



# Notification of contraventions of General Conditions 22.3(d), 22.8 and 9.4 under section 96C of the Communications Act 2003

Notice served on True Telecom Limited (True  
Telecom) by the Office of Communications (**Ofcom**)

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## Section 1

# Executive Summary

- 1.1 This document (the "Explanatory Statement") explains Ofcom's decision to issue True Telecom Limited ("True Telecom") with a confirmation decision ("the Confirmation Decision") under section 96C of the Communications Act 2003 ("the Act") in respect of contraventions of the following General Conditions of Entitlement ("the GCs"):
- GC22.3(d) which prohibits Communications Providers ("CPs") from engaging in Slamming.<sup>1</sup>
  - GC22.8 which requires CPs to create and keep individually retrievable records of consent to migrate Communications Services<sup>2</sup> to the gaining CP, for a period of not less than twelve months; and
  - GC9.4 which provides that CPs may not enter a Consumer<sup>3</sup> into a contract which includes the payment of compensation for termination after a period of 24 months.
- 1.2 The rules set out in GC22 and GC9 are important consumer protection provisions. A failure to comply with these rules may undermine the development of competition, damage consumer trust in the industry, and can result in harm and distress to consumers.
- 1.3 Ofcom opened an investigation on 20 October 2016 into True Telecom's compliance with GC22 and GC9 ("the Investigation"). This followed a series of earlier engagements with the company dating back to November 2013, triggered by a notable level of complaints from consumers to Ofcom's Consumer Contact Team ("CCT") about True Telecom's sales practices. Complaints to the CCT about True Telecom increased despite engagements and assurances made to Ofcom in April 2016 concerning steps True Telecom had taken, and was continuing to take, to ensure compliance with GC22.
- 1.4 Based on the evidence received during the Investigation, Ofcom considered there were reasonable grounds for believing that between 8 October 2015 and 26 October 2016 ("the Relevant Period"), True Telecom contravened GC22.3(d), GC22.8 and GC9.4. Accordingly, on 1 August 2017, Ofcom issued True Telecom with a notification under section 96A of the Act ("the Section 96A Notification").
- 1.5 The Section 96A Notification set out Ofcom's provisional findings that True Telecom had contravened GC22.3(d), GC22.8 and GC9.4 for the following reasons:

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<sup>1</sup> Slamming involves a CP transferring communications services of a consumer without having obtained express consent. See section 2 for a more detailed description of Slamming (paragraph 2.3).

<sup>2</sup> The definition of Communications Services includes Fixed-Line Telecommunications Services. "Fixed-Line Telecommunications Services" refers to narrowband calls and lines services (i.e. services provided over a traditional public communications network) provided to a customer that allow for the transfer of speech communications and other forms of communications such as fax and data. (For a full definition see GC22 30(u).)

<sup>3</sup> "Consumer" refers to any natural person who uses or requests a Communications Service for purposes which are outside his or her trade, business or profession (see GC22.30(l)).

- (a) True Telecom contravened GC22.3(d) by placing transfer orders for Fixed-Line Telecommunications Services without the Customer's express knowledge and/or consent, in the following circumstances:
    - (i) where the Customer was contacted, but did not give authorisation to transfer their services. Ofcom's provisional view was that True Telecom did this in respect of 26 Customers.
    - (ii) by placing repeat transfer orders following the cancellation of the initial transfer order by the losing CP, without making contact with the Customer to obtain their authorisation to place a new transfer order. Ofcom's provisional view was that True Telecom did this for 90 CLIs in respect of 86 Customers.
  - (b) True Telecom contravened GC22.8 by failing to create and retain the relevant Records of Consent for the required minimum period of not less than twelve months, as set out in GC22.8, in relation to contracts entered into for 34 Customers; and
  - (c) True Telecom contravened GC9.4 on 37 occasions by entering 35 Consumers including terms requiring them to pay compensation for a period exceeding 24 months.
- 1.6 The Section 96A Notification set out Ofcom's provisional view that it was minded to impose a penalty for the contraventions and the amount of the penalty that Ofcom provisionally considered would be appropriate and proportionate. It also set out the steps that Ofcom provisionally concluded that True Telecom should take to comply with the requirements of GC22.3(d), GC22.8 and GC9.4 and remedy the consequences of the contraventions. True Telecom was given the opportunity to make written and/or oral representations on the notified matters.
- 1.7 True Telecom provided its written representations on 25 August 2017 (True Telecom's "Written Representations"). It also made oral representations to Ofcom on 29 September 2017 (True Telecom's "Oral Representations"). Together, these representations are referred to as the "Representations".
- 1.8 Ofcom has carefully considered the Representations and all the relevant evidence and, having done so, is satisfied that, during the Relevant Period, True Telecom contravened GC22.3(d), GC22.8 and GC9.4 as follows:
- (a) True Telecom contravened GC22.3(d) by placing transfer orders for Fixed-Line Telecommunications Services without the Customer's express knowledge and/or consent, in the following circumstances:
    - (i) where the Customer was contacted, but did not give authorisation to transfer their services. Ofcom's view is that True Telecom did this in respect of 24 Customers.
    - (ii) by placing repeat transfer orders following the cancellation of the initial transfer order by the losing CP, without making contact with the Customer to obtain their authorisation to place a new transfer order. True Telecom did this for 90 CLIs in respect of 86 Customers.
  - (b) True Telecom contravened GC22.8 by failing to create and retain the relevant records of consent for the required minimum period of not less than twelve months, as set out in GC22.8, on 21 occasions; and

- (c) True Telecom contravened GC9.4 on 37 occasions by entering 35 Consumers into contracts including terms requiring them to pay compensation for a period exceeding 24 months.
- 1.9 Ofcom has determined that a penalty of £300,000 is appropriate and proportionate to the contraventions in respect of which it is imposed. In taking this view, Ofcom has had regard to all the relevant evidence referred to in Sections 2, 3, and 4 of this Explanatory Statement, together with Ofcom's published Penalty Guidelines.<sup>4</sup>
- 1.10 True Telecom has until 5.00pm on 15 December 2017 to pay the penalty.
- 1.11 True Telecom must take the following steps, to the extent it has not already taken them, to secure compliance with the requirements of GC22.3(d), GC22.8 and GC9.4:
- to make all necessary changes to its policies and procedures to ensure that:
    - (i) True Telecom is only placing transfer orders where the Customer has express knowledge and/or has given their express consent to a transfer order being placed;
    - (ii) True Telecom is creating and retaining Records of Consent for the required minimum period of 12 months; and
    - (iii) True Telecom is not entering Consumers into contracts containing provisions which require payment of compensation for a period exceeding 24 months.
  - to create and implement policies and procedures in relation to ensuring compliance with GC22.3(d), GC22.8 and GC9.4, including an effective quality assurance process to monitor the compliance by True Telecom's agents who are placing transfer orders for Fixed-Line Telecommunications Services; and
  - to provide appropriate training to all True Telecom's agents who are engaged in placing transfer orders for all True Telecom's Fixed-Line Telecommunications Services in order to ensure compliance with GC22.3(d), GC22.8 and GC9.4.
- 1.12 True Telecom must also take the following steps, to the extent it has not already taken them, to remedy the consequences of the contraventions:
- allow Customers who believe they were Slammed by True Telecom to cease their contract with True Telecom, regardless of the period for which the contract has been in force, with no requirement to pay an Early Termination Charge ("ETC") or disconnection fee and no requirement to pay any charges (including charges for transferring away from True Telecom) for services other than those the Customer has used;

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<sup>4</sup> The current version of the Penalty Guidelines were published on 14 September 2017 and are found here [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/106267/Penalty-Guidelines-September-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf). At the time of issuing the Section 96A Notification there was a different version of the Penalty Guidelines in place. However, the new Penalty Guidelines are substantively unchanged, save that they now refer to the new settlement procedure.

- for any Customers who believe they were Slammed by True Telecom but who have already transferred away from True Telecom and have incurred charges in doing so, compensate them in full for those charges;
- for those Customers identified in Annexes 2 and 3 that are still with True Telecom, take active steps to inform them of their right to terminate their contract with no payment of an ETC or disconnection fee;
- for all Customers identified at Annexes 2 and 3 of this Explanatory Statement, refund, in full, any money paid by those Customers to True Telecom. True Telecom must also refund the Customers, in full, for any other costs which may have been incurred as a result of being Slammed, including payment of ETCs to their previous CP or the loss of upfront line rental which was paid to their previous CP;
- for those Customers identified in Annex 5 of this Explanatory Statement who are not included in Annex 2 or 3, take active steps to inform them of their right to terminate their contract with no payment of an ETC or disconnection fee after a period of 24 months has elapsed from the date of entering into a contract with True Telecom; and
- for those Customers identified at Annex 5 of this Explanatory Statement, who have already transferred to another CP and have paid an ETC to True Telecom, refund them for the portion of the ETC which relates to any period beyond 24 months.

1.13 True Telecom must comply with the requirements imposed on it by this Confirmation Decision as soon as possible and, in any event, not later than three months from the date of this Confirmation Decision.

## Section 2

# Regulatory Framework

## Introduction

2.1 This section sets out the regulatory framework that is relevant to the Investigation, including the applicable GCs<sup>5</sup> and Ofcom's investigation and enforcement powers under the Act. The GCs impose specific obligations on all persons who provide electronic communications networks and services in the UK and have been set by Ofcom pursuant to section 45 of the Act.

## General Condition 22

2.2 GC22 includes rules which have been designed to protect consumers from suffering harm and distress caused as a result of being mis-sold services by CPs.

2.3 Of particular relevance in this case, GC22.3(d) prohibits CPs from engaging in Slamming. Slamming is defined under GC22.30(mm). As regards transfer orders placed on Openreach<sup>6</sup>, the relevant parts of the definition are as follows:

*“Slamming’ means where:*

- *a request for Carrier Pre-Selection (“CPS”)<sup>7</sup>, Wholesale Line Rental (“WLR”)<sup>8</sup>, Shared Metallic Path Facility (“SMPF”)<sup>9</sup> and/or Metallic Path Facility (“MPF”)<sup>10</sup> has been made,*
- *[...]*
- *A Transfer Order or a Working Line Takeover Order has been placed on Openreach [...]*

*without the Customer’s express knowledge and/or consent; that is in the following circumstances:*

- i) where the Customer has never contacted, or has never been contacted by, the Gaining Provider;*

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<sup>5</sup> An unofficial consolidated version of the GCs is available for reference on Ofcom's website: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/86273/CONSOLIDATED\\_VERSION\\_OF\\_GENERAL\\_CONDITIONS\\_AS\\_AT\\_28\\_MAY\\_2015-1.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/86273/CONSOLIDATED_VERSION_OF_GENERAL_CONDITIONS_AS_AT_28_MAY_2015-1.pdf)

<sup>6</sup> The CCT complaints only concerned transfers on Openreach (i.e. there were no transfers concerning KCOM's network).

<sup>7</sup> CPS is defined in GC22.30(m) as a facility which allows a customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a telephone number.

<sup>8</sup> WLR is defined in GC22.30(uu) as a regulated wholesale service sold by BT which is used by the CP to provide retail customers with exchange lines and in turn, access to other Narrowband telephone services such as telephone calls, fax and dial-up.

<sup>9</sup> SMPF is defined in GC22.30(nn) as access to the non-voiceband frequencies of the MPF.

<sup>10</sup> MPF is defined in GC22.30(jj) as a circuit comprising a pair of twisted metal wires between an End-User's premises and a main distribution frame that employs electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an Electronic Communications Network).

- ii) *where the Customer has contacted, or has been contacted by, the Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of their Communications Services;*
- iii) *where the Customer has agreed to purchase a product of service from the Gaining Provider and the Gaining Provider has submitted an order for a different product or service which the Customer has not agreed to purchase; or*
- iv) *where the Customer has agreed to transfer some or all of their Communications Services to the Gaining Provider having understood as a result of a deliberate attempt by the Gaining Provider to mislead, that they are making an agreement with a different Communications Provider.”*

2.4 GC22.8 requires CPs to create and keep individually retrievable records that include, amongst other things, a direct record of consent (“Record of Consent”) of the Customer agreeing to transfer their Communications Services to the gaining CP. CPs are required to hold this Record of Consent for a period of not less than twelve months.

2.5 Specifically, GC22.8 states:

*“For each contract entered into with a Customer for the provision of Communications Services, the Gaining Provider must create and keep individually retrievable records of the following, for a period of not less than twelve months:*

*(a) a direct record of consent, as provided by the Customer, to:*

- (i) migrate from the Communications Services supplied by the Losing Provider to the Communications Services supplied by the Gaining Provider; or, as relevant,*
- (ii) begin acquiring Communications Services over the Target Line;*

*(b) an explanation from the Communications Provider that they are required to create a record of the Customer’s consent;*

*(c) the name and address of the Customer;*

*(d) the time, date and means by which the consent in sub-section (a) above was given;*

*(e) where appropriate, the place where the consent in sub-section (a) above was given and the salesperson(s) involved;*

*(f) the Target Address; and*

*(g) where appropriate, the Calling Line Identification of the Target Line.*

2.6 GC22.9 states that:

*“The Gaining Provider shall keep the records required in paragraph 22.8 irrespective of whether the contract for the provision of the Communications Services is cancelled or terminated.”*

- 2.7 The requirement to keep a direct Record of Consent was introduced following Ofcom’s August 2013 Consumer Switching Statement (the “August Statement”).<sup>11</sup> At paragraph 9.23 of the August Statement Ofcom sets out its position in relation to the Record of Consent requirement:

*“To ensure this obligation is met, CPs will have to amend their processes to ensure a direct record of the consumer’s consent, as given by the consumer, is kept for each of their sales channels. Each of the following could constitute a record of consent:*

- i) *call recordings for all successful telesales of the customers’ consent to the transfer. This consent could either be recorded as an individual element of the telesales process i.e. a verification stage, or the consumer could be put through to a separate person (e.g. internal verifier) who records the record of consent;”*

- 2.8 In terms of call recordings, therefore, it makes the point that simply keeping the sales call would not be sufficient and the Record of Consent needs to be a distinct part of the call, either a verification stage or put through to separate person.

- 2.9 Paragraph 9.27 of the August Statement also set out the intention of the Record of Consent requirement. Specifically, it stated:

*“The recording of consent from a consumer to switch their services is intended to deter, and enhance our ability to investigate, Slamming. There is also the potential for consumers to be misled during the initial sales calls. In order to continue to enforce against mis-selling more generally, we will retain the requirement (currently in GC 24.11) to use reasonable endeavours to create and keep all records regarding the sale of its communications services.”*

#### **General Condition 9.4**

- 2.10 GC9 requires CPs, when entering into contracts for the provision of Public Electronic Communications Services<sup>12</sup>, to include certain minimum, specified terms and information for consumers and other end-users.

- 2.11 GC9.4 sets out that the maximum length of a contract a CP can enter a Consumer into is 24 months. Specifically, GC9.4 states:

*“Communications Providers shall not include a term in any contract with a Consumer for the provision of Electronic Communications Services concluded after 25 May 2011 preventing the Consumer from terminating the contract before the end of the agreed contractual period without compensating the Communications Provider for so doing, unless such compensation relates to no more than the initial commitment period (being the period beginning on the day on which the Communications Provider and*

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<sup>11</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/76569/consumer\\_switching.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/76569/consumer_switching.pdf)

<sup>12</sup> “Electronic Communication Service” is defined in section 32 of the Act and means a service consisting in, or having as its principle feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.

*the Consumer have agreed that the contract shall begin and ending on a day falling nor more than 24 months thereafter).*

For the purpose of GC9.4 Consumer means:

*“any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside his or her trade, business or profession”*

- 2.12 Therefore, any contract a CP enters a Consumer into that is longer than 24 months, and includes a term that requires the Consumer to pay an ETC for the period after 24 months in order to exit the contract before the end of the minimum period, is a contravention of GC9.4.

### **Ofcom’s investigation and enforcement powers**

- 2.13 Sections 96A to 96C of the Act set out Ofcom’s enforcement powers in cases where Ofcom determines there are reasonable grounds for believing that a person is contravening, or has contravened a GC.

- 2.14 Section 96A of the Act provides for Ofcom to issue a notification (a “section 96A Notification”) setting out Ofcom’s provisional view of the alleged contravention. The section 96A Notification will include, amongst other things:

- the steps which Ofcom considers should be taken to comply with the relevant requirement and to remedy the consequences of the contravention;
- the period within which the subject of the investigation may make representations in response to Ofcom’s preliminary views; and
- details of any penalty that Ofcom is minded to impose for the alleged contravention in accordance with section 96B of the Act.

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

- issue a confirmation decision, confirming the imposition of requirements on the subject of the investigation and the imposition of the penalty specified in the section 96A Notification or a lesser penalty; or
- inform the person we are satisfied with their representations and that no further action will be taken.

## Section 3

# The Investigation and the Section 96A Notification

## Introduction

- 3.1 In this section, Ofcom explains why Ofcom opened the Investigation into True Telecom's compliance with GC22 and GC9.4. Ofcom also set out the information Ofcom requested from True Telecom and other interested parties during the Investigation.

