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## **Confirmation Decision under section 96C of the Communications Act 2003**

Confirmation Decision served on Onestream Limited (Onestream) by the Office of Communications (Ofcom) for the contravention of General Condition C7.3(a) (GC C7.3(a)).

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Non-confidential version – redactions are indicated with [X].

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# 1. Overview

This document explains how Onestream breached its regulatory obligations by attempting to switch and in some cases, switching customers' home phone services without their permission. This is known as Slamming, which we consider to be one of the most serious forms of mis-selling. Slamming can cause significant harm including stress, anxiety, financial harm and requires customers to put time and effort into resolving the situation.

## What we have decided – in brief

We have found that between 13 April 2018 and 25 January 2019, Onestream Slammed at least 118 customers. Onestream did this by:

- making cold calls to customers without making it clear to them that Onestream was an entirely separate phone company who was trying to switch their home phone services from their current phone company to Onestream. We have found that for at least 45 of the 118 customers, Onestream engaged in Slamming by attempting to switch them without ever obtaining the customer's express permission to do so; and
- by putting in place and implementing a policy, to make repeated attempts to switch customers to Onestream without contacting them each time to seek permission to switch them. This was despite customers asking their current phone company to cancel the previous attempt by Onestream to switch them. We have found that Onestream did this in the case of at least 113 of the 118 customers.

**We found that many of the customers affected were elderly and/or vulnerable.** At the time, Onestream was calling customers on their landlines. Almost 60 customers identified themselves as being over 70. Some customers also made it clear they needed help from family members before making any decisions. Despite being aware of the customers' age or vulnerability, Onestream took no additional steps to protect them from Slamming.

**We have found that Onestream failed to take appropriate steps to prevent Slamming and that senior management acted recklessly.** Senior management were directly involved in creating and signing off the policies and procedures that led to Onestream Slamming at least 118 customers and therefore should have been aware of the risk that it was breaching its regulatory obligations.

**We have decided that Onestream's breaches of its regulatory obligations are serious and warrant a penalty of £35,000.** We have taken into account Onestream's co-operation and the pro-active steps it took to remedy the consequences of its contravention. Onestream is a small company and the penalty we have imposed is near the maximum level we could impose (10% of relevant turnover). We consider the penalty accurately reflects the seriousness of this contravention and is needed to deter Onestream and other CPs from further contraventions of regulatory rules, particularly those relating to mis-selling and Slamming. Onestream has now ceased outbound voice sales.

This overview is a simplified high-level summary only. The decisions we have taken, and our reasoning are set out in the full document.

## 2. Introduction and summary findings

- 2.1 This Confirmation Decision issued under section 96C of the Communications Act 2003 (the Act) sets out Ofcom's findings of Onestream's contravention of General Condition C7.3 in relation to Slamming.<sup>1</sup>
- 2.2 Slamming happens when a Communications Provider (CP)<sup>2</sup> places a transfer order<sup>3</sup> for the landline and/or broadband services of a consumer without their express knowledge and/or consent.
- 2.3 Ofcom has set a number of General Conditions (GCs)<sup>4</sup> to protect consumers, which CPs must comply with in order to further consumers' interests and protect them from poor practices.
- 2.4 GC C7.3(a) is an important consumer protection provision as it protects consumers from Slamming which is one of the most extreme forms of mis-selling. Slamming can cause significant harm to consumers, including stress, anxiety, financial harm, as well as the time and effort that consumers spend trying to resolve the situation. Failure to comply with the rules can also undermine the trust that consumers have in the telecommunications industry. It is fundamental that consumers are able to switch their services with ease and without having to worry that they may be switched without their express knowledge and/or consent.

### Findings under GC C7.3(a)

- 2.5 On 22 January 2019 Ofcom opened an investigation into Onestream's compliance with GC C7.3(a) and (b) (the Investigation).<sup>5 6</sup> The Investigation, the information gathering process, as well as remedial steps taken by Onestream are described in more detail in Annex 2.
- 2.6 In this case, based on the information and evidence we have gathered, we are satisfied that during the period 13 April 2018 to 25 January 2019 (the Relevant Period), Onestream contravened GC C7.3(a) by Slamming at least 118 Customers.<sup>7</sup> It did this in the following ways:

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<sup>1</sup> See Section 3 for a more detailed description of Slamming (paragraphs 3.7 to 3.11).

<sup>2</sup> 'Communications Provider' means a person who (within the meaning of section 32(4) of the Act) provides an Electronic Communications Network or an Electronic Communications Service (as defined in the Act).

<sup>3</sup> See footnote 17 for the definition of transfer order, as defined in the GCs.

<sup>4</sup> The General Conditions (GCs) of Entitlement have been imposed by Ofcom under sections 45 to 55 of the 2003 Communications Act (the Act): <http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/general-conditions/>

<sup>5</sup> The Investigation was opened in accordance with our published Enforcement Guidelines:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf)

<sup>6</sup> Ofcom amended the GCs with effect from 1 October 2018. Prior to that date, the Slamming rules were contained in GC22.3(a). Since 1 October 2018, the same Slamming rules are contained in GC C7.3(a). For the purpose of this document, when referring to the relevant rules relating to Slamming, we refer to GC C7.3(a).

