date most beneficial to its customer). Using this method to determine cease dates, Plusnet reported, as it had in its EPF notification, that the bulk of the 1,025 affected customers ceased to have service<sup>17</sup> in 2011 and 2013, with the balance in either 2008 (55 customers) or 2009 (82 customers).

## Formal information notices

### First information request

- 2.18 Based on Plusnet's Enquiry Response, Ofcom opened a formal investigation, and on 5 July 2016, issued a formal Information Request (First Information Request) under Section 135 of the Act. The Information Request asked Plusnet to confirm the accuracy and completeness of its Enquiry Response, and required Plusnet to provide Ofcom with specified documents and information relating to the billing error.
- 2.19 Ofcom received Plusnet's response to the Information Request on 29 July 2016 ("First Section 135 Response") together with a number of annexed documents in both hard and soft copies. Plusnet's Section 135 Response confirmed the accuracy and completeness of its Enquiry Response, subject to several clarifications:
- In terms of when Plusnet ceased billing customers, Plusnet explained that, although as previously reported it had suspended billing for all 1,025 affected customers by 3 September 2015, it had actually suspended billing for 300 of those customers several months earlier, by 20 May 2015. These 300 customers consisted of the 183 vISP customers it had identified by that time as affected by the billing error, plus an additional 117 customers identified in connection with the analysis of the vISP accounts.
  - In terms of refunds, Plusnet said that it had made further attempts to contact affected customers in May 2016, and had paid out additional monies. As of the 29 July date of its First Section 135 Response, Plusnet stated that it had refunded 346 customers a total of £212,239.43, inclusive of 4% interest and VAT. This represented a 34% success rate. (On 10 October 2016, Plusnet corrected the number of customers refunded to 356.)<sup>18</sup>
- 2.20 In terms of cease dates, Plusnet stated that, it remained the case that "the bulk" of the 1,025 affected customers last contacted Plusnet or used their broadband or telephone services between 2011 and 2013 with the balance of customers doing so, prior to 2011 as - 2008 (55 customers), 2009 (82 customers) and 2010 (114 customers). Using last known contact dates and actual cease dates, Plusnet identified the first instance of the billing error as 7 March 2008.

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<sup>16</sup> Annex 3, Plusnet response to Ofcom enquiry, paragraph 4, page 5

<sup>17</sup> Plusnet's Response to Ofcom's First Information Request clarified there were 114 affected customers who ceased their service in 2010

<sup>18</sup> Plusnet letter to Ofcom dated 10 October 2016

2.21 Although Plusnet reiterated that it did not discover the billing error until April 2015, it acknowledged that it noted a “*potential discrepancy*” as early as December 2014.<sup>19</sup>

2.22 Plusnet offered the following additional details about the timeline for its handling of the billing error:

- 10 April 2015: The billing error was first raised with the Billing, Collection & Facilities team during a meeting on 10 April 2015, at which the Head of Business (responsible for Project Tapir), Head of Management Information, and certain managers were present. The Head of Billings, Collections & Facilities and the then Director of Legal, Governance, & Compliance were notified shortly thereafter.<sup>20</sup>
- 17 April 2015: Plusnet began to carry out further analysis of the Project Tapir data.
- c. 13-14 May 2015: Plusnet concluded a preliminary analysis of Project Tapir data, and identified 300 affected customers.
- 15 May 2015: A request was made to analyse a broader data set. The initial scope was to focus on all accounts that had been billed in the last 30 days, but which showed as not having had service during the last 90 days.
- 20 May 2015: Plusnet suspended billing for the 300 accounts identified as a result of the initial data analysis.
- June 2015: Analysis of the broader Plusnet data was provided.
- c. 6 July 2015: Initial analysis of broader data was finalised, identifying potentially 2,300 affected accounts.
- 7-20 July 2015: Further analysis was carried out, and it was identified that additional resources would be necessary to complete the task properly.
- 29 July 2015: Plusnet CEO, Andy Baker appears to have been first notified of the billing error.
- August 2015: Further analysis was carried out, which resulted in Plusnet identifying 725 affected customers, in addition to the 300 previously identified (bringing the total count of affected customers to 1,025).
- 3 September 2015: Plusnet suspended billing 725 customers identified.

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<sup>19</sup> Plusnet notes that it is possible that before the billing error was exposed in Project Tapir, that individual customers may have contacted its Customer Services about continuing to pay for broadband or telephone services that had ceased. Had this happened, it is likely that such incidents would have been treated as individual incidents, and Plusnet would have closed the account and issued a refund. Plusnet does not know whether such instances in fact occurred, and believes it would be “an extremely time consuming exercise” to determine if they had, and even if so, “it is unclear that such a search would prove useful”.

<sup>20</sup> Annex 5, Plusnet response to Ofcom’s Section 135 request for information, Q6

- 17 December 2015: A meeting with Andy Baker (CEO) occurred to confirm closing the relevant accounts, removing them from the database, and agreeing that refunding would start in Q4.
- End December 2015 – mid February 2016: Plusnet took steps to ensure that a reliable customer refund process was in place, including recruiting sufficient resources to respond to consumer enquiries.
- 29 February 2016: Plusnet began to send letters to affected customers.
- 16 May 2016: Plusnet sent a final letter to remaining customers that had not responded to the earlier letter.

