



Notification under section 110
of the Communications Act 2003
in relation to contravention of
Regulation 16 of the Electronic
Communications Code
(Conditions and Restrictions)
Regulations 2003

Notice served on Infolines Public
Networks Limited

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Section 1

Notification under section 110 of the Communications Act 2003 of contravention of Regulation 16(1) of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003

Regulation

1.1 Section 109 of the Communications Act 2003 (the “2003 Act”) grants the Secretary of State the power to make the application of the electronic communications code in any person’s case subject to restrictions and conditions. On 2 October 2003 the Secretary of State made the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (the “Regulations”) under section 109 and they came into force on 23 October 2003.

1.2 Regulation 16(1) requires that:

“(1) A code operator must –

(a) ensure that sufficient funds are available to meet the specified liabilities which –

(i) arise on or before the date on which a relevant event occurs, or

(ii) may arise at any time during the liability period,

from the exercise of rights conferred upon the code operator by paragraph 9 of the electronic communications code;

(b) on 1st April each year, provide OFCOM with the certificate the requirements of which are set out in paragraphs (2) to (6) inclusive unless he has not previously exercised any rights conferred by the electronic communications code; and

(c) where he has not previously exercised any rights conferred by the electronic communications code and intends to exercise such rights for the first time, provide OFCOM with the said certificate two weeks before he exercises such rights to install any apparatus.”

1.3 Section 110 of the 2003 Act allows Ofcom to issue a notification to a person where Ofcom has reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed by virtue of any restriction or conditions set under section 109 of the Act.

Ofcom's determination

1.4 Ofcom determines that there are reasonable grounds for believing that Infolines Public Networks Ltd (a company incorporated in England and Wales under registration number 02979944) ("Infolines") has contravened and is contravening Regulation 16(1) of the Regulations. Specifically:

- a. Infolines is a code operator for the purposes of the Regulations as defined in Regulation 2(2).
- b. Infolines has an obligation under Regulation 16(1)(a) to ensure that sufficient funds are available to meet the specified liabilities which (i) arise on or before the date on which a relevant event occurs, or (ii) may arise at any time during the liability period, from the exercise of rights conferred upon the code operator by paragraph 9 of the electronic communications code.
- c. Under Regulation 16(1)(b), Infolines is and was required on 1 April each year to provide Ofcom with a certificate attesting that it has fulfilled its duty under Regulation 16(1)(a).
- d. Under Regulation 16(6), a certificate provided under Regulation 16(1)(b) is required to be accompanied by copies of any insurance policy, bond or guarantee or other instrument which will provide the funds required by Regulation 16(1)(a).
- e. On 24 August 2006 Ofcom issued a notification under section 110 of the Communications Act 2003 determining that Infolines had failed to provide Ofcom with a certificate attesting that it had fulfilled its duty under Regulation 16(1)(a), in contravention of Regulation 16(1)(b), for the years to 1 April 2004, 1 April 2005 and 1 April 2006. Infolines failed to comply with Regulation 16(1) as required by that section 110 notification and has further failed to provide Ofcom with a certificate as required by Regulation 16(1)(b) on 1 April 2007, 1 April 2008 and 1 April 2009.
- f. Infolines has also failed to provide Ofcom with copies of any insurance policy, bond or guarantee or other instrument which will provide the funds referred to in Regulation 16(1)(a) (in contravention of Regulation 16(6)).
- g. The reasons for Ofcom's determination are set out in the accompanying explanatory statement.

Action required by Infolines

1.5 Infolines is required to comply with Regulation 16(1) by:

- a. ensuring that sufficient funds are available to meet the specified liabilities which may arise from the exercise of rights conferred upon it by paragraph 9 of the electronic communications code as required by 16(1)(a) of the Regulations;
- b. providing Ofcom with a certificate confirming that it has put in place sufficient funds and ensuring that it does so in the manner specified by 16(2) to 16(6) of the Regulations; and
- c. remedying any consequences of its breach of Regulation 16(1).

