
Confirmation Decision under section 96C of the Communications Act 2003

Confirmation Decision served on Post Office Limited by
the Office of Communications (Ofcom) for
contravention of General Condition C5.9 and previous
General Condition 15.3

Non-confidential Version - redactions are indicated with [§].

Contents

Section

1. Overview	1
2. Introduction and summary	3
3. Our findings	5
4. Penalty	13
5. Remedial steps required of Post Office	26

Annex

A1. Confirmation Decision to Post Office Limited of contravention of General Condition C5.9 and previous General Condition 15.3 under Section 96C of the Communications Act 2003	27
A2. Ofcom's investigation	34
A3. Limitations of Post Office data	37
A4. Figures provided by Post Office: Relay service use/spend	38
A5. Timeline of correspondence between Post Office and its Managed Service Provider	39

1. Overview

Ofcom requires all landline and mobile Communication Providers ('CPs') to provide a number of services for customers with disabilities, including access to an approved relay service for people with hearing or speech impairments. Ofcom also requires CPs in effect to charge customers no more than the cost of a standard call for using a relay service, and to also apply a special tariff scheme to those calls made by disabled subscribers in order to compensate for the additional time required to complete the call.

This document explains Ofcom's finding that Post Office has contravened its regulatory obligations by not applying a special tariff scheme to those calls. It also sets out why we consider this to be a serious breach of the regulations and why we have imposed a penalty of £175,000 on Post Office.

What we have found – in brief

We have found that, between at least 31 August 2013 and 28 November 2018, Post Office contravened General Condition (GC) C5.9 and previous GC 15.3 by not applying a special tariff scheme to calls made by customers who, because of their disabilities, needed to use relay services. Despite the low number of customers estimated to have been affected, and the low monetary amounts involved, Ofcom considers this to be a serious breach. Based on information provided by Post Office, between 31 August 2013 and 28 November 2018, as a minimum, anywhere between 37 and 126 Post Office customers a year made calls to the 18001 relay service prefix (text-to-speech) at a total approximate cost of £4,500. Notwithstanding that the requirement to provide a special tariff scheme does not necessarily require a full rebate on the cost of a call and so the monetary amounts involved were small, we consider that several factors point to this being a serious breach. In particular, we consider that the following aggravating factors support our finding that this contravention is a serious one and the penalty we impose should reflect them accordingly: (i) the potential vulnerability of those consumers affected; (ii) the length of time in which Post Office contravened (and, for a period, knowingly contravened) the GC; and (iii) the absence of any significant compliance function prior to 2018 which likely contributed to the breach occurring and/or delayed its identification.

Post Office first became aware that it was in breach of the relevant GC in October 2016 but did not apply a fix until November 2018. Evidence provided shows that it took over 2 years between Post Office (including senior management) becoming aware that it was in breach of the regulations and a fix being implemented. This delay was in part due to the time needed to design a technical solution but was also partly a result of senior management placing the proposed fix on hold due to the cost of implementation.

We note that Post Office has taken several steps to remedy the breach. Since 29 November 2018, Post Office has zero-rated (i.e. applied no charge to) all calls made using relay services. Where it was able to identify customers and their use of relay services prior to this, it has automatically applied credits to the bills of active customers and sent cheques to the last known address of ex-customers. For customers it was not able to identify or refund, Post Office has made a donation to charity.

We have imposed a penalty of £175,000 on Post Office. This includes a 30% discount applied to the penalty figure of £250,000 which we would have otherwise imposed. This discount reflects resource savings achieved by Ofcom as a result of Post Office admitting liability and entering into a settlement with Ofcom. We consider that a penalty is appropriate and proportionate to the contraventions in respect of which it is imposed. In taking that view, we have had regard to all the evidence referred to in this document, together with our published Penalty Guidelines. We also consider it appropriate that, to the extent it has not already done so, Post Office should take steps to ensure it is compliant with GC 5.9 and refunds customers affected by the contravention.

This overview is a simplified high-level summary only. Our findings and our reasoning are set out in the full document.

2. Introduction and summary

- 2.1 Ofcom requires all providers of any electronic communications service that is provided so as to be available for use by members of the public (“CPs”), such as landline and mobile telephone services, to provide a number of services for customers with disabilities. One such service is access to an approved relay service for people with hearing or speech impairments.
- 2.2 A relay service offers text-to-speech and speech-to-text translation services. To achieve such translations, relay assistants located in call-centres act as an intermediary, enabling people with hearing or speech impairments to communicate with other people over the telephone. Ofcom approves text relay providers and has set out minimum standards for the service to ensure users have a good experience.¹
- 2.3 General Condition (‘GC’) C5.9 places an obligation on all CPs in effect to charge customers no more than the cost of a standard call for using relay services. It also requires CPs to apply a special tariff scheme to those calls made by disabled subscribers in order to compensate for the additional time required to complete the call. Prior to 1 October 2018 (when GC C5.9 took effect), a substantively similar obligation applied under GC 15.3 (which generally applied since 31 December 2003). GC 15.3 (and subsequently GC C5.9) applied at all material times to Post Office Limited, whose registered company number is 02154540 (‘Post Office’).
- 2.4 This document explains Ofcom’s decision to issue a Confirmation Decision (the ‘Confirmation Decision’) to Post Office under section 96C of the Communications Act 2003 (the ‘Act’) in respect of our finding that Post Office has contravened its requirements under GC C5.9 and previous GC 15.3. In particular, this document accompanies that Confirmation Decision by setting out (among other things) the extent to which we are satisfied that Post Office has contravened those requirements and our reasons for that finding. The Confirmation Decision itself given to (and served on) Post Office is attached at Annex 1.
- 2.5 The Confirmation Decision also sets out the penalty we are imposing on Post Office as well as the action we are requiring Post Office to take to ensure compliance with GC C5.9 and to remedy the consequences of its contravention.²
- 2.6 This Confirmation Decision follows our investigation into Post Office’s compliance with GC C5.9 and previous condition GC 15.3. Key steps taken during our investigation are summarised in Annex 2. Based on the information and evidence we have gathered, we are satisfied that Post Office contravened GC 15.3 and C5.9 by not applying, between at least

¹ A consumer guide on relay services can be found on Ofcom’s website at: <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/accessibility/text-relay-guide>

² Further information about the process Ofcom follows in taking enforcement action is set out in our Enforcement Guidelines for regulatory investigations, published on 28 June 2017, at:

https://www.ofcom.org.uk/_data/assets/pdf_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf

31 August 2013 and 28 November 2018, a special tariff scheme to calls made by customers who, because of their disabilities, needed to use relay services.

- 2.7 We have imposed a penalty of £175,000 on Post Office. The penalty includes a 30% discount applied to the penalty figure of £250,000 which we would otherwise have imposed. That discount reflects resource savings achieved by Ofcom as a result of Post Office admitting liability and entering into a settlement with Ofcom.
- 2.8 We consider that this penalty is appropriate and proportionate to the contraventions in respect of which it has been imposed. In taking that view, we have had regard to all the information and evidence referred to in this document, together with our published Penalty Guidelines. The basis for our view as to the amount of the proposed penalty is explained in Section 4.

3. Our findings

Relevant regulatory requirements

- 3.1 GC C5.9 places an obligation on all providers of any electronic communications service that is provided so as to be available for use by members of the public, such as landline and mobile telephone services, to in effect charge customers no more than the cost of a standard call for using relay services. GC C5.9 also requires such CPs to apply a special tariff scheme to those calls made by disabled subscribers in order to compensate them for the additional time required to complete the call. Those obligations have applied since 1 October 2018.
- 3.2 The text of those obligations (including associated definitions) is set out more fully in the Confirmation Decision attached at Annex 1. Given that our findings (based on the information and evidence we have gathered) relate specifically to the obligation about applying a special tariff scheme, it suffices here to note that GC C5.9(b) itself requires:
- “C5.9 In providing access to **Relay Services** under **Condition C5.8, Regulated Providers must comply with the following requirements:***
- (a) any charge for the conveyance of messages to which a **Relay Service** applies must not exceed the equivalent price as if that conveyance had been made directly between the caller and the called person without use of a **Relay Service**;*
- (b) in making the charges set out in **Condition C5.9(a), Regulated Providers must apply a special tariff scheme designed to compensate Subscribers for the additional time taken by End-Users with disabilities to make telephone calls using a Relay Service where, because of their disabilities, those End-Users need to make calls using a Relay Service;***
- [(c) to (f)...]”*
- 3.3 Prior to 1 October 2018 (when GC C5.9 took effect), a substantively similar obligation applied under GC15.3. It came into initial effect from 25 July 2003 for any person who provided so-called Publicly Available Telephone Services ('PATS')³ whom was required to provide equivalent (relay) services to those in GC15 by virtue of a licence condition, and from 31 December 2003 for all other PATS providers.
- 3.4 The initial GC 15.3 stated:
- “Subject to paragraph 15.9, the Communications Provider shall ensure that such of its Subscribers who, because of their disabilities, need to make calls in which some or all of the*

³ PATS meant “...a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-Users with disabilities or with special social needs and/or the provision of non-geographic services;”: see paragraph 1 of Part 1 of the notification issued in accordance with section 48(1) of the Act setting the general conditions by the Director General of Telecommunications, dated 22 July 2003.

call is made or received in text format, are able to access a Relay Service. Such Subscribers shall be charged for the conveyance of messages to which a Relay Service applies at no more than the equivalent price as if that conveyance had been made directly between the caller and the called person without use of a Relay Service:

- (a) except that the calling person may be charged standard local prices for the call made to a Relay Service provider in order to make a call irrespective of whether the call is successful; and*
- (b) **applying a special tariff scheme designed to compensate Subscribers who need to make calls to which a Relay Service applies for the additional time to make telephone calls using a Relay Service.***” (emphasis added)

3.5 Initial GC 15.10 provided the following definitions:

“(a) “Communications Provider” means a person who provides Publicly Available Telephone Services;”

and

“(c) “Relay Service” means any service which:

- i. provides facilities for the receipt and translation of voice messages into text and the conveyance of that text to the terminal of customers of any provider of Publicly Available Telephone Services and vice versa, and*
- ii. has been approved by the Director to be a text relay service for the purposes of this Condition;”*

3.6 While some modifications were subsequently made to that GC15, GC15.3 itself was modified⁴ on 13 March 2014 to state:

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

⁴ The notification was published in Annex 2 to Ofcom’s statement entitled ‘Access to electronic communications services for disabled customers’ as published on 12 March 2014 and the revised requirements to GC15.3 took effect the following day, 13 March 2014.