2.23 As to testing its billing systems, Plusnet stated:

*“Between 1 January 2008 and 30 April 2015, Plusnet did not test its billing systems for the specific purpose of assessing whether the systems would deliver accurate bills where lines had been ceased”*

Plusnet further stated:

*“Nevertheless, Plusnet has been testing its billing systems for many years for wider purposes. The focus of this testing has been ensuring the system continues to work when changes are made to the billing system’s functionality (e.g. due to the introduction of new prices or products)”*.<sup>21</sup>

2.24 In terms of the processes and procedures Plusnet had in place up to September 2015 to ensure it billed consumers correctly, Plusnet advised that it *“had a number of billing-related processes and procedures. We have reviewed these processes and procedures and have identified the following which, in part help to ensure that Plusnet does not render bills to customers at incorrect rates”*. It provided supporting documentation listing various billing procedural checks.

2.25 Prior to discovery of the billing error in April 2015, Plusnet had not recorded billing for ceased lines as a specific risk in any Plusnet risk register. However, its risk register for 2014<sup>22</sup> does highlight a general billing risk under *“Risk ID 23974 - Billing – unable to provide timely/accurate customer bills (legacy Workplace /new Geneva System)”* in which it lists probable causes, two of which are: *“Inaccurate billing”* and *“Manual data manipulation due to poor systems leads to human error”*. The risk register under the controls in place to mitigate the cause of these risks materialising states:

*“No controls currently, other than regular review. Finance transformation project to improve this”*.

2.26 Around the time the billing error was identified, Plusnet established a risk register specific to the Transformation & Billing Team. This included a data integrity risk linked to systems having mismatched or missing data, resulting in billing, migration, and cost implications.

<sup>21</sup> Annex 5, Plusnet response to Ofcom’s Section 135 request for information, Q5

<sup>22</sup> Annex 6, Plusnet Billing Risk Register

2.27 As mentioned in paragraph 2.1, BABT informed Ofcom of the billing error on 14 March 2016 by way of an email with an attached EPF Notification dated 13 March 2016.

### **Second information request**

2.28 On 9 January 2017, we issued a second formal Information Request under Section 135 of the Act<sup>23</sup> asking Plusnet to identify:

- the total number of consumers to whom Plusnet rendered any bill from 26 May 2011 to 3 September 2015 as a result of the billing error<sup>24</sup>;
- the total monetary amount of such bills;
- the total number of consumers identified from 26 May 2011 to 3 September 2015 to whom Plusnet has issued refunds and;
- the total monetary amount that Plusnet has refunded to the consumers it identified.

2.29 Ofcom received Plusnet's response on 23 January 2017 ("Second Section 135 Response").<sup>25</sup> Plusnet's response confirmed the total number of customers to whom Plusnet rendered any bill from 26 May 2011 to 3 September 2015 as a result of the billing error, remained at 1,025 consumers. Plusnet reported that the total monetary amount of bills it rendered to these 1,025 customers between 26 May 2011 and 3 September 2015 was £530,775.44. Plusnet also stated that it had issued refunds to 356 customers amounting to £188,271.87 in respect of the same period.

2.30 Plusnet also highlighted a small number of 'non-material inaccuracies' in its previously reported figures, which it had identified in process of producing its response.<sup>26</sup>

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<sup>23</sup> See Annex 6

<sup>24</sup> The reason for focussing on this period is because Ofcom may only take enforcement action under section 96A of the Act in relation to any contraventions that occurred on or after 26 May 2011 and, in relation to a continuing contravention, the period of contravention from that date. See paragraph 4.2 and paragraphs 4.14 to 4.18 below.

<sup>25</sup> See Annex 7

<sup>26</sup> See table in Annex to Plusnet's Response to Second Information Request.

## Section 3

# Evidence of contravention of General Condition 11

## Summary

- 3.1 The following sets out the bases on which Ofcom is satisfied that Plusnet contravened GC 11.1 in respect of the period 7 March 2008 to 3 September 2015.

## Relevant Facts

- 3.2 Plusnet experienced a billing error due to the line identifier information contained in the cease notification Plusnet received from BT Wholesale (in case of broadband) and Openreach (in case of telephone) not matching the line identifier information in Plusnet's database. The reason the data did not match was because Plusnet agents entered inaccurate data when setting up customer accounts, inputting the wrong circuit IDs or CLIs into Plusnet's systems. The mismatch resulted in the line being "orphaned" and Plusnet systems treating it as "live", with billing continuing, even though the line had been ceased.
- 3.3 The error came to light in April 2015 when a billing issue was identified as Plusnet undertook an asset reconciliation between Plusnet's records and BT Wholesale data. This identified a customer who was showing as having a chargeable broadband asset on Plusnet systems but who had no active Plusnet broadband line on the BT Wholesale database. Further investigation determined this was not isolated to one account.
- 3.4 Plusnet identified a total of 1,025 customers affected by the error. By 3 September 2015, Plusnet was satisfied that it had identified all affected customers. Consequently, all billing for these customers was suspended by this date.
- 3.5 As a result of the billing error, Plusnet charged the affected customers £80,964.43 during period 7 March 2008 to 26 May 2011 and £530,775.44 during the period 26 May to 3 September 2015 for broadband/telephone services it did not provide. Plusnet has been prepared to refund those sums with interest for a total £608,129.47.<sup>27</sup>
- 3.6 The billing error resulted from Plusnet failing to have effective controls in place both to prevent it from occurring in the first place and to spot it when it did. By its own admission, Plusnet did not test its billing systems for the purpose of assessing whether the systems would deliver accurate bills where lines had been ceased.

## Contravention of General Condition 11.1

- 3.7 GC11.1 states:

*"The Communications Provider shall not render any Bill to an End-User in respect of the provision of any Public Electronic Communications Services unless every*

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<sup>27</sup> Plusnet's Response dated 23 January 2017 to Ofcom's Second Information Request dated 9 January 2017 updated figures given in its Response to Ofcom's First Information Request.