1.6 In accordance with the statutory period set out in section 110(4) of the 2003 Act, Infolines has until **14 August 2009** by which to comply with this notification and/or to make representations to Ofcom about matters contained in it.

1.7 If Infolines does not comply with Regulation 16(1) as set out in this notification, Ofcom will consider further action including, if appropriate, suspension of Infolines' Code powers under section 113(4) of the 2003 Act.

Interpretation

1.8 Words or expressions used in this notification have the same meaning as in the Regulations or the 2003 Act except as otherwise stated in this notification.

Neil Buckley
Director of Investigations
10 July 2009

Section 2

Explanatory statement

The Electronic Communications Code

- 2.1 The Electronic Communications Code (the “Code”) is set out in Schedule 2 to the Telecommunications Act 1984 as amended by Schedule 3 to the Communications Act 2003 (the Communications Act 2003 is referred to hereinafter as the “2003 Act”). It sets out the powers that can be given to providers of electronic communications networks (“ECNs”) and providers of conduit systems available for use by providers of ECNs to enable them to install and maintain electronic communications apparatus (“Code powers”).
- 2.2 Operators that have Code powers applied to them (“Code operators”):
- have the power to install apparatus in, under or over streets without needing a specific licence to do so under the New Road and Street Works Act 1991 or, in Northern Ireland, the Street Works (Northern Ireland) Order 1995 (together “the NRSWA 1991”);
 - benefit from important exemptions under Town and Country Planning legislation in the form of Permitted Development; and
 - have the right to apply to the Court for an order conferring a right, where agreement cannot be reached, to execute works on private land.
- 2.3 Section 106 of the 2003 Act allows Ofcom to apply the Code to providers of ECNs and providers of conduit systems available for use by providers of ECNs by way of a direction under section 106(3) of the 2003 Act. Paragraph 17 of Schedule 18 to the 2003 Act deems those persons granted Code powers under the licensing regime, before entry into force of the 2003 Act, to have been granted Code powers by way of a direction from Ofcom under section 106.
- 2.4 On 1 September 2000, Infolines Public Networks Limited (“Infolines”) was granted a licence by the Secretary of State under section 7 of the Telecommunications Act 1984 (the “1984 Act”) authorising Infolines to run a telecommunications system and applying the Code to Infolines. As set out above, following the entry into force of the 2003 Act, Infolines is treated as person in whose case the Code applies by virtue of a direction under section 106 of the 2003 Act.

Regulation 16

- 2.5 Under section 109(1) of the Act, the Secretary of State may make the effect of the Code subject to such conditions and restrictions as may be contained in regulations. In the exercise of her powers under section 109(1) of the 2003 Act, on 2 October 2003 the Secretary of State made the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (the “Regulations”).¹ The Regulations came into force on 23 October 2003.

¹ Statutory Instrument 2003 No. 2553. The Regulations can be found at: www.opsi.gov.uk/si/si2003/20032553.htm