Importance of the regulatory requirements

- 3.7 The relevant regulatory requirements in GC C5.9 (and previously in GC 15.3) are important consumer protection provisions, in particular for vulnerable consumers.
- 3.8 In our 2012 review of relay services,⁵ we specifically noted the importance of communications services for all citizens, but particularly for those users having hearing and/or speech impairments. Indeed, we explained that voice communication – i.e. the ability to make and receive a telephone call – remains crucially important, and the inability to access voice communications can be a barrier for these users. We also noted that the importance of access to voice communications is recognised at a European level by the Universal Service Directive in requiring action to be taken to secure access for disabled end users to telephone services.
- 3.9 Furthermore, in Ofcom’s statement entitled ‘Access to electronic communications services for disabled customers’ published on 12 March 2014, we made the above-cited modifications to GC 15.3 partly to respond to disability stakeholders considering it important to remove ambiguities from GC 15.3 and to promote equivalence for disabled consumers in line with the Universal Service Directive. In that connection, we provided clarity in relation to (among other things) consultation responses we had received relating to the requirement for a special tariff scheme for disabled subscribers. In particular, we clarified (at paragraph 3.16 of the 2014 statement) that we did not intend to amend GC 15.3 such that the special tariff scheme should apply also to inbound relay calls made to disabled Subscribers by non-disabled End-Users.
- 3.10 Then, in Ofcom’s statement and consultation entitled ‘Review of the General Conditions of Entitlement’ published on 19 September 2017, we explained that the aim of the regulatory requirements in GC15 (which we renumbered as Condition C5) is to ensure that users with disabilities can obtain comparable access to voice call services to that of non-disabled people, that their needs are given sufficient consideration by CPs, and that their access to voice call services is protected when they have a genuine need.
- 3.11 The need for CPs to comply with these important regulatory requirements had therefore been drawn to stakeholders’ attention in several publications by Ofcom over many years.
- 3.12 We should also note that this importance is also reflected more widely in Ofcom’s principal duty set out in section 3 of the Communications Act 2003 in that, whenever we carry out our functions, we must further the interests of citizens in relation to communications matters and of consumers in relevant markets, where appropriate by promoting competition. In so doing, we must have regard to (among other things) the needs of persons with disabilities.⁶

⁵ See Ofcom’s statement entitled ‘*Review of Relay Services – Decision on the introduction of Next Generation Text Relay*’ as published on 17 October 2012, see in particular paragraphs 2.4 to 2.6.

⁶ Section 3(4)(i) of the Communications Act 2003.

Our investigation

- 3.13 On 7 January 2019, Post Office self-reported to Ofcom that it had not applied a special tariff scheme to some text relay calls between at least 13 March 2014 and 28 November 2018.⁷
- 3.14 On 14 March 2019, following further correspondence and in accordance with our published Enforcement Guidelines, Ofcom opened a formal own-initiative investigation into Post Office's compliance with GC C5.9 and previous GC 15.3 (the 'Investigation').⁸
- 3.15 As part of the Investigation, we obtained further information and evidence from Post Office about its charging of relay services using our statutory information gathering powers. The remainder of this document relies mainly on the information Post Office has provided to us.
- 3.16 Key steps taken during the Investigation are summarised in Annex 2.
- 3.17 In light of those steps, we have decided in the Confirmation Decision attached at Annex 1 that we are satisfied that during the period between of at least 31 August 2013 and 28 November 2018 (the 'Relevant Period') Post Office contravened GC 15.3 and subsequently GC C5.9.
- 3.18 As explained in that Confirmation Decision, the extent of that contravention, and the reasons for Ofcom's decision, are set out in the remainder of this Section 3 below.

Post Office is a provider to whom the relevant GCs applied

- 3.19 In order to determine whether Post Office is a provider to whom GC C5.9 and previous GC 15.3 applied, we issued to Post Office our first formal information request, dated 10 May 2019. This information request asked Post Office to confirm the dates during the period beginning on 31 December 2003 and ending on the date of that request in which Post Office has provided Fixed PATS and Mobile PATS.
- 3.20 In that request, we defined a "Publicly Available Telephone Service" (PATS) as a term to be construed, if necessary, in accordance with the meaning this term had for GC15 at the relevant time and currently in GC C5.9. In particular, we explained that PATS shall be taken to mean a service which, as a minimum, is made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan.

⁷ Letter sent from Post Office's Director of Telecoms to Lindsey Fussell (Ofcom's Consumer and External Relations Group Director) dated 7 January 2019.

⁸ On 14 March 2019 Ofcom sent Post Office a letter notifying it of its investigation. On 18 March 2019 an entry was added to Ofcom's Competition and Consumer Enforcement Bulletin at: https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01237.

- 3.21 In its response to our information request ('First Response'), Post Office confirmed that it has provided Fixed PATS services from approximately January 2005.⁹ In order to provide those Fixed PATS to its own retail customers, Post Office confirmed in its First Response that it used wholesale telecommunications providers, namely Cable & Wireless (between c. January 2005 and c. October 2007), BT Wholesale (between c. November 2007 and 30 August 2013), and currently (since 31 August 2013) TalkTalk and Openreach, with [X] managing those relationships on Post Office's behalf (Post Office's 'Managed Service Provider').¹⁰
- 3.22 Post Office also confirmed in its First Response that it conducted a SIM only mobile trial for a short period of time, between approximately August 2015 and March 2016,¹¹ with approximately 10,000 customers. Due to the limited period that Post Office operated this Mobile PATS, we opted to target our investigation only at Post Office's provision of Fixed PATS in which action is needed. Therefore, our findings in this document only relate to Post Office's Fixed PATS (i.e. fixed-line phone service).
- 3.23 Accordingly, we have determined that, in relation to its Fixed PATS, Post Office is a 'Communications Provider' on whom GC 15.3 applied as well as a 'Regulated Provider' on whom GC C5.9 currently applies. As such, Post Office must comply with the relevant requirements set out in those GCs, including during the Relevant Period.

Post Office's charging of relay services

Rates charged by Post Office for using relay services

- 3.24 As explained above, since the relevant GCs came into force in 2003, Post Office has been required to charge no more for calls made using relay services than the "equivalent price" as if that call had been made directly without use of a relay service. We therefore sought evidence from Post Office in that regard in our first formal information request dated 10 May 2019.
- 3.25 Post Office confirmed that:
- *"Post Office has not charged above the Standard Call Rate for Text Relay Services in relation to its fixed PATS for the period January 2005 - 30/08/2013. Where a customer call plan included an inclusive calls bundle, Text Relay calls made within a call plan bundle period (e.g. Free Evening and Weekend, International Saver or Anytime) were treated within the bundle and rated accordingly e.g. free to caller as inclusive within the bundle."*¹²

⁹ First Response, Question 1. Post Office noted that, while it has accurate contract commencement dates, it does not necessarily have accurate service start dates, so the latter were estimated by Post Office.

¹⁰ First Response, Question 2.

¹¹ First Response, Question 1.

¹² On 21 June 2019, Post Office supplemented its response to our formal information request dated 19 May 2019 ('Supplementary Response') to cover the period between January 2005 and 30 August 2013, which was not addressed in its First Response.

- *“Post Office has not charged above the Standard Call Rate for Text Relay Services in relation to its fixed PATS for the period 31/08/2013 - 28/11/2018. Where a customer call plan included an inclusive calls bundle, Text Relay calls made within a call plan bundle period (e.g. Free Evening and Weekend, International Saver or Anytime) were treated within the bundle and rated accordingly e.g. free to caller as inclusive within the bundle. Following a system change on the 29/11/2018 all Text Relay Service calls have been zero rated, regardless of duration, or destination.”*¹³

3.26 As regards the latter, Post Office had already confirmed that, since 29 November 2018, Post Office has zero-rated (i.e. applied no charge to) all calls made using relay services regardless of duration or destination.¹⁴

3.27 In light of those confirmations by Post Office, we have not seen any evidence to suggest that Post Office has contravened the relevant GCs in respect of not charging its fixed line customers more than the cost of a standard call for using relay services. Indeed, it would appear that, since Post Office began providing its fixed line services from in or around January 2005, it has charged no more for relay calls than the equivalent price to what would have been charged had the call been made directly to the recipient. Our findings therefore do not cover this matter.

Post Office’s obligation to apply a special tariff scheme

3.28 As explained above, since the relevant GCs came into force in 2003, Post Office has also been required to apply a special tariff scheme designed to compensate customers who, because of their disabilities, need to make calls via relay services for the additional time taken to make that call. We therefore sought evidence from Post Office also in that regard in our first formal information request dated 10 May 2019.

3.29 Post Office confirmed that “[f]or the period 31/08/2013 [when [§<] began managing its services] through to 28/11/2018 no Special Tariffs were used”.¹⁵ Since 29 November 2018, it has not been necessary for Post Office to apply a special tariff scheme due to its above-mentioned confirmation that Post Office applied a zero-rating to all calls made using relay services.

3.30 However, Post Office was unable to confirm the exact position that existed prior to 31 August 2013 in respect of its application of any special tariff scheme. We understand that this was due to its previous wholesale providers no longer holding that information.¹⁶ That said, Post Office confirmed in respect of that prior period that *“Whilst Post Office does not have a complete archived history of its price lists for the period 2005 to 30/08/2013, we have identified a number of published price lists in the period 2011-2013. These price lists*

¹³ First Response, Question 3.

¹⁴ First Response, Question 5.

¹⁵ First Response, Question 5.