*amount stated in that Bill represents and does not exceed the true extent of any such service actually provided to the End-User in question.”*

- 3.8 Plusnet is a CP that provides Public Electronic Communications Services to End Users and therefore the requirements of GCs 11.1 apply to it.
- 3.9 Plusnet’s Enquiry Response and its First and Second Section 135 Responses show that Plusnet billed end-users for broadband/telephone services (PECS) that it had ceased to provide to end-users. Specifically, these responses show that between 7 March 2008 and 3 September 2015 Plusnet billed 1,025 customers £584,739.87 for broadband/telephone service that they were no longer subscribing to.

## **Conclusion**

- 3.10 Taking these factors into account, Ofcom is satisfied that Plusnet contravened GC 11.1 from 7 March 2008 to 3 September 2015 by rendering Bills to 1,025 End-Users in respect of broadband and telephony services for amounts that did not represent and exceeded the true extent of the service actually provided to them.

## Section 4

# The penalty

## Introduction and summary

- 4.1 Ofcom has decided to impose a penalty on Plusnet for its contravention of GC 11.1 during the period from 26 May 2011 to 3 September 2015. The following explains why we are focussing on this period and not the full period of the contravention from 7 March 2008, why we are imposing a penalty in relation to the later period and the bases on which we assess the proposed amount to be appropriate and proportionate to the contravention.
- 4.2 As explained in paragraphs 4.14 to 4.18 below, Ofcom may only consider Plusnet's contravention for the purpose of taking enforcement action under sections 96A-96C of the Act in relation to the period which occurred from the date on which these sections came into force. For this reason Ofcom has not considered the earlier period of the contravention up to 26 May 2011. Further, for the reasons given in paragraph 4.18, Ofcom is not giving Plusnet a notification under section 94 of the Act in respect of the period up to 26 May 2011.
- 4.3 GC11.1 is an important consumer protection provision. The evidence suggests that Plusnet seriously contravened that provision during the relevant period for the purpose of the section 96A Notification and this Confirmation Decision. A systemic failure meant it overbilled 1,025 customers by £530,775.44 during the period between 26 May 2011 and 3 September 2015.
- 4.4 Plusnet discovered the billing error in April 2015. Since that time, it has taken a number of positive steps to address the mistake, which we have taken into account. These include, most significantly, identifying the affected customers, contacting each of them, making refunds to those with whom it has been able to make contact, and taking steps to donate the amounts unclaimed to charity. It has also modified its billing system to prevent a similar billing error from occurring in the future.
- 4.5 However, Plusnet's billing error was a result of its own data entry errors. It stated: *"We acknowledge that this lack of proactive management was a control weakness in our systems and governance."* It also admitted that *"Plusnet did not test its billing systems for the specific purpose of assessing whether the systems would deliver accurate bills where lines had been ceased,"* and that it ceased billing affected customers in September 2015.
- 4.6 On these bases we regard the contravention as serious, notwithstanding the positive action Plusnet has taken since becoming aware of the error, which we have also taken into account, and place significant weight on the need to deter such breaches. For these reasons we have decided that the contravention warrants the imposition of a significant penalty:
- to reflect and punish Plusnet's wrongdoing during the period from 26 May 2011 to 3 September 2015;
  - which takes into account that Plusnet's size and turnover; and
  - which is accordingly big enough to deter similar contraventions by it and other CPs in future.

- 4.7 Accordingly, and as set out more fully below, we have decided to impose on Plusnet a penalty of £880,000. Our view is that this is appropriate and proportionate to the contravention in respect of which it is imposed and secures our central objective of imposing a penalty of deterrence.

## **Consideration of whether to impose a penalty**

- 4.8 GC11.1 embodies one of the most basic, fundamental exchanges between a communications provider (indeed, any business) and its customers: they are only charged for services they have subscribed to, and that they are charged the agreed amount. GC11 is also an important consumer protection provision because, amongst other reasons, consumers tend to take their bills for electronic communications services on trust. It reflects that CPs, rather than customers, are responsible for avoiding errors in their billing systems.
- 4.9 This may be one reason why there appears to be no record of any complaints by customers to Plusnet about being charged for a service that they were no longer receiving.
- 4.10 Any contravention of GC11 is therefore potentially serious and Ofcom is likely to regard it as serious wherever a significant number of consumers are affected. Consumers have a right to expect that they get what they pay for and that their provider's billing is accurate. Likewise, consumers have a right to expect that they are only billed for services they have subscribed to and that they are not billed for services that are no longer being provided. In the absence of Ofcom taking firm and effective enforcement action under GC 11, consumers receiving bills that are inaccurate or that should not be rendered in the first place would be forced to rely on bringing multiple complaints and/or contractual claims for what may be fairly small amounts in any individual case.
- 4.11 Those points being so, our judgment is that imposing a penalty in this case is an appropriate course of action. Doing so helps to secure Ofcom's objective of furthering the interests of citizens and consumers by incentivising communications providers to comply with their regulatory obligations. We also consider that a financial penalty in this case is a proportionate response to the nature and seriousness of Plusnet's contravention and targeted at a case in which a penalty is appropriate.
- 4.12 In reaching this judgement, we have given careful consideration to the steps Plusnet took once it became aware of the contravention. We have also taken into account the shortcomings in Plusnet's billing processes which gave rise to the contravention and the fact that it remained ongoing during the period from 26 May 2011 to 3 September 2015. We have also taken account of the fact that the vast majority of harm occurred during this period. For these reasons, as set out more fully below, and having regard to the nature and seriousness of the contravention, we have concluded that the steps taken by Plusnet on becoming aware of it do not outweigh the need for us to impose a penalty in this case.

## **Penalty Amount**

- 4.13 Having decided to impose a penalty, the next consideration is its amount. In determining the amount, the statutory provisions referred to below and our Penalty Guidelines are particularly relevant.