<sup>7</sup> 'Customers' refers to 137 consumers who had made a sales and marketing complaint to Ofcom between 4 January 2018 and 22 January 2019 alleging that they had been slammed. These 137 Customers formed the basis of the Investigation and we requested call recordings from Onestream and transfer information from Openreach in relation to these 137

- a) where the Customer was contacted but did not give authorisation for Onestream to place a transfer order for their Fixed-line Telecommunications Services.<sup>8</sup> Ofcom found that Onestream did this in respect of at least 45 of the 118 Customers; and
  - b) by placing repeat transfer orders following the cancellation of the initial transfer order by the Losing Provider,<sup>9</sup> without first contacting the Customer to obtain their authorisation to place a new transfer order. Ofcom found that Onestream did this in respect of at least 113 of the 118 Customers.
- 2.7 The contraventions took place during the Relevant Period at which time the rules relating to Slamming were set out in GC 22.3(a) and subsequently in GC C7.3(a).<sup>10</sup>
- 2.8 Many of the 118 Customers were subjected to multiple repeat transfer orders in a repeated and systematic attempt by Onestream to switch their Fixed-Line Telecommunications Services.<sup>11</sup> We also identified that a significant proportion of these 118 Customers (at least 88) were elderly and/or vulnerable.<sup>12</sup>
- 2.9 As explained in more detail in Section 4, we have found that Onestream failed to take appropriate steps to prevent the contravention. We note that Onestream put in place a policy to place repeat transfer orders without first obtaining the customers' permission to do so. We also found that despite being a small CP, it failed to appropriately monitor the compliance of its sales agents with GC C7.3(a). Senior management within Onestream were involved in setting up and signing off these policies and as such should have been aware of the risk that Onestream was, or was likely to be, contravening GC C7.3(a).
- 2.10 We consider that the contravention resulted from Onestream's senior management's recklessness, and that the failings by Onestream's senior management significantly contributed to the seriousness of this case. In light of the seriousness of this case, Ofcom is minded to impose a significant penalty in relation to Onestream's size and turnover.

## Penalty

- 2.11 We have determined that a penalty of £35,000 is appropriate and proportionate to the contraventions.
- 2.12 In setting this penalty, we have taken into account Onestream's co-operation with our Investigation and the pro-active steps it has taken to remedy the contravention, as set out in Section 4. Nevertheless, the penalty is near the maximum level we could impose, which is 10% of a CP's relevant turnover. We consider that the penalty accurately reflects the size

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Customers. The 118 figure is a subset of these 137 Customers. Of the 118 Customers that were Slammed, 113 had repeat transfer orders placed by Onestream for their Fixed-line Telecommunications Services, and of the 45 that were Slammed as a result of the first transfer order, only five were not subject to a repeat transfer order.

<sup>8</sup> 'Fixed-line Telecommunications Service' means Narrowband calls and lines services that allow for the transfer of speech communications, and other forms of communications such as facsimile and data (as defined in the Act).

<sup>9</sup> As defined in the GCs.

<sup>10</sup> See footnote 6.

<sup>11</sup> Paragraphs 3.76 to 3.92 set out the extent to which Onestream placed multiple repeat transfer orders.

<sup>12</sup> We determined this based on information given by the Customer during the sales and verification calls or based on the complaint to the CCT (refer to Annexes 3 and 4).

of the company, the seriousness of this contravention and is sufficient to deter Onestream and other CPs from further contraventions of regulatory rules, particularly those relating to mis-selling and Slamming. The penalty also includes a 30% discount applied to the penalty figure of £50,000 we would otherwise have imposed, as a result of Onestream admitting liability and entering into a settlement with Ofcom.

- 2.13 In light of all these matters, and on the basis of the evidence and reasoning contained in this document, we have issued this Confirmation Decision. It sets out the penalty we are imposing on Onestream as well as the action we are requiring Onestream to take to ensure it complies with the General Conditions relating to Slamming going forward.

## 3. Contravention of GC C7.3(a)

### Introduction

3.1 This section sets out the regulatory framework that is relevant to the Investigation and our determination that there are reasonable grounds to believe that Onestream contravened GC C7.3(a) between 13 April 2018 and 25 January 2019 (the Relevant Period).

### Ofcom's investigation and enforcement powers

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

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

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

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

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

### General Condition GC C7.3(a)

3.5 Onestream is a provider of electronic communications services and must comply with a number of GCs which have been imposed by Ofcom under sections 45 to 55 of the Act.

3.6 GC C7 sets out the rules on switching. This GC is aimed at protecting domestic and small business customers during the process of switching their landline and/or broadband services (either when moving from one CP to another, when moving location or when changing services but staying with the same CP).

- 3.7 The rules relating to Slamming are set out at GC C7.3(a).<sup>13</sup>
- 3.8 GC C7.3(a) states that when selling or marketing Relevant Communications Services,<sup>14</sup> the Regulated Provider that is the Gaining Provider<sup>15</sup> must ensure that *“it does not engage in Slamming”*.
- 3.9 *“Slamming”* is defined in the GCs as where:
- “(a) a request for a CPS, WLR, SMPF and/or MPF<sup>16</sup> has been made;*
- [...];*
- (c) a Transfer Order<sup>17</sup> or a Working Line Takeover Order has been placed on Openreach or on KCOM (as applicable), without the Switching Customer’s express knowledge and/or consent,*
- That is in the following circumstances:*
- (i) where the Switching Customer has never contacted, or has never been contacted by, the Gaining Provider;*
- (ii) where the Switching Customer has contacted, or has been contacted by, the Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of their Fixed-line Telecommunications Services and/or DSL Broadband Services;*
- [...];”*
- 3.10 When a consumer legitimately wants to switch their Relevant Communications Service to the Gaining Provider, the Gaining Provider will submit a transfer order to Openreach, which requests that the relevant customer be transferred from their current provider (known as the Losing Provider) to the Gaining Provider.

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<sup>13</sup> See footnote 6.

<sup>14</sup> For the purpose of GC C7, any such Communications Providers is a ‘Regulated Provider’ (GC C7.2(a)) and any such Fixed-line Telecommunications Services and/or DSL Broadband Services are ‘Relevant Communications Services.’ (GC C7.2(b)).

<sup>15</sup> For the purpose of the GCs, the definition of ‘Gaining Provider’ includes a Communications Provider to whom a Switching Customer is transferring. ‘Switching Customer’ means a Customer that is a Domestic or Small Business Customer in relation to a Communications Provider which provides Fixed-Line Telecommunications Services and/or DSL Broadband Services using Openreach’s or KCOM’s Access Network (as defined in the Act).