## The decision to investigate

- 3.2 Ofcom first raised issues regarding compliance with GC22 with True Telecom in November 2013 following a notable level of consumer complaints to the CCT. Ofcom invited True Telecom to comment on the substance of complaints being made to Ofcom by consumers and to identify the underlying causes and take any necessary steps to address those causes.
- 3.3 Ofcom was then contacted by Ombudsman Services about True Telecom on 27 February 2015. Subsequent analysis of CCT complaints made between 1 January 2014 and February 2015 revealed a series of issues, including consumers alleging they were being transferred to True Telecom when they had only asked to be sent pricing information.
- 3.4 In June and July 2015, True Telecom contacted Ofcom to discuss a variety of issues including details of what GC22 was and the GC22 monitoring and enforcement programme Ofcom had open at the time. Ofcom responded including providing True Telecom with a link to the GCs in full. Despite this contact, by the end of 2015, GC22-related complaints to the CCT had again increased, and sharply so. The level of complaints remained high in early 2016.
- 3.5 On 22 March 2016, Ofcom shared all CCT complaints for the period 1 October 2015 to 21 March 2016 with True Telecom and asked it to analyse Ofcom's complaints data and explain what was driving the complaints and what actions it was taking, or intended to take, to prevent further complaints and ensure compliance with GC22.<sup>13</sup> True Telecom responded to Ofcom on 29 April 2016 (the "April Document").
- 3.6 The April Document set out True Telecom's assessment of each complaint Ofcom had shared with it. True Telecom explained that its sales team had doubled in size and that an increase in complaints was likely due to an increase in sales. The April Document included assurances concerning the steps True Telecom had taken, and was continuing to take, to ensure it was complying with GC22. These included an assurance that it was looking to recruit a sales specific compliance manager. After assessing the information provided and, on the basis of the assurances made, Ofcom emailed True Telecom on 20 May 2016 informing it that Ofcom would not be taking any further action at that time. At the same time, Ofcom made clear that Ofcom would "*continue to monitor the level and nature of complaints received in*

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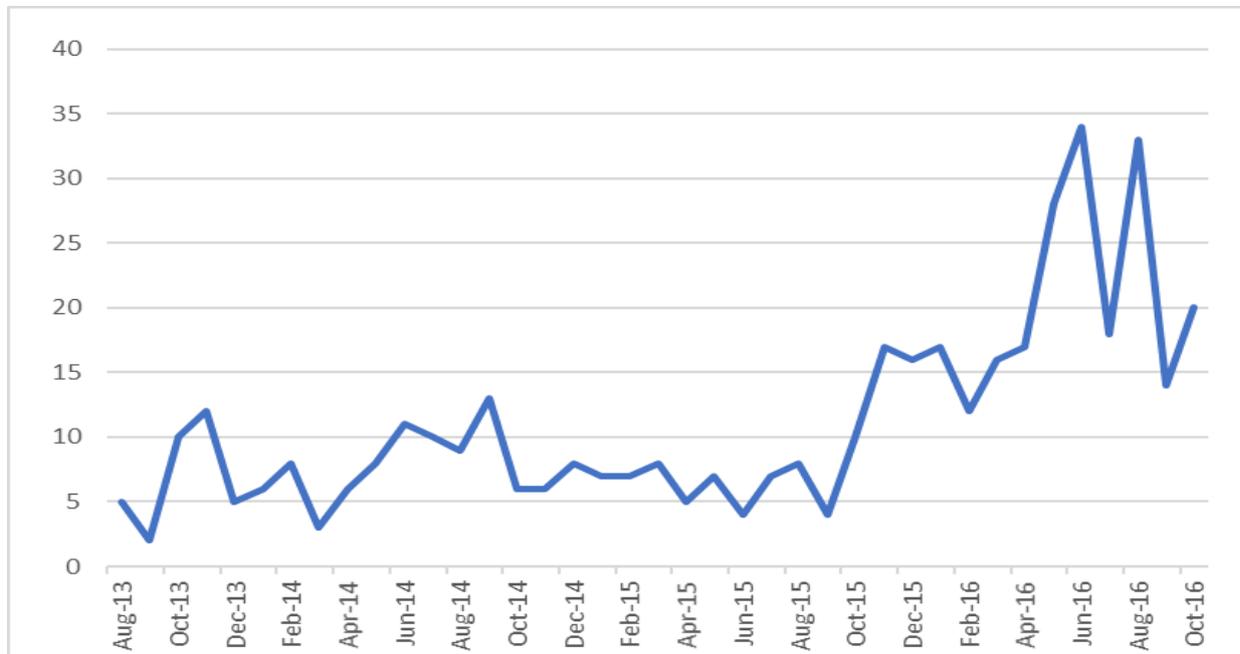
<sup>13</sup> The reason Ofcom chose to share complaints from 1 October 2015 was because this was the first time True Telecom had generated 10 complaints or more during the last 12 months.

relation to True Telecom to ensure that [its] proposed actions do yield positive results with regards to complaints alleging breaches of GC22 which we continue to receive” and that “we reserve the right to investigate and take enforcement action in relation to these complaints in the future, if appropriate.”

3.7 Despite this engagement, complaints to the CCT continued to increase, as illustrated in Figure 1 below. An in-depth analysis of 180 complaints made between 1 January 2016 and 12 September 2016, showed that there were:

- 54 complaints alleging True Telecom had contacted the Customer and placed transfer orders for their line without their express knowledge and/or consent; and
- 41 complaints that made reference to repeat transfer orders being placed following the cancellation of the initial transfer order.

Figure 1: True Telecom mis-selling and Slamming complaints to the CCT



3.8 Taking account of all Ofcom’s previous engagement, and having regard to Ofcom’s Enforcement Guidelines<sup>14</sup> and to the administrative priority framework set out in those guidelines, Ofcom decided that it was proportionate to open an investigation into True Telecom’s compliance with GC22 and GC9.4.

3.9 Accordingly, Ofcom wrote to True Telecom on 20 October 2016 informing it of Ofcom’s decision.

<sup>14</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0034/79846/enforcement\\_guidelines.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0034/79846/enforcement_guidelines.pdf) . These Enforcement Guidelines have since been replaced with the Enforcement Guidelines included at footnote 5 of this notification.

## Information gathering

### True Telecom s.135 information requests

- 3.10 As part of the Investigation Ofcom used its powers under section 135 of the Act to gather information from True Telecom. Ofcom sent True Telecom a formal request for information under section 135 of the Act on 21 November 2016 (the “First s.135 Notice”).
- 3.11 True Telecom responded on 9 December 2016 (the “First True Telecom Response”).
- 3.12 On 11 April 2017, Ofcom sent a second request for information under section 135 of the Act (the “Second s.135 Notice”).
- 3.13 True Telecom responded on 26 April 2017 (the “Second True Telecom Response”).

### Openreach s.135 information requests

- 3.14 Ofcom also issued two requests for information to Openreach under section 135 of the Act. Openreach is the infrastructure division of British Telecommunications Plc. It is required to ensure that all CPs have equal access to BT’s local network, and it is responsible for installing and repairing these services. In doing so, Openreach retains the records of the services it provides to CPs using the local BT network, including “transfer order records” for each CP. These records provide details of the date on which a CP placed a Customer’s order for services (i.e. “their transfer order”) and the date on which those transfer orders were completed or cancelled.
- 3.15 Ofcom issued a first request for information to Openreach on 23 November 2016 under section 135 of the Act (the “First Openreach s.135 Notice”). Openreach responded on 6 January 2017 (the “First Openreach Response”). A copy of this response is included in Annex 8.
- 3.16 On 18 April 2017, Ofcom sent a second request for information to Openreach (the “Second Openreach s.135 Notice”). Openreach responded on 26 April 2017 (the “Second Openreach Response”). The information received in this response is also included in Annex 8.

### Questionnaires

- 3.17 Ofcom also gathered evidence, through the use of questionnaires, from Customers who had complained to the CCT about having their services transferred to True Telecom. The purpose of the questionnaires was to help assess any harm to Customers resulting from True Telecom’s alleged conduct. Ofcom attempted to make contact with 41 Customers whose complaints raised potential compliance issues under GC22.3(d) and/or GC9.4 and whose services had transferred to True Telecom. Ofcom sent questionnaires to 31 Customer’s between 13 April 2017 and 27 April 2017. Ofcom received 23 completed and signed questionnaires.<sup>15</sup> These are attached at Annex 7.

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<sup>15</sup> Ofcom has since excluded the questionnaire for [X], Ofcom reference [X], on the basis that following True Telecom’s Representations, Ofcom no longer considers that it contravened GC22.3(d) in relation to transfer of his service.

## Analysis of call recordings relating to CCT complaints

- 3.18 In the First True Telecom Response, True Telecom provided call recordings for approximately 184 of the 217 Customers Ofcom had identified. For the majority of those Customers, there were two call recordings, which consisted of the sales call and the Record of Consent. In some cases, True Telecom also provided recordings of conversations between sales agents transferring Customers to different teams and call recordings where the Customer had been transferred back from the Record of Consent to the sales agent.
- 3.19 Ofcom listened to each of these calls and obtained transcriptions of all call recordings which appeared to show that the Customer (a) had not agreed to transfer their Fixed-line Telecommunications Services to True Telecom; and (b) that True Telecom had gone on to place a transfer order; and/or (c) sign a Consumer up to a 36-month contract. In total, Ofcom transcribed 48 Customers' calls. These are attached at Annex 6.<sup>16</sup>

## Ofcom's provisional conclusions

- 3.20 On the basis of the information gathered above, Ofcom provisionally determined that it had reasonable grounds for believing that, during the Relevant Period, True Telecom contravened GC22.3(d), GC22.8 and GC9.4. Accordingly, on 1 August 2017, Ofcom issued True Telecom with a Section 96A Notification.
- 3.21 The Section 96A Notification set out Ofcom's provisional determination that True Telecom contravened GC22.3(d), GC22.8 and GC9.4 for the following reasons:
- (a) True Telecom contravened GC22.3(d) by engaging in Slamming by placing transfer orders for Fixed-Line Telecommunications Services without the Customer's express knowledge and/or consent, in the following circumstances:
    - (i) where the Customer was contacted, but did not give authorisation to transfer their services. Ofcom's provisional view was that True Telecom did this in respect of 26 Customers.
    - (ii) by placing repeat transfer orders following the cancellation of the initial transfer order by the losing CP, without making contact with the Customer to obtain their authorisation to place a new transfer order. Ofcom's provisional view was that True Telecom did this for 90 CLIs in respect of 86 Customers.
  - (b) True Telecom contravened GC22.8 by failing to create and retain the relevant Records of Consent for the required minimum period of not less than twelve months, as set out in GC22.8, in relation to contracts entered into for 34 Customers; and
  - (c) True Telecom contravened GC9.4 by entering 35 Consumers on 37 occasions into contracts that exceeded 24 months and including terms requiring them to pay ETCs for the period following the initial commitment period.
- 3.22 The Section 96A Notification set out the steps that Ofcom provisionally concluded True Telecom should take to comply with the requirements of GC22.3(d), GC22.8 and GC9.4 and remedy the consequences of the contraventions. It also set out

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<sup>16</sup> Ofcom has since excluded the call transcripts for [redacted], Ofcom reference [redacted] and [redacted], Ofcom reference [redacted] on the basis Ofcom no longer considers that True Telecom Slammed them in relation to the initial sale.

Ofcom's provisional view that that is was minded to impose a penalty for the contraventions and the amount of the penalty that Ofcom provisionally considered would be appropriate and proportionate. True Telecom was given the opportunity to make written and/or oral representations on the notified matters.

- 3.23 True Telecom provided its Written Representations on the notified matters on 25 August 2017. It also made its Oral Representations to Ofcom on the notified matters on 29 September 2017. The transcript of the Oral Representations was provided to True Telecom on 6 October 2016 and on 13 October 2017 it confirmed it had no comments on the accuracy of the transcript.
- 3.24 This Confirmation Decision takes account of True Telecom's Representations in relation to the Section 96A Notification. Ofcom has summarised, and responded to, matters raised by True Telecom in its Representations in Section 4, in relation to the contraventions and in Section 5, in relation to the level of the penalty.

## Section 4

# Analysis and evidence of contravention

## Introduction

4.1 This section summarises Ofcom's provisional findings relating to the contraventions, True Telecom's Representations and sets out Ofcom's final determination having carefully considered True Telecom's Representations. True Telecom also made Representations which were relevant to Ofcom's decision to impose a penalty and the amount of the penalty; these, and Ofcom's consideration of them, are set out in Section 5.

## Contraventions of GC22.3(d)

### **(a) Placing transfer orders for Fixed-Line Telecommunications Services where the Customer was contacted, but did not give authorisation to transfer their services**

- 4.2 As part of Ofcom's assessment of True Telecom's compliance with this element of GC22.3(d), Ofcom assessed the following information and evidence:
- (i) call recordings supplied by True Telecom in relation to 217 Customers identified in Annex 2 of the First s.135 Notice who made a mis-selling and/or Slamming complaint to the CCT; and
  - (ii) various documents from True Telecom, including sales and verification scripts, copies of any procedure documents, internal guidelines, training manuals or other instructions that were used by its sales agents for the purpose of selling and marketing its Fixed-Line Telecommunications Services.

## CCT Complaints

- 4.3 During the Relevant Period, Ofcom's CCT received 247 complaints relating to True Telecom's sales and marketing activities of Fixed-Line Telecommunications Services. During this period, True Telecom generated the second highest number of complaints of all CPs complained about to the CCT. This was significant in terms of the overall CCT complaint volumes for this period for sales and marketing activities of Fixed-Line Telecommunications Services, representing 8.65% of total complaints.<sup>17</sup>
- 4.4 Of the circa 19,500 transfer orders<sup>18</sup> placed by True Telecom during the Relevant Period, 1.27% led to complaints. By comparison, the CP with the highest number of

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<sup>17</sup> There was a total of 2,854 complaints to the CCT relating to sales and marketing activities of Fixed-Line Telecommunications Services during the Relevant Period.

<sup>18</sup> This transfer information was provided by True Telecom in response to the First s.135 Notice. However, it did not provide transfer information for October 2015 so Ofcom used information obtained from Openreach. The transfer information for October 2016 includes the total number of transfers for October 2016 and is not limited to 19 October 2016.

complaints during the Relevant Period placed circa [3<] transfer orders, leading to [3<] complaints, a ratio of just 0.12%.<sup>19</sup>

### Call recordings

- 4.5 The First s.135 Notice requested all Records of Consent and any other sales call recordings for each of the 217 CCT complainants.
- 4.6 For most of these complainants, Ofcom received two call recordings. These consisted of the initial sales call and the Record of Consent. In some cases, True Telecom also provided recordings of conversations between sales agents transferring a Customer to different teams and call recordings where the Customer had been transferred back from the Record of Consent to the sales agent.
- 4.7 These call recordings formed Ofcom's primary assessment of whether True Telecom had contravened GC22.3(d) by placing transfer orders for Fixed-Line Telecommunications Services, where the Customer was contacted, but did not give authorisation to transfer their services. Ofcom listened to every call recording provided by True Telecom and made Ofcom's provisional assessment on the basis of all the call recordings associated with each Customer.
- 4.8 The approach Ofcom adopted was as follows:
- (i) Ofcom relied on its assessment of the Record of Consent alone where Ofcom considered this indicated that Slamming had occurred.
  - (ii) Where Ofcom considered the Record of Consent on its own was ambiguous as to whether the Customer had consented to transfer to True Telecom or not, Ofcom took into consideration its assessment of the sales call.
  - (iii) In both cases, Ofcom then reviewed the CCT complaint to determine if it corroborated Ofcom's assessment of the call recordings.
- 4.9 Based on this approach, Ofcom's provisional assessment was that True Telecom contravened GC22.3(d) in respect of 26 Customers during the Relevant Period by placing transfer orders where the Customer was contacted, but did not give authorisation to transfer their services.
- 4.10 For each of the specific contraventions identified, Ofcom had the relevant calls transcribed.<sup>20</sup>

### Role of the Record of Consent

- 4.11 The Record of Consent played an important role in Ofcom's provisional assessment. During the Record of Consent call, Customers were asked several questions in order to obtain authorisation to place a transfer order for their services. These were set out in the Verification Script provided in the First True Telecom Response.<sup>21</sup> Specifically, the questions which sought to obtain a Customer's consent to place a transfer order included:

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<sup>19</sup> This transfer information is based on information obtained from Openreach and the transfer information for October 2015 and October 2016 are for the full months.

<sup>20</sup> These are attached at Annex 6.

<sup>21</sup> The Verification Script was attached at Annex L of the First True Telecom Response.

- (a) *“Can you confirm you are authorised to enter into this agreement today?”*
- (b) *“And lastly can you confirm that today on (confirm date) we are placing an order to transfer your service from your current service provider to True Telecom?”*
- (c) *“Can you confirm you understand that you are switching to True Telecom, a separate service provider, and that you understand we are not in any way affiliated with the British Telecom group of companies?”*

- 4.12 Ofcom’s analysis of the Record of Consent call recordings showed that the sales agents followed the Verification Script closely and that all three of these questions were asked in the main. Ofcom noted the questions were not always asked using this exact form of wording but Ofcom did not consider the deviation from the scripted words was material.
- 4.13 Where a sales agent failed to ask all the questions or deviated from the scripted words, this was usually because the Customer had not explicitly confirmed that they were authorising True Telecom to transfer their services or because the Customer had raised some questions or objections about what they were agreeing to.
- 4.14 Ofcom broadly categorised these calls into four scenarios, which Ofcom describes below. In many of the cases, a variety of the behaviours described in the scenarios below were present. These behaviours supported Ofcom’s provisional assessment that True Telecom contravened GC22.3(d) in the respect described above in relation to 26 Customers. Ofcom’s analysis of each call was annexed to the Section 96A Notification.