## Relevant statutory provisions

- 4.14 Section 96A of the Act provides for Ofcom to issue a notification where we have reasonable grounds to believe a person has contravened any of the General Conditions of Entitlement set under section 45 of the Act. Amongst other things, that notification can specify a penalty Ofcom is minded to impose and must specify a period within which the person notified may make representations in response.
- 4.15 In accordance with section 96A Ofcom issued Plunet with its provisional decision in this case on 13 February 2017. The section 96A Notification set out Ofcom's provisional finding that Plusnet had contravened GC11.1 and that Ofcom was minded to impose a penalty in respect of its contravention for the period 26 May 2011 to 3 September 2015. It further notified Plusnet that Ofcom was minded to require Plusnet, to the extent it has not already taken them, such steps as are necessary for ensuring that when rendering a Bill to a customer, the amount stated fully represents and does not exceed the true extent of the services actually provided to them. As Plusnet had already taken action to remedy the consequences of the contravention the section 96A Notification did not identify any further steps Plusnet could reasonably be expected to take in this regard. Plusnet was given an opportunity to make written and/or oral representations about all the notified matters.
- 4.16 Section 96C provides for Ofcom to issue a confirmation decision, once the period for making representations has expired, if after considering any representations we are satisfied the person has contravened the relevant condition. A confirmation decision may, amongst other things, confirm imposition of the penalty specified in the section 96A notification or a lesser penalty. Ofcom's Confirmation Decision in this case is attached at Annex 1.
- 4.17 Sections 96A to 96C of the Act apply in relation to any contravention that occurred on or after 26 May 2011 (the date on which those sections came into force) and, in relation to a continuing contravention, the period of contravention from that date. Sections 94 to 96 of the Act set out the enforcement regime that preceded sections 96A to 96C and apply in respect of any contravention that occurred before 26 May 2011, or in relation to a continuing contravention, the period of contravention before that date.<sup>28</sup>
- 4.18 Ofcom may only consider taking enforcement action under section 94 of the Act if the target has been in contravention of a general condition and has not, during the period allowed under a notification under section 94, taken steps for complying with that condition and for remedying the consequences of its contravention. In this case, Plusnet has already remedied the contravention for the whole period of the contravention by taking steps to identify all affected customers and to attempt to reimburse those customers for the charges they incurred for services that Plusnet had ceased to provide. For this reason, Ofcom is not issuing a separate notification under section 94 of the Act in respect of the earlier period of the contravention up to 26 May 2011.
- 4.19 Section 97 of the Act provides that a penalty may be such amount not exceeding ten per cent of the notified person's turnover for relevant business for the relevant period as Ofcom determine to be appropriate and proportionate to the contravention for

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<sup>28</sup> Sections 94 to 96 of the Act continue to apply by virtue of a saving provision in paragraph 3, Schedule 3 to the Wireless Telegraphy Regulations 2011 (SI 2011/1210).

which it is imposed. Section 392 of the Act requires Ofcom to publish and have regard to guidelines for determining penalties.

## **Settlement**

- 4.20 Ofcom wrote to Plusnet on 28 February 2017 outlining a procedure under which Plusnet could enter into a settlement agreement on the basis of its admission as to the matters notified to it in the section 96A Notification. Pursuant to that procedure, on 3 March 2017, Plusnet wrote to Ofcom and confirmed it was prepared to agree to the settlement requirements set out in Ofcom's letter.
- 4.21 On 20 March 2017, Plusnet wrote to Ofcom:
- admitting liability in relation to the nature, scope, and duration of the contravention set out in this document;
  - confirming its acceptance that this document would be published, being a formal finding of contravention against it;
  - confirming that it would pay the penalty set out in this finding;
  - confirming its acceptance that it will no longer benefit from the settlement discount to that penalty if it appeals the decision or it fails to comply with the requirements of the settlement; and
  - confirming that it would accept a streamlined administrative process for the disposition of this matter.

## **Ofcom's penalty guidelines**

- 4.22 As set out in our guidelines, 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 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, as stated in our guidelines, 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 contravention and Plusnet's size and turnover (as well as any other relevant factors);
  - c) the following, which appear to us relevant in determining an appropriate penalty that is proportionate to the contravention in respect of which it would be imposed:
    - i) the seriousness and duration of Plusnet's contravention;
    - ii) the degree of harm, whether actual or potential, caused by the contravention;
    - iii) any gain (financial or otherwise) made by Plusnet as a result of the contravention;

- iv) whether in all the circumstances, Plusnet took appropriate steps to prevent the contravention (and took timely and effective steps to end the contravention on becoming aware of it);
  - v) the extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management knew, or ought to have known, they were occurring or would occur;
  - vi) any steps Plusnet has taken for remedying the consequences of the contravention;
  - vii) whether Plusnet has a history of contraventions;
  - viii) the extent to which Plusnet has cooperated with our investigation; and
  - ix) the extent to which the level of penalty is appropriate and proportionate, taking into account Plusnet's size and turnover.
- 4.23 We have also had regard to previous cases involving Talk Talk's, Tiscali's, Vodafone's and EE's contraventions of GC 11. When considering these, Ofcom has taken into account, as set out in our Penalty Guidelines, both their relevance and that, in appropriate cases, we may depart from them, depending on the facts and context that are specific to each case. We do not regard the amounts of previously imposed penalties as limiting the amount of any current penalty and may impose higher penalties to secure effective deterrence of regulatory contraventions.
- 4.24 We have also taken into account the need for transparency in applying our Penalty Guidelines, particularly as regards the weighting of the factors in taking our proposed approach. We explain below the weight we have ascribed to particular points.