- 2.6. Regulation 16(1)(a) requires Code operators to ensure that sufficient funds are available to meet specified liabilities arising from the exercise of rights conferred upon them by paragraph 9 of the Code upon the occurrence of a relevant event. "Relevant event" is defined in Regulation 16(10) and, in short, refers to a Code operator ceasing to trade². Paragraph 9 is the part of the Code which allows Code operators to carry out street works without needing a specific licence to do so under the NRSWA 1991 (see paragraph 2.2 above).
- 2.7. Streets, or in Scotland roads, ("public highways") are run by appropriate authorities and traffic authorities ("authorities") and these authorities are responsible for, among other things, ensuring that public highways are kept in a good state of repair and accessible. In general, therefore, it is necessary for anyone wishing to place anything on public highways or wishing to break up public highways to seek a specific licence to do so under the NRSWA 1991. This allows the authorities to control who is permitted to place apparatus of any description on public highways and who can break up or open public highways.
- 2.8. However, Code operators do not have to seek a specific licence to access public highways and they are permitted, among other things, to install and maintain apparatus that are on, under, over or across public highways. A primary aim of the funds for liabilities regime is to ensure that authorities do not incur the cost of removing apparatus should a Code operator cease to operate by requiring Code operators to put in place a fund sufficient to meet the costs and expenses of removal.
- 2.9. The specified liabilities referred to in paragraph 2.6 are defined in Regulation 16(10) as, among other things, costs or expenses reasonably incurred by an authority in removing electronic communications apparatus and making good any damage caused by the installation or removal of such apparatus.
- 2.10. Regulation 16 contains a number of specific requirements to ensure that Code operators have sufficient funds available to meet the specified liabilities:
- 16(1)(a) of the Regulations contains the general provision requiring Code operators to ensure that sufficient funds are available to meet specified liabilities;
 - 16(1)(b) of the Regulations requires Code operators to provide Ofcom with a certificate on 1 April each year;
 - 16(2)(a) of the Regulations states that, in the case of a company, the certificate must be signed by the director or a company secretary;
 - 16(3) of the Regulations states that the certificate shall include a statement that in the reasonable opinion of the board, in the case of a company, the Code operator has fulfilled his duty to put in place sufficient funds to meet the specified liabilities;

² 'Relevant event' is defined in Regulation 16(10) as follows: A "relevant event" occurs if -

- (a) a code operator becomes subject to a direction under the Act by virtue of which he is prohibited from providing the electronic communications network for the purposes of the provision of which the electronic communications code was applied to him by a direction under section 106(3)(a) of the Act;
- (b) a code operator ceases to provide an electronic communications network;
- (c) a code operator is deemed to be unable to pay his debts;
- (d) a code operator enters into administration, receivership or liquidation;
- (e) any person takes action for the voluntary winding-up, dissolution, bankruptcy or sequestration of a code operator;
- (f) an administrator, receiver, trustee or similar officer of a code operator, or of all or any material part of the revenues and assets of that operator, is appointed;
- (g) any order is made for the compulsory winding-up, dissolution, bankruptcy or sequestration of a code operator.

- 16(5)(a) of the Regulations requires Code operators to state on the certificate the amount of the funds which have been provided for;
- 16(5)(b) of the Regulations requires that the certificate state the systems and processes which enabled the board to form the opinion referred to in Regulation 16(3); and
- 16(6) of the Regulations states that the certificate shall be accompanied by a copy of any insurance policy, bond, guarantee or other instrument which will provide for the funds.

Infolines

- 2.11. Ofcom understands that Infolines' primary business relates to the provision of public payphones including managed payphones and private payphones. One of the differences between these different types of payphone is that managed payphones are likely to be on public highways or located at transport hubs whereas private payphones are likely to be located at private establishments. In terms of the Regulations, payphones located on public highways are relevant and should be covered by the funds for liabilities regime.
- 2.12. As explained in paragraphs 2.4 and 2.5, Infolines, as a Code operator, is required to comply with the conditions and restrictions set out in the Regulations. The Regulations came into force on 23 October 2003. Ofcom should therefore have received certificates from Infolines on 1 April of each of the years 2004, 2005, 2006, 2007, 2008 and 2009. It has not received any one of these certificates or any accompanying documentation.
- 2.13. On 24 August 2006, Ofcom issued a notification under section 110 of the 2003 Act (the "2006 Notification")³, determining that there were reasonable grounds for believing that Infolines had contravened and was contravening Regulation 16(1) of the Regulations ("the Notified Contraventions").
- 2.14. The 2006 Notification required Infolines to take action to comply with Regulation 16 and to remedy any consequences of its contravention by 25 September 2006. Infolines did not take the action required by the 2006 Notification by 25 September 2006 or at all.
- 2.15. On 20 February 2007 Ofcom issued a notification to Infolines under sections 111 and 112 of the 2003 Act ("the Enforcement and Penalty Notification")⁴ which required Infolines to obtain an insurance policy or other instrument to meet the specified liabilities, and to provide Ofcom with a copy of such instrument and a certificate confirming that sufficient funds were in place to meet the specified liabilities by 22 March 2007, and imposed a financial penalty of £7,500 on Infolines in respect of the Notified Contraventions.
- 2.16. Infolines has failed to comply with the Enforcement and Penalty Notification, and Ofcom has not received a certificate from Infolines as required by paragraph 16(1)(b) of the Regulations for subsequent years or received any accompanying documentation.