#### *Scenario one*

- 4.15 In some cases, the Customer explicitly told the sales agent that they were not authorising any transfer orders to be placed and they did not wish the call to proceed any further. This was acknowledged by the sales agent who agreed with the Customer that everything would be cancelled or that the order would not proceed any further. Despite this, True Telecom placed transfer orders for these Customers’ Fixed-Line Telecommunications Services.

#### *Scenario two*

- 4.16 In some cases, the Customer raised objections making it very clear to the sales agent that they were not authorising any transfer orders without first seeing the information in writing and, only then, once they had reviewed the information provided by True Telecom, would they make a decision. True Telecom sales agents responded variously in a number of ways that Ofcom considered did not appropriately address the Customer’s objection and/or direct request to receive information in writing before making a decision about transferring to True Telecom.
- 4.17 In these cases, Ofcom identified different examples of how True Telecom’s sales agents responded to Customer objections and/or requests for further information. These were as follows:
- Instead of appropriately addressing the specific issues raised by the Customer, the sales agent simply proceeded with the Verification Script in order to obtain a specific answer. Once the specific answer had been obtained, the agent took this as authorisation from the Customer to place a transfer order. However, in these cases, Ofcom did not consider that the

Customer was agreeing to place a transfer order. Customers had made a very clear request for information in writing before making a decision to transfer to True Telecom and Ofcom did not consider that subsequent responses provided any indication that they had changed their position. Consequently, Ofcom did not consider that, in these circumstances, the Customer could be taken to have provided express consent to a transfer.

- The sales agent appeared to agree with the Customer's objection, only to proceed with the Verification Script again for the purpose of obtaining a specific answer. Once the specific answer had been obtained, the agent took this as authorisation from the Customer to place a transfer order. However, in these cases, Ofcom did not consider that the Customer was agreeing to place a transfer order. Any agreement was only provided subject to the Customer's objection and/or request to receive the information in writing but did not amount to express consent to transfer to True Telecom.
- The sales agent provided an answer to the Customer to confirm that they would be receiving information in writing and that any agreement provided by the Customer on the Record of Consent was only to confirm they understood they would be transferring to True Telecom once they had reviewed the information and then authorised True Telecom to place a transfer order. In other words, the Customer had not provided consent to transfer to True Telecom and would only do so at a subsequent point after reviewing the information in writing.
- The sales agent told the Customer that the information was '*the order*'. This mis-led the Customer into believing that all they were authorising was for True Telecom to send them information, not that they were authorising True Telecom to place a transfer order.
- The sales agent provided a clear explanation to the Customer that True Telecom was in fact placing a transfer order and that it was up to the Customer to review the information and if they were not happy to proceed with the transfer to True Telecom, they would need to call True Telecom to cancel within the Transfer Period.<sup>22</sup> Despite this clear explanation of how the process worked, the Customer subsequently raised issues about the transfer and again clearly raised an objection and/or indicated that they wanted to see all of the information in writing first before making a decision about transferring to True Telecom which the sales agent did not appropriately address. Consequently, Ofcom did not consider that, in these circumstances, the Customer could be taken to have provided express consent to a transfer.

### *Scenario three*

4.18 In some cases, True Telecom's sales agent had not obtained the Customer's authority to place a transfer order<sup>23</sup> before reaching the last question in the Verification Script (as set out in paragraph in 4.11(c) above). When the sales agent asked this last question, the Customer raised objections or was unsure about how to answer. In response to the objection and/or confusion, rather than ask the Customer

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<sup>22</sup> True Telecom did not use the term Transfer Period and usually told the Customer they had a 14 day, or 10 working day, cooling-off period. Transfer Period is defined at GC22.30 (ss).

<sup>23</sup> This could be for any of the reasons identified above in scenario one and/or two.

to confirm that they were agreeing to transfer to True Telecom, Ofcom noted that the sales agent asked the Customer to confirm that they understood that True Telecom was not BT or affiliated to BT. At no point following this part of the call did True Telecom explicitly request the Customer's authorisation to place a transfer order. Consequently, Ofcom did not consider that, in these circumstances, the Customer could be taken to have provided express consent to a transfer.

#### *Scenario four*

4.19 In some cases, to the extent that any agreement was provided, this arose as a result of misleading information that had been given during the sales call. The following examples illustrated the types of misleading information that was given:

- A sales agent provided the Customer with information such as *“They [the accounts team which perform the Record of Consent call] also confirm today we only take a verbal agreement, they might also call it placing an order. You're not going ahead with it today. You have to see this in writing first...”*.
- Customers were repeatedly provided with information that gave them the impression that any agreement to transfer would only happen once they had received the information, reviewed it and were then happy to go ahead with the transfer. On certain occasions, the sales agent would state that the Customer would receive a call from an account manager within the Transfer Period to determine if they were happy to go ahead. This gave the impression that the Customer would only authorise a transfer once they had reviewed the information and received the follow-up call from a True Telecom account manager.
- Customers had indicated that they needed to speak to someone else before making any decision. In these cases, True Telecom indicated to the Customer that the information would be sent out to them so they could discuss it with another person, and make a decision from there.
- Customers were given information that suggested that nothing was happening today when in fact True Telecom was placing a transfer order. This information varied from the sales agent telling the Customer that they: could not be signed up on the back of a phone call<sup>24</sup>; were not going ahead with it, were not signing up, or were not going live, today; would need to see it in writing first; nothing was changing and everything would remain exactly the same; and that all True Telecom was doing was providing cheaper bills.
- Customers were given misleading information in relation to attempts to obtain their bank details. If a Customer objected to providing bank details over the phone, usually because they had not provided any agreement to transfer to True Telecom, they were almost always told that the only thing True Telecom could do with the bank details was pay money into the Customer's account. On some occasions, the Customer repeatedly refused to provide bank details but the sales agent persisted until the Customer

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<sup>24</sup> In the case of [X], who lives in a nursing home, Ofcom reference [X], the sales agent stated *“Never in a million am I going to expect you to make a decision over the phone”*.

eventually gave in.<sup>25</sup> Ofcom also noted the following examples of misleading information given by True Telecom agents to induce Customers to provide their bank details: (a) that the Customer was under no financial obligation today; (b) that whilst they could set up a direct debit with the account information, the only reason for obtaining the bank details was to pre-print a direct debit guarantee, which was necessary because True Telecom was offering a new tariff rather than a new service; (c) that the direct debit guarantee would be sent to the Customer to approve so that if the Customer was happy after two weeks True Telecom could “lapse off” the old payments and there would be no “downtime” - Customers were also told that this would also ensure that they would not be charged twice; and (d) that True Telecom needed the bank details in order to send product and pricing information.

- 4.20 In Ofcom’s view, in none of these cases can the Consumer be considered to have provided express consent to the transfer in circumstances where True Telecom sales staff indicated that a transfer and/or order would not be taking place as a result of the sales call.

#### Ofcom’s Provisional Determination

- 4.21 Ofcom’s provisional determination was therefore that True Telecom had contravened GC22.3(d) in respect of 26 Customers during the Relevant Period by placing transfer orders where the Customer was contacted, but did not give their express consent to transfer their services.

#### True Telecom’s Representations

- 4.22 In its Representations, True Telecom stated that out of the 26 provisional contraventions, *“we have indeed acted compliantly in 11 cases and have fallen short in our historical processes for the remaining 15 cases. These 15 cases have however been classed as ‘Live in error’ and have been attributed to human error in the majority of cases”*.
- 4.23 True Telecom provided individual assessments for each of the 26 provisional contraventions.
- 4.24 With regards to the 11 cases for which True Telecom disputed Ofcom’s provisional findings, the assessments normally included specific quotes from the call recordings and the relevant time of the call where the quotes occurred. Specifically, in nine cases, True Telecom’s assessment acknowledged that the Customer had shown some confusion about the sale or had indicated that they wanted to see the paperwork before transferring. However, in each of these cases, True Telecom’s assessment stated that it had explained to the Customer that it was placing a transfer order and the Customer had a 10-day cooling-off period to cancel. In each of the nine cases, True Telecom then noted, normally using quotes, that the Customer had answered positively to these statements or had thanked True Telecom. As a result, for each of these cases, True Telecom contended that there was *“No issue”*.
- 4.25 For the other two cases which True Telecom disputed, it explained that:

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<sup>25</sup> In the case of [X], who is in her 70s, Ofcom reference [X], it took the sales agent approximately 17 minutes to obtain her bank details from the point they first requested the bank details.

- In one case it simply stated that it told the Customer it was applying for the line and they had two weeks to cancel. There was no assessment about whether the Customer agreed or raised any objections.
- In the other case the transfer was due to a clerical error. This was on the basis that True Telecom had previously attempted to sell its services to a Customer unsuccessfully, but for some reason, that Customer's CLI remained on its system. This resulted in the wrong Customer's phone service being applied for when agreeing a sale with another Customer a few weeks later

4.26 During True Telecom's Oral Representations, the Final Decision Maker ("the final DM") asked True Telecom to clarify its position about what it considered amounted to consent from the Customer to transfer to True Telecom, in particular, where there was ambiguity about whether consent had been provided, such as in circumstances where the Customer had suggested they wanted to see the paperwork before making any decisions.

4.27 True Telecom responded, as follows:

*"I think, for me, it depends on that particular customer in that particular scenario. I think we really need to understand that sales call from beginning to end." It then stated, "I understand – so from my point of view, I wouldn't allow anybody to sell a deal on 'Let me see the paperwork and then I'll do it'. That's from our internal perspective. Completely understand customers that wish to see the paperwork. Our guys are trained to say, 'Okay, fine. Would you like me to send you an email, or are you near a computer? Maybe I could talk you through our website. I think there's something these days about emails that customers say, 'Send me an email' – well, with all the will in the world, I don't trust a sales person to send an email. I would prefer my sales people to talk them through our website where there is no ambiguity, or no opportunity of misleading. If a salesperson was to compose an email, I have no quality control over that, so I would look to ask them to push them to the website."*

4.28 True Telecom then elaborated by saying:

*"I think, as well, on certain occasions – I don't know the specifics of that customer you're talking about, but there will be a flow of back and forth, effectively. 'I don't want to do it'. 'Okay, fine, I understand that. We're not doing anything today. You have 14 days to think about it, or 10 working days.' 'Okay, well, send me the information.' 'Yes, we are going to send you the information, but you need to understand that we will be applying for the line.' Again, when we go through to the recko – or, sorry, the recorded call; we call it the 'recko' in-house – we have maybe 10% of all deals written on a daily basis that will fall out of recko. Now, that means that if a customer says, 'You're not applying for it today, are you?' and we say, 'Well, yes, we are applying for it today', they'll say, 'Oh, well, the salesperson told me X, Y and Z', and we'll say, 'No problem. Obviously, there is some confusion. I'm not going to continue in this process, and I am going to pass you back to the salesperson.'"*

4.29 For the 15 cases which it classed as 'live in error', True Telecom explained the reasons why it considered these should be classed as such. This was as follows:

- In two cases, it explained that the retentions agent should have explained the process better and should have arranged a call back for the Customer rather than progressing the order.
- In three cases, True Telecom considered the Customer had agreed to transfer but also explained that the sale should not have progressed due to the “*particulars*” of the Customer.
- In one case True Telecom considered the Customer agreed to the sale but was also promised a call back during the cooling-off period to confirm the details, however, as True Telecom was unable to contact the Customer, it said that it should not have progressed the transfer.
- In another case, True Telecom considered the Customer agreed to transfer but also noted that she did call True Telecom to cancel during the cooling-off period but that the transfer was not cancelled and therefore the line transferred in error.
- Finally, there were eight cases where True Telecom stated “*Live in error - This customer should not have gone live. This was not a case of intentional Slamming.*”

4.30 In its Oral Representations, True Telecom also provided additional clarification as to why cases might be classed as ‘*live in error*’. It stated that these could occur where customers called True Telecom to cancel the transfer order, but where True Telecom was unable to cancel the transfer order because the transfer order had reached the ‘*Point of No Return*’.<sup>26</sup>

#### Ofcom’s Considerations and Decision

- 4.31 Ofcom notes that True Telecom disputed Ofcom’s provisional findings in 11 cases and argued that the other 15 cases were the result of ‘*live in error*’ which it describes as being “*attributed to human error*”.
- 4.32 In terms of the 11 disputed cases, Ofcom has carefully considered the individual case assessments provided as part of True Telecom’s Written Representations and the statements it made during its Oral Representations. Ofcom’s assessment of these is that in nine cases it is sufficiently ambiguous as to whether the Customer provided consent to place a transfer order that no express consent can be considered to have been given for the purposes of GC22. Consequently, True Telecom should not have placed transfer orders in these cases. Ofcom notes that True Telecom’s general basis in disputing these cases is that it was able to obtain specific answers from the Customer in response to questions from the Verification Script.<sup>27</sup> However, having reviewed the evidence, Ofcom does not agree it had appropriately addressed, and resolved, the specific objections raised by each of the Customers during the relevant calls. Ofcom also notes that its approach in these cases, as set out in its assessments, is contrary to what it said in its Oral Representations about how it deals with cases where there is any ambiguity or confusion about whether the Customer has agreed to transfer or was just agreeing to have information sent to them.

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<sup>26</sup> The ‘Point of No Return’ being a period just before the transfer completes where the gaining CP is unable to cancel the transfer order.

<sup>27</sup> In one case, [3<], True Telecom relied only on the sales call as it did not provide a Record of Consent for this Customer.

- 4.33 On this basis, Ofcom remains of the view that True Telecom has contravened GC22.3(d) with regards to nine of the 11 cases which it disputes.
- 4.34 Ofcom accepts True Telecom's assessment in two of the 11 cases that there was no contravention of GC22.3(d).<sup>28</sup>
- 4.35 For the 15 cases which True Telecom has classed as *'live in error'*, Ofcom notes that True Telecom argued that the Customer actually agreed to transfer to it in five of these cases; but that it had classed them as *'live in error'* for reasons other than the Customer not agreeing to transfer, such as, the particular nature of the Customer (vulnerability), the fact they were expecting a call back but never received one or because it failed to cancel the transfer order at the request of the Customer<sup>29</sup>. In a further two cases, it is not clear whether True Telecom considers that the Customer agreed to transfer to it or not.<sup>30</sup> True Telecom did, however, acknowledge that it should not have progressed these two orders and that the retentions agent should have *"pipelined"* them for a call back. Ofcom also notes that there are eight, of the 15 cases where True Telecom has not disputed that the Customer never agreed to transfer to it.
- 4.36 In its Oral Representations, True Telecom explained that it considered *'live in errors'* could happen as a result of a Customer's request to cancel the initial transfer order occurring after the *'Point of No Return'*. Ofcom takes this to mean that True Telecom considers the initial sale was compliant with GC22.3(d) and that any issues which arose occurred as a result of a system issue which meant that it was too late for it to be able to stop the transfer going ahead (i.e. True Telecom's position was that the transfer went ahead through no fault of its own). However, True Telecom has not provided any evidence to support its argument that the cases which it classes as *'live in error'* occurred as a result of those cases having reached the *'Point of No Return'*.
- 4.37 Having taken account of True Telecom's Representations in relation to the 15 cases which it classes as *'live in error'*, Ofcom remains satisfied that True Telecom has contravened GC22.3(d) in respect of all of these cases. This is on the basis that Ofcom does not agree that the Customers provided their express consent to True Telecom to transfer their Fixed-Line Telecommunications Services. Ofcom's individual assessment for each of these cases is set out in Annex 2.

### Final Decision

- 4.38 In contravention of GC22.3(d), True Telecom engaged in Slamming in respect of 24 Customers during the Relevant Period by placing transfer orders without the express knowledge and/or consent of those Customers to the transfer of their services.

### **(b) Placing repeat transfer orders for Fixed-Line Telecommunications Services, following the cancellation of the initial transfer order by the losing CP, without making contact with the Customer to obtain their authorisation to place a new transfer order**

<sup>28</sup> Specifically, these two cases related to the clerical error identified in paragraph 4.25 above and in relation to [redacted], Ofcom reference [redacted] where Ofcom now considers he did agree to transfer to True Telecom. Ofcom changed its assessment following True Telecom providing additional sales calls which provided evidence that he did in fact agree to transfer to True Telecom.

<sup>29</sup> True Telecom did not state that this was a case of Point of No Return.

<sup>30</sup> [redacted], Ofcom reference [redacted] and [redacted], Ofcom reference [redacted].

- 4.39 As part of Ofcom’s assessment of True Telecom’s compliance with this element of GC22.3(d), Ofcom assessed the following information and evidence:
- (i) complaints made to the CCT during the Relevant Period;
  - (ii) relevant documentation supplied by True Telecom; and
  - (iii) transfer data supplied by both Openreach and True Telecom.
- 4.40 Where transfer orders are repeatedly placed, Ofcom interprets GC22.30(mm) to cover the following scenario, amongst others. Where a Customer initially consents to the gaining CP making a request for their Fixed-Line Telecommunications Services, and this request is subsequently cancelled (either by the losing CP or the gaining CP), the gaining CP no longer has express consent to transfer the Customer’s Fixed-Line Telecommunications Service. In this event, each subsequent transfer order must then be treated as a new request for services where, if the gaining CP does not contact the Customer again, the Customer has “never been contacted” for the purposes of that particular transfer order. In other words, despite any prior contact, the Customer has not given the gaining CP the relevant authorisation (i.e. consent) to place a subsequent transfer order.
- 4.41 Ofcom, therefore, considers that any subsequent request for services should not take place without the Customer’s express knowledge and/or consent to the transfer of the relevant service(s).