<sup>16</sup> ‘CPS’ stands for ‘Carrier Pre-Selection’ which is defined by the GCs as a facility which allows a Customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a Telephone Number. ‘WLR’ stands for ‘Wholesale Line Rental’ and is defined as a regulated wholesale service sold by a Communications Provider, which is used by the Communications Provider to provide retail Customers with exchange lines and, in turn, access to other narrowband telephony services (for example, telephone calls, facsimile and dial-up internet access). ‘Shared Metallic Path Facility’ (or ‘SMPF’) means access to the non-voiceband frequencies of the MPF. ‘Metallic Path Facility’ (or ‘MPF’) means a circuit comprising a pair of twisted metal wires between a Customer’s premises and a main distribution frame in a local access node that employs electric magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey Signals when connected to an Electronic Communications Network.

<sup>17</sup> ‘Transfer Order’ is defined by the GCs as an order submitted by, or on behalf of, a Gaining Provider to Openreach, or KCOM, or other applicable wholesaler, requesting for the Target Line (as defined in the Act) to be transferred from the Losing Provider to the Gaining Provider.

3.11 Slamming is where a CP places a transfer order for that consumer to switch them without that customer's express knowledge and/or consent. Slamming can have a serious impact on the affected customer, causing significant harm including stress, anxiety, financial harm and requires customers to put time and effort into resolving the situation. We discuss the types of harm a customer can suffer in more detail in Section 4.

### Findings under GC C7.3(a)

3.12 We are satisfied that Onestream contravened GC C7.3(a) during the Relevant Period. For a period of almost ten months, Onestream engaged in Slamming by placing transfer orders for the Fixed-line Telecommunications Services of at least 118 Customers, without their express knowledge and/or consent. It did this in the following ways:

- a) where the Customer was contacted but did not give authorisation for Onestream to place a transfer order for their Fixed-line Telecommunications Services. Ofcom found that Onestream did this in respect of at least 45 of the 118 Customers; and
- b) by placing repeat transfer orders following the cancellation of the initial transfer order by the Losing Provider, without first contacting the Customer to obtain their authorisation to place a new transfer order. Ofcom found that Onestream did this in respect of at least 113 of the 118 Customers.

3.13 We set out our assessment in respect of these contraventions in more detail in the remainder of this section. While we draw on relevant examples to illustrate our findings in this section, the full assessment of the relevant evidence is set out in Annexes 3 and 4.

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

3.14 As part of our assessment of Onestream's compliance with GC C7.3(a), we assessed the following information and evidence:

- i) complaints made by 137 consumers to Ofcom's Consumer Contact Team (CCT) about Onestream's sales and marketing of its landline and/or broadband services (between the period 4 January 2018 and 22 January 2019);
- ii) Call recordings and transcripts in relation to 133 of the 137 consumers identified in paragraph 3.14(i) above;<sup>18</sup> and

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<sup>18</sup> Onestream confirmed in its response of 21 February 2019 to the first information request issued under s135 of the Act (the First Response) (see Annex 2) that it was unable to locate call recordings for four Customers: for one of them there was no record of the Customer ([redacted]) and in three cases, Onstream had experienced technical system issues ([redacted], [redacted] and [redacted]). These four Customers have not been included in the review.

- iii) documentation such as sales and verification scripts received as part of Onestream’s response (the First Response) to an information request issued to it on 7 February 2019 under section 135 of the Act (the First Notice) and its response (the Second Response) to a further information request issued to it on 17 September 2019 under section 135 of the Act (the Second Notice).<sup>19</sup>

### Assessment of call recordings

- 3.15 The outbound telesales calls made by Onestream comprised of two parts, the sales call and the verification call.<sup>20</sup> It provided its telesales agents with scripts for both parts of the call.
- 3.16 During the Relevant Period, there were two sales scripts in use. The first script was in use during the period 1 October 2017 until 30 April 2018 (Sales Script One) and the second script was in use from 1 May 2018 until Onestream ceased making outbound telesales calls in February 2019 (Sales Script Two).<sup>21</sup> There were four verification scripts in use from the period 1 October 2017 until outbound sales ceased in February 2019.<sup>22</sup>
- 3.17 We set out below our assessment of the sales and verification calls made by Onestream. This is based on our review of:
- i) the way that Onestream’s agents conducted the calls, in particular the way they introduced the calls to Customers, the information they provided as to the purpose of the calls and the statements they made as part of the verification calls; and
  - ii) the way that Customers responded to these calls (including where Customers raised no objections) and when objections were expressed during the calls, the way that these objections were handled by agents.
- 3.18 We set out below specific examples to support our assessment. A detailed analysis of each call can be found at Annex 4.

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<sup>19</sup> Onestream provided the First Response on 21 February 2019 and provided the Second Response on 24 September 2019 (see Annex 2).

<sup>20</sup> Under GC C7.7 CPs are required to create and keep individually retrievable records that include, amongst other things, a direct record of consent (Record of Consent) of the Customer agreeing to transfer their Relevant Communications Services to the Gaining Provider (as defined in the GCs). CPs are required to hold this Record of Consent for a period of not less than twelve months. The part of the call that is to ensure customers agree to transfer their Relevant Communications Services is known as the verification call. We note that the intention of this provision is to deter, and enhance our ability to investigate Slamming, as set out at paragraph 9.27 of

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

<sup>21</sup> Sales Script One was written and approved by [redacted Senior Staff One], who from March 2018 onwards was assuming ‘caretaker’ control of Onestream. Sales Script Two was written by [redacted Senior Staff One] and approved by [redacted Senior Staff Two], who was acting [redacted] of Onestream from March 2018 (now [redacted]).

<sup>22</sup> The first verification script was in use during the period 1 October 2017 to 20 April 2018 (Verification Script One), the second was in use during the period 1 May to 23 May 2018 (Verification Script Two), the third was in use from 24 May 2018 to 28 August 2018 (Verification Script Three), and finally the fourth was in use from 29 August 2018 until outbound sales ceased in February 2019 (Verification Script Four).