### **Seriousness and culpability**

- 4.25 For the reasons set out above, GC11.1 is important and any contravention of it is therefore potentially serious, particularly wherever a significant number of consumers are affected. Again, GC 11.1 reflects the fundamental premise that consumers should be billed accurately and should only be billed for services that are actually being provided.
- 4.26 Ofcom considers that the relevant period of the contravention (26 May 2011 to 3 September 2015) was significant, not only because this was a period of over four years but also in view of the fact that the vast majority of harm from the contravention occurred during this latter period.
- 4.27 Plusnet billed more than a thousand customers (1,025) over half a million pounds sterling (£530,775.44) from 26 May 2011 to 3 September 2015. It made gains and caused consumers harm of that amount (notwithstanding that it subsequently reimbursed some of the affected customers and made charity payments of the balance it was unable to reimburse). Ofcom's view, given the importance of GC11.1, is that this was a serious contravention.
- 4.28 Ofcom also regards the factors discussed in the following paragraphs as exacerbating the seriousness of Plusnet's contravention and its culpability for the contravention, and to consider that these should be similarly reflected in the penalty.

- 4.29 Plusnet clearly failed to take appropriate steps to prevent the contravention or to have effective controls in place to prevent the billing error from occurring. In taking this view, we take full account of the fact that Plusnet has provided us with a number of documents that describe the processes and systems it had in place, generally seeking to ensure it billed customers accurately and to avoid such issues as double-billing. However, the facts that the billing error occurred and that it continued for so long point to serious shortcomings in Plusnet's processes.
- 4.30 A copy of Plusnet's Risk Register dated 1 January 2014 in relation to 'Billing' issues shows that its approach to identifying billing risks was narrow and limited<sup>29</sup> and it is apparent from this document that there were no effective controls in place to address and mitigate the causes of inaccurate billing specifically concerning data integrity. Indeed, Plusnet acknowledged to Ofcom "that this lack of proactive management was a control weakness in our systems and governance".<sup>30</sup> It also admitted that "Plusnet did not test its billing systems for the specific purpose of assessing whether the systems would deliver accurate bills where lines had been ceased."<sup>31</sup> and did not so test its billing system, even after Ofcom took enforcement action against other communications providers for billing their customers for services not provided. (See paragraph 4.40 below).
- 4.31 Plusnet explained that its data entry errors rendered it unable to match the line identifiers received in the cease notifications (KCIs) from BT Wholesale or Openreach with those in its own databases. This mismatch caused the KCIs to become "orphaned" and placed into a "bucket" alongside other non-actionable KCIs<sup>32</sup> and periodically deleted rather than flagged for further investigation. As a result, the line remained active in Plusnet's systems and billing continued. It was evident that if Plusnet's systems had flagged the mismatches for further action, rather than deleting them, the contravention could have been prevented from continuing throughout the period from 26 May 2011 (and could perhaps have been avoided in the first place).
- 4.32 The degree to which the error was avoidable is illustrated by the actions Plusnet has subsequently taken to prevent recurrence of the problem. Plusnet told us that it now filters orphaned KCIs and investigates them, instead of relegating them to a "bucket" that is not looked at; it runs, monthly, a process to identify customers that have been billed in the last 30 days but have not used their broadband/telephone service in the last 180 days; it has re-trained its call centre staff on the importance of accurate data entry and has increased the resourcing of its Revenue Assurance and Compliance teams. It is also in the process of implementing a brand new billing system that will prevent recurrence of the error, in that it will carry out daily and monthly asset reconciliations by checking circuit ID and CLIs in Plusnet's database with those in BT Wholesale and Openreach bills to identify any discrepancies.<sup>33</sup> Any of these measures might have identified the billing error at issue much sooner, if not prevented it entirely.
- 4.33 Instead, the error came to light by chance during the course of an asset reconciliation exercise between Plusnet's records and BT Wholesale data, as part of a project to close some of Plusnet's accounts in April 2015. Up until this point Plusnet was unaware that there was an issue with inaccurate data in its billing system.

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<sup>29</sup> Annex 6, Plusnet's Billing Risk Register

<sup>30</sup> Annex 3, Plusnet response to Ofcom enquiry, paragraph 2, page 3

<sup>31</sup> Annex 5, Plusnet response to Section 135 request for information, Q5

<sup>32</sup> Annex 3, Plusnet response to Ofcom enquiry, paragraph 5, page 2

<sup>33</sup> *ibid*, paragraph 7, page 4

## Deterrence

4.34 In making our judgment about the appropriate and proportionate penalty, we have considered the amount we regard as likely to secure our central objective of deterrence. In particular, any penalty must be sufficient to act as an effective incentive for compliance and to have an impact on Plusnet's behaviour, having regard to the seriousness of its contravention and the size and turnover of the company. We have also taken into account in this regard the 2015 revision of our Penalty Guidelines, the precedent set by the enforcement action we have previously taken against TalkTalk and Tiscali for their contraventions of GC11.1 and the penalties Ofcom has recently imposed on Vodafone and EE for its contravention of the same condition.

4.35 We set out in our revised 2015 Penalty Guidelines that:

“All businesses should operate in compliance with the law, taking into account any relevant guidelines where appropriate. As such, the central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient to deter the business from contravening regulatory requirements, and to deter the wider industry from doing so.

In particular, the level of the penalty must be sufficiently high to have the appropriate impact on the regulated body at an organisational level. It should incentivise the management (which is ultimately responsible for the conduct and culture of the regulated body) to change the conduct of the regulated body as a whole and bring it into compliance, achieving this, where necessary, by changing the conduct at different levels within the organisation. .... it should therefore discourage bad conduct and encourage good practices and a culture of compliance across the organisation.”