¹⁶ Supplementary Response, see above footnote.

do not contain any reference to Text Relay. Therefore we have no price lists detailing any Special Tariff Schemes in relation to Text Relay in this period.”¹⁷

- 3.31 Further, in response to our second formal information request dated 22 July 2019 (‘Second Response’), Post Office confirmed that *“The earliest price list identified was applicable from 16 May 2011. That price list contained no detail of Relay Services or Special Tariff Scheme.”¹⁸* That confirmation was given in relation to our request: *“1. In its response of 21 June 2019 to the 1st Notice, Post Office stated that it had “identified a number of published price lists in the period 2011-2013” that did not detail Relay Services or any Special Tariff Scheme. Please confirm the date that the earliest identified 2011 price list was applicable from.”* We can only infer from this evidence the possibility of Post Office not applying a special tariff scheme for the period prior to 31 August 2013, particularly between 16 May 2011 and 30 August 2013. This inference seems supported by Post Office’s own admission that it *“accepts that it was in breach of GC C5.9¹ up to 29 November 2018”¹⁹*.

Post Office’s organisational structure and processes

- 3.32 Post Office explained that *“[b]etween 2003 and 2017 the responsibility for telecoms compliance sat with the Telecoms team. The team did not have a dedicated telecoms regulatory compliance specialist. Responsibility for compliance with all telecoms obligations sat with the individuals of the Telecoms team, supported by our telecoms service providers and legal advisers (as required).”²⁰*
- 3.33 It also explained that the Telecoms team was, at the time of its response, *“small numbering currently 7 FTE”* and that *“[t]he team’s primary role is to manage the retail products that Post Office sells and the relationship with our managed service provider and its supply chain.”*
- 3.34 It advised that, following the recruitment of a new Director of Telecoms to lead the team in February 2017, *“[t]he new management organisation recognised that there was a need to have a dedicated telecoms regulatory compliance team, which should also be separate from the Telecoms team.”* As a result, in February 2018 it recruited a Head of Telecoms Regulation and Compliance who was accountable directly to the Director of Compliance.
- 3.35 It also explained that *“[i]n 2018 the Telecoms Compliance Committee was set up which meets every two months and is chaired by the Director of Compliance. Its remit is to monitor Post Office compliance with all telecoms regulatory obligations. Its membership includes senior members of the Telecoms team as well as our managed service provider [redacted].”*

¹⁷ Ibid.

¹⁸ Second Response, Question 1.

¹⁹ Letter dated 4 October 2019 from Post Office to Ofcom. In footnote 1 of Post Office’s letter, it states that *“GC C5.9 and GC 15.3 are substantively the same. The references are used interchangeably, depending on the context.”*

²⁰ Second Response, Question 4.

- 3.36 The organisational structure and processes Post Office had in place to ensure compliance are considered in more detail in Section 4.

Ofcom's determination of contravention

- 3.37 For the reasons set out above, we have set out in the Confirmation Decision attached at Annex 1 our findings that during the period between at least 31 August 2013 and 28 November 2018 (i.e. the Relevant Period) Post Office contravened GC 15.3 and subsequently GC C5.9, by not applying a special tariff scheme to calls made by customers who, because of their disabilities, needed to use relay services.
- 3.38 On that basis, Post Office's contravention lasted for at least 1916 days (or 5 years, 2 months, 29 days). This is a significant period of non-compliance.
- 3.39 As noted above, it is possible that the contravention could have lasted for longer, depending on the actual position that existed prior to 31 August 2013. If Post Office never applied a special tariff scheme since it began providing Fixed PATS services from January 2005 until 28 November 2018, the contravention would have lasted for almost 14 years. However, we make no finding of contravention in respect of that earlier period. The above-mentioned 5-year period of non-compliance in respect of which we have made a finding of contravention is long and serious enough for the purposes of determining our penalty (which we discuss in the next Section 4).

4. Penalty

Summary

- 4.1 Ofcom has imposed a penalty of **£175,000** on Post Office for its contravention of GC C5.9 and previous GC 15.3 in relation to its failure to apply a special tariff scheme during the period between at least 31 August 2013 and 28 November 2018 (i.e. the Relevant Period), in light of our findings discussed in previous Section 3. The penalty includes a 30% discount reflecting resource savings achieved by Ofcom as a result of Post Office admitting liability and entering into a settlement with Ofcom.
- 4.2 In reaching this view, we have had regard to (among other things) the need to incentivise Post Office, as well as other CPs, to comply with their regulatory obligations and to our principal duty of furthering the interests of citizens and consumers. In so doing, we have had particular regard to the fact that Post Office's contravention affected vulnerable consumers.
- 4.3 Ofcom's judgement is that this penalty is appropriate and proportionate to the contravention we have found and will have the appropriate deterrent effect on Post Office and the wider industry. When setting the particular penalty amount that we believe would achieve that objective, we have considered relevant factors in the round and have had regard to our Penalty Guidelines.²¹ Our reasons for reaching this view are set out fully below.

Consideration of whether to impose a penalty

- 4.4 The General Conditions contain important provisions intended to ensure that users with disabilities can obtain comparable access to voice call services to that of non-disabled people, that their needs are given sufficient consideration by CPs, and that their access to voice call services is protected when they have a genuine need. We have further explained in Section 3 the importance of these regulatory requirements. Any contravention of these regulatory requirements is therefore potentially serious, and we are likely to regard it as serious wherever consumers are affected.
- 4.5 In our view, Post Office's contravention of GC C5.9 and previous GC 15.3 was a serious contravention. Amongst other factors detailed below, we consider that a penalty is appropriate due to the potential vulnerability of those consumers affected, the length of time in which Post Office contravened (and, for a period, knowingly contravened) the regulatory requirements, and the absence of any significant compliance function prior to

²¹ 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:

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf

2018 which likely contributed to the contravention occurring and/or delayed its identification.

- 4.6 We recognise that Post Office self-reported the absence of a special tariff scheme shortly after it began zero-rating relay calls and has taken steps to remedy the contravention. However, we also note that it took over two years from the date Post Office became aware of its non-compliance for it to implement a fix, and that this fix was in part delayed due to Post Office's concerns about costs.
- 4.7 Taking everything into account alongside our view on the seriousness of Post Office's contravention, our view is that a penalty is appropriate and proportionate in this case.

Penalty amount

- 4.8 In considering the level of penalty which should be applied, Ofcom has had regard to its published Penalty Guidelines.

Our Penalty Guidelines and assessment in the round

- 4.9 As set out in our Penalty Guidelines, the central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient, having regard to the relevant turnover, to have a material impact on the regulated body so that it is incentivised to bring itself into compliance and avoid recurrences of the contraventions in future. It is also important that the penalty imposed serves to deter the wider industry from contravening regulatory requirements.
- 4.10 Any penalty we set should therefore be sufficiently high to discourage bad conduct and incentivise Post Office's management to change the conduct of the company, encouraging good practices and a culture of compliance across the organisation.
- 4.11 In that regard, our Penalty Guidelines set out a range of further factors which may be relevant in any particular case and Ofcom has assessed those factors carefully. Ofcom has also considered whether there are any relevant precedents and, if so, the extent to which they should be followed in this case. We have, however, determined the appropriate and proportionate amount of penalty in this case by taking all of those factors into account in the round. We set out below Ofcom's consideration of each of them.

Relevant turnover of Post Office

- 4.12 Our Penalty Guidelines explain that the amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. In so doing, they also make clear that Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty.
- 4.13 Section 97 of the Act provides that the amount of a penalty notified under section 96C is to be such amount not exceeding ten per cent of the turnover of the person's relevant

business²² for the relevant period²³ as Ofcom determine to be appropriate and proportionate to the contravention in respect of which it is imposed.

- 4.14 For that purpose, section 97 also provides that the turnover of a person's relevant business for a period shall be calculated in accordance with such rules as may be set out by order made by the Secretary of State. Two general rules²⁴ made by the Secretary of State are relevant in this case, namely the turnover of a notified provider shall be:
- 4.15 calculated in conformity with accounting practices and principles which are generally accepted in the United Kingdom; and
- 4.16 limited to the amounts derived by that provider from the relevant business after deduction of sales rebates, value added tax and other taxes directly related to turnover.
- 4.17 Therefore, in our second information notice dated 22 July 2019 to Post Office, we requested Post Office to provide us with full details of its 'Relevant Turnover' of Post Office's 'Relevant Business' for the period 1 April 2018 to 31 March 2019. This was because, in this case, the 'relevant period' to be taken into account in determining Post Office's turnover is one year ending 31 March prior to the date of our Notification to Post Office issued under section 96A of the Act.²⁵ Our second information notice also defined the concept of 'Relevant Turnover' to reflect the two above-mentioned general rules made by the Secretary of State.²⁶ We also defined 'Relevant Business' as meaning so much of any business carried on by Post Office as consists in the provision of fixed Publicly Available Telephone Services, because Post Office's business consisted predominantly in the provision of such services at the relevant time and in any event, as noted in Section 3 of this document, Post Office's SIM only mobile trial ended in March 2016.
- 4.18 In its Second Response, Post Office stated its turnover for its Relevant Business for the period 1 April 2018 to 31 March 2019 was £[redacted]. The maximum penalty which Ofcom may impose in respect of the contravention by Post Office during that period is £[redacted].

²² Section 97(5) defines "relevant business" as meaning (subject to the provisions of an order under subsection (3) and to subsections (6) and (7)) so much of any business carried on by the [person] as consists in any one or more of the following—(a) the provision of an electronic communications network; (b) the provision of an electronic communications service; (c) the making available of associated facilities; (d) the supply of directories for use in connection with the use of such a network or service; (e) the making available of directory enquiry facilities for use for purposes connected with the use of such a network or service; (f) any business not falling within any of the preceding paragraphs which is carried on in association with any business in respect of which any access-related condition is applied to the person carrying it on.

²³ Section 97(5) also defines "relevant period", in relation to a contravention by a person of a condition set under section 45, as meaning (a) except in a case falling within paragraph (b) or (c), **the period of one year ending with the 31st March next before the time when notification of the contravention was given under section 94 or 96A**; (b) in the case of a person who at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which he has been carrying it on; and (c) in the case of a person who at that time has ceased to carry on that business, the period of one year ending with the time when he ceased to carry it on. (emphasis added because this part is the relevant definition for Post Office's circumstances in this case).