³ See: http://www.ofcom.org.uk/telecoms/ioi/e_c_c/ffl/reg16/infolines.pdf

⁴ http://www.ofcom.org.uk/telecoms/ioi/e_c_c/ffl/reg16/enforcement.pdf

- 2.17. In 2007, Infolines operated 143 payphones⁵. Aware that Infolines may be continuing to operate payphones and may also be applying to local authorities to install further payphones⁶, on 15 April 2009 Ofcom wrote to Infolines asking for confirmation of the arrangements it had in place to meet its Regulation 16 obligations. In a response dated 1 May 2009 Phil Pearson, a director of Infolines, failed to provide such confirmation, instead stating that he was “not installing or maintaining any new electronic communications apparatus on the highway”.
- 2.18. On 5 May 2009 Ofcom opened an investigation to confirm whether or not Infolines is compliant with Regulation 16.
- 2.19. Ofcom found evidence of applications from Infolines to local authorities to install at least 50 further payphones⁷.
- 2.20. On 22 May 2009, Ofcom issued a formal notice under section 135 of the 2003 Act, requiring that by 1 June 2009 Infolines provide confirmation of whether or not it has ensured that sufficient funds are available to meet any specified liabilities as defined in Regulation 16 and evidence that those funds are available. At the time of writing, Ofcom has yet to receive a response to the notice.

Relevant provisions of the 2003 Act

- 2.21. Section 110 of the 2003 Act sets out the procedure that Ofcom must follow in commencing enforcement action in relation to any conditions and restrictions imposed by the Secretary of State under section 109 of the 2003 Act. Section 110 states that Ofcom may issue a notification to a Code operator where it has reasonable grounds for believing that that person is contravening, or has contravened, a requirement imposed by virtue of any restrictions or conditions under section 109.
- 2.22. Section 111 of the 2003 Act allows Ofcom to issue an enforcement notification where a Code operator has been in contravention of a requirement specified in a notification issued under section 110 and has not, during the period allowed under section 110, taken all the appropriate steps to comply with the requirement and remedy the consequences of the contravention.
- 2.23. In addition, under section 112 of the 2003 Act Ofcom may impose a penalty on a Code operator that has been in contravention of a requirement specified in a section 110 notification and has not, during the period allowed, taken all the appropriate steps to comply with the requirement and remedy the consequences of the contravention.

⁵ See paragraph 4.9 of the Enforcement and Penalty Notification, 20 Feb 2007:

http://www.ofcom.org.uk/telecoms/ioi/e_c/ffl/reg16/enforcement.pdf

⁶ In addition to information received directly from the Royal Borough of Kensington and Chelsea in February 2009, Ofcom has seen online articles referring to the expansion of Infolines' public call box network. See Media Week article “Infolines Rolls Out New Payphone Ad Panels” 10 July 2008

(<http://www.mediaweek.co.uk/news/search/830997/Infolines-rolls-new-payphone-ad-panels/>) and a comment in Media Week of 18 August 2008 from “Phil Pearson, Director, Infolines” (<http://www.mediaweek.co.uk/news/search/840111/Inbox---19-August-2008/>)

⁷ Details of these applications were available online as public documents published by local authorities. The dates of applications covered a period from 8 December 2008 to 24 April 2009.

2.24. Further, section 113(4) of the 2003 Act provides that where a Code operator has been in serious and repeated contravention of the Regulations, Ofcom may, in that operator's case, suspend the application of the Code. The procedure which should be followed before suspending Code powers under s113 is set out in s114.

The notification

2.25. Ofcom has not received a certificate from Infolines as required by paragraph 16(1)(b) of the Regulations nor has it received the required accompanying documentation.