#### Relevant documentation supplied by True Telecom

- 4.42 In response to the First s.135 Notice, True Telecom provided a document called “*Appendix C – Cancel Other Workflow*” (the “Cancel Other Document”), which set out the process True Telecom staff were to follow when notified that a Cancel Other order had been placed against one of its transfer orders.<sup>31</sup> Under this process, when a Cancel Other order was identified by True Telecom’s Faults and Provisioning team, True Telecom’s Retentions team were required to call the relevant Customer and determine if they were happy to proceed and, if the Customer was happy to proceed, another transfer order could be placed. If the Customer was not happy to proceed, they were required to close the task.
- 4.43 However, this description of the process for handling Cancel Other orders appeared to be different from the description given to Ofcom by True Telecom before Ofcom opened the Investigation.<sup>32</sup> Specifically, the description given to Ofcom in the April Document stated:

*“As Ofcom will know, the process is a gaining provider led service, therefore where cancel other orders are received, the reason code is checked against the verbal agreement. If a discrepancy is found between the cancel other reason code and verbal agreement and order placed then the line is re-*

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<sup>31</sup> Cancel Other is a consumer protection mechanism which allows the Customer’s existing CP to cancel a transfer order placed by another CP for reasons specified in GC22. It was designed to ensure Customers are not transferred between CPs (“switched”), without their express knowledge and/or consent. For the purpose of this Notification, Ofcom has only taken account of where the losing CP has placed Cancel Others where the customer has alleged Slamming.

<sup>32</sup> This description was set out in the April Document in relation to True Telecom’s own analysis of CCT complaints.

*applied for. As Ofcom know it is a gaining provider led service and the losing supplier has acted outside the cancel other rules as listed below”.*

The April Document also included True Telecom’s analysis of a number of complaints to the CCT, which indicated that True Telecom staff had been following the process described in the April Document.

- 4.44 In order to clarify this issue, Ofcom asked True Telecom in the Second s.135 Notice to confirm which of these processes was in place during the Relevant Period and, if both processes were in place during the Relevant Period, the relevant time frames during which each process was in use. True Telecom responded with the following:

*“True Telecom can confirm that the process map (referred to above as the ‘diagram’) provided was the process that True Telecom staff were trained and under instruction to follow.<sup>33</sup> However, after receiving correspondence from Ofcom regarding True Telecom’s Cancel Other and Slamming process, the department responsible for undertaking the Cancel Other process were interviewed by senior management. During this process, it came to light that the department were under the impression that the process described in the ‘April Document’ was in accordance with the relevant cancel other regulations”.*

- 4.45 Ofcom contacted True Telecom to request further clarification about when the process described in the April Document was effective. True Telecom confirmed that the process described in the April Document was effective from 1 October 2015 until it conducted the interviews referred to in the above quote from True Telecom, which took place in November and December 2016. Since conducting these interviews True Telecom has stated that it now follows the process that was set out in the Cancel Other Document.
- 4.46 Ofcom also requested that True Telecom provide the relevant Record of Consent in relation to every transfer order it placed during the Relevant Period for the Customers identified in Annex 2 of the First s.135 Notice. However, in its response, True Telecom only provided the Record of Consent in relation to the initial transfer order.<sup>34</sup> There were no instances where True Telecom provided a Record of Consent for any repeat transfer order that it placed following the cancellation of the initial transfer order.

#### Transfer data supplied by both Openreach and True Telecom

- 4.47 Ofcom also requested transfer data from both True Telecom and Openreach to determine how many transfer orders were placed by True Telecom during the Relevant Period, and against which Customers those orders were placed.
- 4.48 Ofcom used this information to:
- (i) corroborate CCT complaints which involved Slamming allegations and, in particular, complaints about repeat Slamming; and
  - (ii) assess the magnitude of possible contraventions of GC22.3(d) by True Telecom.

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<sup>33</sup> The document True Telecom is referring to is the Cancel Other Document.

<sup>34</sup> In some cases, no Records of Consent were provided at all.

Openreach transfer data

- 4.49 The First Openreach s.135 Notice requested transfer information for 232 CLIs in relation to 217 Customers. Openreach's transfer data showed that True Telecom placed transfer orders for 204 of these CLIs during the Relevant Period and that 64 of those transferred to True Telecom as a result of the initial transfer request placed by True Telecom.
- 4.50 For the 140 CLIs that did not transfer, the information indicated the possibility of repeat transfer orders. Openreach's transfer data showed that True Telecom placed at least two transfer orders for 90 CLIs in respect of 86 Customers during the period of 23 October 2015 to 26 October 2016.
- 4.51 Ofcom's provisional view was that this number supported a provisional finding that a significant proportion of those Customers who had complained to Ofcom had repeat transfers orders placed for their lines and that this was consistent with their CCT complaints. Openreach's transfer data also showed the degree of repetition and persistence in terms of the extent to which True Telecom placed these transfer orders, as shown in the information included in Annex 8 and summarised in Table 1 below.

*Table 1: Repeat Transfer orders placed by True Telecom*

<b>Total number of Transfer orders placed by True Telecom</b>	<b>Number of CLIs</b>
2	43
3	19
4	12
5	8
6	4
7	1
8	1
9	0
10	1
11	0
12	1

- 4.52 In total, True Telecom placed 292 transfer orders for 90 CLIs, 202 of which were repeat transfer orders occurring without the Customer's express knowledge and/or consent. This evidence shows that in these cases, orders were placed systematically until True Telecom obtained the transfer of the CLI.
- 4.53 A number of Customers were subject to repeated transfer requests within a short period of time, in some cases even express instructions to cancel the transfer order had been given by the Customer:
- A Customer had 12 transfer orders placed for their line between 5 October 2015 and 17 March 2016.<sup>35</sup> Two transfer orders were placed each month despite the Customer's complaint to Ofcom stating that the Customer had

<sup>35</sup> Ofcom did not determine that the transfer order on 5 October 2015 was a result of Slamming.

cancelled the initial transfer order and that, since doing so, he had not received any call back from True Telecom or contacted them himself.<sup>36</sup>

- A Customer had 10 transfer orders placed for their line in total between 28 October 2015 and 6 April 2016. In that Customer's complaint to Ofcom they stated that after each transfer order was placed they requested their current CP to cancel the transfer order.<sup>37</sup>
- A Customer had five transfer orders placed for their line over a period of 14 days between 23 October 2015 and 5 November 2015. This Customer's service ended up transferring to True Telecom and they were with True Telecom for approximately two months.<sup>38</sup>
- A Customer had three transfer orders placed for their line in three days, from 1 August 2016 to 3 August 2016.<sup>39</sup>
- A Customer had repeat transfer orders placed for their line over two different periods relating to two different sales calls. That Customer had four transfer orders placed for their line from 28 October 2015 to 30 November 2015 and then another three transfer orders almost a year later from 1 September 2016 to 27 September 2016. This Customer was also a resident of a care home and was entered into a 36-month business contract.<sup>40</sup>

#### True Telecom's transfer data

4.54 Ofcom asked True Telecom to provide details of all the transfer orders it placed for the 217 Customers identified in the the First Openreach s.135 Notice. For the majority of Customers, who were subject to repeat transfer orders, the transfer data provided by True Telecom matched the transfer data provided by Openreach. In a small number of cases, the transfer data only partially matched or did not match at all. True Telecom did not provide any transfer data for 11 Customers.

#### Ofcom's Provisional Determination

4.55 Ofcom's provisional determination found that True Telecom contravened GC22.3(d) for 90 CLIs in respect of 86 Customers during the Relevant Period by placing repeat transfer orders without the Customer's express knowledge and/or consent.

4.56 Relevant documentation provided by True Telecom showed that True Telecom's process was to place a repeat transfer order following the initial transfer order being cancelled by the losing CP, without making any further contact with the Customer, where it had reviewed the Record of Consent call recording and concluded that Slamming had not occurred. Whilst True Telecom provided a process map in the First True Telecom Response that stated its process was to make contact with the Customer before placing a repeat transfer order, it became clear that this was not, in fact, the process which was followed.

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<sup>36</sup> [redacted], Ofcom reference [redacted].

<sup>37</sup> [redacted], Ofcom reference [redacted].

<sup>38</sup> [redacted], Ofcom reference [redacted]. This Customer also has two transfer orders placed for another phone line.

<sup>39</sup> [redacted], Ofcom reference [redacted].

<sup>40</sup> [redacted], Ofcom reference [redacted].

- 4.57 Openreach's transfer data showed that True Telecom placed repeat transfer orders for 90 CLIs in respect of 86 Customers during the Relevant Period. 292 transfer orders were placed for these 90 CLIs during the Relevant Period, of which 202 were repeat transfer orders for which no express consent had been obtained. True Telecom did not limit these repeat transfer orders to one per customer and, in two of these cases, True Telecom placed at least nine repeat transfer orders. True Telecom's own transfer data confirms the Openreach transfer data.
- 4.58 For all of the relevant CLIs, True Telecom only provided Records of Consent and sales calls in relation to the initial transfer orders placed and did not provide any evidence of express consent for any repeat transfer orders which it placed.

### True Telecom's Representations

- 4.59 In its Written Representations, True Telecom explained that:

*"These cases predominantly fall into a specific scenario, in which it seemed there was some confusion from individual members of our transfer's team. These individuals were wrongly of the understanding that if the reason for cancellation from the losing CP was an erroneous or illegal one, they could simply re-apply for the client's account. This was solely due to the suspected erroneous reasons for cancellation by the losing CP."*

- 4.60 It also stated that:

*"of these 90 CLI's, 58 Accounts were in fact cancelled during cooling-off period and did not actually receive a live status, 26 live clients but transferred away [sic] and 6 clients that remain live and billing."*

- 4.61 In its Oral Representations, True Telecom explained that the erroneous process:

*"was something that was taken upon by the manager of that specific department. Now, our policy is to always contact, irrespective, and if we can't gain a contact, then we allow the transfer to stop." Again, it also referred to why it considered the contravention occurred "I believe the particular contravention was the misunderstanding of the particular manager of that department, where he felt – because of the reasons being unlawful and because we had evidence to the contrary, he felt that we were allowed to reapply for that business."*

- 4.62 True Telecom's final position, as set out in its Oral Representations, was that there were only 26 actual transfers and that this *"represents a 71% reduction in the contravention."*

### Ofcom's Considerations and Decision

- 4.63 In its Representations, True Telecom acknowledged that it had contravened GC22.3(d) in respect of repeat Slamming but argued that it only did so in respect of

26 Customers. This would appear to be on the basis that only 26 Customers actually transferred to True Telecom.<sup>41 42</sup>

- 4.64 However, under GC22, for Slamming to have occurred, there does not need to have been a transfer of services. The only requirement is that the gaining CP has placed a transfer order without the Customer's express knowledge and/or consent. Accordingly, and having assessed True Telecom's Representations in respect of our provisional findings relating to contraventions of GC22.3(d) with regards to repeat Slamming, Ofcom remains satisfied that True Telecom did contravene this particular requirement to the extent set out in our provisional determination. In each of the cases identified, True Telecom placed a transfer order without the Customer's express knowledge and/or consent and, therefore, engaged in Slamming on each occasion.

### Final Decision

- 4.65 In contravention of GC 22.3(d), True Telecom engaged in Slamming by placing repeat transfer orders without the Customer's express knowledge and/or consent in respect of 90 CLIs relating to 86 Customers during the Relevant Period.

## **Contraventions of GC 22.8**

### **Failure to create and retain a Record of Consent**

- 4.66 The First s.135 Notice requested the relevant Record of Consent for each successful set-up order in respect of 217 Customers.
- 4.67 In its response, True Telecom indicated that seven of the 217 Customers identified were not True Telecom Customers<sup>43</sup> and one other Customer moved into a property where True Telecom was already the CP.<sup>44</sup> As no transfer orders were, therefore, placed for these Customers, there was no requirement for a Record of Consent to be created.
- 4.68 This left a total of 209 Customers where transfer orders were placed and, therefore, a Record of Consent should have been created and retained for a period of not less than twelve months. In total, of these 209 Customers, True Telecom was only able to provide a Record of Consent for 175 Customers, meaning it was not able to provide a Record of Consent for 34 Customers. However, for one of those Customers, while True Telecom had been able to provide a Record of consent for one sale, Ofcom identified two additional sales to that customer during the Relevant Period for which True Telecom did not provide a Record of Consent.<sup>45</sup> In total, therefore, Ofcom identified 35 missing Records of Consent.

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<sup>41</sup> Ofcom notes that in its Written Representations, it explained that a total of 32 CLIs transferred to it but that only six remain live with it.

<sup>42</sup> Ofcom notes that True Telecom has not applied this application of Slamming in relation to the other 26 cases of Slamming Ofcom identified in the Section 96A Notification and appears to accept that a contravention could occur even if a Customer was not transferred.

<sup>43</sup> [redacted], Ofcom reference [redacted]; [redacted], Ofcom reference [redacted].

<sup>44</sup> [redacted], Ofcom reference [redacted].

<sup>45</sup> [redacted], Ofcom reference [redacted].

- 4.69 In the First True Telecom Response, True Telecom’s explanation of why it had not provided the relevant Records of Consent related only to three Customers. In relation to each of these, it stated:

*“True Telecom can provide no narrative as to why this ROC is missing. We can only surmise a technical glitch has led to the call failing to record”.*

- 4.70 Therefore, in the Second s.135 Notice, Ofcom asked True Telecom to provide the missing Records of Consent for the remaining Customers or, if it did not have them, to explain, why this was the case. The Second True Telecom Response stated:

*“True Telecom have provided all available material for customers identified in the previous request for information. A further examination of True Telecom servers have [sic] not yielded any additional material to provide to Ofcom. True Telecom cannot comment on why this information is missing. In the instance of missing recordings, True Telecom can only surmise that there was a failure of our call recording software for reasons unknown”.*

- 4.71 There were, therefore, 35 Records of Consent which were requested by Ofcom but were not provided by True Telecom. As explained in paragraph 2.9 above, the intention of the Record of Consent requirement is to deter Slamming, and to enhance Ofcom’s ability to investigate it where Ofcom has reason to believe that Slamming has occurred. By failing to provide the relevant Record of Consent in 35 cases Ofcom was unable to establish whether Slamming occurred for those Customers.

### Provisional Determination

- 4.72 Ofcom’s provisional determination was that True Telecom had contravened GC22.8 by failing to create and retain Records of Consent for a period of not less than twelve months in respect of 34 Customers, and in relation to 35 separate sales. Ofcom noted that True Telecom had not retained Records of Consent for a significant proportion (16%) of the 213<sup>46</sup> sales calls where True Telecom should have created and retained Records of Consent.

### True Telecom’s Representations

- 4.73 True Telecom stated that, following a deep dive of its records, *“we have managed to obtain a large majority of the ‘missing records’.*” It provided a case by case assessment for each of the 34 Customers, in relation to the missing 35 Records of Consent that Ofcom has identified as contraventions of GC22.8 in the provisional determination. For each Customer True Telecom explained whether it considered it had now provided a Record of Consent or not.
- 4.74 True Telecom explained that its *“deep dive”* had identified 28 call recordings which it had not previously provided to Ofcom. It categorised these 28 call recordings under the following headings: *“Recko Found”*; *“Sales Call Found”*; and *“Welcome call”*.

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<sup>46</sup> In paragraph 4.68 above Ofcom stated there were 209 Customers for whom transfer orders were placed and, therefore, a Record of Consent should have been created and retained. However, we considered there were 213 specific sales where there should have been a Record of Consent. This was on the basis of three Customers who had received more than one sales call which each resulted in a transfer order being placed for their services and being allocated different True Telecom account numbers for each sale.

### “Recko Found”

- 4.75 The first category was called “*Recko Found*” and included 18 calls in relation to 15 Customers. True Telecom provided a detailed assessment of each call, including referring to specific times of the call recording it considered demonstrated that the call recording acted as a Record of Consent.

### “Sales Call Found”

- 4.76 The next category was called “*Sales Call Found*” and included eight calls in relation to eight Customers.
- 4.77 True Telecom’s assessment for the call recordings for each of the eight Customers in this category consisted of a slight variation of the following statement:

*“True Telecom have provided a verbal confirmation with the customer. Whilst the agreement is not in full as other verbal agreements due to time constraints, True Telecom feel that this recording demonstrates the relevant authority to support that the customer was aware that they were placing an order with True Telecom for their fixed line services and understood their contractual rights.”<sup>47</sup>*

### “Welcome call”

- 4.78 The final category was called “Welcome Call” and included two calls in relation to two Customers.
- 4.79 For these two calls, whilst True Telecom stated that it could “*find no evidence of either the sales call or verbal agreement for this file*”, it argued that the welcome calls were sufficient evidence on their own to show that the two Customers had agreed to transfer to True Telecom.
- 4.80 True Telecom stated the following in relation to the remaining records:

*“True Telecom can find no evidence of either the sales call or verbal agreement for this file. True Telecom can offer no explanation as to the lack of material to provide against this record. We believe that files may have been corrupted or the call recording software failed.”*

- 4.81 True Telecom’s final position, as set out in its Oral Representations, was that there were only eight Customers in relation to whom it had failed to create and retain relevant Records of Consent. True Telecom said that this represented a 76% reduction in the contravention.