²⁴ These general rules are set out in the Schedule to the Electronic Communications (Networks and Services) (Penalties) (Rules for Calculation of Turnover) Order 2003, SI 2003/2712.

²⁵ Ofcom issued a Notification under section 96A of the Act to Post Office on 16 December 2019.

²⁶ Specifically, our second information notice defined 'Relevant Turnover' as "i. limited to the amounts derived by you from the relevant business after deduction of sales rebates, VAT and any other taxes directly related to turnover; and ii. to be calculated in conformity with accounting practices and principles which are generally accepted in the United Kingdom."

Seriousness, culpability and harm

Duration of contravention

- 4.19 As set out in Section 3, we have found that the contravention lasted for at least 1916 days (5 years, 2 months, 29 days) between 31 August 2013 and 28 November 2018. This is a significant period of non-compliance.
- 4.20 We have taken into account that duration of contravention in line with our Penalty Guidelines.

Degree of actual or potential harm caused by the contravention

- 4.21 The degree of harm, whether actual or potential, caused by the contravention is another factor we may take into account in determining the amount of a penalty under our Penalty Guidelines.
- 4.22 We have already explained (see paragraphs 3.7 to 3.12 above) that GC C5.9 (and previous GC 15.3) is an important provision intended to ensure that users with disabilities can obtain comparable access to voice call services to that of non-disabled people. Any contravention of it is therefore potentially serious, particularly when vulnerable consumers are affected.
- 4.23 In order to calculate potential financial harm caused by the contravention, Post Office provided data from its wholesale providers from across the Relevant Period. These figures included some limitations based on the availability of data for customers provided via Openreach, and the need to apply a proxy to estimate use of relay services by prefix. This proxy was important to establish because the requirement to provide a special tariff scheme only applies to calls made by customers using relay services due to their disability. Ofcom considers that use of the 18001 (text-to-speech) prefix is likely to be the best way to identify those customers. A detailed background of these limitations can be found in Annex 3. Details of the actual figures provided can be found in Annex 4.
- 4.24 Based on those figures, the number of customers and amount of money involved is relatively low, potentially affecting, as a minimum, anywhere between 37 to 126 customers a year at an estimated minimum total cost of c.£4,500. In that regard, we note that the requirement to provide a special tariff scheme does not necessarily require a full rebate on the cost of a call.
- 4.25 From the evidence we have gathered, we note that, in 2017, a single customer is known to have spent £1,067 on calls made using relay services.²⁷ Whilst uncertain, given the established proxy, it is likely that these calls were predominantly made to the 18001 prefix.
- 4.26 Further to any additional costs incurred, the contravention also risked discouraging customers reliant on the use of relay services from using the service as regularly as they would have liked. However, we have taken into account that we received no complaints

²⁷ First Response, Question 11 iv.

suggesting that this was the case, nor did we receive complaints about the absence of a special tariff scheme in general.

- 4.27 While we have taken into account all of these considerations concerning actual or potential harm, we give particular weight to the fact that the requirements in GC C5.9 (and previously in GC 15.3) are important consumer protection provisions for vulnerable consumers and we regard the potential harm to these consumers as serious, regardless of the actual financial harm caused by Post Office’s contravention.

Whether appropriate steps were taken to prevent the contravention

- 4.28 Our Penalty Guidelines set out that we may take into account whether in all the circumstances appropriate steps had been taken by the regulated body to prevent the contravention.
- 4.29 We consider that there are at least two aspects in considering this factor in Post Office’s case from the evidence we have gathered.
- 4.30 First, we deal below with Post Office’s opportunities to take steps to prevent the contravention in a timely manner, once Post Office’s attention was drawn to concerns about its compliance with GC 15.3.
- 4.31 The second aspect relates to the monitoring and compliance processes that Post Office had in place during the Relevant Period that are likely to have impacted on taking such timely steps.

Post Office’s opportunities to take preventative steps

- 4.32 Internal emails provided by Post Office²⁸ show that it had several opportunities to identify that it was in breach of GC15.3 earlier than it eventually did.
- 4.33 Specifically, on 14 November 2012, Post Office’s Managed Service Provider emailed a Senior Business Analyst (Telecoms) and Service Assurance Lead at Post Office referring to a document found on www.textrelay.org which mentioned that *“because calls using Text machines will take longer than a speech call and [sic] some providers may reflect this with a discount”*.²⁹ It then queried whether Post Office applied such a discount.
- 4.34 Further, on 8 July 2014, a member of Ofcom’s Consumer Affairs team emailed Post Office asking it to direct them to the page on its website *“where information about the services mandated in General Condition 15 may be found”* including *“[a]ccess to text relay for people who are hearing- or speech-impaired, with special tariffs to compensate disabled customers for the additional time taken by these calls”*.³⁰ This email was responded to by [X], Head of Telecoms.³¹

²⁸ Second Response, Question 6.

²⁹ See [X]’s email of 15 November 2012.

³⁰ See [X]’s email of 24 July 2014.

³¹ See [X]’s email of 24 July 2014.

- 4.35 In both instances, Post Office failed to identify that by not having such a scheme in place it was in breach of the regulations.
- 4.36 In relation to its Managed Service Provider’s email in 2012, Post Office has informed us³² that “[a]t that point in time, it does not appear that Post Office were aware that this was a regulatory requirement.” Regarding Ofcom’s email in 2014, Post Office has stated that “this correspondence did not relate to whether Post Office had in place a Special Tariff Scheme and it appears from these emails that the relevant people at Post Office were unaware whether such a tariff was in place”. Further, in its letter of 4 October 2019, Post Office has informed us “[a]s explained in Post Office’s response, Post Office did not consider these emails to be responsive to question 5 as, at those dates, Post Office was not aware that its conduct infringed GC 15.3.”
- 4.37 In regard to when Post Office explicitly became aware that it was in breach of GC 15.3, its letter of 4 October 2019 stated that “we [Post Office] have been aware of the breach of GC C5.9 since a notification from [X] on 24 October 2016”. That notification from its Managed Service Provider consisted of an email quoting the regulation and stating that, in relation to the absence of a special tariff scheme, “I believe that if OFCOM investigated Post Office against GC15.3 they would have a strong case against Post Office for not acting in accordance with the General Condition.”
- 4.38 On 14 November 2016, Post Office submitted a change request to its Managed Service Provider requesting “that the voice element of a text relay call is charged at 30% discount (to be configurable for any future changes) compared to normal voice calls.” The request was sponsored by [X], Head of Telecoms.
- 4.39 Despite this change request being submitted less than a month after Post Office became aware that it was in breach of GC15.3, it took over 2 years for a fix to be applied. This was in part due to the time taken to establish a suitable solution but was also a result of Senior Management delaying sign off due to the costs involved.³³
- 4.40 Since 29 November 2018, Post Office has confirmed that it has zero-rated all calls made using text relay services.³⁴
- 4.41 We consider from the above evidence that Post Office did not take all appropriate and timely steps to prevent the contravention, and this has been factored into the penalty imposed on Post Office.

Post Office’s monitoring and compliance processes for its telecoms service

- 4.42 Another aspect of whether in all the circumstances appropriate steps had been taken by Post Office to prevent the contravention relates to how it chose to organise and structure itself over the Relevant Period.

³² Second Response, Question 5.

³³ See 4.47 to 4.52

³⁴ First Response, Question 3.

- 4.43 As noted in Section 3, in its Second Response,³⁵ Post Office advised that *“Between 2003 and 2017 the responsibility for telecoms compliance sat with the Telecoms Team. The team did not have a dedicated telecoms regulatory compliance specialist. Responsibility for compliance with all telecoms obligations sat with the individuals of the Telecoms team, supported by our telecoms service providers and legal advisers (as required).”*
- 4.44 Corresponding with this, an internal email from [redacted] (Head of Financial Services and Telecoms Risk and Regulation) sent on 25 January 2018 to Post Office’s Director of Financial Services and Telecoms, Director of Telecoms, and HR Director set out the rationale for employing a Senior Telecoms Risk Manager. In that email [redacted] set out that *“Our [Post Office’s] telecoms business has had no real focused risk management capability since its creation. The Telecoms team has been working with its suppliers, in this instance primarily [redacted], to manage risks but on an ad hoc basis, stretching its capacity and capabilities beyond the roles in the team.”* The email went on to say that *“We [Post Office] have been totally reliant on our suppliers telling us, the regulated firm, what regulations we have to meet, which is a high risk approach”.*
- 4.45 Furthermore, in its letter dated 4 October 2019 to Ofcom, Post Office also acknowledged (among other things) that *“Post Office failed to progress this issue expediently during this period. A solution to the text relay issue should have been identified far earlier. Indeed, at the time, we were aware that we did not have a sufficiently robust understanding of our regulatory obligations and how to meet them and sought to hire a Head of Telecoms Regulation and Compliance. That role was approved on 3 November 2017.”*
- 4.46 From the evidence we have gathered, we consider that, had Post Office had a dedicated internal compliance and monitoring function in place prior to February 2018 (when its new Senior Telecoms Risk Manager started), it would have been better placed to have prevented or identified the contravention sooner than it did. In particular, we note that Ofcom’s email to Post Office in 2014 (see paragraph 4.32 above) would have in all probability been addressed to the compliance team (as is standard practice) and may have resulted in increased scrutiny of the GC 15 requirements.
- 4.47 Accordingly, we consider that Post Office’s lack of proper monitoring and compliance processes contributed to its failure to take all appropriate and timely steps to prevent the contravention and demonstrated a reckless approach to compliance. This has therefore been factored into the penalty imposed on Post Office.

The extent to which the contravention occurred deliberately or recklessly

- 4.48 Our Penalty Guidelines state that another factor we may take into account in imposing a penalty is the extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur.

³⁵ Second Response, Question 4.