2.26. Ofcom therefore hereby serves a notification on Infolines requiring it to:

(a) ensure that it puts in place sufficient funds to meet the specified liabilities which may arise from the exercise of rights conferred upon it by paragraph 9 of the Code as required by 16(1)(a) of the Regulations;

(b) provide Ofcom with a certificate confirming that it has put in place sufficient funds and ensure that it does so in the manner specified by 16(2) to 16(6) of the Regulations; and

(c) remedy any consequences of its breach of Regulation 16.

2.27. In accordance with the statutory period set out in section 110(4) of the Act, Infolines has until **14 August 2009** to make representations to Ofcom about matters contained in the notification and accompanying explanatory statement, to comply with the notified requirements and to remedy the consequences of notified contraventions.

2.28. If Infolines fails to comply with this section 110 notification Ofcom will consider further action including, if appropriate, suspension of Infolines' Code powers under section 113(4) of the 2003 Act.

Annex A

Ofcom correspondence

A1. Request from Ofcom to Infolines, dated 15 April 2009

15 April 2009

Mr Pearson

Infolines Public Networks Ltd
Unit 18 Ariane
Lichfield Road Industrial Estate
Tamworth
Staffordshire B79 7XF

NEIL BUCKLEY
Director of Investigations

Direct line: 020 7981 3855
Direct fax: 020 7783 4109

neil.buckley@ofcom.org.uk

Dear Mr Pearson

Infolines Public Networks Ltd (“Infolines”) regarding compliance with Regulation 16 of the Electronic Communications Code (Conditions & Restrictions) Regulations 2003 (“the Code”)

I am writing to advise you that Ofcom has been made aware of planning applications lodged by Infolines with local councils to install public payphones.

As you are aware, Regulation 16 of the Code requires that operators which have been granted Code powers who carry out works on public highways must ensure that sufficient funds are available to meet specified liabilities arising from the exercise of rights conferred upon them by paragraph 9 of the Code should a relevant event occur¹¹. Infolines, as an operator which has been granted Code powers, is therefore required to comply with Regulation 16 of the Code.

As you know, Ofcom has previously issued notifications to Infolines for breach of Regulation 16. We note your letter of 23 March 2009 in this respect which is being considered separately in that context. Infolines has not provided Ofcom with evidence that its position has been remedied since the date of its previous notifications. Ofcom is therefore concerned that Infolines would not have sufficient funds available to it in order to meet any liabilities which may arise from the installation of further public payphones.

I should therefore be grateful if you could respond to us no later than 5pm Monday 20 April 2009 indicating the extent to which Infolines has put in place arrangements to ensure that sufficient funds are in place to meet any liabilities which may arise, as required by Regulation

¹¹ Regulation 16(1) (a) provides that a code operator must ensure that sufficient funds are available to meet the specified liabilities which (i) arise on or before the date on which a relevant event occurs or (ii) may arise at any time during the liability period from the exercise conferred upon the code operator by paragraph 9 of the electronic communications code.

16 of the Code. Ofcom will then consider whether it is appropriate to take any further action. This may include a suspension of the application of the Code to Infolines as provided section 113 of the Communications Act 2003.

If replying electronically, please send any emailed response to myself and copying in my colleague Lawrence Knight (lawrence.knight@ofcom.org.uk).

Yours sincerely

Neil Buckley

A2. Request from Ofcom to Infolines, dated 23 April 2009



23 April 2009

Mr Pearson

Infolines Public Networks Ltd
Unit 18 Ariane
Lichfield Road Industrial Estate
Tamworth
Staffordshire B79 7XF

NEIL BUCKLEY
Director of Investigations

Direct line: 020 7981 3855
Direct fax: 020 7783 4109

neil.buckley@ofcom.org.uk

Dear Mr Pearson

Infolines Public Networks Ltd ("Infolines") regarding compliance with Regulation 16 of the Electronic Communications Code (Conditions & Restrictions) Regulations 2003 ("the Code")

I write further to my request for information dated 15 April 2009, and an emailed response from  of Infolines on 20 April advising of your absence until 30 April 2009.