## Sales calls

### Agent introductions

3.19 Most agents in the cases we reviewed did not say upfront that they were calling from Onestream. Instead Onestream’s agents referred to the Customer’s existing provider, and/or more broadly to the Customer’s landline service, for example:

*“Hello, [X Customer One]. Nice to speak with you. I am just giving you a call about your BT telephone service.”<sup>23</sup>*

3.20 As part of the introduction, the agents referred to Customers’ accounts in different ways. For example, in almost all cases, the agents asked the Customers to confirm their postcode.<sup>24</sup> They also referred to running “a check” on the Customer’s line, and/or said that they were checking the Customer’s account to see what services /features they had. For example, in the case of [X Customer Two],<sup>25</sup> not only did the agent fail to identify himself immediately as calling from Onestream, he also made the following statements:

*“can I confirm that your post code is [X]?”;*

*“So I need to run a check on your line, and that’s your number that ends in [X]”;*

*“I can see in your account it’s addressed to [X Customer Two]”; and*

*“...while I’m checking through your account, it is just the phone that you have at the moment. On your phone though, Ivan, you do have one feature that you’re currently paying for. That’s your caller display.”*

3.21 Where agents did refer to Onestream, this was done later in the call with only a brief reference to Onestream but without explaining who Onestream were. At that point, we found that, for many of the Customers, they were already under the impression that they were speaking to their existing CP. For example, in the case of [X Customer Three]:<sup>26</sup>

- The agent failed to immediately identify himself as calling from Onestream, but instead referred to the Customer’s landline and existing CP, *“It’s a very quick call regarding your BT landline services. Can I confirm you’re still at [X]?”;*
- The agent told the Customer that he was calling due to the recent price increase: *“...the reason for our quick call today is a follow-up call to let you know that we’re currently running some checks down in your area. We’re currently reviewing some services after this recent price increase that took place on the 16th. I don’t know if you’re aware of that.”;*

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<sup>23</sup> [X Customer One]. Agent refers to Onestream 2 minutes 16 seconds into the call.

<sup>24</sup> With the exception of [X], [X], [X], [X] (agent confirms first line of address), and [X].

<sup>25</sup> [X Customer Two]. Agent refers to Onestream 2 minutes 10 seconds into the call. Note that the agent incorrectly refers to the Customer as ‘Ivan’ throughout the call, until corrected.

<sup>26</sup> [X Customer Three]. Agent refers to Onestream 1 minute 34 seconds into the call and fails to explain who Onestream are.

- The agent referred to running a check on the Customer's account and checking usage: *"I do need to run a check on your line. While the check's running I need to ask you a few questions regarding your landline usage. Is that okay?"*;
- The agent finally referred to Onestream: *"Just call me [§<]. I'm calling from Onestream"*; and
- The agent returned to discussing the Customer's account: *"Right. I'm just going through your account then. Very quickly I can see that it's just the landline you have."*

3.22 The CCT notes setting out what the Customer said when she complained to Ofcom states that the Customer assumed that she was speaking with BT as the sales agent ([§<]) *"mentioned things about her BT account"*.<sup>27</sup>

3.23 We found that the way that Onestream's agents introduced the calls suggested to Customers that they were speaking to their existing CP rather than clearly explaining to them that they were speaking to a distinctly different provider.

#### Information about the purpose of the call

3.24 In addition to the ambiguity around the identity of the caller, Onestream agents also failed to clearly inform the Customers that the purpose of the call was to switch them from their current CP to Onestream. Instead Customers were also given information suggesting that the purpose of the call was to offer them a cheaper package with their current provider.

3.25 In the case of [§< Customer Four],<sup>28</sup> the agent made reference to the Customer's account, told the Customer that he was *"following up from a recent price rise letter"* and referred to running a check on the line. The agent mentioned briefly that he was calling from Onestream (*"I will make you aware that Onestream comply with GDPR"*), he discussed features on the Customer's line and asked the Customer about her experiences of receiving nuisance calls and her usage. He then informed her in various different ways that he was taking action to reduce her bills, and taking steps to ensure that she didn't receive any more price increases:

*"You shouldn't be paying anywhere near that region. It's very clear you have suffered with the price increase. Hold the line for me, I'm going to have a word with my controller for you. I'm going to see if I can put a stop to any further price increases"*;

*"I will see if I can have your bill reduced as well, alright?"*;

*"Now going forward there is actually a new, it's just a cheaper wholesale billing rate so customers get stuff a little bit cheaper"*; and

*"You're now going to be on a cheaper wholesale rate. Your monthly bill is now going to stay locked into place at a nice round mark for the next 24 months now."*

3.26 In our view, [§< Customer Four's] complaint to the CCT shows that she was under the impression that she was speaking to her existing provider and that the call was about

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<sup>27</sup> See Annex 4 for complete CCT complaint.

<sup>28</sup> [§< Customer Four]. Agent refers to Onestream 1 minute and 27 seconds into the call.

getting a better deal. The CCT notes, setting out what the Customer said when complaining to Ofcom states *“The consumer received a sales call regarding her phone services which are provided by BT. The consumer says the agent was talking about reviewing her contract for a better deal and of nuisance call blocking packages.”*

- 3.27 Similarly, many other Customers’ complaints to the CCT show that Customers had been led to believe that they were speaking to their current provider (i.e. BT) or were led to believe that Onestream was affiliated with BT/Openreach (see CCT summary in Annex 4).<sup>29</sup>
- 3.28 We consider that, as shown by the above examples, Onestream agents did not make clear to the Customers that they were being called by a different CP. The Customers were led to believe that they were speaking to their current provider, and that the purpose of the call was to reduce their bills (rather than to switch their services to a new provider, Onestream).

