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# Investigation into BT's compliance with the 118 price cap

Confirmation Decision under Section 96C  
Communications Act 2003

Non-confidential version – redactions are indicated with [REDACTED]

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# 1. Overview

In November 2018, Ofcom found that prices for directory enquiry (DQ) services had risen steeply and most consumers did not know how much they cost. This was causing bill shock because consumers were paying more than they expected for these calls. Some consumers were also struggling to pay their bills. To protect consumers, Ofcom imposed a price cap on the amounts that can be charged for calls to DQ services, with effect from 1 April 2019.

This document explains Ofcom's finding that BT contravened its regulatory obligations by failing to implement the price cap in time, which resulted in EE customers being charged too much for calls to DQ services. It also sets out why we consider this to be a serious breach of the regulations and why we have imposed a penalty of £245,000 on BT.

## What we have found – in brief

**We have found that, between 1 April 2019 and 26 June 2019, BT contravened General Conditions B1.5, B1.19 and B1.21(b) by overcharging customers of EE for calls to DQ services.**

Based on information provided by BT, we have concluded that between 1 April 2019 and 26 June 2019, BT overcharged around 5900 EE customers £42,700 for calls to DQ services. BT was able to correct most bills before they were paid by customers so that only £10,600 of the overcharge was ultimately paid by customers.

**BT has taken steps to fully remedy the consequences of the breach.** In particular, BT has repaid in full those customers that paid too much for a call to a DQ service. BT has also put in place steps which it considers will help to prevent similar issues from recurring in future.

**We consider that several factors point to this being a serious breach.** In particular, the following 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 some of the consumers affected; (ii) the system failures that contributed to the contravention; and (iii) EE's poor record of compliance with its regulatory obligations. However, the overall financial harm was relatively low and BT has fully cooperated with Ofcom's investigation. We consider that the penalty we have imposed adequately reflects these factors.

**We have imposed penalty of £245,000 on BT. This includes a 30% settlement discount on the full amount of the penalty imposed.** 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.

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

## 2. Introduction

- 2.1 This document sets out Ofcom's findings that BT plc (BT) has contravened General Conditions B1.5, B1.19 and B1.21(b) because its subsidiary, EE Limited (EE) overcharged customers for calls to certain 118 numbers between 1 April 2019 and 26 June 2019.
- 2.2 118 numbers are used exclusively for the provision of directory enquiry ('DQ') services. On 1 April 2019, Ofcom imposed a price cap of £3.65 per 90 seconds on charges set by DQ providers for calls to their services. This required communications providers, which retail voice calls to consumers, to make changes to their billing systems to ensure that the prices that their customers pay for calling a DQ service comply with the price cap.
- 2.3 BT has admitted that EE failed to make all the necessary changes to its billing systems by 1 April 2019. As a result, it overcharged its customers for calls they made to over a hundred 118 numbers between 1 April and 11 April 2019 inclusive in breach of the price cap.
- 2.4 BT has also admitted that EE failed to implement the price cap on time for an additional 11 numbers, which resulted in its customers continuing to be overcharged for calls made to these numbers between 1 April 2019 and 26 June 2019. Some calls to these numbers were charged at prices that breached the price cap, while other calls were charged at prices that complied with the price cap but were higher than the price set by the DQ provider.
- 2.5 In total, BT overcharged 5923 EE customers by £42,709 for calls to 118 numbers, as a result of these billing errors. Of this £10,639 was paid by EE's customers and has been refunded. The remaining sum was not billed to customers, as EE amended the customer bills before they were issued.
- 2.6 On the basis of these facts, Ofcom has found that BT has contravened the following General Conditions:
- B1.5: by charging prices for calls to 118 numbers that exceeded the price cap for the 118 range, BT failed to comply with all applicable restrictions and requirements set out in the National Telephone Numbering Plan;
  - B1.19: by charging prices for calls to 118 numbers that exceeded the price cap for the 118 range, BT failed to comply with the applicable maximum price in the National Telephone Numbering Plan;
  - B1.21(b): by charging calls to 118 numbers at rates which exceeded the prices set by the relevant DQ providers, BT failed to calculate the retail price for these calls as the sum of its access charge and the service charge set by the DQ provider.
- 2.7 Ofcom's view is that BT's contraventions are serious. BT recognised the importance with which Ofcom regarded the implementation of the price cap for calls to 118 numbers and said it was committed to giving consumers the protection it would provide. It gave Ofcom repeated assurances that it would implement the price cap by 1 April 2019. However, it failed to ensure that the necessary changes were made to EE's billing systems by 1 April 2019. Poor communication between the teams involved in implementing the change and inadequate verification measures contributed to this failure.

- 2.8 Once the error was drawn to BT's attention, it acted swiftly to refund the customers affected by the overcharging. Nonetheless, the breaches had the potential to cause harm by prejudicing the achievement of the consumer protection objectives of the 118 price cap. These were to ensure that the prices that consumers are charged for calling DQ services are closer to what they expect to pay, to reduce the scope for bill shock and to improve the affordability of 118 services.
- 2.9 We also take a serious view of BT's failure to identify the full extent of the billing inaccuracies in its systems so that it continued to overcharge consumers calling some DQ numbers for almost 3 months after it first identified flaws in its implementation of the 118 price cap.
- 2.10 For these reasons and in light of its assessment of the penalty factors in this case, Ofcom has imposed a penalty of £245,000; which includes a 30% discount to reflect the fact that BT has agreed to settle this investigation.
- 2.11 The structure of this document is as follows:
- In section 3, we set out the background to Ofcom's findings and the applicable legal framework.
  - In section 4, we set out the factual findings we have made and our grounds for finding that BT contravened General Conditions B1.5, B1.19 and B1.21(b).
  - In section 5, we explain why we have imposed a penalty for these breaches and our assessment of the appropriate penalty.

## 3. Background

### DQ services and the 118 Price Cap

- 3.1 DQ services are provided on 118 numbers. They are used by consumers who are looking for telephone numbers for individuals, businesses and public services.
- 3.2 Demand for DQ services is in decline, with only a small proportion of consumers using the services and tending to do so very infrequently.<sup>1</sup> Nonetheless, for many of the 1.1 million who use the services, they offer an important means of obtaining the number they need. These consumers often have no alternative because they do not have internet access or other ways to find the information at the time they need it.<sup>2</sup> Ofcom has found that the over-65s are four times as likely as those aged between 16 and 34 to use DQ services and they are significantly less likely than DQ users as a whole to have internet access when they call.<sup>3</sup>
- 3.3 In 2018, Ofcom completed its review of the cost of calls to 118 numbers. We found that prices had increased substantially in recent years with some services costing almost as much as £20 for a 90 second call.<sup>4</sup> We also found that consumers were generally not aware of how much DQ calls cost. There is little advertising of DQ prices and we found that consumers' understanding of charges had not kept pace with the price increases for some services. We found that DQ users estimated that on average DQ calls cost around £2 for the first minute.<sup>5</sup> As a result of high prices, poor price transparency and low consumer awareness, significant numbers of DQ users were experiencing bill shock because they paid more for these calls than they expected.<sup>6</sup>
- 3.4 We also found that high prices for DQ services were causing affordability issues for vulnerable consumers. For those on low incomes, a single DQ call lasting 90 seconds could cost more than their average weekly expenditure on communications services (including post and internet).<sup>7</sup> We found that other consumers didn't use DQ services at all because they were worried about the cost, while among DQ users, 8% experienced affordability issues as a result of making a DQ call, cutting back on expenditure on other items, borrowing money to pay their bill, delaying payment or defaulting on their bill altogether.<sup>8</sup>

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<sup>1</sup> Ofcom, Directory Enquiries (118) Review, 28 November 2018 ('DQ Statement'), paragraph 1.2.

<sup>2</sup> DQ Statement, paragraph 3.40.

<sup>3</sup> DQ Statement, paragraphs 3.36 and 3.40.

<sup>4</sup> DQ Statement, paragraph 1.4.

<sup>5</sup> DQ Statement, paragraphs 3.29 – 3.28, 3.43 – 3.44.