In light of the circumstances I would be grateful if you could now respond to my request of 15 April 2009 by no later than 5pm Friday 01 May 2009, indicating the extent to which Infolines has put in place arrangements to ensure that sufficient funds are in place to meet any liabilities which may arise, as required by Regulation 16 of the Code. As set out in my earlier correspondence, Ofcom will then consider whether it is appropriate to take any further action. If replying electronically, please send any emailed response to myself and copying in my colleague Lawrence Knight (lawrence.knight@ofcom.org.uk).

Yours sincerely

Neil Buckley

Office of Communications	Riverside House 2a Southwark Bridge Road London SE1 9HA	Telephone +44 (0)20 7981 3000 or +44 (0)300 123 3000 Textphone +44 (0)20 7981 3043 or +44 (0)300 123 2024	Facsimile +44 (0)20 7981 3333 www.ofcom.org.uk
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A3. Response from Infolines to Ofcom's requests, dated 1 May 2009

INFOLINES PUBLIC NETWORKS LTD.



Unit 18 ~~Asians~~
Lichfield ~~of Ind Est~~
Teamworth
B79 7XF
Tel/Fax: 

For the attention of Neil Buckley
~~Ofcom~~
Riverside house
2a Southwark bridge road
London
SE1 9HA

Date: 1st May 2009

Dear Mr Buckley,

In reply to your letter of the 15th April 2009, I am surprised that you did not reply my ~~letter~~ dated 30th March 2009.

Please be advised that I am not INSTALLING or maintaining any new electronic communications apparatus on the highway. It might be of interest to you to know that 90 percent of the applications I have applied for have been rejected by the local authorities for spurious reasons. My Code powers were ignored

I

Yours sincerely

Phil Pearson
~~infolines public networks ltd~~

A4. Letter from Ofcom to Infolines advising of the opening of an investigation, dated 11 May 2009



11 May 2009

Mr P Pearson
Infolines Public Networks Ltd.
Unit 18 Ariane
Lichfield Road Industrial Estate
Tamworth
B79 7XF

Director of Investigations

Direct 020 7981 3855
line:
Direct 020 7783 4109
fax:
Noil.Buckley@ofcom.org.uk

Dear Mr Pearson

Investigation into Infolines Public Networks Ltd ("Infolines") regarding compliance with Regulation 16 of the Electronic Communications Code (Conditions & Restrictions) Regulations 2003 ("the Regulations") – CW/01016/03/09

Thank you for your letter dated 1 May 2009, sent in response to my requests of 15 April and 23 April 2009.

Whilst I note from your response that you indicate you are *"not INSTALLING or maintaining any new electronic communications apparatus on the highway"*, your reply failed to answer my request for you to specify what arrangements Infolines has in place to ensure that sufficient funds are in place to meet any liabilities which may arise, as required by Regulation 16 of the Regulations. I also note from your response that 90 percent of the applications you have applied for have been rejected by the local authorities, which leads me to infer that 10 percent are pending or have been approved.

In the circumstances, Ofcom considers it is appropriate to launch a formal investigation into whether Infolines is compliant with Regulation 16, in particular that Infolines as a Code operator ensures that sufficient funds are available to meet specified liabilities arising from

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the exercise of rights conferred by paragraph 9 of the Electronic Communications Code should a relevant event occur¹.

We will therefore be sending you a letter formally requesting additional information within the next few days.

Ofcom will publish the attached competition bulletin entry on its website on Tuesday 12 May 2009 announcing the opening of this investigation.

If you or your team require further information, please feel free to contact me or Lawrence Knight, the case leader, on 020 7981 3411.

Yours sincerely

Neil Buckley

¹ Regulation 16(1): A code operators must (a) ensure that sufficient funds are available to meet the specified liabilities which (i) arise on or before the date on which a relevant event occurs, or (ii) may arise at any time during the liability period, from the exercise of rights conferred upon the code operator by paragraph 9 of the electronic communications code.