- 4.49 In our view, it is clear from the evidence we have gathered that Post Office’s senior management was aware of Post Office being non-compliant with GC15.3 from at least 14 November 2016 through to the point that a fix was implemented on 29 November 2018. In other words, Post Office’s senior management deliberately or recklessly took no effective steps to end the contravention for a period of 2 years. It also shows that a fix was in part delayed due to Post Office’s senior management concerns regarding cost.
- 4.50 Specifically, shortly after Post Office became aware on 24 October 2016 that it was in breach of GC15.3, emails show that its senior management were also made aware of this issue. This is demonstrated by the change request submitted by Post Office on 14 November 2016 which, as noted in paragraph 4.36 above, was sponsored by the Head of Telecoms, [redacted], and contained the GC15.3 text verbatim.³⁶
- 4.51 Later, in February 2017, [redacted] was employed as Post Office’s Director of Telecoms. In particular, emails provided by Post Office to us show that [redacted]:
- was given an ‘Immersion Week’ slide pack for w/c 6 February 2017 which included a programme list referencing the text relay change request;³⁷
 - was regularly included in or sent emails detailing outstanding change requests, with emails from 16 June 2017³⁸ onwards showing the text relay request as being Priority 1;³⁹
 - was, from 19 October 2017,⁴⁰ noted as being due to discuss the text relay matter with Ofcom – the request was placed on hold in the interim;⁴¹ and
 - was emailed by its Managed Service Provider on 2 January asking for an update on whether he had had his discussion with Ofcom about “*the materiality of Cost of Compliance*”, with its Managed Service Provider noting that if Post Office opted to do nothing then it would be “*accepting the risk of OFCOM non-compliance*”.⁴²
- 4.52 On 13 February 2018, [redacted] emailed [redacted] (Post Office’s new Senior Telecoms Risk Manager) a copy of its Managed Service Provider’s email of 2 January 2018 advising that they Post Office were “*going to need to discuss [the matter] with Ofcom*” stating that “*implementation costs are too high, so we would propose to review other options, which should include commercially writing off this revenue*”.
- 4.53 On 29 March 2018, [redacted] gave instructions for a new change request to be placed, stating “*The costs of implementing Text relay differential pricing is too high, please can to [sic]*

³⁶ See [redacted]’s email of 14 November 2016.

³⁷ See [redacted]’s email to [redacted] on 15 February 2017.

³⁸ See [redacted]’s email of 16 June 2017.

³⁹ To note, in its letter to Ofcom dated 4 October 2019, Post Office set out that Priority 0 is its top priority.

⁴⁰ See attachment to [redacted]’s email dated 08 November 2017.

⁴¹ See [redacted]’s email to [redacted] on 10 April 2018.

⁴² See [redacted]’s email of 2 January 2018.

*raise a request to write off this revenue going forward with monthly reporting on write off levels?”.*⁴³ An updated draft request was subsequently placed on 23 April 2018.⁴⁴

- 4.54 Following several discussions with Post Office colleagues, Post Office’s Managed Service Provider submitted a final Change Management Note (CMN)⁴⁵ to Post Office on 31 July 2018.⁴⁶ [X] signed off the CMN on 1 August 2018⁴⁷ giving Post Office’s Managed Service Provider authority to proceed with the necessary system changes to begin zero-rating text relay calls. This work was completed on 29 November 2018 and text relay calls have been zero-rated from that date.
- 4.55 On 7 January 2019, [X] contacted Lindsey Fussell, Ofcom’s Consumer and External Relations Group Director, to inform her that Post Office had identified a potential breach and had recently implemented a fix.
- 4.56 A full timeline of the actions taken by Post Office to come into compliance can be found in Annex 5.
- 4.57 Accordingly, we consider that Post Office’s senior management should have been aware for a significant period of time that a contravention of GC 15.3 was either occurring or would be likely to occur, and that this awareness is an aggravating factor that has been taken into account in setting the penalty.

Remedial steps taken by Post Office

- 4.58 We may take into account any steps taken for remedying the consequences of the contravention under our Penalty Guidelines.
- 4.59 As noted above, Post Office has zero-rated all calls made using relay services regardless of the prefix used or duration of the call since 29 November 2018.
- 4.60 In relation to charges applied prior to that date, Post Office confirmed in its Second Response⁴⁸ that, where it was able to identify actual customer use of relay services through available data, it has:
- automatically applied credits totalling £2,644.74 to the bills of 95 active customers; and
 - sent cheques totalling £2,420.35 to the last known address of 46 ex-customers.
- 4.61 These refunds were made regardless of the prefix used by the customer and totalled the entire cost of the calls made.⁴⁹ In total, these refunds amounted to £5,065.09.

⁴³ See chain to [X]’s email of 29 March 2019.

⁴⁴ See [X]’s email of 23 April 2018.

⁴⁵ A CMN sets out details of the: requested change, acceptance criteria, deliverables, timescales for implementation, and cost.

⁴⁶ See [X]’s email of 31 July 2018.

⁴⁷ See [X]’s email of 1 August 2018.

⁴⁸ Second Response, Question 8.

⁴⁹ As noted in paragraph 4.22, the requirement to provide a special tariff scheme does not necessarily require a full rebate on the cost of a call, and so any financial harm caused is likely to be lower than the estimated total spent.

- 4.62 Whilst we welcome these refunds, as detailed in Annex 3, Post Office was only able to obtain Openreach data dating back to 1 December 2017. Had Post Office requested relevant billing and customer data from Openreach when it first identified the breach in October 2016, it would have been significantly better placed to refund a larger number of affected customers.
- 4.63 For the remaining £8,272 that Post Office estimated was incurred by customers using relay services,⁵⁰ as well as actual amounts it was unable to refund due to customers being unidentifiable, “deceased” or “bad debtors”, Post Office made a private and confidential payment of £10,000 to a charity relevant to those consumers affected.
- 4.64 Finally, for any existing customer who highlights that they were a Post Office customer pre-31 August 2013 and made calls using relay services, Post Office has trained its staff to provide customers with appropriate estimated compensation.⁵¹
- 4.65 We acknowledge the steps Post Office has taken to try and remedy the consequences of the contravention and have taken these into account when setting the penalty.

Deterrence

- 4.66 As set out earlier in this section, our central objective in imposing a penalty is deterrence. The level of the penalty must be sufficient to have a material impact on the regulated body so that it is incentivised to bring itself into compliance and avoid recurrences of the contraventions in future. It is also important that the penalty imposed serves to deter the wider industry from contravening regulatory requirements.
- 4.67 Any penalty we set should therefore be sufficiently high to discourage bad conduct and incentivise Post Office’s management to change the conduct of the company, encouraging good practices and a culture of compliance across the organisation. The level of the penalty should ensure that Post Office’s senior management, and senior management across the wider industry, recognise that it is not more profitable for it to break the law and pay the consequences, than to comply in the first place. It should make clear that it is not worth taking the risk of non-compliance because it will cost the company to do so.
- 4.68 In considering deterrence in this particular case, we also consider it important to deter any actual or potential harm to vulnerable consumers, noting again that the requirements in GC C5.9 (and previously in GC 15.3) are important consumer protection provisions for vulnerable consumers (see paragraphs 3.7 to 3.12 above).

⁵⁰ Whilst it is unclear whether a special tariff scheme was or was not applied prior to 31 August 2013, Post Office estimated relay charges dating back to January 2005 (when it first began providing regulated services). In its First Response to Question 12 it also stated that “[w]here Text Relay Openreach call data is not available (period 31/08/2013 to 30/11/2017) Post Office will estimate the volume and charge of Text Relay calls for the period and make a corresponding donation to charity.”

⁵¹ First Response, Question 12.

Financial gain

- 4.69 Any gain (financial or otherwise) made by the regulated body in breach (or any connected body) as a result of the contravention is another factor set out in our Penalty Guidelines.
- 4.70 We have therefore considered whether in failing to comply with GC C5.9 (and previous GC 15.3) Post Office raised any additional revenue or saved any costs.
- 4.71 Post Office has estimated⁵² that between 31 August 2013 and 28 November 2018 customers spent c.£4,500 on calls made to the 18001 relay service prefix. However, as noted above, the requirement to provide a special tariff scheme does not necessarily require a full rebate on the cost of a call.
- 4.72 We consider, however, that Post Office could have potentially gained financially from delaying implementation of a fix in order to seek a cheaper solution. The cost difference between the original and most costly proposed solution (which we note Post Office stated in its letter of 4 October 2019 was *“flawed as the discounted tariff would only apply to destinations previously called by text relay customers”*) and the fix implemented on 29 November 2018 was c.£7,700.
- 4.73 Considering these amounts alongside the amount of £5,065.09 that Post Office has refunded to customers and the amount of £10,000 it has already donated to charity, we do not consider that Post Office made any significant gains during its period of non-compliance, and has subsequently made negative gains as a result of the remedial steps taken. As such, this has not weighed heavily as a factor in our setting of the penalty.
- 4.74 However, as noted above, regardless of any financial gain made by Post Office, we give particular weight to the fact that Post Office’s contravention had the potential of causing harm to vulnerable consumers.

Precedents

- 4.75 As set out in our Penalty Guidelines, Ofcom will have regard to any relevant precedents set by previous cases, where they are relevant, but we will not regard the amounts of previously imposed penalties as placing upper thresholds on the amount of any penalty.
- 4.76 On 17 March 2015,⁵³ Ofcom imposed a penalty of £800,000 on British Telecommunications plc (‘BT’) in relation to its compliance with previous GC 15, in particular GC 15.3 and GC 15.5.⁵⁴ Ofcom concluded that, between 18 April 2014 and 24 September 2014, BT contravened GCs 15.3 and 15.5 by failing to provide a Next Generation Text Relay service to its customers in accordance with the requirements of GC 15.5.
- 4.77 We note that the facts and context of the two cases are different, in particular that:
- Post Office customers were not denied access to any form of relay service; and

⁵² First Response, Question 11.

⁵³ Prior to the penalty guidelines being revised on 3 December 2015 and again on 14 September 2017.

⁵⁴ See: https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01129

- The financial harm experienced by Post Office customers is significantly lower than the £70,000 estimated in the BT case.⁵⁵

4.78 However, we also note that the duration of the breach in this case is significantly longer than that of the BT case. The BT case was also concluded during the period of Post Office's non-compliance, more than 1 year and 7 months before it identified the breach.