<sup>6</sup> DQ Statement, paragraphs 4.9 – 4.12

<sup>7</sup> DQ Statement, paragraph 4.54

<sup>8</sup> DQ Statement, paragraph 4.58.

- 3.5 As a result of these findings, Ofcom decided on 28 November 2018 to impose a cap on the maximum amount that providers can charge for DQ services to protect consumers. This price cap is £3.65 per 90 seconds (inclusive of VAT) (the ‘Price Cap’).<sup>9</sup>

## Implementing the price cap

- 3.6 In its response to Ofcom’s consultation on the appropriate implementation period for the Price Cap, BT said:

*“We agree that the remedies should be implemented as soon as possible after Ofcom publishes its final statement. It is important to address the consumer harm Ofcom has identified without delay.*

*“To meet Ofcom’s proposed four month implementation period, 118 service providers will have to notify BT and CPs of their proposed prices within two months of Ofcom’s final statement. Ofcom should therefore set out a two-stage implementation period, whereby 118 providers are given two months to notify prices to CPs so that the necessary notice period can be given under the SIA. This will also allow sufficient time to notify end customers and implement any price changes within billing systems.”<sup>10</sup>*

- 3.7 However, BT also said that a four month implementation period was only tenable if there was no requirement to introduce new price points on its billing systems to replace those that would become redundant under the Price Cap.<sup>11</sup>

- 3.8 In our statement of 28 November 2018, we decided that a four month implementation period for the Price Cap was appropriate. We said that this was sufficient time to allow DQ providers with charges above the Price Cap to migrate to a new, compliant price point on CPs’ billing systems. We said that we expected CPs *“to take all reasonable steps to act promptly upon requests from DQ providers for new price points within the four month implementation period in order to comply with their obligations ...and ensure that they charges they bill their customers for calls to DQ services are set in accordance with the cap.”<sup>12</sup>*

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<sup>9</sup> When consumers call a 118 number, the price charged by their phone provider is the sum of the access charge (the amount charged by the phone provider for the call) and the service charge, which is the rate set by the DQ provider in respect of their DQ service. The Price Cap applies to the service charge only.

<sup>10</sup> BT’s response to Ofcom’s Consultation: A review of the cost of calling Directory Enquiries (118), 24 August 2019 (‘BT’s Response’), paragraphs 2.3.1 – 2.3.3.

<sup>11</sup> BT’s Response, paragraph 2.3.4. Under GC B1.28 – 1.29, CPs are required to have 100 different price points on their billing services for calls to non-geographic number ranges (which include 118 numbers), reflecting the range and volume of prices requested by service providers. As a result of the Price Cap, 11 price points on CPs billing systems became redundant and some DQ providers asked for new price points for their services. Introducing these new price points entailed changes to BT’s billing systems additional to those that it needed to make to move 118 numbers to price points compliant with the Price Cap.

<sup>12</sup> DQ Statement, paragraph 6.14.

- 3.9 We said that if there were other contractual changes that providers wished to make as a result of the Price Cap, that was a matter for commercial negotiation between the parties and did not provide grounds for delaying implementation.<sup>13</sup>

## Engagement with BT prior to 1 April 2019

- 3.10 On 31 January 2019, BT wrote to Ofcom about the implementation of the Price Cap. It said:

*“We are committed to giving consumers the protection they need and will ensure that from 1 April 2019 the Service Charge for a call to a 118 number does not exceed [the Price Cap].”<sup>14</sup>*

- 3.11 It also outlined two areas of difficulty in terms of timely implementation: (i) the treatment of DQ services where the provider fails to request a compliant price point; and (ii) whether requests for new price points by DQ providers (i.e. additional to those already available on BT’s billing systems) could be accommodated by the implementation deadline of 1 April 2019.

- 3.12 Ofcom met with BT and EE on 6 February 2019 to discuss the issues that BT said it was experiencing in relation to introducing new price points requested by DQ providers. On 7 February 2019, Ofcom spoke to a senior manager at BT to reiterate that it took the implementation of the Price Cap on 1 April very seriously. We also said that while we considered that new price points for DQ services should be available by that date, it was important that BT committed to a clear date for the introduction of new price points and that this should be no later than 1 May 2019.<sup>15</sup>

- 3.13 On 13 February 2019, BT wrote to Ofcom and said that it had *“confirmation that all 118 providers that BT interconnects with, except one, will comply with the price cap from 1 April”*.<sup>16</sup> In relation to the outstanding DQ provider, BT said that it would be blocking calls to the relevant numbers *“to ensure that all active numbers are compliant with the price cap from 1 April”*.<sup>17</sup>

- 3.14 On 21 March 2019, BT wrote to Ofcom and confirmed that *“the 118 price cap for EE will be effective from 1 April”*.<sup>18</sup>

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<sup>13</sup> DQ Statement, paragraph 6.16.

<sup>14</sup> Letter from BT to Ofcom, 31 January 2019

<sup>15</sup> Call between Ofcom and BT, 8 February 2019

<sup>16</sup> Letter from BT to Ofcom, 13 February 2019

<sup>17</sup> Email from BT to Ofcom, 13 February 2019

<sup>18</sup> Letter from BT to Ofcom 21 March 2019



## 4. Our findings

- 4.1 We have found that BT has contravened GC B1.5, B1.19 and B1.21(b) in respect of its charges for calls to 118 numbers.
- 4.2 In this section, we set out the evidence on which Ofcom relies and its reasons for finding that BT's conduct contravened these General Conditions.

### Relevant facts

#### 118 calls charges between 1 April and 11 April 2019

- 4.3 BT has informed Ofcom that between 1 April and 11 April 2019 inclusive, 3,668 EE customers made calls to 118 numbers which were charged at an incorrect rate.<sup>19</sup> All of these calls were charged at levels above the Price Cap (the 'First Overcharge').
- 4.4 This matter first came to BT's attention when it was informed by The Number UK (TNUK) on 1 April 2019 that calls to its 118 118 number were not being charged at the correct rate.<sup>20</sup>
- 4.5 BT's internal investigation identified that this was not an issue that was not limited to 118 numbers allocated to TNUK, but instead impacted over 100 118 numbers.<sup>21</sup> BT also identified that this issue impacted both pay as you go and pay monthly customers, although pay as you go customers were not overcharged for the same length of time, with the issue resolved more expediently than for pay monthly customers.<sup>22</sup>
- 4.6 As at 1 April 2019, there were over 300 118 numbers which consumers were able to call to obtain a DQ service. The information provided by BT shows that EE failed to implement a service charge that complied with the Price Cap for over 100 of these DQ numbers.<sup>23</sup>
- 4.7 Ofcom estimates that of all 118 calls made by pay monthly customers during the period 1 April to 11 April 2019, around 60% of calls were made to a number with a service charge that did not comply with the 118 price cap.<sup>24</sup> For pay as you go customers, the problem was corrected after one day; however, during this time around 40% of DQ calls of calls were made to a number with a service charge that did not comply with the 118 price cap during this same period.<sup>25</sup>
- 4.8 One of the numbers that EE failed to move to a compliant price point was 118 118, the most commonly called DQ service. Other 118 numbers that were impacted by this issue

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<sup>19</sup> BT's response to Ofcom's 2<sup>nd</sup> Information Request, 24 September 2019

<sup>20</sup> BT internal email 5

<sup>21</sup> Attachment to BT internal email 4

<sup>22</sup> The overcharge for PAYG customers in relation to the DQ numbers covered by the First Overcharge lasted one day, 1 April 2019

<sup>23</sup> BT Internal Email 1

<sup>24</sup> Ofcom's analysis of BT's response to question 2 of Ofcom's 1<sup>st</sup> Information Request, 3 July 2019

<sup>25</sup> Ofcom's analysis of BT's response to question 2 of Ofcom's 1<sup>st</sup> Information Request, 3 July 2019

included 118 888 (Conduit National) and 118 247 (Yell). The prices charged by EE for calls to these numbers during the period 1 April to 11 April 2019 are set out in Table 1.