### Ofcom’s Considerations and Decision

- 4.82 As set out in Section 2 of this Explanatory Statement, paragraph 9.23 of the August Statement set out Ofcom’s position in relation to the Record of Consent

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<sup>47</sup> There was also a ninth Customer where True Telecom provided this explanation. This was in relation to [§<], Ofcom reference [§<]. True Telecom had previously provided the sales call as part of the First True Telecom Response but did not provide it again in its Representations.

requirement.<sup>48</sup> The requirement is clear that a recording of the sales call alone is not sufficient and that the Record of Consent must be a distinct part of the call, either through a verification stage in the sales call or by being put through to a separate person to carry out the Record of Consent.

- 4.83 Ofcom has assessed the further 28 call recordings provided by True Telecom as part of its Written Representations and, having done so, Ofcom considers that only 11 of them constitute a Record of Consent. These were all call recordings that True Telecom included in the category “*Reckos Found*”.
- 4.84 Additionally, Ofcom has also identified a further three Customers where no sale was actually made during the Relevant Period and, therefore, there was no requirement for True Telecom to have made and retained a Record of Consent in those cases.
- 4.85 The first of these related to an employee of True Telecom. The order was agreed and provisioned at cost price as a staff benefit so there was no actual sale involved.<sup>49</sup> In the other two cases, True Telecom stated that they had no records of the complainants and that the account numbers referred to Customers with different names.<sup>50</sup> We accept that these are ‘Erroneous Transfers’<sup>51</sup> and that, as no actual sale was made, there was no requirement for True Telecom to create and retain a record of consent in these cases.
- 4.86 Taking all of the above into account, Ofcom has revised its provisional assessment that there were 35 missing Records of Consent. Ofcom’s final assessment is that True Telecom failed to record and retain Records of Consent in 21 cases when it was required to do so under GC22.8. Ofcom’s full case by case assessment can be found at Annex 4 of this Explanatory Statement.

### Final Decision

- 4.87 True Telecom contravened GC22.8 by failing to create and retain Records of Consent for a period of not less than twelve months on 21 occasions during the Relevant Period.

## **Contraventions of GC 9.4**

### **Maximum contract length for Consumers**

- 4.88 GC 9.4 sets out that Consumers cannot be entered into contracts which involve the payment of ETCs in respect of a period longer than 24 months. GC9.4 is an important

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<sup>48</sup> “To ensure this obligation is met, CPs will have to amend their processes to ensure a direct record of the consumer’s consent, as given by the consumer, is kept for each of their sales channels. Each of the following could constitute a record of consent:

- i) call recordings for all successful telesales of the customers’ consent to the transfer. This consent could either be recorded as an individual element of the telesales process i.e. a verification stage, or the consumer could be put through to a separate person (e.g. internal verifier) who records the record of consent;”

<sup>49</sup> The customer who complained to Ofcom was [redacted].

<sup>50</sup> [redacted], Ofcom reference [redacted] & [redacted], Ofcom reference [redacted].

<sup>51</sup> Where the wrong customer’s service is transferred as a result of a process failure.

GC which protects Consumers from unfair contract terms and excessive ETCs which reduce Consumers' ability to switch CPs.

4.89 As part of Ofcom's assessment of True Telecom's compliance with this requirement, Ofcom assessed the following information and evidence:

- (i) customer complaints made to the CCT during the Relevant Period;
- (ii) True Telecom's Terms & Conditions;
- (iii) information obtained from Customers when speaking to them about completing questionnaires; and
- (iv) call recordings and other relevant Customer records supplied by True Telecom.

### CCT Complaints

4.90 Ofcom's analysis of complaints made to the CCT between 1 January 2016 and 12 September 2016 identified that 14 Customers had raised issues about being entered into contracts involving the payment of ETC for termination at any point up to 36-months from the date of the contract. Ofcom's analysis showed that some of these were Consumers and, therefore, they should not have been entered into contracts involving the payment of ETCs for termination at a point after 24 months from the date of the contract.

4.91 Ofcom, therefore, considered it was appropriate to include True Telecom's compliance with GC9.4 within the scope of the Investigation.

### True Telecom's terms and conditions

4.92 As part of the First True Telecom Response, True Telecom provided us with its terms and conditions that it relied on during the Relevant Period. Section 12 of the Terms and Conditions was called "*Cancelling your Service*" which included the following term at section 12(b):

*"b. If you wish to end your contract during the minimum period, you will be charged your monthly line rental and average bill amount in advance up until the end of your contractual agreement date. If your early termination fee is a lesser amount then there will be a minimum charge of one hundred and ninety nine pounds."*

4.93 The terms and conditions supplied by True Telecom were the same as those currently available on its website as at the date of this notification.<sup>52</sup> Those terms and conditions were clear that the customer will be charged the remaining duration of their contract if they cancel within the minimum contract period. This term applied in all cases, even if the Customer is a Consumer and the minimum contract period was 36-months.

### Call recordings and other customer records relating to contract lengths

4.94 Ofcom listened to every call recording provided by True Telecom. To ascertain whether any Consumer had been incorrectly entered into a contract with a minimum

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<sup>52</sup> <http://www.truetelecom.com/terms/>

contract period exceeding 24 months, Ofcom specifically sought to establish whether the Customer used the phone for business purposes and whether the length of minimum contract period was referred to in the call recording. Ofcom excluded Customers where there was an indication that they used the phone for business purposes of any type, including where the Customer appeared to use the phone mainly as a domestic line but may possibly have conducted some business on that line.

- 4.95 In addition to listening to the call recordings, Ofcom also reviewed other customer records provided by True Telecom in relation to minimum contract periods. Specifically, Ofcom looked at a contractual document referred to by True Telecom as the '*Middle Page*' (the "True Telecom Contract") in relation to each Customer for whom such a record had been provided. The True Telecom Contract stated the type of contract the Customer was entered into and the minimum contract period. Ofcom used this document both to corroborate the information in the call recordings and as evidence of the contract length where this was not mentioned in the call recording.
- 4.96 In instances where True Telecom did not provide the True Telecom Contract for the Customer, Ofcom referred to another document True Telecom provided in the First True Telecom Response called "*Appendix D – total number of customer contracts*" (the "Total Number of True Telecom Contracts"). This was a spreadsheet that included a tab that was called "*Cust*" which provided the minimum contract period for each Customer.
- 4.97 Finally, Ofcom also corroborated the information with Ofcom's categorisation of the consumer type when the applicable complaints were made to the CCT.
- 4.98 Ofcom's analysis of the call recordings highlighted the following;
- (i) There were 23 cases in which the Customer clearly stated to the sales agent that they were not a business Customer. In some cases, the Customer had been trading as a business in the past but clearly stated that they were now retired. In other cases, the Customer stated they had never traded as a business.<sup>53</sup>
  - (ii) There were a further 12 cases in which the sales agent either did not attempt to establish whether the Customer traded as a business, or made an assumption that the Customer was a business which the Customer did not correct. In each of these cases Ofcom concluded that the Customer was not trading as a business on the basis of Ofcom listening to the entire content of the call recordings and corroborating this against the classification of the complaint to the CCT and any questionnaire responses.<sup>54</sup> In fact, on two of the calls, the Customers stated they were elderly, with one stating she was 88 and the other stating she was in her 90s.
  - (iii) For three of these cases, True Telecom provided call recordings of the transfer between the sales call and the Record of Consent in which the sales agent clearly identified the Customer as a Consumer but that Consumer was

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<sup>53</sup> There were two additional cases for [redacted], Ofcom reference [redacted]. Ofcom reviewed the call recording for 28 October 2015 but note that True Telecom set up two further 36-month contracts for her on 1 September 2016 and 20 September 2016 but provided no call recordings.

<sup>54</sup> Ofcom included one Customer where no call recordings were provided. This was for [redacted], Ofcom reference [redacted]. Ofcom included [redacted] on the basis of the questionnaire response that stated he was 81 years old and has Alzheimer's disease and, the CCT complaint which stated he has dementia.

nevertheless entered into a 36-month minimum contract period in the Record of Consent.

- 4.99 In two of the cases identified above, Ofcom contacted the Customers to complete a questionnaire and it was clear from the conversations with the Customers that they were no longer operating as a business and had not done so for at least ten years.
- 4.100 In relation to the 217 Customers identified in the First s.135 Notice, the Total Number of Contracts and the CCT complaint categorisation showed that 53 of these Customers were Consumers who had been signed up to contracts with True Telecom for Fixed-Line Telecommunications Services during the Relevant Period.<sup>55</sup> The call recordings for the remaining Customers showed that they were unlikely to have been Consumers and therefore, no contraventions of GC9.4 could have occurred, regardless of the minimum contract period.
- 4.101 The call recordings were not always clear as to the length of the minimum contract period the sales agent was entering the Customer into. In the sales calls, True Telecom sales agents did not inform Customers what the length of the minimum contract period was. Instead, the sales agents normally referred to placing the Customer onto a 36-month price promise. It was only in the Record of Consent that True Telecom would normally inform the Customer that they were entering into a 36-month minimum contract period. This is consistent with both the Sales Script and the Verification Script provided in the First True Telecom Response although in some cases the sales agent failed to inform the Customer of the length of the minimum contract period in the Record of Consent.
- 4.102 For the 35 Consumers set out in paragraphs 4.98 (i and ii) above, Ofcom considered all the other evidence available to us. Ofcom also reviewed the Openreach transfer information and concluded that True Telecom placed transfer orders for each of these Customers. Having reviewed all this information in the round, Ofcom provisionally concluded that there were reasonable grounds to consider that each of these Customers were Consumers for the purpose of GC9.4 and that they were entered into contracts including a 36-month minimum contract period. As per True Telecom's terms and conditions, these contracts included a term that required the Customer to pay an ETC to True Telecom for the entire duration of the contract if they were to cancel the contract before the end of the minimum contract period.

#### Sales scripts and training material

- 4.103 Both the Sales Script and the Verification Script included questions for the sales agent to ask the Customer to establish whether they were a business or not. These include:

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<sup>55</sup> Only 45 of the 217 Customers identified in the First s.135 Notice were entered into contracts that were 24 months or less. Ofcom's analysis shows that four of these contracts were entered into before the Relevant Period, 23 of these contracts had been put in the name of a business by True Telecom (Ofcom recorded 15 of these as business Customers and eight as residential Customers), and 18 of these contracts appeared to have been put in the name of the individual Customer who complained to Ofcom (Ofcom recorded 18 of these as residential Customers). The remaining 172 Customers were all entered into 36-month contracts and were not considered to be Consumers for the purpose of this Investigation. Therefore, of the 217 Customers identified in the First s.135 Notice, there was only a total of 53 Consumers who True Telecom entered into a 36-month contract during the Relevant Period.

- “Firstly, you are still trading as a business?”<sup>56</sup>
- “And your position within the business?”<sup>57</sup>

- 4.104 Neither of the scripts dealt with the possibility that the Customer stated they were not trading as a business. Instead, they both proceeded on the basis that the Customer is a business and the length of minimum contract period they would be entered into was 36-months.
- 4.105 The absence of information in the Sales Script and Verification Script which specifically dealt with scenarios where the Customer was not a business highlighted flaws in True Telecom’s sales process to ensure it complies with GC9.4. This was of particular relevance on the basis that True Telecom primarily provides Fixed-Line Telecommunications Services to small businesses.
- 4.106 True Telecom also provided us with details of its commission structure in response to the First s.135 Notice. That structure clearly envisages payment of higher levels of commission to sales agents where “Residential” customers were entered into contract with a 36 month minimum contract period<sup>58</sup>. True Telecom therefore envisaged entering non-business customers (i.e. Consumers) into contracts with a 36 month minimum contract period and sales agents were incentivised to sign Consumers up to such contracts.

#### Ofcom’s Provisional Determination

- 4.107 Ofcom’s provisional determination found that True Telecom contravened GC9.4 by entering 35 Consumers on 37 occasions into contracts with a minimum contract period exceeding 24 months. In making Ofcom’s provisional decision, Ofcom relied on the following information and evidence, in particular:
- Ofcom’s review of True Telecom’s terms and conditions in relation to “*Cancelling your Service*”, which were identical to its online terms and conditions as at the date of Ofcom’s provisional determination. These were very clear that Customers would be charged their monthly line rental and average bill amount in advance up until the end of the Customer’s contractual agreement date, or £199 if the ETC is a lesser amount, in the event they leave during the initial commitment period.
  - Ofcom’s review of True Telecom’s sales scripts and training material, which started from the assumption that the Consumer was a business and did not include any clear instructions on how to proceed with a call where a Customer identified themselves as a Consumer.
  - Ofcom’s analysis of call recordings and other customer records related to contract lengths, which showed that sales agents did not always seek to establish whether the Consumer was a business and that, even where Consumers clearly stated they were not a business, the sales agent still

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<sup>56</sup> This question was found on page 2 of the Sales Script.

<sup>57</sup> This question was found on page 1 of the Verification Script.

<sup>58</sup> By way of example, the commission structure provided in response to the First s.135 Notice sets out, for Residential customers entering into a contract for unlimited minutes, that sales agents would receive £10 for contracts containing a minimum contract period of 12 months, £20 for 24 months and £30 for 36 months.

proceeded to enter them into a contract with a 36-month minimum contract period.

4.108 For the purpose of Ofcom’s provisional assessment, Ofcom only included cases which Ofcom considered were clear examples of contraventions. There were a number of cases where Ofcom considered it likely that the main and only use of the phone was for domestic purposes. However, where there was any doubt about the line having any business use, Ofcom excluded these cases.

### True Telecom’s Representations

4.109 In its Written Representations, True Telecom stated:

*“All our residential tariffs are fully compliant with GC22 however it would seem that with this small amount of cases the sales agent has become confused and has reverted back to the breakdown and makeup of a standard business deal (36-months). This has unfortunately resulted in these cases being entered incorrectly due to human error during the sale.”*

4.110 True Telecom then went on to provide a breakdown of the “deep dive” it said it conducted into the 35 Consumers that Ofcom had identified as being contraventions in Ofcom’s provisional determination. This breakdown was as follows:

- 23 of the cases never transferred to True Telecom.
- Four cases where the Customer transferred as a result of ‘live in error’ and was returned to the losing CP.
- Five cases where the Customer was transferred and was returned to the losing CP.<sup>59</sup>
- Five cases where the Customer transferred to True Telecom and are still with True Telecom but have had their contract terms amended to include a minimum contract period of 24 months.

4.111 In its Oral Representations, True Telecom acknowledged that it did sign up all of the Consumers that Ofcom set out in Ofcom’s provisional determination as having been entered into contracts with a 36-month minimum contract period by True Telecom. However, it argued that 32 of these Customers were cancelled during the cooling-off period and only five went live with True Telecom and remained with them. It stated that it was alerted that all five of these Consumers were on contracts with a 36-month minimum contract period and that it pro-actively changed them to contracts with a 24-month minimum contract period and informed the Consumers of the amendment.

4.112 On this basis, True Telecom suggested that there were only five Consumers who were entered into contracts with a 36-month minimum contract period by True Telecom and that this represented a 86% reduction in the contravention.

4.113 In relation to why it had incorrectly signed Consumers into contracts with a 36-month minimum contract period, True Telecom noted that it is primarily focussed on acquiring business customers but that, on occasion, it may come across residential

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<sup>59</sup> It is not clear how these cases differ to the four cases where the Customers were transferred as result of a ‘live in error’. However, Ofcom does not consider it is a relevant consideration when determining a contravention.

consumers and, at this point, it will offer the Consumer a residential tariff. It further noted that as the majority of the Customers it signs up are business customers, the sales agents are “*encouraged to sign longer contracts*” because it is in True Telecom’s interests to have a Customer long term. During its Oral Representations, True Telecom said that sales agents:

*“inevitably will try and, first of all, push a 36-month deal – I say ‘push’. It’s not really pushing, but they would opt for a 36-month deal to be their chosen opportunity of a sale, if the customer’s interested in that.”*

4.114 However, because True Telecom also has a 36-month price-promise, it explained that the reason for the five contraventions was that:

*“the reason why we’ve had these customers slip through the net would be purely down to the fact that sales person is in that mode of ‘We have a 36-month price promise, Mr Customer. I’m going to place that on your account for you today. If there’s any issues with – yadda, yadda, so that would be how the sales process would work. So I just think it is a lapse in process for those five customers.”*

#### Ofcom’s Considerations and Decision

4.115 Of the 35 Consumers (on 37 occasions) which Ofcom identified as having been entered into contracts with a with a 36-month minimum contract period, True Telecom considers that it only contravened GC9.4 in relation to five Consumers as the remaining customers did not have their services transferred and the contractual provision, therefore, did not take effect

4.116 However, GC9.4 does not require a Consumer to have actually transferred to True Telecom, and to have an ongoing billing relationship, in order for a contravention of GC9.4 to have occurred. GC9.4, specifically states:

*“Communications Providers shall not include a term in any contract with a Consumer for the provision of Electronic Communications Services concluded after 25 May 2011 preventing the Consumer from terminating the contract before the end of the agreed contractual period without compensating the Communications Provider for so doing, unless such compensation relates to no more than the initial commitment period (being the period beginning on the day on which the Communications Provider and the Consumer have agreed that the contract shall begin and ending on a day falling nor more than 24 months thereafter).*

For the purpose of GC9.4 Consumer means:

*“any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside his or her trade, business or profession”*

4.117 True Telecom entered into contacts with all 35 Consumers (on 37 separate occasions) identified in the provisional assessment prior to a transfer order being placed. Each of those contracts contained a 36-month minimum contract period. At that point, True Telecom was in contravention of GC9.4. Indeed, True Telecom placed transfer orders for each of those Consumers on the basis of having entered into a contractual relationship. The fact that those transfer orders may not have been completed does not affect that assessment.