History of contraventions

4.79 Our Penalty Guidelines also state that we may consider whether the regulated body in breach has a history of contraventions (repeated contraventions may lead to significantly increased penalties).

4.80 In 2006/07, Ofcom investigated Post Office regarding its compliance with sales and marketing regulations and found that it had breached its requirements.⁵⁶ A notification under section 94 of the Act was issued to Post Office on 15 June 2007 setting out Ofcom's findings. No penalty was applied.⁵⁷

4.81 Ofcom has not investigated Post Office's compliance with its regulatory requirements since that case until the present investigation and we have not considered the 2006/07 investigation to be an aggravating factor when determining the penalty in this case.

The extent of Post Office's co-operation with Ofcom's investigation

4.82 The extent to which the regulated body in breach has cooperated with our investigation is another factor in our Penalty Guidelines.

4.83 In that regard, we note that Post Office self-reported its failure to apply a special tariff scheme, albeit more than 2 years and 2 months after it first identified the matter, and cooperated closely with the Investigation. It also provided Ofcom with information in a timely manner, both when requested informally and formally under section 135 of the Act. However, Ofcom considers that some of the information provided informally by Post Office prior to the investigation opening was inconsistent with some of the facts later established as part of our investigation. This resulted in Ofcom having to spend additional time establishing the full facts of the case and, in our view, was an aggravating factor that neutralised the extent to which the otherwise positive cooperation would have been taken into account when determining the penalty.

4.84 It is important that CPs take compliance with their regulatory responsibilities seriously and that when things go wrong, they recognise this and act quickly and responsibly to remedy any harm caused and allow Ofcom to investigate as appropriate. Whilst we encourage

⁵⁵ See paragraph 7.51 of the non-confidential version of our confirmation decision issued to BT: https://www.ofcom.org.uk/data/assets/pdf_file/0022/85153/non-confidential_version_of_confirmation_decision_issued_to_bt.pdf

⁵⁶ See: https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_940

⁵⁷ To note, prior to sections 96A to 96C of the Act being introduced on 26 May 2011, a notification issued under section 94 of the Act gave CPs a month to address the identified breach. If the CP complied within that time Ofcom did not have the power to take further action, including to impose a penalty.

other CPs to follow Post Office's lead in notifying Ofcom should they identify a breach of their regulatory requirements, we would also encourage CPs to notify us as soon as practicable and without any lengthy delay. We also expect any information provided by CPs prior to an investigation to be candid, explicit and precise.

Ofcom's conclusion on the penalty amount

- 4.85 Whilst the level of financial harm involved in the breach was small, when considering all of the above factors in the round, Ofcom considers this to be a serious breach and has imposed a penalty of £175,000 on Post Office. This includes a 30% discount applied to the penalty of £250,000 which we would otherwise have set. That discount reflects resource savings achieved by Ofcom as a result of Post Office admitting liability and entering into a settlement with Ofcom.
- 4.86 Ofcom considers that this level of penalty is appropriate and proportionate to the contravention in respect of which it has been imposed. Our objectives in setting it are, in particular:
- a) to impose an appropriate and proportionate sanction that reflects the seriousness of both the duration and potential vulnerability of those consumers affected by Post Office's contravention, and its culpability in that contravention; and
 - b) to deter Post Office from contravening the GCs, and GC C5.9 in particular, again.
- 4.87 Having regard to Post Office's turnover, our view is that a penalty of £175,000 will secure these objectives in a proportionate way. It appropriately reflects each of the factors described in more detail above and gives particular weight to the potential harm to vulnerable consumers, whilst not exceeding the maximum penalty Ofcom may impose in Post Office's case.

5. Remedial steps required of Post Office

- 5.1 In addition to imposing a penalty, Ofcom has decided that, to the extent they have not already been taken, Post Office must take the following steps to comply with GC C5.9 and to remedy the consequences of the contravention:⁵⁸
- i) apply a special tariff scheme designed to compensate Subscribers for the additional time taken by End-Users with disabilities to make telephone calls using a Relay Service where, because of their disabilities, those End-Users need to make calls using a Relay Service.⁵⁹ In so doing, for the avoidance of doubt, Post Office may choose to continue to 'zero-rate' (i.e. apply no charge to) all calls made using Relay Services regardless of duration or destination.
 - ii) identify and provide appropriate refunds to all Subscribers who, because of their disabilities, needed to use Relay Services and did not benefit from a special tariff scheme.
 - iii) put in place and promote a process allowing affected Subscribers who it was unable to identify due to the absence of records to approach them with proof that they did not benefit from a special tariff scheme and claim a refund.
- 5.2 The step required by 5.1(i) must be taken immediately by Post Office upon receipt of the Confirmation Decision found in Annex 1 issued under section 96C of the Communications Act.
- 5.3 The steps required by 5.1(ii) and (iii) must be taken within 1 month of Post Office receiving the Confirmation Decision found in Annex 1 issued under section 96C of the Act.
- 5.4 Within 1 month and 1 week of Post Office receiving the Confirmation Decision found in Annex 1 Post Office must provide written confirmation that it has taken the steps required by 5.1(i) – (iii).

⁵⁸ The reference to 'remedying the consequences of a contravention' include references to paying an amount to a person (a) by way of compensation for loss or damage suffered by that person; or (b) in respect of annoyance, inconvenience or anxiety to which he has been put: see section 151(7) of the Act.

⁵⁹ The terms 'End-User', 'Relay Service' and 'Subscriber' have the meanings given for the purpose of GC C5.9.

A1. Confirmation Decision to Post Office Limited of contravention of General Condition C5.9 and previous General Condition 15.3 under Section 96C of the Communications Act 2003

Section 96C of the Communications Act 2003

- A1.1 Section 96C of the Communications Act 2003 (the “Act”) allows the Office of Communications (“Ofcom”) to issue a decision (a “Confirmation Decision”) confirming the imposition of requirements on a person where that person has been given a notification under section 96A of the Act, Ofcom has allowed that person an opportunity to make representations about the matters notified, and the period allowed for the making of representations has expired. However, 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 decision;
 - c) may require immediate action by the person to comply with the requirements of a kind mentioned in section 96A(2)(d) of the Act,⁶⁰ 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.

The General Conditions of Entitlement

- A1.3 Under the regulatory regime set out in the Act, communications providers do not require a licence to operate in the United Kingdom, but they can be made subject to conditions of

⁶⁰ Such requirements include the steps that Ofcom thinks should be taken by the person in order to remedy the consequences of a contravention of a condition.

general application. The General Conditions of Entitlement are the regulatory conditions that all providers of electronic communications networks and services of a particular description specified for the respective General Conditions must comply with if they want to provide their services in the United Kingdom.

- A1.4 Section 45(1) of the Act gives Ofcom the power to set conditions, including General Conditions, binding on the person to whom they are applied. Section 408 of the Act sets out transitional provisions that applied to (among other things) functions carried out by the Director General of Telecommunications (“**DGT**”) prior to Ofcom’s inception.
- A1.5 On 22 July 2003, the DGT issued a notification in accordance with section 48(1) of the Act setting the general conditions set out in the Schedule to his notification (the “**2003 Notification**”), pursuant to his transitional powers. They took effect from 25 July 2003. Under the Act’s transitional provisions, after the end of the transitional period, the 2003 Notification had effect as if it had been done by or in relation to Ofcom.
- A1.6 The General Conditions were amended from time to time between 2003 and 2018 and, on 1 October 2018, a new set of General Conditions came into effect.⁶¹

General Condition C5.9 (previously General Condition 15.3)

- A1.7 General Conditions 15.3 under the 2003 Notification required that—
- “15.3 Subject to paragraph 15.9, the Communications Provider shall ensure that such of its Subscribers who, because of their disabilities, need to make calls in which some or all of the call is made or received in text format, are able to access a Relay Service. Such Subscribers shall be charged for the conveyance of messages to which a Relay Service applies at no more than the equivalent price as if that conveyance had been made directly between the caller and the called person without use of a Relay Service:*
- (a) except that the calling person may be charged standard local prices for the call made to a Relay Service provider in order to make a call irrespective of whether the call is successful; and*
- (b) applying a special tariff scheme designed to compensate Subscribers who need to make calls to which a Relay Service applies for the additional time to make telephone calls using a Relay Service.”*
- A1.8 While the General Conditions under the 2003 Notification took effect in general from 25 July 2003, General Condition 15.9 set out the following qualification—
- “15.9 Where, prior to the entry into force of this Condition, the Communications Provider was not required, by virtue of any condition to a licence granted under section 7 of the Telecommunications Act 1984, to provide equivalent services and facilities to those required*

⁶¹ <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-conditions-of-entitlement>

*by paragraphs 15.2 to 15.8 above, that **Communications Provider shall comply with those paragraphs no later than 31 December 2003.***” (emphasis added)

A1.9 For the purpose of interpreting General Condition 15.3, the following definitions (among others) applied—

- “Communications Provider” means⁶² a person who provides Publicly Available Telephone Services;
- “End-User”, in relation to a Public Electronic Communications Service, means⁶³ (a) a person who, otherwise than as a Communications Provider is a Customer of the provider of that service; (b) a person who makes use of the service otherwise than as a Communications Provider; or (a) a person who may be authorised, by a person falling within paragraph (a), so to make use of the service;
- “Publicly Available Telephone Service” means⁶⁴ a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-Users with disabilities or with special social needs and/or the provision of non-geographic services;
- “Relay Service” means⁶⁵ any service which: (i) provides facilities for the receipt and translation of voice messages into text and the conveyance of that text to the terminal of customers of any provider of Publicly Available Telephone Services and vice versa, and (ii) has been approved by the Director to be a text relay service for the purposes of this Condition;
- “Subscriber” means⁶⁶ an End-User who is party to a contract with the Communications Provider for the provision of Publicly Available Telephone Services.