## Verification calls

- 3.29 In the calls that we have reviewed, we found at least 45 instances in which Onestream agents did not explicitly ask the Customers to confirm that:
- i) they understood that their services would be transferred from the current provider to Onestream; and
  - ii) they agreed and authorised for a transfer order to be placed by Onestream.
- 3.30 Instead, Onestream agents read statements from the verification scripts<sup>30</sup> which did not ask to confirm that the Customers understood that that their Fixed-Line Telecommunications Services would be transferred from their current provider to Onestream.
- 3.31 These verification scripts included the following statements that were used by agents in calls:
- i) *“for your safety and security I must advise you...[customer name]..., this call is being recorded and forms a 24 months verbal contract with Onestream from today’s date”;*
  - ii) *“The information in this call supersedes ANY OTHER information given so far”;*
  - iii) *“...you will have the right to change your mind and cancel your contract within 14 days from today’s date....”;* and
  - iv) *“I need you to confirm that...you have understood and agree to everything we have discussed today”.*<sup>31</sup>

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<sup>29</sup> Most of the Customers were already with BT and therefore were under the impression they were speaking with their existing provider.

<sup>30</sup> As set out at footnote 22

<sup>31</sup> Verification Script Two, which was applied for a very short period of time during the Relevant Period (i.e. 23 days from 1 May 2018 to 23 May 2018), required customers to confirm the name of their existing provider and that they understood

- 3.32 We refer to these as Statement (i) to Statement (iv) respectively.
- 3.33 The statements (i) and (iii) refer to a verbal contract being made with Onestream and a 14 day cancellation period; however they do not explain that the customer's services will be transferred to a new CP and that a transfer order will be placed following the call.
- 3.34 Statements (i) and (iii) do not seek the customer's consent for Onestream to place the transfer order. Instead, the customer is told by the agent that they are entering a 24-month contract with Onestream and that they will have the right to cancel that contract within 14 days.
- 3.35 Similarly, although Statement (iv) asks customers to confirm that they have understood and agreed with what they discussed with the agent, it does not explicitly request customers to confirm (i) their understanding that their services will be switched to a new provider and (ii) that a transfer order will be placed by Onestream immediately after the call.
- 3.36 We also found that the verification calls were often conducted very quickly by Onestream's agents, with sales agents speaking over the Customer and providing little opportunity for the Customer to interject and ask questions. This is all the more relevant considering the age and vulnerability of many of the Customers that were contacted by Onestream (as described in more detail at paragraphs 3.67 to 3.68).
- 3.37 We consider that by relying on Statements (i) to (iv), rather than by asking clear verification questions (such as the questions contained in Verification Script Two), Onestream's agents did not seek to expressly confirm that the Customers they had contacted:
- i) clearly understood and had express knowledge that their services were going to be transferred to a new provider; and
  - ii) agreed to a transfer order being placed by Onestream.

## Customers' responses

- 3.38 In our review of call recordings, we identified two scenarios in relation to Customers' responses.
- 3.39 In the first scenario (Scenario One), the Customers expressly raised questions and/or objections during the call indicating that they were not prepared to take any decision over the phone and/or that they first wanted to review the information in writing.
- 3.40 In this scenario, we found that Onestream's agent did not clearly address the objections/questions raised by Customers. This is set out in more detail below.
- 3.41 In the second scenario (Scenario Two) the Customers did not appear to object during the call, but as we set out in more detail below, we found that the lack of express objections

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that they were moving to Onestream. However, we note that only two of the sales calls we reviewed were made within this period and that neither of the relevant Customers were asked to confirm the name of their current billing provider and that they understood that they were moving to Onestream (a separate billing provider) as set out in Verification Script Two.

could not, in our view, reasonably be interpreted as the Customers agreeing to a transfer order being placed by Onestream.

- 3.42 We note that, in many of the cases we reviewed, a variety of the behaviours described in the scenarios below were present.

Scenario One - Customer objections

- 3.43 In our review of the call recordings, we identified three broad categories of objections that were raised by the Customers:

- i) some Customers indicated that they wanted to see the information in writing and/or discuss with family members first;
- ii) some Customers indicated that they were not making their own decisions but relied on family members; and
- iii) some Customers indicated that they wanted to see the information in writing first and that they did not want to provide bank details to Onestream.

- 3.44 Calls often exhibited more than one of these objections.

- 3.45 In some instances, the Customers made it clear to the agent that they wanted to see the information in writing first. The Customers also explicitly stated they wanted to discuss it with a family member first. For example, in the case of [redacted Customer Five],<sup>32</sup> the Customer expressed at least nine times that she needed to read the information first and that she needed to speak to her family about it. During the call, she told the sales agent:

*“Well, I’m not joining it now. I’m having a think about it and I’ll read it up”*

In response to being asked to complete a direct debit mandate and return it to Onestream she said: *“There’s no need to do that, [redacted], because it’s going to take me long time to sort this out with my family, for us all to read it and decide whether I’m doing a good thing or a bad thing.”*

- 3.46 In the CCT notes, setting out what [redacted Customer Five] said when complaining to Ofcom, she explained that she had only requested further information (rather than agree to switch to a new provider).

- 3.47 As part of the verification call, the agents, following their script, would ask the Customers whether they made their own financial decisions. In some cases, the Customer made it clear to the agent that they did not make their own financial decisions. This was often due

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<sup>32</sup> [redacted Customer Five]

to their age and/or vulnerability. For example, [§< Customer Six], when asked if anyone made financial decisions on her behalf, informed the agent *“I do, yeah, my daughter”*.<sup>33</sup>

- 3.48 In some cases, the Customers were adamant that they were not interested in what the sales agent was putting to them and that they did not make decisions without the help of a family member. The objections were articulated clearly. For example, 85 year old [§< Customer Seven],<sup>34</sup> made it clear on at least seventeen occasions, during the 30 minute call, that it was her daughter that handled her finances and decisions, and that she was not willing to make a decision:

*“Love, some of it I don’t understand now because, as I said, I just leave her to do everything for me”;*

*“Like I said, love, my daughter does it all for me. Like I said, I’m 85”;* and

Despite a second agent taking over the call, the Customer insisted *“No, no, no. I’m not going to do any more now sweetie.”*

- 3.49 Finally, in some cases the Customers made it clear they wanted to see the information in writing first and did not want to provide bank details over the phone. For example, 84 year old [§< Customer Eight], told the agent, when she was asked to confirm who she banked with, *“Well, I don’t want to give these details over the phone”*.<sup>35</sup> She continued to express her refusal in the following ways:

*“I know that’s my card, yes, but I’m not giving you my bank details. You’ve already got it. I’m already in a direct debit, aren’t I?”;*

*“Don’t you send me something so that I can notify my bank that I notify? I’m not giving things over the phone.”;* and

*“I’ve never done a direct debit over the phone before – ever.”*

- 3.50 The CCT notes, setting out what [§< Customer Eight] said when complaining to Ofcom, corroborated the above, where the Customer told the CCT that she did not agree to anything and said she would not give direct debit details over the phone. The Customer said that she had asked for information to be put to her in writing but did not agree to the service.