4.36 We also say:

“A relevant factor in securing this objective of deterrence is the turnover of the regulated body subject to the penalty. Penalties should be set at levels which, having regard to that turnover, will have an impact on the regulated body that deters it from misconduct in future and which provides signals to other bodies that misconduct by them would result in penalties having a similar impact. That is, it must be at a level which can also change and correct any non-compliant behaviour, or potential non-compliant behaviour, by other providers.”

4.37 Plusnet's turnover for the relevant business in 2015/16 was £267,049,000.<sup>34</sup> As such we consider that any penalty designed to secure the appropriate deterrent effect should reflect this level of turnover.

4.38 To secure that objective, the penalty should also take into account both the reasons why we revised our Penalty Guidelines in 2015 and that Ofcom has previously

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<sup>34</sup> Given that this Notification is issued in March 2017, the relevant period for the purposes of calculating the maximum penalty Ofcom may impose, as defined in section 97(5) of the Act, is 1 April 2015 to 31 March 2016.<sup>34</sup> Plusnet stated in the Section 135 Response that its turnover for its relevant business in that period was £267,049,000.

imposed penalties of £1,524,728 and £1,512, 392,<sup>35</sup> respectively, on TalkTalk and Tiscali for contraventions of GC11.1.

- 4.39 As to the first of these points, we revised our Penalty Guidelines in December 2015 on the basis that the penalties we had set prior to that date had not operated as effective deterrents. We said that it might be necessary in appropriate cases to set higher penalties to secure a stronger effect.
- 4.40 As to the penalties Ofcom has previously imposed for contraventions of GC11.1, TalkTalk had charged 19,840 customers approximately £1.25m for services not provided to them over a period of at least 10 months, as a result of failings in its billing systems. For the same reasons, Tiscali had charged 41,879 customers around £500,000 for services not provided over a similar period.
- 4.41 Neither of the penalties Ofcom had previously imposed on TalkTalk and Tiscali for contraventions of GC11.1 arising out of billing system failures appear to have had the appropriate deterrent effect on Plusnet. Given this, together with the reasons for reviewing our Penalty Guidelines, and taking account of the seriousness of the contravention and the size and turnover of Plusnet, we have decided to impose a significant penalty.
- 4.42 A further consideration is that, on 25 October 2016, Ofcom imposed on Vodafone a penalty of £3,700,000<sup>36</sup> for conduct that involved a contravention of GC11.1. As a result of errors in its billing system, over a 17-month period Vodafone had taken in the region of £150,000 from 10,452 of its customers for services it did not provide to them.
- 4.43 Likewise, on 19 January 2017, Ofcom imposed on EE a penalty of £2,700,000<sup>37</sup> for conduct involving a contravention of GC 11.1. As a result of errors in its billing system, EE overcharged approximately 39,819 of its customers in the order of £247,900.
- 4.44 These cases demonstrate the seriousness with which Ofcom regards matters in which CPs overcharge their customers and/or do not provide them with the services they pay for. It is important that Ofcom acts consistently with these cases in establishing the appropriate deterrent to that type of conduct. However, these cases were different from the present case in that Ofcom concluded that the steps Vodafone and EE took once they were aware of the problems were flawed. Also, unlike in the present case, Vodafone and EE did not take appropriate steps to limit the effects on their customers, and they did not take steps to reimburse the affected customers, until Ofcom began investigating the matters.

## Steps to remedy the contravention

- 4.45 To its credit, Plusnet has taken a number of steps to remedy its contravention. As indicated:
- Plusnet identified the 1,025 customers affected by the contravention by identifying “active” customers in its database who had not used their

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<sup>35</sup> Equivalent in each case to approximately 0.7 of their turnover for relevant business in the relevant period.

<sup>36</sup> Including a discount that takes into account Vodafone’s co-operation in settling the relevant case.

<sup>37</sup> Including a discount that takes into account EE’s co-operation in settling the relevant case.

broadband/telephone service in the previous 12 months or more, and then comparing that with BT Wholesale and Openreach data to determine whether the broadband/telephone lines were active with Plusnet.

- On 20 May 2015, Plusnet ceased billing 300 affected customers it had identified by then, and by 3 September 2015 it identified and ceased billing the remaining 725 affected customers.
- Plusnet explained that, having identified with certainty the affected customers, *“we immediately suspended billing for these customers. From September 2015 to December 2015, we then undertook a process to make certain no other accounts were impacted, determine the amount of refunds owed to each customer and implement a robust plan to contact the customers and facilitate the refund payments.”*
- Plusnet identified that £530,775.44<sup>38</sup> was owed in respect of the period 26 May 2011 to 3 September 2015 to the 1,025 affected customers.
- Plusnet has stood ready to offer full refunds to all affected customers, plus interest of 4%.
- Plusnet attempted to reach each of the 1,025 affected customers by letter, asking them to contact Plusnet.<sup>39</sup> If no response was received it followed up with two outbound call attempts. It sent out its first letter in February 2016, and, where necessary, sent out a second letter in May 2016.
- Plusnet has, in fact, refunded a total of £212,140.29 to 356 of the affected customers for the full period of the contravention (7 March 2008 to 3 September 2015). Of that amount it has refunded a total of £188,271.87 for the period from 26 May 2011 to 3 September (the remaining amount of £23,868.42 relates to the period up to 26 May 2011). Plusnet has also allowed a reasonable opportunity for those customers it has been unable to make contact with to approach Plusnet for a refund.<sup>40</sup>
- Following this, Plusnet has donated the remainder of the funds set aside for those customers, to a dozen local charities. Plusnet has also taken steps to prevent recurrence of a similar billing error. With regard to the governance processes Plusnet now has in place to monitor, escalate and address billing errors at the appropriate level within the organisation, Plusnet advised that:

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<sup>38</sup> Plusnet’s Response dated 23 January 2017 to Ofcom’s Second Information Request dated 9 January 2017.