A1.10 On 12 March 2014, Ofcom issued a notification⁶⁷ in accordance with section 48(1) of the Act making modifications to General Condition 15.3 as set out in the Schedule to that notification. Those modifications took effect on 13 March 2014. The modified General Condition 15.3 read—

“The Communications Provider shall ensure that such of its Subscribers who, because of their disabilities, need to make or receive calls in which some or all of the call is made or received in text format, are able to access and use a Relay Service, including the receiving of calls made by End-Users irrespective of whether such End-Users have a disability. Such Subscribers

⁶² See General Condition 15.10(a) under the 2003 Notification.

⁶³ See paragraph 1 of Part 1 of the 2003 Notification.

⁶⁴ *Ibid.*

⁶⁵ See General Condition 15.10(c) under the 2003 Notification.

⁶⁶ See General Condition 15.10(d) under the 2003 Notification.

⁶⁷ The notification was published in Annex 2 to Ofcom’s statement entitled ‘Access to electronic communications services for disabled customers’ as published on 12 March 2014.

and End-Users, as the case may be, shall be charged for the conveyance of messages to which a Relay Service applies at no more than the equivalent price as if that conveyance had been made directly between the caller and the called person without use of a Relay Service. In making such charges, the Communications Provider shall apply a special tariff scheme designed to compensate Subscribers who, because of their disabilities, need to make calls to which a Relay Service applies for the additional time to make telephone calls using a Relay Service.”

A1.11 With effect from 1 October 2018, General Condition 15.3 was replaced by General Condition C5.9, which requires in relation to Relay Services (among other things) that—

*“C5.9 In providing access to **Relay Services** under **Condition C5.8**, **Regulated Providers** must comply with the following requirements:*

*(a) any charge for the conveyance of messages to which a **Relay Service** applies must not exceed the equivalent price as if that conveyance had been made directly between the caller and the called person without use of a **Relay Service**;*

*(b) in making the charges set out in **Condition C5.9(a)**, **Regulated Providers** must apply a special tariff scheme designed to compensate **Subscribers** for the additional time taken by **End-Users** with disabilities to make telephone calls using a **Relay Service** where, because of their disabilities, those **End-Users** need to make calls using a **Relay Service**;*

[(c) to (f)....]”

A1.12 For the purpose of interpreting General Condition C5.9, the following definitions (among others) applied—

- ‘**End-User**’, in relation to a **Public Electronic Communications Service**, means⁶⁸: (a) a person who, otherwise than as a **Communications Provider**, is a **Customer** of the provider of that service; (b) a person who makes use of the service otherwise than as a **Communications Provider**; or (c) a person who may be authorised, by a person falling within paragraph (a), so to make use of the service;
- ‘**Public Electronic Communications Service**’ means⁶⁹ any **Electronic Communications Service** that is provided so as to be available for use by members of the public;
- Condition C5 applies⁷⁰ to all providers of **Public Electronic Communications Services**, each of whom is a ‘**Regulated Provider**’ for the purposes of this **Condition**;
- ‘**Relay Service**’ means⁷¹ any service which: (a) provides facilities for the receipt and translation of voice communications into text and the conveyance of that text to the terminal of **End-Users** of any provider of **Publicly Available Telephone Services** and vice versa; (b) provides facilities for the receipt and transmission of voice communications in parallel with text communications, allowing both channels to work in tandem to deliver

⁶⁸ See section entitled ‘Definitions’ for the new General Conditions.

⁶⁹ *Ibid.*

⁷⁰ See General Condition C5.1.

⁷¹ See section entitled ‘Definitions’ for the new General Conditions.

near synchronous voice and text; (c) is capable of being accessed by **End-Users** of the service from readily available compatible terminal equipment, including textphones, Braille readers, personal computers and mobile telephones; (d) provides facilities to allow **End-Users**, who because of their disabilities need to make calls using a **Relay Service**, to receive incoming calls via the **Relay Service**, without the calling party needing to dial a prefix; (e) insofar as reasonably practicable, allows for communication between **End-Users** of the service at speeds equivalent to voice communications; (f) provides call progress voice announcements in a suitable form; (g) provides facilities for access to **Emergency Organisations**; and (h) provides access to operator assistance services and a **Directory Enquiry Facility** using short code numbers; and

- ‘**Subscriber**’ means⁷² any **End-User** who is party to a contract with a provider of **Public Electronic Communications Services** for the supply of such services.

A1.13 Accordingly, General Condition 15.3 (and subsequently General Condition C5.9, with effect from 1 October 2018, in similar terms) applied at all material times for the purposes of this Notification.

Subject of this Notification

A1.14 This Confirmation Decision is addressed to Post Office Limited, whose registered company number is 02154540 (“**Post Office**”). Post Office’s registered office is Finsbury Dials 20 Finsbury Street, London, EC2Y 9AQ.

Notification issued by Ofcom under section 96A of the Act

A1.15 On 16 December 2019, Ofcom issued a Notification under section 96A of the Act (the “Section 96A Notification”) to Post Office, as Ofcom had reasonable grounds for believing that between at least 31 August 2013 and 28 November 2019 (the “**Relevant Period**”) Post Office had contravened General Condition 15.3 and subsequently General Condition C5.9.

A1.16 The Section 96A Notification also specified the penalty that Ofcom was minded to impose on Post Office in respect of its contraventions of General Condition 15.3, and subsequently of General Condition C5.9. It further specified the steps that Ofcom thought should be taken by Post Office in order to comply with the General Condition C5.9 and remedy the consequences of the contravention.

A1.17 The Section 96A Notification allowed Post Office the opportunity to make representations to Ofcom about the matters set out in the Section 96A Notification.

⁷² *Ibid.*

Confirmation Decision issued under section 96C of the Act

- A1.18 On 18 December 2019, in a letter to Ofcom, Post Office confirmed that it waived its rights to make representations about the matters notified and admitted liability for the contravention. The period for Post Office to make representations has therefore expired.
- A1.19 Accordingly, Ofcom is hereby satisfied that Post Office contravened General Condition 15.3 and subsequently General Condition C5.9 during the Relevant Period, it being a 'Communications Provider' on whom General Condition 15.3 applied as well as a 'Regulated Provider' on whom General Condition C5.9 currently applies. Post Office did so by failing to apply a special tariff scheme to calls made by customers who, because of their disabilities, needed to use relay services.
- A1.20 Ofcom has therefore decided to give Post Office this Confirmation Decision confirming its contravention of General Condition 15.3 and subsequent General Condition C5.9 and our decision to impose a financial penalty on Post Office of £175,000 in respect of this contravention.
- A1.21 The extent of these this contravention and the reasons for Ofcom's decision are set out in the explanatory statement to which this Confirmation Decision is annexed.

Steps that should be taken by Post Office

- A1.22 In order to comply with General Condition C5.9 and remedy the consequences of the contravention, Post Office must, to the extent it has not already done so:
- i. apply a special tariff scheme designed to compensate Subscribers for the additional time taken by End-Users with disabilities to make telephone calls using a Relay Service where, because of their disabilities, those End-Users need to make calls using a Relay Service. In so doing, for the avoidance of doubt, Post Office may choose to continue to 'zero-rate' (i.e. apply no charge to) all calls made using Relay Services regardless of duration or destination.
 - ii. identify and provide appropriate refunds to all Subscribers who, because of their disabilities, needed to use Relay Services and did not benefit from a special tariff scheme.
 - iii. put in place and promote a process allowing affected Subscribers who it was unable to identify due to the absence of records to approach them with proof that they did not benefit from a special tariff scheme and claim a refund.
- A1.23 The step required by A1.22(i) should be taken immediately by Post Office upon receipt of this Confirmation Decision issued under section 96C of the Communications Act.
- A1.24 The steps required by A1.22(ii) and (iii) should be taken within 1 month of the receipt of this Confirmation Decision issued under section 96C of the Communications Act.
- A1.25 Within 1 month and 1 week of the receipt of this Confirmation Decision issued under section 96C of the Communications Act, Post Office must provide written confirmation that it has taken the steps required by A1.22 (i) – (iii).

Penalty

- A1.26 Ofcom has decided that Post Office must pay a penalty of **£175,000** in respect of its contravention of General Condition 15.3, and subsequently of General Condition C5.9, during the Relevant Period. This includes a 30% discount to the penalty Ofcom would otherwise have imposed, as a result of Post Office admitting liability and entering into a settlement with Ofcom.
- A1.27 Post Office has until **5.00pm Monday 10 February 2020** to pay Ofcom the penalty. If not paid by that deadline, it can be recovered by Ofcom accordingly.⁷³

Interpretation

- A1.28 Except insofar as the context otherwise requires, words or expressions used in this Notification have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of the said General Conditions or the Act.

Signed by



Gaucho Rasmussen

Director of Investigations and Enforcement

A person duly authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

13 January 2020

⁷³ Section 96C(7) Communications Act 2003.

A2. Ofcom's investigation

The decision to investigate

- A2.1 On 7 January 2019, Post Office self-reported that it had not applied a special tariff scheme to some text relay calls between at least 13 March 2014 and 28 November 2018.
- A2.2 Following a meeting with Post Office on 31 January 2019, we opened an Initial Assessment ('IA') on 7 February 2019 to help us determine how serious the issues were and what action, if any was appropriate. Post Office responded to the IA on 21 February 2019 (the 'February letter'). Post Office provided more detail about when it first discovered that it had not applied a special tariff scheme to calls using text relay services and the steps it had taken since the contravention was discovered.
- A2.3 Having considered all the information provided by Post Office in the February Letter, and in light of our Enforcement Guidelines,⁷⁴ we opened an investigation into Post Office's compliance with GC C5.9 and previous GC 15.3 (the 'Investigation') on 14 March 2019.

Information gathering

Information requests to Post Office

- A2.4 During the investigation, we issued two formal notices to Post Office under section 135 of the Act, requiring it to provide information to us.

First information notice

- A2.5 The information notice issued to Post Office on 10 May 2019⁷⁵ ('First Notice') required it to confirm when it began providing fixed and mobile telephone services; which companies provided it with wholesale services and the dates these services were provided to Post Office, details of the rates charged for standard calls and calls made using relay services; data including the number of customers that used relay services and how many calls were made using relay services that did not benefit from a special tariff scheme; as well as details of the remedial steps Post Office outlined in its previous correspondence.
- A2.6 Post Office responded to the First Notice in two stages, first on 31 May 2019 and then on 21 June 2019 ('First Response').⁷⁶
- A2.7 On 11 September 2019, Ofcom asked Post Office to clarify the methodology used in its response of 31 May 2019 to estimate the number of call attempts made to relay services

⁷⁴ Ofcom, *Enforcement Guidelines*, 28 June 2017, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf.