**Table 1: Examples of numbers impacted by First Overcharge**

Number	Service charge
118 118	£8.98 and £4.49 per additional minute
118 888	£8.98 and £4.49 per additional minute
118 247	£5.50 and £2.75 per additional minute

- 4.9 The total amount overcharged by EE in relation to calls to 118 numbers made during this period was £36,809.03.<sup>26</sup> However, only 471 customers<sup>27</sup> who called a non-compliant DQ number during the period 1 to 11 April 2019 made a payment as a result of the overcharging by EE.<sup>28</sup> The total amount paid by these customers was £4,739.15.<sup>29</sup>
- 4.10 The remaining £32,069.88, relating to 3196 customers, was proactively recredited by EE to the customers affected before bills were issued to them.<sup>30</sup>
- 4.11 We note that money refunded or proactively recredited to customers comprises the difference between the amount charged and the price cap, and the difference between the price cap and the actual amount that should have been charged.
- 4.12 BT has refunded in full all customers who paid amounts overcharged by EE as a result of making calls to 118 numbers during this period.<sup>31</sup>

### Call charges to eleven 118 numbers between 1 April and 26 June

- 4.13 On 1 July 2019, BT informed Ofcom that EE had continue to overcharge its customers for calls to eleven 118 numbers (the ‘Second Overcharge’).<sup>32</sup>
- 4.14 EE omitted these numbers from the billing changes it had requested in relation to 118 numbers in response to the First Overcharge. As a result, it continued to bill calls to these numbers at rates above the Price Cap.
- 4.15 In Table 2 below sets out the 118 numbers in question and the service charge rates applied by EE after 1 April 2019:

<sup>26</sup> BT’s response to Ofcom’s 2<sup>nd</sup> Information Request, 24 September 2019

<sup>27</sup> By “customers” we mean unique customer phone numbers that called relevant DQ numbers during the period 1 April to 11 April 2019.

<sup>28</sup> Attachment to email from BT to Ofcom, 19 November 2019

<sup>29</sup> Attachment to email from BT to Ofcom, 19 November 2019

<sup>30</sup> BT’s response to Ofcom’s 2<sup>nd</sup> Information Request, 24 September 2019

<sup>31</sup> BT’s response to Ofcom’s 2<sup>nd</sup> Information Request, 24 September 2019

<sup>32</sup> Call between Ofcom and BT, 1 July 2019

**Table 2: Numbers impacted by Second Overcharge**

Number	Service Charge
118212	£8.98 and £4.49 per additional minute
118412	£8.98 and £4.49 per additional minute
118003	£3.99 and £1.39 per additional minute
118190	£3.99 and £1.39 per additional minute
118060	£4.99 and £1.35 per additional minute
118224	£6.98 and £3.49 per additional minute
118688	£3.99 and £1.39 per additional minute
118119	£5.50 and £2.75 per additional minute
118288	£5.50 and £2.75 per additional minute
118802	£5.50 and £2.75 per additional minute
118800	£6.98 and £3.49 per additional minute

- 4.16 When the overcharging was discovered on 25 April 2019 by the EE Portfolio and Pricing Team, it was decided to ‘cease’ the eleven 118 numbers, in the belief that calls would no longer be connected to these numbers once the cease was implemented.<sup>33</sup>
- 4.17 Action to implement the cease was taken on the following dates: 22 May (for EE customers on legacy billing systems); 11 June (for EE pay as you go customers); and 19 June (for EE pay monthly customers). However, the action EE took did not stop calls being connected to the numbers in question. Instead, the calls continued to be connected and were charged by EE’s billing system at a rate below the Price Cap.
- 4.18 Specifically, for each affected number, the service charge price point defaulted to the service charge price point for the next closest 118 number. As all other active 118 numbers had been moved to compliant price points, the service charge applied by EE when billing customers for calls to these eleven 118 numbers complied with the Price Cap. However, the charge for each of these eleven numbers was not the rate that had been selected by the DQ providers for calls to access their services.<sup>34</sup>
- 4.19 This issue was identified by BT’s Group Customer Billing team, which took corrective action to restore the link between each of the eleven 118 numbers and their respective compliant price point for billing purposes.<sup>35</sup> From each of the dates set out in paragraph 4.18, calls to these numbers were charged at a price point which complied with the Price Cap but not at

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<sup>33</sup> BT’s response to Ofcom’s 3<sup>rd</sup> Information Request, 22 October 2019

<sup>34</sup> BT’s response to Ofcom’s 3<sup>rd</sup> information request, 22 October 2019

<sup>35</sup> BT’s response to Ofcom’s 3<sup>rd</sup> information request, 22 October 2019

the level requested by the relevant DQ provider; this was remedied from 26 June 2019, when calls to these numbers were charged at the levels requested by the DQ providers.<sup>36</sup>

- 4.20 As a result of this failure, BT overcharged 1,730 EE customers for calls to these numbers in relation to 2160 calls.<sup>37</sup> Up to 19 June 2019, during which time 2125 of the relevant DQ calls were placed, callers were charged at rates which did not comply with the Price Cap.<sup>38</sup> Subsequently, until 26 June 2019, callers were charged at rates which did not match the charging rates selected by the relevant DQ provider.<sup>39</sup>
- 4.21 In total, customers were overcharged £5,899.89 during the Second Overcharge, £5802 of which related to calls to numbers with service charges set at levels above the price cap.<sup>40</sup>
- 4.22 BT has refunded all customers affected by the Second Overcharge in full.<sup>41</sup>

## **BT's regulatory obligations in relation to calls to 118 numbers**

- 4.23 Numbers that are available for use as telephone numbers are set out in the National Telephone Numbering Plan (the 'Numbering Plan') which Ofcom publishes in accordance with section 56 of the Act. The Numbering Plan also includes:

- such restrictions as Ofcom considers appropriate in relation to the use of the numbers listed; and
- any applicable tariff principles and maximum prices which Ofcom considers appropriate for the purpose of protecting consumers.

- 4.24 118 numbers are listed in Part A of the Numbering Plan, with the restriction that they are used "to access a Directory Enquiry Facility". Ofcom's DQ Statement of 28 November 2019 included a modification of the tariff principles and maximum prices recorded as applicable to 118 numbers so that, with effect from 1 April 2019, the relevant entry read:

*"Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs B1.21 – B1.27 of the General Conditions of Entitlement.*

*"The applicable Service Charge must not exceed: • 304.167 pence per 90 seconds, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or • 304.167 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate."<sup>42</sup>*

- 4.25 The tariff principles referred to in the Numbering Plan include the requirement in GCB1.21 to calculate the retail price for call to a 118 as the sum of the Access Charge Element (which is set by the caller's communications provider) and the "Service Charge Element".

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<sup>36</sup> Attachment to email from BT to Ofcom, 5 November 2019

<sup>37</sup> Attachment to email from BT to Ofcom 19 November 2019.

<sup>38</sup> Attachment to email from BT to Ofcom 19 November 2019.

<sup>39</sup> Attachment to email from BT to Ofcom, 5 November 2019. .

<sup>40</sup> Attachment to email from BT to Ofcom 19 November 2019.

<sup>41</sup> Annex 2, BT's response to Ofcom's 2<sup>nd</sup> Information Request, 24 September 2019

<sup>42</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0013/102613/national-numbering-plan.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0013/102613/national-numbering-plan.pdf)

This is a defined term in the General Conditions, meaning an amount calculated by reference to the “Service Charge”. This is another defined term meaning:

*“the rate set by a Communications Provider in accordance with Condition B1.23 in respect of the conveyance of a call to an Unbundled Tariff Number from the Assumed Handover Point to the point of termination and the enabling of a Consumer to use an Unbundled Tariff Number to access any service provided by means of that number.”*

- 4.26 In the context of DQ services, this is the rate that is selected by the DQ provider for accessing and using its service, in conjunction with the communications provider hosting its service on its network, (where the DQ provider and hosting communications provider are not the same). Accordingly, the overall effect of these provisions is that when calculating the amount it charges its customer for calling a 118 number, the communications provider must use the Service Charge which has been set by the DQ provider.
- 4.27 Part B1 of the General Conditions of Entitlement imposes a number of different obligations on communications providers in relation to the use of numbers and how charges for calls to certain numbers, including 118 numbers are calculated. These obligations include:
- GC B1.5, which requires communications providers to comply with the restrictions and requirements recorded in the Numbering Plan;
  - GC B1.19, which requires a CP to calculate call charges to certain types of number, including 118 numbers, in accordance with the tariff principles in GC B1.21 – B1.27 and any maximum price in the Numbering Plan;
  - GC B1.21, which specifies that the retail price charged to a consumer for a call to certain types of number, including 118 numbers, must be the sum of the access charge, which is the rate set by the communications provider retailing the call, and the service charge (as defined in paragraph 4.25 above), which is the rate set by the relevant service provider for enabling the caller to access and use the particular service provided by means of the number in question.
- 4.28 In the paragraphs below, we explain our findings that BT has contravened each of these conditions as a result of the amounts it charged consumers for calls to 118 numbers. We have found that it contravened GC B1.5 and B.21(b) between 1 April 2019 and 26 June 2019 and GC B1.19 between 1 April 2019 and 19 June 2019.