- 3.51 When Customers raised objections (as the ones described in paragraph 3.43 above), this provided Onestream with an opportunity to clear up any confusion that the Customer might have had regarding the CP’s identity and the purpose of the call. This also gave the

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<sup>33</sup> [§< ] on behalf of her mother [§< Customer Six]

<sup>34</sup> [§< Customer Seven]

<sup>35</sup> [§< Customer Eight]

agents the opportunity to ensure that, at the end of the phone call, Customers were aware that Onestream was a separate CP, it would be placing a transfer order to switch their Fixed-line Telecommunications Services and that they expressly gave their authorisation for the transfer to be placed. However, our assessment shows that, when handling these objections, agents did not appropriately address the issues raised by the Customers. Instead, the information provided to the Customer added further confusion as to what was happening. Some specific examples are set out below.

- 3.52 Some agents reassured Customers that nothing would happen immediately and that they would have 14 days to make a decision or to cancel. This led Customers to believe that nothing would happen for 14 days until they made a decision, but the reality was that Onestream would place a transfer order almost immediately, on the back of the call to switch their Fixed-line Telecommunications Services from their current provider to Onestream.
- 3.53 For example, in the case of [redacted Customer Nine],<sup>36</sup> she had made it clear that she needed to speak to her family before making a decision; *“Well, listen, I’ll tell you what – I need to speak to my family about it because I get rumbled with these things, you know?.”* She was told by the agent that she would have:
- “...14 days to read it through with your family, because, you know, after this call nothing’s set in stone, you do get a cooling-off period, to decide, think it through”; and*
- “You’re not set in stone from this date. You do get 14 days, as I say, so give it a read of that, and if she doesn’t like it and you don’t like it, feel free to call in.”*
- 3.54 We consider this gave the Customer the impression that nothing would happen immediately, when in fact, a transfer order to switch the Customer’s Fixed-line Telecommunications Services to Onestream was placed the next day.<sup>37</sup>
- 3.55 In the case of [redacted Customer Ten],<sup>38</sup> the Customer attempted to clarify when he would need to give any authorisation; *“Is there something I’ve got to sign – eventually to sign up to all of this?”* and the agent attempted to explain that the Customer had 14 days to change his mind (rather than clarify that a transfer order would be placed that day). The Customer asked again *“You really won’t do this until I’ve approve – ah, agreed to the order surely?”* to which the agent responded *“Yeah – listen [redacted Customer Ten], we don’t actually reduce your bills until you’ve actually double checked everything and made sure you’re happy with it. Alright? [...] Providing you’re happy with it, then we reduce the bill for you.”* Furthermore, when [redacted Customer Ten] attempted to clarify *“How do I agree this? By email?”*, rather than explaining that the transfer order would be placed that day the agent

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<sup>36</sup> [redacted Customer Nine]

<sup>37</sup> The sales call took place on 1 August 2018 and Openreach received the transfer request on 2 August 2018.

<sup>38</sup> [redacted Customer Ten]

inaccurately confirmed that the Customer would need to agree by email (*"That's right. Yeah"*).

- 3.56 In some instances, despite the Customers' objections, the agents did not address these accurately and simply continued to proceed to the verification script. For example, despite [§ Customer Eleven's]<sup>39</sup> objections and his requests to review the paperwork first, the agent continued the call, in order to try to elicit a positive response from the Customer. The Customer repeated he needed to receive the paperwork, *"but I want more information, writing me a letter, so write me a letter, and I'll read it and see how it goes from there."* The agent said *"But, yeah, I just need a yes or no from you. I just need you to understand-*, to which the Customer responded *"Yeah, that's fair enough."* The agent continued *"Because what I'm going to do, I'm going to do the verbal verification done to get your paperwork sent out to you by Monday"*.
- 3.57 This created the impression that the verification part of the call was to simply process the paperwork for the Customer to review. The agent failed to explain Onestream would be placing a transfer order, a few days later, to switch the Customer's Fixed-line Telecommunications Services to it.<sup>40</sup>
- 3.58 In some cases, Onestream agents responded to the Customer's objections by reinforcing the impression that nothing would change, thus creating an impression that Onestream was somehow affiliated with their existing CP and/or Openreach, or that Onestream was simply the billing provider. For example, in the case of [§ Customer Twelve],<sup>41</sup> 13 minutes into the call, when the agent repeated his name and said he was calling from Onestream, the Customer expressed surprise: *"Hang on, hang on. What's this Onestream?"* Rather than providing a clear explanation as to the identity of Onestream, the agent repeated several times that nothing was going to change:

*"Now don't worry, we're not here to change anything, and Onestream, we're a wholesale billing provider on the Openreach network, so our job is simply to review your account and make sure you're not being overcharged";*

*"...so your line, your internet, your number, everything's staying the same, nothing's changing. All we're doing is reducing the bills that you're going to be receiving at the end of the month";*

*"Those are exactly the same speeds that you're on. Nothing's changing. All right?";* and

*"Like I said, your line, your number, your services, everything's remaining exactly the same, and we're not changing a thing. The only thing we're doing is we're reducing the bill at the end of the month down for you."*

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<sup>39</sup> [§ Customer Eleven]

<sup>40</sup> The sales call was made on 30 October 2018 and Openreach received the transfer request on 5 November 2018.