4.118 Ofcom also notes that True Telecom stated that where a customer was identified as a Consumer, a residential contract would be proposed containing a minimum contract period which did not exceed 24 months. It therefore sought to explain that a few customers had slipped through the net. However, Ofcom has seen no evidence which suggests this was the case. True Telecom's sales script and training materials contain nothing to this effect and, in none of the call recordings provided to us, was a residential tariff proposed to the customer once they had clearly identified themselves as a Consumer.

### Final Decision

4.119 True Telecom contravened GC9.4 by entering 35 Consumers on 37 occasions into contracts with a minimum contract period exceeding 24 months requiring payment of an ETC for termination prior to the end of the minimum contract period.

## Section 5

# Ofcom's Decision to Impose a Penalty

## Summary

- 5.1 Ofcom's decision is that Ofcom should impose a penalty of £300,000 on True Telecom for its contraventions of GC22.3(d), GC22.8 and GC9.4.
- 5.2 In reaching this decision, Ofcom has had regard to the need to incentivise CPs to comply with their regulatory obligations and to our principal duty of furthering the interests of citizens and consumers. When setting a penalty that would achieve that objective, Ofcom has considered a number of factors in the round.
- 5.3 The contraventions are serious, taking account of the nature and duration of the contraventions and the actions of True Telecom in failing to ensure that the contraventions did not occur. This seriousness is exacerbated by the repetitive nature of the contraventions and the high number of repeat Slamming incidents which occurred.
- 5.4 Ofcom has also taken account of the degree of harm suffered by Customers, as evidenced by the questionnaires which show that Customers, particularly Customers who were potentially vulnerable, experienced significant harm, including financial harm, stress, anxiety, time and effort trying to resolve the situation. Again, in many of these cases, Ofcom considers it should have been evident to True Telecom from the sales calls that those consumers were elderly and potentially vulnerable.
- 5.5 Ofcom considers that senior management should have been aware that Slamming was occurring, or was likely to be occurring, and failed to take any mitigating action until Ofcom opened the Investigation. In Ofcom's view, therefore, True Telecom acted recklessly in its approach to compliance with the relevant regulations. In this regard, Ofcom notes that True Telecom did not have any effective policies and procedures in place to ensure staff were trained on, and complied with, GC22 and GC9.4.
- 5.6 Accordingly, Ofcom's view is that the conduct warrants the imposition of a penalty:
- (i) to reflect the seriousness and duration of the infringements;
  - (ii) to reflect the harm caused to consumers and to ensure that True Telecom does not profit from its breaches;
  - (iii) which reflects Ofcom's view that the contraventions were reckless;
  - (iv) which is sufficiently substantial having regard to True Telecom's size and turnover to incentivise compliance;
  - (v) which reflects the fact that previous penalties relating to breaches of GC22.3(d) do not appear to have deterred True Telecom; and
  - (vi) which acknowledges True Telecom's co-operation throughout the Investigation and that following the opening of the Investigation, it has taken steps to improve its processes and procedures.

- 5.7 Taking into account these factors and, as set out more fully below, other factors set out in Ofcom's Penalty Guidelines, Ofcom has decided to impose a penalty of £300,000 on True Telecom in respect of the infringements identified in the preceding section.

## Statutory provisions

- 5.8 Section 96A of the Act provides for Ofcom to issue a notification where Ofcom has 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 any penalty that Ofcom is minded to impose in accordance with section 96B<sup>60</sup> and must specify a period within which the person notified may make representations in response.
- 5.9 Section 96C provides for Ofcom to issue a confirmation decision, once the period for making representations has expired, if after considering any representations Ofcom is satisfied the person has contravened the relevant condition. A confirmation decision may, amongst other things, confirm the imposition of the penalty specified in the section 96A notification or a lesser penalty.
- 5.10 Section 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.
- 5.11 Section 97 of the Act provides that a penalty may be such amount not exceeding ten per cent of the notified person's turnover for relevant business for the relevant period as Ofcom determine to be appropriate and proportionate to the contravention for which it is imposed.
- 5.12 Section 392 of the Act requires Ofcom to prepare and publish guidelines for determining penalties under sections 96A to 96C of the Act. Section 392(6) of the Act requires us to have regard to those guidelines when determining such penalties. The current version of the Penalty Guidelines was published on 14 September 2017<sup>61</sup>.

## Consideration of whether to impose a penalty

- 5.13 Ofcom may impose a penalty on a person where that person has contravened a General Condition<sup>62</sup>. That penalty may be such amount (up to 10% of the annual turnover of a relevant business) as Ofcom consider appropriate and proportionate in respect of each contravention.
- 5.14 In this case, we are satisfied that it is appropriate and proportionate to impose a penalty. True Telecom has contravened important consumer protection provisions set out in GC22 and GC9. Those provisions are important to protect consumers from harm and distress and to maintain trust in the integrity of CPs.
- 5.15 Ofcom considers that imposing a penalty on True Telecom is an appropriate course of action to secure Ofcom's objective of furthering the interests of citizens and

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<sup>60</sup> Section 96A(2)(e) of the Act.

<sup>61</sup> The current version of the Penalty Guidelines are found here

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/106267/Penalty-Guidelines-September-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf)

<sup>62</sup> Which is a condition set under section 45 of the Communications Act 2003.

consumers by incentivising True Telecom and other CPs to comply with their regulatory obligations.

## Level of penalty

5.16 In considering the level of penalty which should be applied, Ofcom has had regard to the approach set out in the Penalty Guidelines.

### The Penalty Guidelines and relevant factors

5.17 As set out in the Penalty Guidelines, 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.

5.18 In particular, the level of the penalty must be sufficiently high to have the appropriate impact on the regulated body at an organisational level to increase the incentive of management to bring the organisation into compliance. A relevant factor in securing this objective is setting a penalty at a level which, having regard to the turnover of the regulated body, will have an impact on the 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.

5.19 The Penalty Guidelines set out a range of further factors which may be relevant in any particular case<sup>63</sup> and Ofcom has assessed those factors carefully. Ofcom has also considered whether there are any relevant precedents and the extent to which they should be followed in this case. The appropriate and proportionate amount of penalty in this case has been determined taking into account these factors, taken in the round. The following sections set out Ofcom's consideration of each of these factors.

### Turnover of True Telecom

5.20 Section 97 of the Act sets out that the 'relevant period' to be taken into account in determining turnover of the regulated body is one year ending 31 March prior to the date of notification of contravention. In the Second True Telecom Response, it stated its turnover for its relevant business in the relevant period was £4,359,315.44.<sup>64</sup> The maximum penalty which Ofcom may impose in respect of a contravention by True Telecom during this period may not therefore exceed £435,931<sup>65</sup>.

### Seriousness and duration

5.21 As set out above, GC22 and GC9 are important consumer protection provisions and any contraventions are therefore potentially serious. In this case, the contraventions

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<sup>63</sup> See paragraph 1.12 Penalty Guidelines

<sup>64</sup> Given that this Notification was issued in August 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 2016 to 31 March 2017.

<sup>65</sup> Ofcom notes that where multiple contraventions may have occurred in the same period, a penalty of 10% of turnover for the relevant period may be imposed in respect of each contravention. Ofcom has not considered in this case whether it may have been possible to impose a penalty in respect of each contravention since Ofcom's assessment of the appropriate level of penalty does not exceed 10% of turnover for the relevant period in any event.

are particularly serious given the number of customers affected and the vulnerable nature of a number of those customers.

#### GC22.3(d) - Slamming

- 5.22 In terms of Slamming, Ofcom considers this to be the most extreme form of mis-selling and one of the most serious contraventions of the GCs that can occur. The rules in GC22 are important and help ensure consumers are protected from being transferred to a different CP without their express knowledge and/or consent. Where this happens, and consumers are Slammed, this has the potential to cause significant harm, whether the transfer actually happens or not. It can cause stress and anxiety for affected customers as well as time spent in trying to prevent the transfer from occurring. This is even more so where CPs make repeated attempts to take over the line without the customer's express knowledge and consent. This harm is also compounded where vulnerable consumers are involved.
- 5.23 In this case, during the Relevant Period, True Telecom placed initial transfer orders without the Customer's express knowledge and/or consent in respect of 24 Customers and placed repeat transfer orders without the Customer's express knowledge and/or consent for 90 CLIs in respect of 86 Customers. The placing of repeat transfer orders was common practice and repeat transfer orders were often placed the same day, or within two days. Indeed, in 16 of these cases, True Telecom placed repeat transfer orders even where Ofcom determined that Slamming had occurred in relation to the initial transfer order. Further, many of the Customers involved were likely to have been vulnerable<sup>66</sup>.

#### GC22.8 - Records of consent

- 5.24 True Telecom failed to create and retain Records of Consent for a period of not less than twelve months on 21 occasions during the Relevant Period. This materially impacted Ofcom's ability to properly assess True Telecom's compliance with GC22.3(d) for these cases.

#### GC9.4 – Minimum Contract Periods

- 5.25 In terms of minimum contract periods, Ofcom notes that GC9.4 was specifically introduced to protect Consumers from onerous contracts with potentially large ETCs. It also facilitates effective competition by enabling consumers to be able to shop around, and take advantage of competitive offers, without being tied into excessive contract periods.
- 5.26 True Telecom signed 35 Consumers into contracts containing minimum contract periods of 36-months, on 37 occasions. Based on Ofcom's assessment of the CCT complaints, call recordings and questionnaire responses, 17 of these Customers were elderly and potentially vulnerable and it was clear they were not running a business. This was compounded by the fact that 12 of these Customers were entered into contracts with minimum periods of 36-months without their consent as a

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<sup>66</sup> In certain cases, the customer clearly identifies themselves as being retired, elderly and/or in a care home.

result of Slamming and, therefore, they would have had no knowledge that they had been entered into such contracts.

- 5.27 Further, the True Telecom Sales Script and Verification Script failed to inform Customers about the length of the minimum contract period until after the Customer was deemed to have agreed to the transfer of their services.

#### True Telecom's Representations

- 5.28 True Telecom argued that the contraventions were far fewer than Ofcom provisionally determined and that it had acted compliantly in the majority of cases. It noted that during the Relevant Period, it transferred between 15,000 and 20,000 Customers and Ofcom's evidence was, therefore, representative of only a very small proportion of the total transfers. It argued that this demonstrated that the contraventions did not, therefore, occur as a "*companywide trend or premediated action*" but instead were clearly individual cases that "*slipped through the net*", usually as a result of human error. It also argued that if these contraventions had occurred intentionally or recklessly or as a strategy of True Telecom, the number of cases would be significantly higher.
- 5.29 In relation to repeat transfers, True Telecom stated that it had an agreed policy in place which required it to contact Customers first and obtain their consent before placing another transfer order. It further stated that the policy which resulted in the contraventions was only implemented by the manager of that specific department as a result of BT mis-using the Cancel Other process and, on this basis, "*they could simply re-apply for the clients account*".<sup>67</sup> It said that this was not a policy agreed by True Telecom and that, as soon it found out, it stopped that practice immediately.
- 5.30 In relation to entering Consumers into contracts containing a minimum contract period of 36-months, True Telecom stated that it never intentionally did this, and that these contraventions all arose as human error. Specifically, it referred to the fact that the sales agent(s) had "*become confused and has reverted back to the breakdown and makeup of a standard business deal (36-months)*" and because it offered a 36-month price promise, this was likely the reason sales agents erroneously placed Consumers into 36-month contracts.

#### Ofcom's Considerations

- 5.31 As set out in Section 4, having taken account of True Telecom's Representations, Ofcom has reduced the contraventions of GC22.3(d) (placing transfer orders without the Customer's express knowledge and/or consent) from 26 Customers to 24 Customers and the contraventions of GC22.8 (failure to keep records of Consent) from 35 instances to 21 instances. However, Ofcom's assessment of the number of contraventions in relation to GC22.3(d) (repeat Slamming) and GC9.4 remains the same as in Ofcom's provisional determination.
- 5.32 Ofcom does not agree that the contraventions are minimal (or insignificant) based on the number of transfer orders placed by True Telecom during the Relevant Period. In particular, Ofcom does not consider that it is acceptable for CPs to engage in Slamming of any form and that any instance of Slamming is unacceptable and potentially serious. True Telecom was reckless in its approach to ensuring that Slamming (whether repeat or otherwise) did not occur and Ofcom considers this to

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<sup>67</sup> True Telecom did not name the specific department, however, the First and Second True Telecom Response's referred to the relevant team as being the Retentions Team.

be a serious matter.

- 5.33 With respect to the failure to keep Records of Consent, it is only after True Telecom received the Section 96A Notification that all available Records of Consent were provided and a number remained unavailable. In Ofcom's view, this is a serious matter since it has not enabled Ofcom to carry out an assessment for 21 of the 213 sales calls where True Telecom should have created and retained Records of Consent, a total of approximately 10%.
- 5.34 In respect of the contraventions relating to minimum contract periods, GC9.4 is clear that Consumers must not be entered into contracts with a minimum contract period in excess of 24 months. Despite this, True Telecom entered Consumers into contracts containing a minimum period in excess of this on 35 occasions. True Telecom did not have in place any processes to address this and, indeed, its commission structure for sales agents provided an incentive to enter Consumers into contracts with a minimum contract period of 36 months. In Ofcom's view, therefore, this amounted to a serious contravention.

### Degree of harm

- 5.35 The seriousness of the contraventions is further exacerbated when consumer harm is taken into account, particularly where a number of the customers involved were vulnerable. True Telecom's contraventions of GC22.3(d) and GC9.4 are likely to have resulted in significant consumer harm, in several ways.

### Slamming

- 5.36 In principle, Slamming is liable to cause significant consumer harm, including distress, anxiety, time and effort trying to resolve the situation and financial harm. This harm may be compounded where consumers are actually transferred between CPs as a result of Slamming and/or CPs are engaging in repeated attempts to transfer Customers without their express knowledge and/or consent.
- 5.37 Based on the 18 questionnaires which Ofcom received, customers experienced varying levels of harm, including, but not limited to:
- five cases in which the Customer experienced loss of services due to non-payment of bills;
  - nine cases in which the Customer described actual or potential harm including: payments made to True Telecom; increased mobile phone bills, ETCs to their losing CP; losing upfront payments for line rental to the losing CP; having new lines installed and the costs to their business as a result of losing service or trying to resolve the issue;
  - 16 cases in which the Customer experienced stress and anxiety, particularly in the case of potentially vulnerable Customers;
  - 11 cases where True Telecom had contacted the Customer via emails, phone calls and/or letters, informing them they owed money or that their credit rating would be impacted; and
  - five cases in which the Customer explicitly referenced general inconvenience in terms of the time and effort spent trying to resolve the situation with True Telecom and their existing CP. However, while inconvenience was only explicitly

referenced in these five cases, it was evident from the questionnaires that there would have been inconvenience suffered in all 18 cases due to time and effort spent trying to understand and resolve the situation.

- 5.38 It is significant that 13 of these Customers were over 65 years old. These Customers are more likely to be vulnerable on account of their age.<sup>68</sup> Indeed, one Customer was 93, two were in their 80s and at least seven were in their 70s.
- 5.39 The questionnaire responses indicated a high degree of actual consumer harm experienced in these cases, including examples of distress, anxiety, financial harm and inconvenience through time spent trying to resolve the situation. By way of example, verbatim responses to the questionnaire included the following:
- *"My mother has unbeknownst to us been suffering from hyperthermia and symptoms displayed included memory loss and confusion not dissimilar to dementia. She was clearly, at 93 years old, unable to make rational decisions..."<sup>69</sup>*
  - *"This has been a very stressful thing to happen to us as a small business and instead of having Christmas with my family in 2015 I spent the whole time on the phone trying to sort out this problem as I work away from home and just get home at holidays and have to do this kind of work as my wife is not well".<sup>70</sup>*
  - *"I am also her carer [His wife has suffered mental health issues since the 1970s] and the last 6 months have been very difficult, causing me to increase my anxiety medication. I have had many sleepless nights going over this problem time after time. The only financial impact was when True Telecom SUSPENDED our outgoing calls (for lack of payment) and we had a heavy cost of using mobile phones."<sup>71</sup>*
  - *"Extreme distress, lack of sleep, knowing I didn't have the money to cover it."<sup>72</sup>*
  - *"Currently I have been harmed financially with the threat of credit rating and removal of goods. However, the credit controller [X] has been telephoning me constantly for at least 12 months."<sup>73</sup>*
  - *"I received 6-10 emails from True Telecom pestering me for payment, I then had a couple of threatening phone calls chasing payment. This was very intimidating."<sup>74</sup>*
  - *"Anxiety, lots. Distress. Anyone who rings are now rebuffed, even age care, if they are not known".<sup>75</sup>*
- 5.40 In addition, based on information provided in the Second True Telecom Response,

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<sup>68</sup> Ofcom did not know the age of [X], Ofcom reference [X] but Ofcom noted that his son complained on behalf of him and the son is 47 years old. The questionnaire also noted that [X] wife has Alzheimer's.