## **Findings of contravention**

### **Contravention of General Conditions B1.5, B1.19 and B1.21(b)**

- 4.29 Under GCB1.5 and B1.21(b) BT must comply with the requirement specified in the Numbering Plan that retail prices for voice calls to 118 numbers are charged in accordance with the applicable service charge selected by the relevant DQ provider. Under GC B1.5 and GCB1.19, the service charges which BT uses to calculate its retail prices for calls to 118 numbers must be no more than the maximum price specified in the Numbering Plan of

£3.65 (inc VAT) per 90 seconds (where the service charge comprises or includes a pence per minute rate) and £3.65 (inc VAT) where the service charge is set on a per call basis.

- 4.30 As set out in BT's letter to Ofcom of 13 February 2019, all bar one provider had notified BT of a charging rate for its service that complied with the Price Cap.<sup>43</sup> However, between 1 April 2019 and 19 June 2019, BT's subsidiary, EE did not use these rates and instead continued to charge 118 calls above the maximum price specified in the Numbering Plan (i.e. the Price Cap).<sup>44</sup>
- 4.31 Between 1 April 2019 and 11 April 2019 inclusive, the failure to comply with the Price Cap and charging a rate which was not the one selected by the DQ provider applied to calls made to over 100 118 numbers;<sup>45</sup> thereafter until 19 June 2019, the failures applied to calls made to eleven 118 numbers.<sup>46</sup>
- 4.32 From 19 June 2019, EE charged all 118 calls at rates which complied with the Price Cap. However, in respect of eleven 118 numbers, it failed to use the charging rate selected by the DQ provider when calculating its retail charges for calls. This failure continued until 26 June 2019.<sup>47</sup>
- 4.33 We have therefore found that BT contravened:
- a) General Condition B1.5 and B1.19 between 1 April 2019 and 19 June 2019 by calculating retail prices for calls to 118 numbers using service charges which exceeded the maximum price specified in the Numbering Plan for calls to these numbers; and
  - b) General Conditions B1.5 and B1.21(b) between 1 April 2019 and 26 June 2019 by calculating retail prices for calls to 118 numbers using service charges which were not the applicable service charges selected by the relevant DQ providers.

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<sup>43</sup>See paragraph 3.13 above. In relation to the outstanding provider, BT told Ofcom that it would block calls to its DQ service.

<sup>44</sup> See paragraphs 4.3 to 4.20

<sup>45</sup> See paragraph 4.5

<sup>46</sup> See paragraph 4.13

<sup>47</sup> See paragraphs 4.17 to 4.18

## 5. Penalty

### Summary

- 5.1 Ofcom's has imposed a penalty of £350,000 in relation to the contraventions of GC B1.5, B1.19 and B1.21(b), which it has reduced to £245,000 as a result of BT agreeing to settlement.
- 5.2 In reaching this view, we have had regard to (among other things) the need to set a penalty which acts as an effective incentive for BT and communications providers more widely to comply with regulatory obligations which we impose for the protection of consumers. In so doing, we have had particular regard to the potential impact of the contraventions in this case on consumers, including vulnerable consumers.
- 5.3 In setting the penalty, we have considered relevant factors in the round and have had regard to our Penalty Guidelines, as set out in the paragraphs below.

### Consideration of whether to impose a penalty

- 5.4 Ofcom's principal duty in carrying out its functions is to further the interests of citizens and consumers in relevant markets. As set out in Section 3, Ofcom found material consumer harm associated with calls to 118 numbers and so imposed the Price Cap in order to protect consumers from high call charges. We recognised that the consumer interest strongly favoured the implementation of the cap as soon as reasonably practicable, taking account of the changes that CPs such as BT would need to make to their billing systems. BT expressly recognised the importance of the measure and the need for it to be implemented without delay in order to address the consumer harm that Ofcom had identified.<sup>48</sup> BT wrote to Ofcom committing that it would ensure that the price cap would be implemented from 1 April 2019.<sup>49</sup>
- 5.5 Accordingly, we regard the contraventions we have identified as a result of BT's failure to implement the price cap for calls to 118 numbers as serious. The total amount of the overcharge resulting from the contraventions and the number of EE customers adversely affected were relatively low. However, based on our findings in the DQ Statement, set out at paragraphs 3.2 to 3.5 above, the contraventions carried a high risk of consumer harm, including harm to vulnerable consumers.
- 5.6 We also take a serious view of BT's failure to have adequate systems in place to ensure that it was able to fulfil its regulatory obligations on time, despite having had a sufficient period to implement the cap ahead of it coming into force (see paragraph 5.29 and Table 3). Therefore, our view is that that a penalty is appropriate in this case.

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<sup>48</sup> See paragraph 3.6.

<sup>49</sup> See paragraph 3.10.

## Penalty amount

5.7 In considering the level of penalty, Ofcom has had regard to its published Penalty Guidelines.

## Deterrence

5.8 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.

5.9 Any penalty we set should therefore be sufficiently high to discourage bad conduct and incentivise BT'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 BT'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.

5.10 In considering deterrence, we also consider it important that the penalty we set should incentivise BT and the wider industry to comply with obligations that are imposed for the protection of consumers, in particular, where vulnerable consumers might otherwise be at risk of harm. Accordingly, in circumstances where the scale of the overall financial harm arising from the contraventions is relatively low, a higher penalty may be appropriate to reflect the harm or risk of harm to individual consumers.

5.11 Our Penalty Guidelines make clear that Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty.

5.12 Under section 97 of the Act, the amount of a penalty notified under section 96A may not exceed ten per cent of the turnover of the person's relevant business<sup>50</sup> for the relevant period.<sup>51</sup>

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<sup>50</sup> 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.

<sup>51</sup> 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 BT's circumstances in this case).



- 5.13 BT's turnover from its relevant business for the financial year ending 31 March 2019 was £[~~3~~].<sup>52</sup>

## Seriousness, culpability and harm

### Duration of contravention

- 5.14 As set out in Section 3, the contraventions we have found lasted from 1 April 2019 until 19 June 2019 and from 1 April 2019 to 26 June 2019. While this was a relatively short period of non-compliance, BT was on notice in the four months immediately prior to the period of contravention that it was required to implement the Price Cap on 1 April 2019.

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

- 5.15 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. We have given particular weight to this factor in this case, given Ofcom's findings in its review of the cost of DQ calls about the extent of consumer harm caused by the cost of DQ calls which led to the imposition of the Price Cap. Our findings included the potential harm caused to vulnerable consumers, including those over 65, who may not have internet access, and those on low incomes, who might face affordability issues as a result of making a DQ call.
- 5.16 In relation to the financial harm caused by the contraventions, BT overcharged 5923 EE customers in total for calls to 118 numbers. The total amount of the overcharge was £42,708.92. However, most of this was recredited by BT before the bills were issued, meaning that no money was paid by EE's customers. 46% of the customers – 2727 - actually paid the amounts they were overcharged. The total amount of the overpayments made as a result of the contraventions was £10,639.04.<sup>53</sup> Of this, £10,542.11 related calls to DQ numbers with a service charge set above the price cap.<sup>54</sup>
- 5.17 BT confirmed on 24 September 2019 that it had refunded all customers who were overcharged for calls to 118 numbers as a result of the contraventions.<sup>55</sup>
- 5.18 The actual financial harm which EE's customers suffered overall was relatively short-lived. However, we have also taken account of the wider effects on consumers of the failure to comply with the Price Cap in breach of General Condition B1.5 and B1.19. These had the potential to compromise the benefits to consumers of the Price Cap. On 1 April 2019, Ofcom issued a press release to announce that the Price Cap had come into effect, saying *"If you call directory enquiry services you will be protected from high prices, thanks to a*

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<sup>52</sup> This information was gathered as part of a separate, unrelated investigation. Ofcom has notified BT of its intent to use this information for the purposes of identifying the cap on the penalty in this investigation.