⁷⁵ First s135 Notice to Post Office dated 10 May 2019.

⁷⁶ First Response dated 31 May 2019 and 21 June 2019.

and the amounts spent on calls made to relay services. Post Office responded to this request detailing its methodology on 17 September 2019.

Second information notice

- A2.8 We issued a second information notice to Post Office on 22 July 2019⁷⁷ ('Second Notice'). The Second Notice sought additional information for the purposes of the Investigation and required Post Office to explain and clarify comments and documents that it provided in the February Letter and the First Response. In particular, the Second Notice required Post Office to confirm the date of the earliest 2011 price list that it had referred to in its First Response; provide call revenue data based on the use of both the 18001 (text-to-speech) and 18002 (speech-to-text) relay service prefixes; provide details of internal compliance monitoring and escalation procedures, including details of the steps taken when Post Office first became aware of the contravention; update on the remedial steps set out in its First Response; and provide information about relevant turnover.
- A2.9 Post Office responded to the Second Notice on 12 August 2019 and 12 September 2019 ('Second Response').⁷⁸

Meeting and Post Office's follow-up letter

- A2.10 On 24 September 2019, Ofcom met with Post Office to discuss tensions that it considered to exist between some of the information provided in Post Office's Second Response and information provided prior to the investigation opening, including in its IA response. At the meeting, Ofcom set out these tensions and invited Post Office to respond to these in writing.
- A2.11 On 4 October 2019, Post Office sent Ofcom a letter setting out why it considered that the information provided had been open and transparent.

Ofcom's provisional notification and the settlement procedure

- A2.12 On 16 December 2019, Ofcom issued a notification under 96A of the Act (the "Section 96A Notification") to Post Office setting out our view that we had reasonable grounds for believing that it had contravened GC C5.9 and previous GC 15.3 between at least 31 August 2013 and 28 November 2019. This was because, in Ofcom's view, Post Office had failed to apply a special tariff scheme to calls made by customers who, because of their disabilities, needed to use relay services during that period.
- A2.13 On 18 December 2019, Post Office wrote to Ofcom as part of the voluntary settlement procedure it had entered into with Ofcom:
- a) admitting it had contravened GC C5.9 and previous GC 15.3 as set out in the Section 96A Notification;

⁷⁷ Second s135 Notice to Post Office dated 22 July 2019.

⁷⁸ Second Response dated 12 August 2019 and 12 September 2019

- b) waiving its rights to submit representations; and
- c) confirming its recognition that the penalty imposed by Ofcom in respect of the contravention would be reduced because of its admissions.

A3. Limitations of Post Office data

Call attempts rather than calls completed and applying a proxy

- A3.1 Post Office confirmed that the data it provided in response to Question 9 of Ofcom’s First Information request related to call attempts made to relay services (which may include unsuccessful attempts)⁷⁹ rather than successful attempts only.
- A3.2 Further, the figures provided combined the use of both the 18001 (text-to-speech) and 18002 (speech-to-text) relay service prefixes. As the requirement to provide a special tariff scheme only applies to calls made by customers using relay services due to their disability, Ofcom considers that data for 18001 use is likely to be the best proxy for relevant customer use and spend.
- A3.3 Post Office confirmed that its Managed Service Provider (who manages Post Office’s relationship with current wholesale providers TalkTalk and Openreach) could provide data for successful attempts made to the 18001 prefix only, but it would require a system change. It advised that in the absence of such a change it could calculate the split of calls attempts made to each prefix and suggested that Ofcom use this as a proxy for calculating customer use/spend based on the combined call attempt data it had already provided.⁸⁰ Given the time and cost that would be incurred in making such system changes, Ofcom agreed to using the call attempt split as a proxy.
- A3.4 Post Office confirmed that between April 2018 (the furthest point in which data remained available) and November 2018 (when Post Office began zero-rating all calls using relay services), the split of call attempts made to the 18001 and 18002 prefixes was 78% and 22% respectively.⁸¹

Limited data for customers provided via Openreach

- A3.5 Post Office confirmed that it was only able to provide data for services provided by Openreach back to 1 December 2017.⁸² For services provided by TalkTalk it was able to provide data from 31 August 2013.
- A3.6 In 2018, where call attempt figures included volumes for both Openreach and TalkTalk, call attempts made via customers supplied by Openreach accounted for 27% of the overall total.

⁷⁹ Second Response, Question

⁸⁰ Second Response, Question 3.

⁸¹ Second Response, Question 3.

⁸² First Response, Question 12.

A4. Figures provided by Post Office: Relay service use/spend

	2013	2014	2015	2016	2017	2018
Number of subscribers who used relay services	37	60	67	60	106	126
Total call attempts made to relay services	554	3,621	5,514	3,371	3,769	4,294
78% of calls attempts made to relay services ⁸³	432	2,824	4,301	2,629	2,940	3,349
Total amount spent on calls made to relay services	£158	£1,041	£807	£845	£1,761	£1,167
78% of amount spent on calls made to relay services ⁸⁴	£123	£812	£629	£659	£1,374	£910
Highest total amount spent on calls made to relay services by a single subscriber	£46	£401	£171	£145	£1,067	£105

Total	20,619
78% of total	16,083
Total	£5,779
78% of total	£4,508

⁸³ As detailed in paragraphs A3.3 and A3.4, Ofcom agreed to use the split of call attempts made to the 18001 and 18002 prefixes between April 2018 and November 2018 as a proxy for calculating overall use of the 18001 prefix. This split was 78% and 22% respectively.

⁸⁴ See footnote 80 (above).

A5. Timeline of correspondence between Post Office and its Managed Service Provider

Date	Action
24/10/2016	Post Office's Managed Service Provider set out the requirements of GC 15.3 and made clear that Post Office was not applying a special tariff scheme to any relay calls.
14/11/2016	Post Office submitted a change request to its Managed Service Provider asking for a 30% discount to be applied to all relay calls.
31/01/2017	Post Office's Managed Service Provider provided a VROM (Very Rough Order of Magnitude) to Post Office indicating that the requested change was of medium complexity and would cost an estimated £25,000 to £40,000.
31/01/2017	Post Office queried whether there were alternative solutions that would be cheaper.
03/02/2017	Post Office's Managed Service Provider advised that the solution presented was the simplest solution available.
06/02/2017	<p>Post Office and its Managed Service Provider discussed potential alternative solutions including:</p> <ul style="list-style-type: none"> • zero-rating relay calls • creating a bundle for users of relay services • applying manual credits to bills <p>Post Office's Managed Service Provider explained why these options were unlikely to be cheaper or meet Ofcom requirements.</p>
21/02/2017	Post Office gave its Managed Service Provider approval to proceed with a Solution Design and a Change Management Note.
11/07/2017	Post Office's Managed Service Provider sent Post Office a Solution Design and Change Management Note. Cost of proposed solution was quoted at £53,820 (exc. VAT).
20/07/2017	Post Office and its Managed Service Provider discussed the Solution Design. Post Office asked for clarifications re: the solution presented, whether alternative solutions had been considered, and for amendments to be made to the Change Management Note.
15/09/2017	Post Office's Managed Service Provider submitted an updated Change Management Note to Post Office for sign-off.
02/01/2018	Post Office's Managed Service Provider emailed [redacted] (Post Office) asking if there was an update on the outstanding Change Management Note. Post Office's Managed Service Provider noted that Post Office had previously advised that they would <i>"like to have a conversation with OFCOM regarding the materiality of Cost of Compliance"</i> .
23/04/2018	Post Office submitted a new change request to its Managed Service Provider asking for text relay calls to be zero-rated.
11/06/2018	Post Office emailed its Managed Service Provider stating that the price for implementing the new change [no record of quote] was <i>"only a little cheaper than the original price"</i> and that they had <i>"pushed back on this"</i>

	<i>one [the previous solution] for price reasons". Post Office told its Managed Service Provider that, as a result "we need to investigate alternative ways of delivering a solution for this".</i>
02/07/2018	Post Office's Managed Service Provider sent an updated Change Management Note to Post Office. The cost of implementing the change was quoted as £46,108.66 (exc. VAT).
11/07/2018	Post Office sent its Managed Service Provider their comments regarding the new Change Management Note including queries on cost and implementation timeframe.
20/07/2018	Post Office's Managed Service Provider responded to Post Office's comments including an explanation of the cost.
23/07/2018	Post Office responded to its Managed Service Provider's response, including a request for a breakdown of 3 rd party costs for the new and previous solutions.
31/07/2018	Post Office's Managed Service Provider provided an updated Change Management Note. Quoted cost remained at £46,108.66 (exc. VAT).
01/08/2018	[X] signed off the updated Change Management Note.
03/08/2018	Post Office's Managed Service Provider sent Post Office its weekly report showing that the requested changes were scheduled to be delivered in October 2018.
10/10/2018	Post Office's Managed Service Provider and Post Office had a call to discuss the 'Roadmap' of outstanding actions. The requested changes to text relay were recorded as having been moved to mid-November for delivery.
18/10/2018	Post Office's Managed Service Provider and Post Office had a call to discuss the 'Roadmap' of outstanding actions. The requested changes to text relay were recorded as having been moved to December for delivery.
13/11/2018	Post Office contacted its Managed Service Provider to query why delivery had been pushed back to December. Post Office were advised that the date was an "error" and "Text relay will go in testing this week and released on the 22nd of Nov."
20/11/2018	Post Office's Managed Service Provider emailed Post Office advising that testing for the text relay change had been delayed due to other testing and delivery was now expected on 29 November 2018. Post Office responded expressing disappointment at the delay.
30/11/2018	Post Office's Managed Service Provider emailed Post Office confirming that the requested change was implemented on the afternoon of 29 November 2018.