<sup>69</sup> [X] on behalf of [X], 93 years old, Ofcom reference [X].

<sup>70</sup> [X], 72 years old, Ofcom reference [X].

<sup>71</sup> [X], 78 years old, Ofcom reference [X].

<sup>72</sup> [X], 83 years old, Ofcom reference [X].

<sup>73</sup> [X], 72 years old Ofcom reference [X].

<sup>74</sup> [X], 69 years old, Ofcom reference [X].

<sup>75</sup> [X], 81 Years old, Ofcom reference [X].

Customers have faced the following financial demands from True Telecom:

- 26 customers paid amounts of between £20 and £1,000 to True Telecom, for services provided or additional charges such as late payment, disconnection and/or ETCs. In total, these Customers paid True Telecom approximately £8,000, an average of about £300 per customer.
- 17 customers owed outstanding payments totalling approximately £8,000, an average of £470 per Customer. Ofcom notes that, of the 16 respondents to the questionnaire who have since transferred away from True Telecom, 11 were still being chased for payment.
- Nine customers were faced with payments for ETCs totalling approximately £6,100, an average of £677 per person.<sup>76</sup> Additionally, two Customers paid ETCs to True Telecom of £525.08 and £1,010.14.<sup>77</sup>
- Responses to the questionnaires indicated that True Telecom was calling and sending letters and e-mails to Customers informing them that they would refer the matter to debt collection agencies, causing the Customers further stress and anxiety, and concern for their credit ratings.
- A total of 10 Customers were still with True Telecom. Of these, three questionnaire responses showed that they had only remained with True Telecom on account of not being able to afford the ETC.

5.41 True Telecom's contraventions of GC22.3(d) gave rise to a high degree of harm both financial and otherwise as a result of distress, anxiety, and time and effort trying to resolve the situation.

#### Minimum Contract Periods

5.42 Consumers subject to the 36 month minimum contract period would have suffered financial harm where they opted to switch to an alternative CP during the minimum contract period, as they would have been required to pay an ETC for the entire remaining period of the contract. This represented a substantial amount of money, at least £199, according to True Telecom's terms and conditions.<sup>78</sup>

5.43 Two consumers who transferred to True Telecom pursuant to a contract with a minimum contract period of 36 months were charged an ETC but refused to pay it. The ETC's for the two Consumers were £665 and £712 and these Consumers were both elderly, 88 and 81 years old respectively.<sup>79</sup> Both referred to the stress and anxiety caused as a result of the high ETCs in their questionnaire responses.

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<sup>76</sup> [§<], Ofcom reference [§<], who was 93 years old and had her son [§<] call on her behalf, had an outstanding balance of £462.33.

<sup>77</sup> [§<], Ofcom reference [§<], who was elderly and his wife has Alzheimer's disease, paid £1,010.14 to True Telecom.

<sup>78</sup> True Telecom's terms and conditions state "If you wish to end your contract during the minimum period, you will be charged your monthly line rental and average bill amount in advance up until the end of your contractual agreement date. If your early termination fee is a lesser amount then there will be a minimum charge of one hundred and ninety nine pounds".

<sup>79</sup> [§<], 88 years old, Ofcom reference [§<] and [§<], 81 years old, Ofcom reference [§<]. The details of the ETC applied to [§<] were only provided in a response to a questionnaire and not in the Second True Telecom Response.

### Vulnerable Consumers

5.44 In considering the degree of harm, Ofcom also considered it significant that 17 of these Customers were elderly and potentially vulnerable Customers. The following cases highlighted some of these concerns:

- Of the Customers who transferred to True Telecom, two were in their 70s, four were in their 80s and two were in their 90s. Ofcom did not know the age of one Customer but she was a full time carer for her husband who has dementia.
- Of the eight Customers who were not transferred to True Telecom, two were in their 90s and one was 70. Ofcom were not sure of the age of the remaining Customers, but based on the information assessed, Ofcom considered they were potentially vulnerable for the following reasons: One Customer was a resident in a care home, one Customer told the True Telecom sales agent that her husband has a brain disease and had been retired for two years, one Customer's son called the CCT and stated that his mother was elderly, one Customer had Alzheimer's disease and two Customers, from the content of the call recordings, appeared to be elderly.

### True Telecom's Representations

5.45 True Telecom argued that, for the majority of consumers that transferred to True Telecom, and that Ofcom provisionally determined were contraventions of GC22.3(d) and/or GC9.4, it did not obtain any payments from them, it did not chase them for payment of any ETCs and that it returned them to their previous CP without delay. This was with the exception of two of the 26 Customers Ofcom provisionally determined were Slammed and five Consumers who were incorrectly entered into a 36-month contract. These consumers are still with True Telecom and being billed. Those Consumers who were incorrectly entered into 36-month contracts had their contracts amended to 24 months.

### Ofcom's Considerations

5.46 True Telecom has produced no evidence to dispute the position set out in the Section 96A Notification. Indeed, three questionnaire responses included letters from True Telecom that were titled "*Notice of intended collection action*" which set out that non-payment "*may result in debt recovery action which will also occur [sic] additional charges*".<sup>80</sup> These letters were all sent on 16 March 2017. This evidence directly contradicts True Telecom's suggestion that it did not chase payment.

5.47 Ofcom further notes that, in relation to the harm incurred as result of the contraventions of GC9.4, one Consumer<sup>81</sup> responded to the questionnaire by including a letter from True Telecom that was titled "*Notice of intended collection action*" which set out that non-payment "*may result in debt recovery action which will also occur [sic] additional charges*". This directly contradicts the position set out by True Telecom in its Representations.<sup>82</sup>

### Duration

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<sup>80</sup> [redacted], 70, Ofcom reference [redacted], [redacted] on behalf of [redacted], 93 years old, Ofcom reference [redacted], [redacted], 47, Ofcom reference [redacted].

<sup>81</sup> [redacted], 88 years old, Ofcom reference [redacted].

<sup>82</sup> [redacted], 82 years old, Ofcom reference [redacted], was also issued with a letter on 16 March 2017 chasing for £430.17. However, it was not clear whether this charge was for an ETC or other charges.

- 5.48 The contraventions identified by Ofcom took place over the period 8 October 2015 to 26 October 2016. This is a substantial period during which True Telecom contravened rules designed to protect domestic and small business customers. True Telecom did not provide any representations with regards to the duration of the contraventions.

Steps taken by True Telecom to prevent the contraventions, including the extent to which the contraventions occurred deliberately or recklessly and whether senior management knew, or ought to have known, they were occurring or would occur

- 5.49 Prior to the opening of the investigation, True Telecom did not have any effective policies and procedures in place which could have prevented the contraventions from occurring. Indeed, the April Document set out a procedure which would inevitably result in repeat Slamming and the commission structure in place provided a direct incentive for sales agents to enter Consumers into contracts with minimum contract periods of 36 months.
- 5.50 While True Telecom took some steps to prevent further contraventions from occurring, including a review of its processes, these steps were all taken as a result of the opening of the Investigation and were not taken before November 2016 at the earliest.

Slamming

- 5.51 In respect of Slamming, True Telecom did not have any effective policies and procedures to train its staff about, and to ensure compliance with, the requirements of GC22.3(d). True Telecom's training materials and scripts contained no reference to GC22 and no other materials have been put forward to show what measures True Telecom was taking to prevent Slamming.
- 5.52 True Telecom's senior management should have been aware that Slamming was likely to have been occurring as a result, not least as a result of Ofcom's engagement with True Telecom before opening the Investigation. Despite this, True Telecom failed to take appropriate steps to prevent the contraventions from occurring and the contraventions were therefore a result of True Telecom's recklessness.
- 5.53 In relation to repeat Slamming, despite the process set out in the Cancel Other Document its staff actually followed the process described in the April Document.<sup>83</sup> That process was not consistent with the requirements set out in GC22.3(d).
- 5.54 In True Telecom's Second Response, it said that its senior management interviewed the retentions team in November and December 2016 to understand which process was being followed. The senior management consisted of [X], Director and [X], Head of Operations. [X] was the person responsible for the April Document. [X] was, therefore, aware by at least April 2016, if not previously, that the process in the Cancel Other Document was not being followed. Senior management, therefore, must have known that these particular contraventions were occurring and did nothing to prevent them.

Contracts

- 5.55 In respect of contract lengths, compliance should be relatively simple and

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<sup>83</sup> See paragraphs 4.42 to 4.45.

straightforward. It requires a CP to establish whether the Customer is a Consumer. If they are a Consumer, those Consumers can only be entered into contracts which have a minimum contract period of no more than 24 months.

- 5.56 True Telecom did not have any effective policies and procedures to train its staff about the relevant GCs, nor did it have any effective processes and procedures in place to ensure compliance with the relevant GCs. True Telecom provided no evidence that it instructed sales staff about what to do if the Customer indicated they were a Consumer and not a business. Indeed, from Ofcom's review of calls, it was evident that sales staff frequently proceeded to sign Consumers up to contracts with a 36-month minimum contract period despite the Customer indicating that they were a Consumer and not a business. Indeed, True Telecom's commission structure was highly incentivised to enter Customers into contracts with an initial period of 36-months.

### True Telecom's Representations

- 5.57 In its Oral Representations, True Telecom stated that it did take steps to prevent the recurrence of the contraventions before Ofcom opened the investigation. Specifically, it stated:

*"In fact, True Telecom had identified and taken steps to prevent recurrence of the contravention before the initial Ofcom contact, and no further contraventions occurred after that contact. And I think we've reacted, as I said, prior to your engagement – we were aware there were some issues of customers slipping through the net – we reacted immediately. I'm sure you have noticed a complete decrease of issues."*

- 5.58 True Telecom stated that these steps took place from about August 2016 but it was not specific on the exact dates or the actions that took place. Specifically, it stated:

*"So that has happened from August last year, I would say. We were – excuse me – we identified some issues. We then started looking into the specifics of those issues and putting in place some processes and procedure."*

- 5.59 Further, True Telecom's Written Representations included a section called "Control development and implementation" which set out a number of procedures and policies that True Telecom now has in place to ensure it is complying with the GCs.

### Ofcom's Considerations

- 5.60 None of the evidence put forward by True Telecom in its Representations sets out specific dates to indicate when steps were taken to address Ofcom's concerns in respect of policies and procedures. To the extent that any changes were made, contraventions continued until October 2016 and it would not, therefore, appear the steps which may have been taken prior to October 2016 were sufficient to stop the contraventions or to prevent it from continuing to occur.

### Co-operation

- 5.61 True Telecom has generally provided Ofcom with information in a timely manner and co-operated fully with the Investigation. However, following the issue of the Section 96A Notification, True Telecom supplied further call recordings which had originally been the subject of formal information requests. Had those requests been fully

complied with at the time, this would have enhanced Ofcom's ability to assess whether True Telecom had complied with GC22.3(d) and GC9.4 in respect of these consumers, and may have saved time and resource considering the impact of the further information at such a late stage. Whilst Ofcom does not consider that this should result in any increase in the penalty, True Telecom's general co-operation does not warrant any reduction in the penalty.

### Relevant precedents

- 5.62 Ofcom has previously imposed penalties of £60,000 and £200,000<sup>84</sup> respectively on Supatel and Unicom for contraventions of GC22.3.
- Supatel placed repeat transfer orders for 87 CLIs, 83 of which occurred over a period of two months. Whilst these contraventions were similar in scale to True Telecom's contraventions, the duration was significantly less in the Supatel case. In this case, Ofcom has also determined that True Telecom was engaged in more than one type of Slamming activity and also contravened GC22.8 and GC9.4. In addition, a number of customers in this case were vulnerable.
  - Unicom mis-led customers into believing that by switching to Unicom they would not incur ETCs or other costs related to the early termination of contracts with their existing CP where they were still within the minimum contract period of that contract. It also told customers that they would experience no effect on their broadband services. Although the Unicom case did not involve Slamming, it did involve another prohibited activity under the same GC. On that basis, it may be relevant to take into account.

### True Telecom's Representations

- 5.63 In its Oral Representations, True Telecom argued the provisional penalty amount was disproportionate. In True Telecom's view, this was reflected by penalties in the following cases:

*"In previous decisions on contraventions of general conditions, Ofcom has imposed penalties on Tiscali and TalkTalk, representing approximately 0.7% of their turnover for the relevant period, and on Vodafone, representing approximately 0.6% of turnover. More recently, earlier this year, in January, Ofcom imposed a penalty on EE under its updated penalty guidelines of December 2015, of £2.7 million for 'serious contraventions' for which EE's culpability was 'exacerbated by a number of factors'. The penalty was described by Ofcom as 'substantial' and reflected, amongst other things, EE's previous breach of the general conditions, a fact that is not relevant in the present matter. EE's turnover for the relevant year was £6.3 billion and, therefore, the penalty presented approximately 0.04% of its turnover.*

*Following the EE decision in March this year, Ofcom imposed a penalty of £880,000 on PlusNet for a breach of a 'serious convention' of general condition 11. This represented approximately 0.32% of turnover for the relevant period. In PlusNet's case, the contravention continued for over four years and Ofcom described the penalty as 'significant'."*

- 5.64 In True Telecom's view, "Ofcom's proposed penalty on True Telecom would represent approximately 9.2% of turnover for the relevant period; a multiple of 28

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<sup>84</sup> Equivalent to 2.24% and 0.37% of their turnover for relevant business in the relevant period.

*times of that imposed on Plusnet. True Telecom submits that, on any analysis of the facts of the present matter, this is not justified to impose such a disproportionately large penalty.”*

- 5.65 True Telecom argued that even if the level of the proposed penalty was appropriate, which it did not accept, it was based on disputed contraventions and that, even though Ofcom regards the contraventions as being serious, True Telecom “*submits that they are not more serious than the contraventions committed by EE and Plusnet*”.

### Ofcom’s Considerations

- 5.66 Ofcom does not consider that the precedents referenced by True Telecom have particular relevance in this case as these related to contraventions of different GCs, notably billing (GC11) and complaints handling (GC14). The facts of those cases are, therefore, very different from the facts which are present in this case.
- 5.67 Ofcom has, however, carefully considered True Telecom’s submissions as to the proportionality of the proposed penalty in this case in reaching a final decision. In doing so, Ofcom notes that the turnover for the relevant period is not £3.2 million, as set out in True Telecom’s Representations. That figure appears to have been based upon a period from October 2015 to September 2016. However, as set out in section 97 of the Act, the relevant period to be taken into account is the period of one year ending with the 31<sup>st</sup> March before the issue of the Section 96A Notification. The Second True Telecom Response sets out that this amounted to £4,359,315.44. A penalty of £300,000 as proposed in the Section 96A Notification represents an amount of 6.88% of turnover and not 9.2% as suggested by True Telecom.

### **Ofcom’s conclusions on the level of penalty**

- 5.68 Taking all of the above factors in the round, Ofcom’s judgment is that a significant penalty is warranted. Ofcom has decided that the appropriate level of penalty in this case is £300,000.
- 5.69 Ofcom considers that this level of penalty is appropriate and proportionate to the contraventions in respect of which it would be imposed. Such a penalty reflects the serious nature of True Telecom’s contraventions of GC22.3(d), GC22.8 and GC9.4, and the harm to consumers which resulted. A penalty of this level will act as a deterrent in incentivising True Telecom and other CPs not to contravene the GCs, and to ensure that they comply with their regulatory obligations.
- 5.70 Having regard to True Telecom’s turnover, Ofcom considers that a penalty 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 contraventions and the objective of deterrence. Ofcom does not consider that a decision to impose a penalty at this level would be disproportionate and it would not exceed the maximum penalty Ofcom may impose under section 96B of the Act.<sup>85</sup>

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<sup>85</sup> In accordance with s.96B(2) of the Act, where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention. Under s.97 this amount may not exceed ten per cent of the turnover of the person’s relevant business for the relevant period and must be such amount as Ofcom determine to be

## Conclusion

5.71 On the basis of the evidence and reasoning contained in this Explanatory Statement, Ofcom has issued the Confirmation Decision set out in Annex 1. The Confirmation Decision sets out the penalty Ofcom has imposed and the steps that should be taken by True Telecom.

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(a) appropriate; and (b) proportionate to the contravention in respect of which it is imposed. Accordingly, the maximum penalty Ofcom could impose for each contravention would be in the region of £430,000.

## Section 6

# Action required by True Telecom

## Contraventions of GC22.3(d), GC22.8 and GC9.4

- 6.1 On the basis of the evidence and reasoning contained in this Explanatory Statement, Ofcom determines that during the Relevant Period, True Telecom contravened the following GCs, and that it did so to the extent set out in this document:
- (i) GC22.3(d) by engaging in Slamming by placing transfer orders without the Customer's express knowledge and/or consent, in the following circumstances:
    - (a) where the Customer was contacted, but did not give authorisation to transfer their services. Ofcom's determination is that True Telecom did this in respect of 24 Customers; and
    - (b) following the cancellation of the initial transfer order by the losing CP, without making contact with the Customer to obtain their authorisation to place a new transfer order. Ofcom's determination is that True Telecom did this for 90 CLIs in respect of 86 Customers.
  - (ii) GC22.8 by failing to create and retain the relevant records of consent for the required minimum period of not less than twelve months, in relation to contracts entered into with 21 Customers; and
  - (iii) GC9.4 by entering 35 Consumers on 37 occasions into contracts with minimum contract periods which exceeded 24 months.