<sup>39</sup> Plusnet response to Section 135 request for information, Q2c) iii.

<sup>40</sup> On 10 October 2016, Plusnet advised Ofcom that no further customers had contacted it for a refund since the 29 July date of its Section 135 Response, and so the refunds paid out had not changed from £212,239.43. Plusnet also advised that in its Section 135 Response it had mistakenly reported that it had refunded 346 customers. The correct number was 356. See Annex 7. On the 23 January 2017, Plusnet advised Ofcom in its response to the Second Information Request, that it had identified a small error to the total amount refunded to customers reported to Ofcom in its letter dated 10 October 2016. The updated figure including interest is £212,140.29.

- beginning in 2014, it is more proactive and structured and has increased the resourcing of its Revenue Assurance team, which actively monitors billing to spot errors and to prevent them from happening, and its Compliance team, whose main focus is to ensure it complies with all Ofcom billing obligations;
- since 2014 Plunet's 24/7 incident management team has been responsible for fully documenting billing errors and ensuring that identified incidents are resolved;
- since April 2015, established a risk register which includes a data integrity risk linked to systems having mismatched or missing data, resulting in billing, migration and cost implications;
- it "runs a process on a monthly basis that identifies customers that have been billed in the last 30 days but have not used their broadband or telephone service in the previous 180 days or more". This is augmented by checks undertaken by its Revenue Assurance team with respect to any assets showing live on the BT Wholesale or Openreach records. Where necessary, the team takes appropriate action, which includes correcting the customer's circuit ID or CLI, cancelling the account and issuing any refunds;
- it filters orphaned KCIs so that they can be investigated right away as opposed to having them sit in a "bucket" with other "non-actionable" KCIs.
- it has retrained all of its call centre staff on the importance of data accuracy and integrity, highlighting what causes data integrity issues and the correct procedure to follow in order to process orders correctly. Furthermore, Plusnet monitors agent adherence to data accuracy and reports lack of adherence to the agents' managers; and
- it was introducing a new billing system that will prevent this type of error from occurring. Plusnet stated:

*"Lastly and most significantly, over the next months we will be implementing a brand new billing engine and processes that will ensure that errors like this cannot occur. The new billing engine will carry out daily and monthly asset reconciliations by checking circuit IDs and CLIs in our database with active circuit IDs and CLIs in BT wholesale and Openreach bills and thereby identify any discrepancies".<sup>41</sup>*

## Co-operation

4.46 We have also taken account of the fact that Plusnet has co-operated with Ofcom throughout our Investigation. We have no reason to add to the penalty on account of any non-co-operation.

## Ofcom's conclusions on the penalty amount

4.47 Considering all of the above factors in the round, and Plusnet's agreement to settle the matter, we have decided to impose a penalty of £880,000 on Plusnet.

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<sup>41</sup> Annex 3, Plusnet response to Ofcom enquiry paragraph 7, page 4



- 4.48 Ofcom’s judgment is that this level of penalty is appropriate and proportionate to the contravention in respect of which it is imposed. Our objectives in setting it are:
- to impose an appropriate and proportionate sanction that reflects the seriousness of Plusnet’s contravention and its culpability for the contravention, as well as the matters for which we give it some credit; and
  - to deter Plusnet and other CPs from contravening the GCs, and GC11.1 in particular.
- 4.49 Having regard to Plusnet’s turnover, Ofcom’s judgment is that a penalty of £880,000 will secure these objectives in a proportionate way. It reflects each of the factors described in more detail above. Taking particular account of the seriousness of the contravention and the objective of deterrence, on the one hand, and the steps taken by Plusnet to remedy the contravention, on the other, we consider that a decision to impose a penalty at this level would not be disproportionate. It does not exceed the maximum penalty Ofcom may impose.<sup>42</sup>
- 4.50 The amount of the penalty also includes a discount that reflects Plusnet’s agreement to settle the matter. Ofcom considers that discount to be appropriate and proportionate given the saving of public money and resources that completion of the case would otherwise have required.

## **Overall conclusions and action required by Plusnet**

### **Contravention of General Condition 11**

- 4.51 On the basis of the evidence, reasoning and admissions contained in this Explanatory Statement, Ofcom is satisfied that in respect of the period from 26 May 2011 to 3 September 2015, Plusnet contravened GC 11.1. It did so to the extent set out in this Explanatory Statement, and specifically by rendering bills to end-users of broadband and telephony services that did not accurately represent and exceeded the true extent of the service that had been provided to them.

### **Steps that should be taken by Plusnet**

- 4.52 The steps Ofcom think should be taken by Plusnet to comply with the requirements of GC 11.1 are, to the extent it has not already taken them, such steps as are necessary for ensuring that when rendering a Bill to a customer, the amount stated fully represents and does not exceed the true extent of the services actually provided. Plusnet needs to ensure that End Users are not charged for services they no longer subscribe to.
- 4.53 Ofcom considers that Plusnet has remedied the contravention by taking steps to identify all affected customers and to attempt to reimburse those customers for the charges they incurred for services that Plusnet had ceased to provide. In light of those steps, Ofcom does not consider that there is any further action it could reasonably require Plusnet to take that it has not already taken to remedy the consequences of its contravention of GC 11.1.

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<sup>42</sup> Which in this case would be £26,704,900.– 10% of Plusnet’s turnover for its relevant business in the relevant period.