A5. Notice from Ofcom requiring information from Infolines, dated 22 May 2009

CW/01013/03/09

22nd May 2009

Mr Pearson
Infolines Public Networks Ltd
Unit 18 Ariane
Lichfield Road Industrial Estate
Tamworth
B79 7XF

Neil Buckley
Director of Investigations

Direct line: 020 7981 8855
Direct fax: 020 7783 4109

Neil.buckley@ofcom.org.uk

Dear Mr Pearson

Investigation into Infolines Public Networks Ltd regarding compliance with Regulation 16 of the Electronic Communications Code (Conditions & Restrictions) Regulations 2003 – CW/01016/03/09

Notice requiring the provision of specified information under section 135 of the Communications Act 2003

This is a formal notice under section 135 of the Communications Act 2003 ("the Act") addressed to Infolines Public Networks Ltd ("Infolines") whose registered company number is 02979944.

This notice requires you to provide the information set out in the enclosed Annex in the manner and form specified, for the purpose of ascertaining whether Infolines has contravened or is contravening Regulation 16 of the Electronic Communications Code (Conditions & Restrictions) Regulations 2003 ("Regulation 16") which imposes a requirement on operators to ensure that sufficient funds are in place to meet specified liabilities.

Background to the investigation

Regulation 16 requires, amongst other things, that Code operators who carry out works on public highways to ensure that sufficient funds are available to meet specified liabilities arising from the exercise of rights conferred upon them by paragraph 9 of the Code should a relevant event occur¹. Operators are required by Regulation 16 to provide Ofcom with a certificate on 1 April each year to the effect that they are complying with the requirement to maintain sufficient funds.

Ofcom has not received a certificate from Infolines to this effect. My letters to you of 15 and 23 April 2009 therefore requested you to specify what arrangements Infolines has in place to ensure that sufficient funds are in place to meet any liabilities which may arise, as required by Regulation 16. Your response of 1 May 2009 failed to answer this request. The purpose of this information request is therefore to obtain specified information relevant to the

¹ Section 16(1): A code operators must (a) ensure that sufficient funds are available to meet the specified liabilities which (i) arise on or before the date on which a relevant event occurs

investigation in order to assist Ofcom in determining whether Infolines is contravening Regulation 16.

You are required to provide Ofcom with the information specified or described in the Annex enclosed with this letter both in hard copy and in electronic form by sending it to Lawrence Knight or giving it to Lawrence Knight in person at: Ofcom, 2a Southwark Bridge Road London SE1 9HA. Your response should also be sent by e-mail to Lawrence Knight at lawrence.knight@ofcom.org.uk.

The information must reach Lawrence Knight at Ofcom by no later than 5.00pm on 01 June 2009.

Confidentiality

In the response please set out in a separate annex marked "confidential information" any document, or information which you consider to be confidential and supply a written explanation as to why it should be treated as such.

Ofcom will take into consideration any representations you make when determining which information it considers to be confidential.

Offences

I draw your attention to sections 138 to 144 of the Act (copies of which are enclosed) which set out, among other things, the offences created by the Act in connection with a failure to comply with a requirement under section 135 or in connection with the provision of false information. You are therefore required to ensure that your response is complete and not false in any material particular. Given the seriousness of the potential penalties and offences involved, you may want to seek your own independent legal advice about the contents of this notice.

Yours sincerely

Neil Buckley
Director of Investigations

encl.
Sections 138 to 144 of the Communications Act 2003

Annex

Requested information

Provide the following documents and information in hard copy and by e-mail to confirm whether or not Infolines is complying with Regulation 16:

1. Confirmation of whether or not Infolines has ensured that sufficient funds are available to meet any specified liabilities as defined in Regulation 16; and
2. Evidence that sufficient funds are available to meet specified liabilities as required by Regulation 16; and
3. Any supporting information you wish to submit with regards to the steps that have been taken by Infolines to ensure that sufficient funds are available to meet any specified liabilities as defined in Regulation 16.