## Steps that should be taken by True Telecom

- 6.2 True Telecom must take the following steps, to the extent it has not already taken them, to secure compliance with the requirements of GC22.3(d), GC22.8 and GC9.4:
- to make all necessary changes to its policies and procedures to ensure that:
    - (i) True Telecom is only placing transfer orders where the Customer has express knowledge and/or has given their express consent to a transfer order being placed;
    - (ii) True Telecom is creating and retaining Records of Consent for the required minimum period of 12 months; and
    - (iii) True Telecom is not entering Consumers into contracts containing provisions which require payment of compensation for a period exceeding 24 months.
  - to create and implement policies and procedures in relation to ensuring compliance with GC22.3(d), GC22.8 and GC9.4, including an effective quality assurance process to monitor the compliance by True Telecom's agents who are placing transfer orders for Fixed-Line Telecommunications Services; and

- to provide appropriate training to all True Telecom's agents who are engaged in placing transfer orders for all True Telecom's Fixed-Line Telecommunications Services in order to ensure compliance with GC22.3(d), GC22.8 and GC9.4.

6.3 True Telecom must also take the following steps, to the extent it has not already taken them, to remedy the consequences of the contraventions:

- allow Customers who believe they were Slammed by True Telecom to cease their contract with True Telecom, regardless of the period for which the contract has been in force, with no requirement to pay an Early Termination Charge ("ETC") or disconnection fee and no requirement to pay any charges (including charges for transferring away from True Telecom) for services other than those the Customer has used;
- for any Customers who believe they were Slammed by True Telecom but who have already transferred away from True Telecom and have incurred charges in doing so, compensate them in full for those charges;
- for those Customers identified in Annexes 2 and 3 that are still with True Telecom, take active steps to inform them of their right to terminate their contract with no payment of an ETC or disconnection fee;
- for all Customers identified at Annexes 2 and 3 of this Explanatory Statement, refund, in full, any money paid by those Customers to True Telecom. True Telecom must also refund the Customers, in full, for any other costs which may have been incurred as a result of being Slammed, including payment of ETCs to their previous CP or the loss of upfront line rental which was paid to their previous CP;
- for those Customers identified in Annex 5 of this Explanatory Statement who are not included in Annex 2 or 3, take active steps to inform them of their right to terminate their contract with no payment of an ETC or disconnection fee after a period of 24 months has elapsed from the date of entering into a contract with True Telecom; and
- for those Customers identified at Annex 5 of this Explanatory Statement, who have already transferred to another CP and have paid an ETC to True Telecom, refund them for the portion of the ETC which relates to any period beyond 24 months.

6.4 True Telecom must comply with the requirements imposed on it by this Confirmation Decision as soon as possible and, in any event, not later than three months from the date of this Confirmation Decision.

## List of Annexes

1.	Confirmation Decision
2.	Contraventions of GC22.3(d) Slamming
3.	Contraventions of GC22.3(d) Repeat Slamming
4.	Contraventions of GC22.8 Record of Consent
5.	Contraventions of GC9.4 Contract Lengths
6.	Transcripts
7.	Returned Questionnaires
8.	Openreach Transfer Information

## Annex 1

# Confirmation Decision under Section 96C of the Communications Act 2003 relating to True Telecom's contraventions of General Conditions 22.3(d), 22.8 and 9.4

## Section 96C of the Communications Act 2003

- A1.1 Section 96C of the Communications Act 2003 (the "Act") allows the Office of Communications ("Ofcom") to issue a decision (a "Confirmation Decision") confirming the imposition of requirements on a person where that person has been given a notification under section 96A of the Act, Ofcom has allowed that person an opportunity to make representations about the matters notified, and the period allowed for the making of representations has expired. Ofcom may not give a Confirmation Decision to a person unless, having considered any representations, it is satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 96A.
- A1.2 A Confirmation Decision:
- (a) must be given to the person without delay;
  - (b) must include the reasons for the decisions;
  - (c) may require immediate action by the person to comply with the requirements of a kind mentioned in section 96A(2)(d) of the Act,<sup>86</sup> or may specify a period within which the person must comply with those requirements; and
  - (d) may require the person to pay:
    - i) the penalty specified in the notification issued under section 96A of the Act, or
    - ii) such lesser penalty as Ofcom consider appropriate in light of the person's representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, and may specify the period within which the penalty is to be paid.

## General Conditions

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

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<sup>86</sup> Such requirements include those steps that Ofcom thinks should be taken by the person in order to remedy the consequences of a contravention of a condition.

*general conditions under section 45 of the Communications Act 2003.*<sup>87</sup> Under Part II of the Schedule to that notification the Director set out the General Conditions of Entitlement (the “General Conditions” or “GCs”) which applied to all Communications Providers (“CPs”) from 25 July 2003.

- A1.5 On 29 December 2003, Ofcom took over the responsibilities and assumed the powers of the Director, and notifications made by the Director are to have effect as if made by Ofcom under the relevant provisions of the Act. Since this date the GCs have, from time to time, been amended by Ofcom.<sup>88</sup>

## General Condition 22.3(d)

- A1.6 GC22.3 prohibits CPs from engaging in mis-selling. Specifically, GC22.3(d) states that:

*“When selling or marketing Communications Services, the Gaining Provider must not engage in Slamming.”*

- A1.7 “Slamming” is defined in GC22.30(mm). As regards transfer orders placed on Openreach<sup>89</sup>, the relevant parts of the definition are as follows:

*“Slamming’ means where:*

- (a) a request for Carrier Pre-Selection (“CPS”)<sup>90</sup>, Wholesale Line Rental (“WLR”)<sup>91</sup>, Shared Metallic Path Facility (“SMPF”)<sup>92</sup> and/or Metallic Path Facility (“MPF”)<sup>93</sup> has been made,*
- (b) [...]*
- (c) a Transfer Order or a Working Line Takeover Order has been placed on Openreach [...] without the Customer’s express knowledge and/or consent; that is in the following circumstances:*
  - i) where the Customer has never contacted, or has never been contacted by, the Gaining Provider;*

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<sup>87</sup> Available at:

[http://webarchive.nationalarchives.gov.uk/20040104233440/http://www.ofcom.org.uk/static/archive/oftel/publications/eu\\_directives/2003/cond\\_final0703.pdf](http://webarchive.nationalarchives.gov.uk/20040104233440/http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/cond_final0703.pdf).

<sup>88</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/>

<sup>89</sup> The contravention only concerned transfers on Openreach (i.e. there were no transfers concerning KCOM’s network).

<sup>90</sup> CPS is defined in GC22.30(m) as a facility which allows a customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a telephone number.

<sup>91</sup> WLR is defined in GC22.30(uu) as a regulated wholesale service sold by BT which is used by the CP to provide retail customers with exchange lines and in turn, access to other Narrowband telephone services such as telephone calls, fax and dial-up.

<sup>92</sup> SMPF is defined in GC22.30(nn) as access to the non-voiceband frequencies of the MPF.

<sup>93</sup> MPF is defined in GC22.30(jj) as a circuit comprising a pair of twisted metal wires between an End-User’s premises and a main distribution frame that employs electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an Electronic Communications Network).

- ii) *where the Customer has contacted, or has been contacted by, the Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of their Communications Services;*
- iii) *where the Customer has agreed to purchase a product of service from the Gaining Provider and the Gaining Provider has submitted an order for a different product or service which the Customer has not agreed to purchase; or*
- iv) *where the Customer has agreed to transfer some or all of their Communications Services to the Gaining Provider having understood as a result of a deliberate attempt by the Gaining Provider to mislead, that they are making an agreement with a different Communications Provider.”*

## **General Condition 22.8**

A1.8 GC22.8 requires that:

*“For each contract entered into with a Customer for the provision of Communications Services, the Gaining Provider must create and keep individually retrievable records of the following, for a period of not less than twelve months:*

- (a) a direct record of consent, as provided by the Customer, to:
  - i. migrate from the Communications Services supplied by the Losing Provider to the Communications Services supplied by the Gaining Provider; or, as relevant,
  - ii. begin acquiring Communications Services over the Target Line
- (b) an explanation from the Communications Provider that they are required to create a record of the Customer’s consent;
- (c) *the name and address of the Customer;*
- (d) *the time, date and means by which the consent in sub-section (a) above was given;*
- (e) *where appropriate, the place where the consent in sub-section (a) above was given and the salesperson(s) involved;*
- (f) *the Target Address; and*
- (g) *where appropriate, the Calling Line Identification of the Target Line.*

A1.9 GC22.9 requires that:

*“The Gaining Provider shall keep the records required in paragraph 22.8 irrespective of whether the contract for the provision of the Communications Services is cancelled or terminated.”*

## General Condition 9.4

A1.10 GC9.4 states that:

*“Communications Providers shall not include a term in any contract with a Consumer for the provision of Electronic Communications Services concluded after 25 May 2011 preventing the Consumer from terminating the contract before the end of the agreed contractual period without compensating the Communications Provider for so doing, unless such compensation relates to no more than the initial commitment period (being the period beginning on the day on which the Communications Provider and the Consumer have agreed that the contract shall begin and ending on a day falling nor more than 24 months thereafter).”*

For the purpose of GC9.4, Consumer means:

*“any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside his or her trade, business or profession.”*

## Enforcement of General Conditions

A1.11 Sections 96A to 96C of the Act give Ofcom the powers to take action, including the imposition of penalties, against persons who contravene, or have contravened, a condition set under section 45 of the Act.

## Subject of this Notification

A1.12 This Confirmation Decision is addressed to True Telecom Limited (“True Telecom”), whose registered company number is 08225783. True Telecom’s registered office is Ground Floor, Lakeview West Galleon Boulevard, Crossways Business Park, Dartford, DA2 6QE.

## Notification given by Ofcom under section 96A

A1.13 On 1 August 2017 Ofcom gave a notification under section 96A of the Act (“the Section 96A Notification”) to True Telecom as Ofcom had reasonable grounds for believing that, between 8 October 2015 and 26 October 2016 (the “Relevant Period”), True Telecom contravened:

- (a) GC22.3(d) by engaging in Slamming by placing transfer orders without the Customer’s express knowledge and/or consent, in the following circumstances:
  - i) where the Customer was contacted, but did not give authorisation to transfer their services. Ofcom’s provisional view was that True Telecom did this in respect of 26 Customers; and
  - ii) following the cancellation of the initial transfer order by the losing CP, without making contact with the Customer to obtain their authorisation to place a new transfer order. Ofcom’s provisional view was that True Telecom did this for 90 CLIs in respect of 86 Customers.

- (b) GC22.8 by failing to create and retain the relevant records of consent for the required minimum period of not less than twelve months in relation to contracts entered into with 34 Customers; and
- (c) GC9.4 by entering 35 Consumers on 37 occasions into contracts which exceeded 24 months and including terms requiring them to pay ETCs for the period following the initial commitment period.

A1.14 The Section 96A Notification also specified the penalty that Ofcom was minded to impose on True Telecom in respect of the contraventions of General Conditions 22.3(d), 22.8 and 9.4.

A1.15 The Section 96A Notification allowed True Telecom the opportunity to make representations to Ofcom about the matters set out.

## Confirmation Decision

A1.16 True Telecom provided its written representations on 25 August 2017 (True Telecom's "Written Representations"). It also made oral representations to Ofcom on 29 September 2017 (True Telecom's "Oral Representations"). Together, these representations are referred to as the "Representations".

A1.17 Ofcom has carefully considered the Representations and all the relevant evidence and, having done so, is satisfied that, during the Relevant Period, True Telecom contravened GC22.3(d), GC22.8 and GC9.4 as follows:

- (a) True Telecom contravened GC22.3(d) by engaging in Slamming by placing transfer orders for Fixed-Line Telecommunications Services without the Customer's express knowledge and/or consent, in the following circumstances:
  - (i) where the Customer was contacted, but did not give authorisation to transfer their services. Ofcom's view is that True Telecom did this in respect of 24 Customers.
  - (ii) by placing repeat transfer orders following the cancellation of the initial transfer order by the losing CP, without making contact with the Customer to obtain their authorisation to place a new transfer order. Ofcom's view is that True Telecom did this for 90 CLIs in respect of 86 Customers.
- (b) True Telecom contravened GC22.8 by failing to create and retain the relevant records of consent for the required minimum period of not less than twelve months, as set out in GC22.8, in relation to contracts entered into on 21 occasions; and
- (c) True Telecom contravened GC9.4 by entering 35 Consumers on 37 occasions into contracts that exceeded 24 months and including terms requiring them to pay ETCs for the period following the initial commitment period.

A1.18 Accordingly, Ofcom has decided to give True Telecom a Confirmation Decision, and to impose a financial penalty of £300,000, in accordance with section 96C of the Act. The reasons are set out in the Explanatory Statement to which this Confirmation Decision is annexed.

## Steps to be taken by True Telecom

- A1.19 Section 96A(2) provides that a notification under section 96A shall specify the steps that Ofcom think should be taken by the person who is contravening or has contravened a condition or conditions in order to comply with that condition or those conditions and/or remedy the consequences of the contravention(s).
- A1.20 True Telecom must take the following steps, to the extent it has not already taken them, to secure compliance with the requirements of GC22.3(d), GC22.8 and GC9.4:
- to make all necessary changes to its policies and procedures to ensure that:
    - (i) True Telecom is only placing transfer orders where the Customer has express knowledge and/or has given their express consent to a transfer order being placed;
    - (ii) True Telecom is creating and retaining Records of Consent for the required minimum period of 12 months; and
    - (iii) True Telecom is not entering Consumers into contracts containing provisions which require payment of compensation for a period exceeding 24 months.
  - to create and implement policies and procedures in relation to ensuring compliance with GC22.3(d), GC22.8 and GC9.4, including an effective quality assurance process to monitor the compliance by True Telecom's agents who are placing transfer orders for Fixed-Line Telecommunications Services; and
  - to provide appropriate training to all True Telecom's agents who are engaged in placing transfer orders for all True Telecom's Fixed-Line Telecommunications Services in order to ensure compliance with GC22.3(d), GC22.8 and GC9.4.
- A1.21 True Telecom must also take the following steps, to the extent it has not already taken them, to remedy the consequences of the contraventions:
- allow Customers who believe they were Slammed by True Telecom to cease their contract with True Telecom, regardless of the period for which the contract has been in force, with no requirement to pay an Early Termination Charge ("ETC") or disconnection fee and no requirement to pay any charges (including charges for transferring away from True Telecom) for services other than those the Customer has used;
  - for any Customers who believe they were Slammed by True Telecom but who have already transferred away from True Telecom and have incurred charges in doing so, compensate them in full for those charges;
  - for those Customers identified in Annexes 2 and 3 that are still with True Telecom, take active steps to inform them of their right to terminate their contract with no payment of an ETC or disconnection fee;
  - for all Customers identified at Annexes 2 and 3 of this Explanatory Statement, refund, in full, any money paid by those Customers to True Telecom. True Telecom must also refund the Customers, in full, for any other costs which may have been incurred as a result of being Slammed, including payment of ETCs to

their previous CP or the loss of upfront line rental which was paid to their previous CP;

- for those Customers identified in Annex 5 of this Explanatory Statement who are not included in Annex 2 or 3, take active steps to inform them of their right to terminate their contract with no payment of an ETC or disconnection fee after a period of 24 months has elapsed from the date of entering into a contract with True Telecom; and
- for those Customers identified at Annex 5 of this Explanatory Statement, who have already transferred to another CP and have paid an ETC to True Telecom, refund them for the portion of the ETC which relates to any period beyond 24 months.

A1.22 True Telecom must comply with the requirements imposed on it by this Confirmation Decision as soon as possible and, in any event, not later than three months from the date of this Confirmation Decision.

A1.23 The duty to comply with any requirement imposed by a Confirmation Decision is enforceable in civil proceedings by Ofcom for an injunction, for specific performance or for any other appropriate remedy or relief.<sup>94</sup>

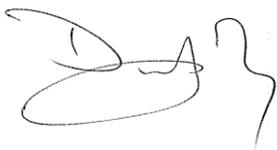
## Penalty

A1.24 Ofcom has determined that True Telecom must pay a penalty of £300,000 in respect of its contraventions of GC22.3(d), GC22.8 and GC9.4 during the Relevant Period.

A1.25 True Telecom has until 5.00pm on 15 December 2017 to pay Ofcom the penalty. If not paid within the period specified it can be recovered by Ofcom accordingly.<sup>95</sup>

## Interpretation

A1.26 Words or expressions used in this Confirmation Decision have the same meaning as in the General Conditions or the Act except as otherwise stated in Explanatory Statement to which this Confirmation Decision is annexed.



**Dilip Roy**  
**Legal Director,**  
**as final decision maker for Ofcom**

16 November 2017

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<sup>94</sup> Section 96C(6) Communications Act 2003.

<sup>95</sup> Section 96C(7) Communications Act 2003.

**Annex 2**

# Contraventions of GC22.3(d) Slamming

Not included in non-confidential version.

### Annex 3

# Contraventions of GC22.3(d) Repeat Slamming

Not included in non-confidential version.

## Annex 4

# Contraventions of GC22.8 Record of Consent

Not included in non-confidential version.

## Annex 5

# Contraventions of GC9.4 Contract Lengths

Not included in non-confidential version.

## Annex 6

# Transcripts

Not included in non-confidential version.

## Annex 7

# Returned Questionnaires

Not included in non-confidential version.

## Annex 8

# Openreach Transfer Information

Not included in non-confidential version.