<sup>41</sup> [§ Customer Twelve]

- 3.59 This is corroborated by the CCT notes, setting out what the Customer said when complaining to Ofcom, where the Customer explained that the agent had told him that they were BT. The agent said to the Customer that BT and Openreach were rearranging their billing and Onestream was now going to be his billing provider. This shows that the information provided by Onestream had caused the Customer to be confused about the identify of Onestream, and the purpose of the call.
- 3.60 In instances where Customers made it clear that they did not want to provide direct debit information over the phone or that they wanted to receive a bank mandate first, agents handled these objections by saying that they could not do anything untoward with the Customer's bank details other than set up a direct debit or by agreeing to send the Customer a direct debit mandate to complete (as instructed to do so on the verification scripts). Many of the Customers only agreed to receive a direct debit mandate.
- 3.61 We consider that the fact that these Customers requested a direct debit mandate to be sent to them in the post, shows that they had no intention of switching to Onestream during the telesales call and did not understand that a transfer order would be placed directly after the call. For example, in the case of 80 year old [redacted Customer Thirteen],<sup>42</sup> a disabled Customer, she was unable to get her bank details, so the agent offered to send her a direct debit mandate. However, she became concerned (*"But I don't know you from Adam, you know. You could be a con artist as far as I'm concerned"*). The agent informed the Customer several times, in response to her objections, that she would receive the paperwork in the post:
- "Like I said, [redacted Customer Thirteen], you don't need to worry. I'm going to send everything through the post in confirmation, so carry on using your phone like normal, because nothing is changing."*;
- "So when you get everything through the post don't worry. If, for example, you forgot to mention anything, you still have your 14 day cooling off period, so, for example, if you still need to change anything, don't worry, you can still give me a call back, and you've got my number. My number will also be on the –";* and
- "I'm going to send you everything out through the post, yeah? [...] You can also show him it, and if he's got any questions, just tell him to Give me a call. All right?"*
- 3.62 The Customer was not aware that, at the end of this call, a transfer order would be placed to switch her to Onestream. This is corroborated by the CCT notes, setting out what the Customer's family said when complaining to Ofcom, that the Customer did not consent to the transfer and was Slammed.

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<sup>42</sup> [redacted Customer Thirteen]

3.63 In the case of 84 year old [redacted Customer Eight],<sup>43</sup> during the verification call, she told the agent that she doesn't give bank information over the phone. In response the agent told her *"that's not a problem, [redacted Customer Eight]. So just to make you feel more comfortable, all it is, we're not here to change anything."* The agent went on to tell the Customer the type of information she should never share (the long card number and the three-digit security code). The agent then told the Customer that it is safe to share her account number and sort-code, but the Customer disagreed *"but I'm not giving you my bank details. You've already got it. I'm already in a direct debit, aren't I?"* By saying this, the Customer clearly indicated she thought she was speaking to her current provider. However, the agent did not address this objection appropriately; he did not clarify, at that point, that the customer was speaking to a different CP. Instead, the agent told the Customer that her current direct debit would be automatically cancelled, and then to reassure her, he offered to send her a mandate in the post; *"what you'll need to do is then very simple is if you fill that in and then send it back, then we can send it up that way [...] Like I said, when I send you the package in the post I'll also send you the direct debit form as well."* Furthermore, the agent then created the impression that nothing would happen until the Customer was happy with the paperwork and returned the direct debit mandate:

*"Very simple, we do send everything in confirmation to you. Alright? [...] You get 14 days of course to be able to change your mind if you're not happy with it, which is two weeks, which is more than enough. Alright? [...] If you are happy with it, within the 14 working days – to 20 days, that's when the package will usually start. So that's when your bills automatically get reduced."*

3.64 In the CCT notes, setting out what [redacted Customer Eight] said when complaining to Ofcom, she said she received a call from Onestream offering her a deal, which sounded good, but that she did not agree to anything and that said she would not give direct debit details over the phone. She indicated that she had asked for details in writing but that she did not agree to the service.

#### Scenario Two - No objections

3.65 In 18 of the 45 cases, the Customers appeared to raise no objections to what was said to them throughout the calls. However, in these instances we consider that the Customers did not provide Onestream with their authorisation to place a transfer order.

3.66 In the calls placed to these 18 customers:

- a) Onestream agents did not make their identity and the purpose of the call clear to the Customer (as set out at paragraphs 3.19 to 3.28). These Customers did not understand that they were speaking to a different CP and that they were asked to authorise a transfer to Onestream; and

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<sup>43</sup> [redacted Customer Eight]

- b) Onestream agents used statements from their verification scripts (as set out at paragraph 3.31), which did not clearly ask the Customer to confirm their understanding that they would be transferred away from their current provider to Onestream.
- 3.67 In 11 out of the 18 cases where the Customers did not object, the Customers clearly indicated to the agents that they were elderly.<sup>44</sup> In one additional case, the Customer did not provide her date of birth, but she confirmed her son managed her financial decisions, suggesting that she may be vulnerable.
- 3.68 In the case of elderly and/or vulnerable consumers, it is particularly important that agents use clear language to set out the changes for which they are seeking the Customer's authorisation. Despite this, agents failed to use unambiguous language and clarify any confusion that the Customer had about what the purpose of the call was, and the fact that Onestream was a distinct CP.
- 3.69 Typically, in the calls we have listened to, where Customers did not object, these Customers were not very engaged with the call, nor did they ask questions to confirm their understanding. Instead, many of these Customers only responded with one, or two word answers, usually "yes" and "Okay".<sup>45</sup>
- 3.70 We found that in these types of calls Customers did not necessarily object to what they were told because of the lack of clarity of Onestream's agents and the ambiguous language that was used throughout the calls. This meant that the Customers were under the impression that they would simply be getting a new and cheaper package from their current provider or that Onestream was affiliated with their current provider (see for example the case of [Customer Four] as set out at paragraph 3.25 to 3.26). It was not until these Customers received a notification from their current provider that they became aware that Onestream was a separate company and had placed a transfer order for their Fixed-line Telecommunications Services.
- 3.71 Our assessment of the 18 no objection cases is corroborated by the CCT notes of what the Customers said when complaining to Ofcom, where they stated in various ways that they did not consent to switch or understood that a switch would take place. In four of these cases, family members had called on behalf of their parents etc to raise the complaint.
- 3.72 On that basis, we consider that, even though in these cases, the Customers did not expressly object to what was said to them during the call, they did not have express knowledge nor provided consent for Onestream to place a transfer order and switch their Fixed-line Telecommunications Services away from their current provider to Onestream.