<sup>53</sup> Attachment to email from BT to Ofcom 19 November 2019

<sup>54</sup> Attachment to email from BT to Ofcom 19 November 2019

<sup>55</sup> BT's response to Ofcom's 2<sup>nd</sup> Information Request, 24 September 2019.

*price cap on 118 phone numbers from 1 April.*"<sup>56</sup> This was not the case for EE's customers. On 1 April, it continued to charge over 100 118 numbers at levels above the Price Cap.<sup>57</sup>

- 5.19 These numbers included 118 118, which is the most commonly used DQ service.<sup>58</sup> Prior to the implementation of the Price Cap, the cost of a 1 minute call to 118 118 was £8.98, with each subsequent minute costing £4.49 (excluding the calling provider's access charge).<sup>59</sup> As a result of the Price Cap, TNUK, the provider of the 118 118 service, reduced the cost of a 1 minute call to £2.50 with each subsequent minute costing 75p (excluding the calling provider's access charge).<sup>60</sup> BT failed to implement these reduced charges on 1 April 2019 and, as a result, EE's customers faced substantially higher charges than they were entitled to expect.
- 5.20 By way of example, during the period 1 to 11 April 2019, around 80 of EE's pay monthly customers faced bills where the Service Charge was over £40 during the period, another 8 of its pay monthly customers faced bills in excess of £100 while 3 faced bills in excess of £200.<sup>61</sup> By comparison, for the period 12 – 15 April 2019, after EE had corrected its charges for the 118 118 service, the most expensive bill faced by an EE pay monthly customer was £30.86 for a call of almost 38 minutes.<sup>62</sup> Most bills during this period for calls to 118 118 were at or below £3.65.<sup>63</sup>
- 5.21 The level of overcharging is particularly striking when comparing the cost of calls of similar length before and after BT fully implemented the Price Cap. On 5 April, the service charge for a call to 118 118 lasting 663 seconds by a pay monthly customer was £54.10. This was almost 5 times as much as the service charge for a call of 669 seconds to 118 118 on 12 April, after it corrected its prices for pay monthly customers. On this occasion, the customer was charged £10.86.<sup>64</sup>
- 5.22 Pay as you go customers were also subject to higher charges than they should have been. For example, on 1 April 2019, one pay as you go customer was subject to a service charge of £26.01 for a call to 118 118 which lasted 226 seconds. This was more than 3 times the amount of the service charge for a call to 118 118 on 3 April 2019 (after the First Overcharge had been resolved for pay as you go customers), which lasted 2 minutes longer - 347 seconds. On that occasion, the caller was billed a service charge of £6.85.<sup>65</sup>
- 5.23 This data shows that consumers faced substantially higher bills than they were entitled to expect. Further, the amounts faced by some consumers were at a level likely to cause bill

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<sup>56</sup> <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/new-price-cap-on-118-numbers-2019>

<sup>57</sup> BT internal email 1

<sup>58</sup> See DQ Statement, paragraph 3.6, Table 1.

<sup>59</sup> See DQ Statement, paragraph 3.35, Table 2 for details of service charges of DQ services prior to implementation of the Price Cap.

<sup>60</sup> Ofcom's analysis of BT's answer to Question 2 of the First Notice, 3 July 2019

<sup>61</sup> Ofcom's analysis of BT's answer to Question 2 of the First Notice, 3 July 2019

<sup>62</sup> Ofcom's analysis of BT's answer to Question 2 of the First Notice, 3 July 2019

<sup>63</sup> Ofcom's analysis of BT's answer to Question 2 of the First Notice, 3 July 2019

<sup>64</sup> Ofcom's analysis of BT's answer to Question 2 of the First Notice, 3 July 2019

<sup>65</sup> Ofcom's analysis of BT's answer to Question 2 of the First Notice, 3 July 2019

shock and affordability concerns if the callers were on low incomes.<sup>66</sup> We consider that there was a material risk of these consumer harms even though the majority of the overcharges were recredited by EE before bills were issued for payment.

5.24 Further, BT's failure to implement the Price Cap on 1 April 2019 and then to correct the error comprehensively in respect of all DQ services for almost 3 months had the potential to compromise consumer certainty about the prices they would face for calling 118 numbers. We found in our review in 2018 that one in ten do not use DQ services because they considered the calls were too expensive or unaffordable.<sup>67</sup> By adding to consumer uncertainty about prices, despite Ofcom's regulatory intervention to ameliorate this, BT's contraventions may have deterred some consumers from making use of DQ services. Since we also found that vulnerable consumers may not have access to the internet in order to use alternative sources of information, this deterrent effect also had the potential to cause consumer harm.

### **Whether appropriate steps were taken to prevent the contravention and whether senior management should have been aware.**

5.25 We consider that there are a number of aspects of BT's conduct which are relevant to our assessment of these factors.

5.26 First, BT was on notice for four months immediately prior to the period of contravention that it was required to implement the Price Cap on 1 April 2019. Following the DQ Statement published on 28 November 2018, which set out Ofcom's decision to impose the Price Cap with effect from 1 April 2019, Ofcom engaged directly with BT during the implementation period to ensure its compliance.

5.27 In the course of this engagement, we:

- reiterated to BT that we regarded the implementation of the Price Cap on 1 April as an important matter; and
- indicated that we would allow it until 1 May 2019 to introduce new price points in response to its concern that this could prejudice its ability to ensure compliance with the Price Cap on 1 April 2019.<sup>68</sup>

5.28 Noting the time allowed for implementation, Ofcom's engagement with BT and the allowances made in order to ensure it met the deadline of 1 April, it was incumbent on BT to take all appropriate steps to fulfil its regulatory obligations. It failed to do so.

5.29 BT has carried out a root cause analysis to find out why the failure occurred. It made the following findings:

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<sup>66</sup> The average weekly expenditure on telecommunications services for consumers in the lowest 10% income group in 2017 was £7.89 – see DQ Statement, paragraph 4.54.

<sup>67</sup> DQ Statement, paragraph 4.3.

<sup>68</sup> See paragraph 3.12.

*“No individual had complete accountability for the end-to-end implementation of the 118 price cap. There were multiple touch points for the 118 change and no single owner.*

*“Lack of clarity around agreed dates and implementation timescales for the 118 price cap, plus misinterpretation of an internal change request relating to the delivery date, led to a belief the price cap was being delivered on 1 April.*

*“There was no regulatory flag on the change request so the importance of the change was not flagged, meaning that technical teams in charge of systems changes did not understand the impact of a delay.”<sup>69</sup>*

- 5.30 The essence of these findings is that there was a breakdown of communication and oversight in relation to the implementation of the Price Cap. It appears that BT’s regulatory team did not inform EE’s operational team with sufficient clarity that implementation of the Price Cap by 1 April 2019 was required in order to ensure that consumers were not overcharged and to fulfil BT’s regulatory obligations. Further, although there is evidence that EE’s operational team understood that the Price Cap was to be implemented separately from the introduction of new price points, this was not communicated with sufficient clarity to the third party contracted to make changes to EE’s billing systems.<sup>70</sup>
- 5.31 It also appears that there was a lack of communication between the regulatory team, the operational team and the third party in relation to verifying that the Price Cap had been implemented on time. In this regard, we note that EE’s failure to implement the Price Cap was not identified in the first instance by BT but by The Number UK Limited (TNUK), the provider of 118 118. TNUK had identified that calls to certain of its numbers made by EE customers were being charged at a level above the Price Cap by undertaking test calls from phones using an EE pay as you go tariff.<sup>71</sup> It informed BT of this on 1 April 2019.<sup>72</sup>
- 5.32 These various failures of communication and oversight in relation to the implementation of the Price Cap are clearly identified by BT in its root cause analysis. Ofcom liaised directly with senior managers at BT about the implementation of the Price Cap. It is plain from the statements made by BT to Ofcom ahead of implementation of the price cap that senior management understood the importance of addressing the consumer harm associated with DQ call prices without delay. Nonetheless, it is clear from the root cause analysis (see Table 3) that this did not result in appropriate action being taken. We consider that it should have been straightforward for an undertaking of BT’s size to have put in place such oversight together with a process for ensuring timely implementation within the four month implementation period.