## **Penalty Decision**

4.54 For the reasons set out in this Explanatory Statement, Ofcom has imposed a penalty of £880,000 on Plusnet in respect of its contravention of GCs 11.1 during the period from 26 May 2011 to 3 September 2015.

## Annex 1

# Notification to Plusnet Plc of contravention of General Condition 11 under section 96C of the Communications Act 2003

## Section 96C of the Communications Act 2003

A1.1 Section 96C of the Communications Act (the “Act”) allows the Office of Communications (“Ofcom”) to issue a decision (a “Confirmation Decision”) confirming the imposition of requirements on a person where that person has been given a notification under section 96A of the Act, Ofcom has allowed that person an opportunity to make representations about the matters notified, and the period allowed for the making of representations has expired. Ofcom may not give a Confirmation Decision to a person unless, having considered any representations, we are satisfied that the person has, in on or more of the respects notified, been in contravention of a condition notified specified in the notification under section 96A.

A1.2 A Confirmation Decision:

- a) must be given to the person without delay;
- b) must include the reasons for the decision;
- c) may require immediate action by the person to comply with the requirements of a kind mentioned in section 96A(2)(d) of the Act,<sup>43</sup> or may specify a period within which the person must comply with those requirements; and
- d) may require the person to pay:
  - i) The penalty specified in the notification issued under section 96A of the Act, or
  - ii) Such lesser penalty as Ofcom consider appropriate in light of the person’s representation 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 Conditions

A1.3 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.

A1.4 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

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<sup>43</sup> 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.

“General Conditions” or “GCs”) which apply to all Communications Providers (“CPs”) defined in each GC. The GCs have, from time to time, been amended.<sup>44</sup>

## General Condition 11

A1.5 General Condition 11 (“GC 11”) was one of the General Conditions introduced in July 2003 and its material parts for the purpose of this Notification are substantially unchanged since that time.

A1.6 Amongst other things, GC 11 requires CPs providing Public Electronic Communications Services (“PECS”) to ensure that bills are accurate and obliges providers to maintain records so that this can be checked. GC 11.1 requires that:

“The Communications Provider shall not render any Bill to an End-User in respect of the provision of any Public Electronic Communications Services unless every amount stated in that Bill represents and does not exceed the true extent of any such service actually provided to the End-User in question.”

## Subject of this Confirmation Decision

A1.7 This Confirmation Decision is addressed to Plusnet plc trading as Plusnet, whose registered company number is 03279013. Plusnet’s registered office is: Plusnet plc, The Balance, 2 Pinfold Street, Sheffield, S1 2GU.

## Notification given by Ofcom under section 96A

A1.8 On 13 February 2017, Ofcom issued a notification under section 96A of the Act (“the section 96A Notification”) to Plusnet, stating that Ofcom had reasonable grounds for believing that Plusnet contravened GC 11.1 by rendering Bills to End-Users of its Public Electronic Communications Services that did not accurately represent and exceeded the true extent of the service that had been provided. It did so by charging or over-charging them for services that had ceased to be provided.

A1.9 The section 96A Notification also specified the penalty that Ofcom was minded to impose on Plusnet in respect of the contravention for the period 26 May 2011 to 3 September 2015.

A1.10 Plusnet was given until 13 March 2017 to make written representations to Ofcom about the matters set out in the section 96A Notification. It did not make any such representations and instead entered into a settlement procedure with Ofcom.

A1.11 Having served the section 96C Notification on Plusnet, which allowed it an opportunity to make representations, the period allowed for making representations having now expired, Plusnet having decided not to make any representations and in light the admissions Plusnet made to use in a letter dated 20 March 2017, Ofcom is satisfied that Plusnet has, in the respects notified in the section 96A Notification, contravened GC 11.1 from 26 May 2011 to 3 September 2015. Ofcom has decided to give Plusnet a Confirmation Decision, and to impose a financial penalty, in accordance with section 96C of the Act. The reasons are set out in the Explanatory Statement to which this Confirmation Decision is annexed.

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<sup>44</sup> A consolidated version of the General Conditions as at 28 May 2015 is available at: <http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/general-conditions/>

## Requirements

- A1.12 In order to comply with GC 11.1, Ofcom requires that Plusnet, to the extent it does not already do so, take such steps as are necessary for ensuring that when rendering a Bill to a customer, the amount stated fully represents and does not exceed the true extent of the services actually provided. Plusnet must ensure that End Users are not charged for services they no longer subscribe to.
- A1.13 Ofcom notes the steps Plusnet has taken to identify all affected customers and to attempt to reimburse those customers for the charges they incurred for services that Plusnet had ceased to provide. In light of those steps, Ofcom does not consider that there is any further action it could reasonably require Plusnet to take that it has not already taken to remedy the consequences of its contravention of GC 11.1.

## Penalty

- A1.14 Ofcom has determined that a penalty of £880,000 be imposed on Plusnet in respect of its contravention of GC 11.1 in respect of the period 26 May 2011 to 3 September 2015. Plusnet have until 5pm on 19 April 2017 to pay Ofcom the penalty.

## Interpretation

- A1.15 Words or expressions used in this Confirmation Decision have the same meaning as in the GCs or the Act except as otherwise stated in this Notification.



**Lynn Parker, Ofcom**

22 March 2017

## Annex 2

# List of Annexes

Annex 1	Notification
Annex 2	BABT EPF Notification Form
Annex 3	Plusnet's Response to enquiry
Annex 4	Ofcom's First Information Request to Plusnet
Annex 5	Plusnet's Response to First Information Request
Annex 6	Ofcom's Second Information Request to Plusnet
Annex 7	Plusnet's Response to Second Information Request
Annex 8	Plusnet's Billing Risk Register
Annex 9	Plusnet letter to Ofcom dated 10 October 2016