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<sup>69</sup> BT Slide Pack, 14 August 2019

<sup>70</sup> BT internal email 2 and BT internal email 3

<sup>71</sup> Attachment to BT internal email 5

<sup>72</sup> BT internal email 5

5.33 In all the circumstances, we have put particular weight in our assessment of penalty on BT's failure to take the appropriate steps to ensure that EE implemented the Price Cap on time and prevent the contraventions.

### **Were adequate and timely steps taken to end contravention upon coming to light?**

5.34 After TNUK alerted BT that EE was overcharging for calls to 118 numbers, BT acted promptly to resolve the issue. In respect of EE's PAYG customers, bills were correctly calculated for calls to all 118 numbers (bar the eleven that were the subject of the Second Overcharge) from 3 April 2019. We recognise the importance of prioritising these customers since they were paying immediately for the calls they made.

5.35 Nonetheless, it took a further 9 days for corrective action to be taken in respect of EE's pay monthly customers. BT has told us that this was because the corrective action "*scheduled for the 3 April was pulled and ultimately not completed until the 12 April.*"<sup>73</sup> BT has told us in response to a section 135 request that the EE operational team "*were not involved*" in the decisions to postpone the remedial work and that its regulatory affairs team were not informed until after the decision was taken.<sup>74</sup>

5.36 We consider this is further evidence of the lack of good communication between the teams within BT involved in the implementation of the Price Cap and the third party that it used to make the necessary technical changes to EE's billing systems.

5.37 In addition, the remedial work that BT undertook when alerted to the overcharging by TNUK overlooked eleven 118 numbers. It was almost 3 months after the implementation date of 1 April 2019 before BT fully resolved this error and charged the correct prices for calls to DQ services on these numbers.<sup>75</sup>

5.38 As a result of this oversight and the time it took BT to resolve the overcharging, 1,730 EE customers paid excess 118 call charges of £5,899.89 in total.<sup>76</sup> The number of customers affected was more than three times the number of customers who overpaid as a result of the First Overcharge and the total amount of the overpayment was also higher.

5.39 BT has said that there were two reasons for this oversight: misinterpretation of details relating to 11 number ranges on BT's Wholesale Carrier Price List; and no overall reconciliation in place between the EE Portfolio and Pricing team and BT's Group Customer Billing team to ensure the full list of 118 numbers from Wholesale Carrier price list corresponded to the billing system rating and the retail price list.<sup>77</sup>

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<sup>73</sup> BT internal email 4

<sup>74</sup> Attachment to BT internal email 4

<sup>75</sup> See paragraph 4.20

<sup>76</sup> See paragraph 4.21

<sup>77</sup> BT Slide Pack, 14 August 2019

- 5.40 After the Second Overcharge came to light, BT engaged a team to test dial all 118 numbers which confirmed that there were no additional numbers that were being charged above the cap.<sup>78</sup>
- 5.41 We make the following findings in relation to this evidence. First, it demonstrates again that poor communications between teams within BT contributed to the time it took to identify and then correct the contraventions.
- 5.42 Second, although the First Overcharge came to light as a result of test calls carried out by an interested third party – TNUK – it was not until some weeks later that BT undertook its own comprehensive testing, with oversight from the relevant regulatory team, to ensure that it had identified all active 118 numbers and check the prices that EE was charging. For an undertaking of BT’s size and resources, we consider that this should have been an obvious and straightforward step for it to take. If it had done so at the outset, the Second Overcharge could have been flagged more quickly.
- 5.43 Accordingly, we find that BT did not take adequate and timely steps to bring the contraventions to an end and this contributed to their duration and the resulting consumer harm.

### **The extent to which the contravention was deliberate or reckless**

- 5.44 There is no evidence that these contraventions were deliberate or reckless.
- 5.45 However, as set above, we do not consider that BT took adequate and timely steps sufficient to prevent the contraventions occurring and to bring them to an end.

### **Financial gain and steps taken to remedy the consequences of the contravention**

- 5.46 BT did not make any financial gain as a result of these contraventions. It has fully compensated all customers that paid excess call charges as a result of the contraventions. It also acted swiftly to recredit customers’ bills so that the majority affected by the contraventions did not pay the incorrect call charges. We acknowledge that these steps have had a material effect on mitigating the consumer harm resulting from the contraventions.
- 5.47 BT has also taken action to ensure that it continues to meet its regulatory obligations in relation to 118 call charges and to address the failings which contributed to the contraventions that we have found.
- 5.48 Specifically, it has responded to the findings of its root cause analysis as follows:

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<sup>78</sup> BT Slide Pack, 14 August 2019

**Table 3. Source: BT Slide Pack, 14 August 2019 and BT root cause analysis**

Finding	Action
No individual had accountability for end-to-end 118 price cap change	Review governance model so all changes have single project ownership. This will deliver end-to-end ownership of change, a standardised approach to assessing impact of change (in particular regulatory impact) and common templates to provide clarity on impact.
Lack of clarity around date & misinterpretation of change request.	Review internal sign offs between stakeholders and embed governance which requires positive confirmation of change dates and delivery, so issues are clearly understood. This will provide end-to-end accountability and sign off.
No regulatory flag on change request.	Add a regulatory change marker to all change requests and review governance to ensure regulatory change is adequately represented at decision making forums. This will increase visibility of importance, highlights need for implementation to all stakeholder groups
Misinterpretation of wholesale price list.	Implementation of proactive pricing controls for EE: a three-way pricing check between all relevant systems and reconciliation of pricing-led change across the pricing and billing estate
No overall billing/pricing reconciliation.	Implementation of proactive pricing controls for EE: a three-way pricing check between all relevant systems and reconciliation of pricing-led change across the pricing and billing estate  Programme of knowledge sharing with [✂] on when to engage billing to manage crediting of customers
Additional numbers not picked up in testing by [✂] or EE.	Test scopes to be correctly written by [✂] and to include broader issues, particularly in cases of regulatory change

- 5.49 BT has confirmed to Ofcom that it has implemented all the remedial actions outlined in Table 3.<sup>79</sup>
- 5.50 In addition, BT has taken the following steps as a result of EE's failure to implement the Price Cap on time:
- Introduced a Head of Regulation, Policy and Implementation within the EE Marketing function to give increased focus on policy, process and how we implement changes.
  - Billing Operations implemented a daily control that produces a report that checks if any 118 call has been charged over the cap.<sup>80</sup>
- 5.51 Separately, prior to this incident, BT had commenced [~~an~~ a review of processes and systems at EE~~an~~]. This project was a response to the contraventions found against EE in November 2018 in relation to its ETCs.<sup>81</sup> This project continues, and BT believes that success of this project will allow it to *"succeed in getting regulatory change right"*.<sup>82</sup> We understand that the scoping and analysis phase of the project started in January 2019 and continued for four months, with the bulk of the change implementation beginning in July and August 2019.
- 5.52 We are disappointed that the present contravention occurred despite BT having knowledge of issues with EE's compliance processes and billing systems. We expect BT to continue with its programme of work, with the aim of better compliance with its regulatory obligations, and to monitor progress in this area.

## Co-operation with this investigation

- 5.53 Throughout the investigation, BT has kept Ofcom fully sighted of its findings in relation to the First and Second Overcharge, as well as the actions taken to remedy the overcharges.
- 5.54 For example, when BT identified the Second Overcharge, it brought the matter to Ofcom's attention in a timely fashion, with transparency as to the scale of the error.
- 5.55 We consider that BT's cooperation and transparency has enabled Ofcom to conduct this investigation in a more expedient fashion and with a lower resource expenditure than we would have been able to do so otherwise.

## History of contraventions

- 5.56 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).
- 5.57 EE has one of the worst compliance records of any CP in terms of the number of contraventions recorded against it. We have imposed penalties on it under section 96C of

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<sup>79</sup> Annex to letter from BT to Ofcom, 19 February 2020.

<sup>80</sup> BT Slide Pack, 14 August 2019

<sup>81</sup> See paragraph 5.60 below.

<sup>82</sup> BT Slide Pack, 14 August 2019



the Act for breaches of consumer-focused General Conditions, including those related to billing and charging consumers in the cases set out below. The contraventions in these cases were serious and the penalties we imposed were significant. These are relevant in our assessment of penalty likely to have an appropriate deterrent effect in this case.

- 5.58 On 2 July 2015, Ofcom imposed a penalty of £1m on EE for contravening GC 14, requiring providers to have, and comply with, procedures about consumer complaints handling.<sup>83</sup> We stated in our Confirmation Decision for this case that we considered this to be a significant and serious contravention, particularly as it consisted of a number of individual breaches of regulation. The contravention caused material harm to consumers and lasted for over two years.
- 5.59 On 17 January 2017, Ofcom imposed a penalty of £2.7m on EE for contraventions of GC 11.1, prohibiting providers from rendering inaccurate bills and billing information to its subscribers.<sup>84</sup> As a result of faults with its billing systems, which resulted in two separate incidents, EE overcharged at least 32,000 customers approximately £245,000 for calls to its Customer Service number, for the first incident, and at least 7,500 customers approximately £2,200 for calls and texts to the same number, for the second incident .
- 5.60 On 16 November 2018, Ofcom imposed a penalty of £6.3m on EE for contravening GCs 9.2(j) and 9.3, requiring providers to clearly state their early termination charges (ETCs) upfront and not to use contract termination conditions as a disincentive for consumers against switching.<sup>85</sup> We found that the contraventions, which lasted for over 6 years, were serious, causing about 400,000 of EE's customers to be billed excessive ETCs by between £11.4m and £13.5m in total. We said that the penalty we set provided EE with an incentive to comply with GCs in the future. We warned that if it found it in contravention again, we would be likely to take fully into account the opportunity we gave it to bring it into compliance and reflect that in any penalty we set.
- 5.61 Ofcom has found BT in breach of the General Conditions on one occasion. On 17 March 2015,<sup>86</sup> Ofcom imposed a penalty of £800,000 on BT in relation to its compliance with GC 15, in particular GC 15.3 and GC 15.5.<sup>87</sup> 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.
- 5.62 In addition, Ofcom imposed a penalty on Plusnet in March 2017 for contravening GC 11.1. Plusnet continued to bill 1,025 customers who had cancelled either their landline or broadband services and overcharged them over £500,000 in total. Plusnet did not self-

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<sup>83</sup> CW/01120/01/14: [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01120](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01120).

<sup>84</sup> CW/01174/12/15: [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01174](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01174).

<sup>85</sup> CW/01217/03/18: [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01217](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01217).

<sup>86</sup> Prior to the penalty guidelines being revised on 3 December 2015 and again on 14 September 2017.

<sup>87</sup> [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01129](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01129)

report this error although on discovering it, and prior to Ofcom opening its investigation, it took a number of proactive positive steps to address its mistake. The penalty imposed was £880,000.<sup>88</sup>

## Precedents

- 5.63 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.
- 5.64 There have been no previous breach findings under GC B1 or its predecessor, GC17.
- 5.65 The contraventions we have found against BT relate to the incorrect charges that EE calculated and in some cases billed to its customers. Accordingly, we consider that the decisions we have taken under GC 11.1, which require CPs to bill their customers accurately for their use of communications services are relevant precedents. We have had regard to the following cases (in addition to the decisions against EE and Plusnet referred to above).
- 5.66 In July 2019, Ofcom imposed a penalty of £3 million on giffgaff in relation to a contravention of GC11.1. We found that giffgaff had overcharged around 2.6 million customers an estimated £2.9 million pounds over a 7 to 8 year period. We said that the penalty would have been significantly higher had giffgaff not self-reported the contravention, co-operated closely with our investigation and proactively taken steps to remedy the contravention following discovery of the issue.
- 5.67 Ofcom imposed a penalty on Vodafone in 2016 for contravening GC 11.1. Vodafone charged approximately 10,500 customers around £150,000 for pay as you go credits to their accounts which they did not receive as a result of problems with its processes for closing dormant pay as you go accounts. In this case, there was evidence that its staff were aware of the problems in its billing system but did not take prompt and effective steps to rectify the problem until Ofcom and a national newspaper contacted Vodafone about the matter. The penalty imposed on Vodafone was £3.7m.<sup>89</sup>
- 5.68 The penalty imposed on Vodafone, Plusnet and EE for contraventions of GC 11.1 were issued before Ofcom updated its Penalty Guidelines in September 2017 to provide it with the flexibility to impose higher penalties in appropriate cases in order for a deterrent effect to be achieved.
- 5.69 We have also had regard to Ofcom's confirmation decision against Post Office on 14 January 2020. We found that Post Office contravened GC C5.9 and GC 15.3 between 31 August 2013 and 28 November 2018 by not applying a special tariff scheme to calls made by customers who, because of their disabilities, needed to use relay services. As a result, potentially vulnerable consumers paid more than they should have done for these services. The number of customers estimated to have been affected was low (estimated to be

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<sup>88</sup> [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01178](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01178).

<sup>89</sup> [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01160](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01160).

between 36 and 126 customers a year for over five years), and the estimated overcharge was around £4,500 a year for over five years. Taking account the duration of the contravention, the absence of any significant compliance function before 2018 and the potential vulnerability of the customers affected, we imposed a penalty of £175,000 on Post Office (which included a 30% settlement discount).

## **Ofcom's conclusion on the penalty amount**

- 5.70 Considering all of the factors discussed above in the round, the penalty we have imposed on BT is £350,000, which has been reduced to £245,000 as a result of BT's agreement to settle this case. Although the contraventions were of a fairly short duration and their actual financial impact was relatively low, we consider these to be serious breaches meriting a significant penalty.
- 5.71 Ofcom's view is that this level of penalty would be appropriate and proportionate to the contraventions in respect of which it would be imposed. Our objectives in setting it are, in particular:
- a) to impose an appropriate and proportionate sanction that reflects the seriousness of the contraventions as regards its actual and potential impact on consumers, some of which may have been vulnerable; and
  - b) to deter BT from contravening the GCs, and GC B1.5, B1.19 and B1.21(b) in particular, again.
- 5.72 Having regard to BT's turnover, our view is that the penalty we have imposed secures these objectives in a proportionate way and appropriately reflects each of the factors described in more detail above, giving particular weight to the potential harm to consumers, and the need to secure an effective deterrent, taking account of EE's poor compliance history. The penalty does not exceed the maximum penalty Ofcom may impose in BT's case.

# A1. Confirmation Decision issued to BT plc of contravention of General Conditions

## 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 (a “Notification”), 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,<sup>60</sup> or may specify a period within which the person must comply with those requirements; and
  - d) may require the person to pay:
    - i) the penalty specified in the notification issued under section 96A of the Act;
    - ii) or 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 The General Conditions of Entitlement are the regulatory conditions that communications providers must comply with, as applicable, in providing electronic communications networks and services in the United Kingdom. They are set and, as the case may be, modified from time to time by Ofcom under section 45 of the Act. General Conditions B1.5, B1.19 and B1.21(b)
- A1.4 General Conditions B1.5, B1.19 and B1.21(b) came into effect from 1 October 2018.
- A1.5 General Condition B1.5 requires that, in providing an electronic communications service, CPs shall comply with:

*“(a) all applicable restrictions and requirements as are set out in the National Telephone Numbering Plan; and*

*(b) any restrictions or requirements set out in a notification issued by Ofcom to that Communications Provider recording the Allocation of specific Telephone Numbers to it.”*

- A1.6 General Condition B1.19 sets out the requirement for CPs to comply with the tariff principles in the Numbering Plan for unbundled tariff numbers (such as those on the 118 number range) and stipulates that:

*“When providing an Electronic Communications Service by means of an Unbundled Tariff Number, the Communications Provider must comply with the tariff principles set out in Conditions B1.21 – B1.27 and any applicable maximum price specified in the National Telephone Numbering Plan.”*

- A1.7 General Condition B1.21(b) requires that the retail price for a call to an unbundled tariff number charged to a consumer is the sum of the CP’s access charge and:

*“the Service Charge Element, subject to any special offers, discounts or call bundling arrangements which the Communications Provider offers to that Consumer.”*

- A1.8 For the purposes of interpreting General Conditions B1.5, B1.19 and B.21(B), the following definitions (among others) applied:

- a) The “Service Charge Element” means, in respect of a call to an Unbundled Tariff Number retailed to a Consumer:

*“(a) the amount produced by multiplying the Service Charge for that Unbundled Tariff Number by the length of the call in accordance with Condition B1.25, where the Service Charge is charged at a pence per minute rate;*

*“(b) an amount equal to the Service Charge for that Unbundled Tariff Number, where the Service Charge is charged at a pence per call rate;*

*“(c) an amount equal to sum of the amounts calculated under paragraphs (a) and (b) of this definition, where the Service Charge is charged at a rate which combines a pence per minute rate and a pence per call rate.”*

- b) “Service Charge” is defined as:

*“the rate set by a Communications Provider in accordance with Condition B1.23 in respect of the conveyance of a call to an Unbundled Tariff Number from the Assumed Handover Point to the point of termination and the enabling of a Consumer to use an Unbundled Tariff Number to access any service provided by means of that number”*

A1.9 Ofcom’s November statement on DQ numbers set out an amendment to the Numbering Plan regarding the 118 number range, which came into effect on 1 April 2019. The relevant section of the Numbering Plan reads as follows:<sup>90</sup>

118XXX	6-digit Non-Geographic Numbers used to access a Directory Enquiry Facility (‘Type B Access Codes’)	Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs B1.21 – B1.27 of the General Conditions of Entitlement.  The applicable Service Charge must not exceed: <ul style="list-style-type: none"><li>• 304.167 pence per 90 seconds, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or</li><li>• 304.167 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate.</li></ul>
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## Subject of this Confirmation Decision

A1.10 This Confirmation Decision is addressed to BT plc (BT), whose registered company number is 01800000. BT’s registered office is 81 Newgate Street, London, EC1A 7AJ.

## Notification issued by Ofcom under section 96A of the Act

A1.11 On 25 February 2020 Ofcom issued a Notification under section 96A of the Act, which set out Ofcom’s reasonable grounds for believing that BT had contravened:

- a) General Condition B1.5 and B1.19 between 1 April 2019 and 19 June 2019 by calculating retail prices for calls to 118 numbers using service charges which exceeded the maximum price specified in the Numbering Plan for calls to these numbers; and
- b) General Conditions B1.5 and B1.21(b) between 1 April 2019 and 26 June 2019 by calculating retail prices for calls to 118 numbers using service charges which were not the applicable service charges selected by the relevant DQ providers.

A1.12 The Notification also specified the penalty that Ofcom was minded to impose on BT for its contraventions and also allowed BT the opportunity to make representations about the matters set out in the Notification.

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<sup>90</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0013/102613/national-numbering-plan.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0013/102613/national-numbering-plan.pdf)

## Confirmation Decision issued under section 96C of the Act

- A1.13 On 10 March 2020 BT confirmed to Ofcom that it waived its rights to make representations about the matters notified and admitted liability for the contravention. The period for BT to make representations has therefore expired.
- A1.14 Accordingly, Ofcom is satisfied that BT contravened:
- a) General Condition B1.5 and B1.19 between 1 April 2019 and 19 June 2019 by calculating retail prices for calls to 118 numbers using service charges which exceeded the maximum price specified in the Numbering Plan for calls to these numbers; and
  - b) General Conditions B1.5 and B1.21(b) between 1 April 2019 and 26 June 2019 by calculating retail prices for calls to 118 numbers using service charges which were not the applicable service charges selected by the relevant DQ providers.
- A1.15 Ofcom has therefore decided to issue to BT this Confirmation decision.
- A1.16 The full extent of the contraventions and the reasons for Ofcom's decision are set out in the explanatory statement to which this Confirmation Decision is annexed.

## Penalty

- A1.17 Ofcom has decided that the appropriate penalty in this case is £350,000. Because BT has agreed to settle the case, it has received a discount of 30% on this amount so that the sum it must pay is £245,000.

## Interpretation

- A1.18 Except insofar as the context otherwise requires, words or expressions used in this Notification have the meaning assigned to them in this Confirmation Decision 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.
- A1.19 BT has until 5.00pm on 9 April 2020 to pay to Ofcom the penalty of £245,000. If not paid by that date, it can be recovered by Ofcom in accordance with section 96C(7) of the Act.

Signed by

**Gaucht 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*

**12 March 2020**

## A2. Relevant Regulatory Conditions

### General Conditions of Entitlement

A2.1 Ofcom's General Conditions of Entitlement impose specific obligations on Communications Providers (CP) offering publicly available telephone services in relation to retail call prices and compliance with the tariff principles set out in the National Telephone Numbering Plan (the 'Numbering Plan'). The relevant General Conditions are set out in further detail below.

A2.2 General Condition B1.5 requires that, in providing an electronic communications service, CPs shall comply with:

*"(a) all applicable restrictions and requirements as are set out in the National Telephone Numbering Plan; and*

*(b) any restrictions or requirements set out in a notification issued by Ofcom to that Communications Provider recording the Allocation of specific Telephone Numbers to it."*

A2.3 General Condition B1.19 sets out the requirement for CPs to comply with the tariff principles in the Numbering Plan for unbundled tariff numbers (such as those on the 118 number range) and stipulates that:

*"When providing an Electronic Communications Service by means of an Unbundled Tariff Number, the Communications Provider must comply with the tariff principles set out in Conditions B1.21 – B1.27 and any applicable maximum price specified in the National Telephone Numbering Plan."*

A2.4 General Condition B1.21(b) requires that the retail price for a call to an unbundled tariff number charged to a consumer is the sum of the CP's access charge and:

*"the Service Charge Element, subject to any special offers, discounts or call bundling arrangements which the Communications Provider offers to that Consumer."*

A2.5 The "Service Charge Element" means, in respect of a call to an Unbundled Tariff Number retailed to a Consumer:

*"(a) the amount produced by multiplying the Service Charge for that Unbundled Tariff Number by the length of the call in accordance with Condition B1.25, where the Service Charge is charged at a pence per minute rate;*

*"(b) an amount equal to the Service Charge for that Unbundled Tariff Number, where the Service Charge is charged at a pence per call rate;*

*"(c) an amount equal to sum of the amounts calculated under paragraphs (a) and (b) of this definition, where the Service Charge is charged at a rate which combines a pence per minute rate and a pence per call rate."*

A2.6 "Service Charge" is defined as:



*“the rate set by a Communications Provider in accordance with Condition B1.23 in respect of the conveyance of a call to an Unbundled Tariff Number from the Assumed Handover Point to the point of termination and the enabling of a Consumer to use an Unbundled Tariff Number to access any service provided by means of that number”*

A2.7 The November Statement set out an amendment to the Numbering Plan regarding the 118 number range. The relevant section of the Numbering Plan reads as follows:<sup>91</sup>

118XXX	6-digit Non-Geographic Numbers used to access a Directory Enquiry Facility ('Type B Access Codes')	<p>Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs B1.21 – B1.27 of the General Conditions of Entitlement.</p> <p>The applicable Service Charge must not exceed:</p> <ul style="list-style-type: none"> <li>• 304.167 pence per 90 seconds, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or</li> <li>• 304.167 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate.</li> </ul>
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<sup>91</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0013/102613/national-numbering-plan.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0013/102613/national-numbering-plan.pdf)

## A3. Redacted annex

A3.1 This annex is redacted.