### Assessment of CCT complaints

- 3.73 Based on the information shared by the Customers who complained to our CCT that they had been Slammed, we identified the following:<sup>46</sup>

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<sup>44</sup> The age and vulnerabilities of the Customers are set out in Annex 4.

<sup>45</sup> See Annex 4.

<sup>46</sup> The information below is based on the information captured by the CCT agent.

- a) All 45 complaints were logged as ‘Slamming’ complaints, where Customers told Ofcom that they did not agree to switch their Fixed-line Telecommunications Services to Onestream;
- b) Fourteen Customers told the CCT that thought they were speaking to their existing provider (BT);
- c) Five Customers told the CCT that they thought they were agreeing to a new cheaper package /to reduce their bills;
- d) Seven Customers told the CCT that they thought they were agreeing to receive information to review before making a decision;
- e) One Customer told the CCT that he was under the impression that Onestream was just the new billing provider; and
- f) Six Customers had a parent or family member make their complaint on their behalf, because the Customer was elderly, vulnerable, the family member had power of attorney or the Customer had since passed away.<sup>47</sup>

### **Conclusion on Slammed Customers that were contacted by Onestream**

- 3.74 For the reasons set out above, and in light of the evidence contained in Annex 4, we have found that Onestream contravened GC C7.3(a) in respect of at least 45 Customers during the Relevant Period by placing transfer orders where the Customer was contacted but did not give their consent to transfer their services.
- 3.75 Placing repeat transfer orders for Fixed-line Telecommunications Services, following the cancellation of the initial transfer order by the losing provider, without making contact with the Customer to obtain their authorisation to place a new transfer order

### **Repeat transfer orders**

- 3.76 Where a Customer initially consents to the Gaining Provider making a request for their Fixed-line Telecommunications Services, and this request is subsequently cancelled (either by the Losing Provider or the Gaining Provider), the Gaining Provider no longer has the Customer’s consent to transfer the Customer’s Communications Service. In this event, each subsequent transfer order must then be treated as a new request for services. If the Gaining Provider proceeds without contacting the Customer again, the Customer has “never been contacted” for the purposes of that particular transfer order.<sup>48</sup>

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<sup>47</sup> Depending on the information provided by the Customer and the details captured by the CCT agent on the complaint summary, absence of information does not suggest that more Customers were not impacted by the behaviour. Similarly, there may be some overlap, where one Customer may fall under more than one of these issues.

<sup>48</sup> See, for example, Ofcom’s previous decision relating to Supanet: [https://webarchive.nationalarchives.gov.uk/20160705035109/http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/cases-in-compliance/cw\\_01096/Supatel\\_s96C\\_Confirmation\\_D1.pdf](https://webarchive.nationalarchives.gov.uk/20160705035109/http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/cases-in-compliance/cw_01096/Supatel_s96C_Confirmation_D1.pdf) and True Telecom: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/108885/true-telecom-confirmation-decision.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/108885/true-telecom-confirmation-decision.pdf)

- 3.77 As part of our assessment of Onestream’s compliance with this element of GC C7.3(a), we assessed the following:
- i) relevant documentation supplied by Onestream;<sup>49</sup> and
  - ii) transfer data supplied by Openreach.<sup>50</sup>

### **Onestream’s policy of placing repeat transfer orders**

3.78 Onestream confirmed that during the Relevant Period, its policy was to place repeat transfer orders following the initial transfer order except in cases where the customer had expressly contacted Onestream to cancel the initial transfer order.

3.79 It first did this in an email received on 21 December 2018,<sup>51</sup> Onestream set out that:

*“As part of our call with the customer, we are very clear that the customer has the right to cancel and that “you must notify Onestream, not your existing provider, that you wish to cancel”. We believe this to be in line with C7 (and the consumer’s statutory cancellation rights)...Where we have not received a request to cancel from the customer and the Losing Provider has used Cancel Other, we have sought to repeat the transfer order as we have had no instruction to the contrary from the customer.”*

3.80 In its First Response Onestream has also stated that throughout the Relevant Period, where “we did not receive a request to cancel from the customer, we placed repeat transfer orders”.

3.81 Onestream further explained, in the First Response, that the only part of the process (of repeat transfers) that changed, during the Relevant Period, was the addition of the extra text in Verification Script Four: “You must notify Onestream, not your existing provider that you wish to cancel within this period. We will attempt to re-process any rejected orders. If we do not hear from you then your agreed services will go live and you will incur termination fees.”<sup>52</sup>

3.82 The First Response from Onestream provided information showing that during the Relevant Period, Onestream entered [redacted] customers into contracts.<sup>53</sup> Yet it placed

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<sup>49</sup> We note that Onestream only provided call recordings consisting of sales and verification calls in relation to the initial transfer orders placed and not for any repeat transfer orders it placed later on.

<sup>50</sup> See Annex 2

<sup>51</sup> This email was sent by [redacted Senior Staff Two] on behalf of Onestream. He did this as part of Onestream’s response to Ofcom’s initial assessment (IA) prior to opening this investigation. See Annex 2 for more details of the IA.

<sup>52</sup> First Response, question 4(a).

<sup>53</sup> We used the period of 1 April 2018 to 31 January 2019 as this was the information provided by Onestream as set out in its response to question 6 of the First Notice.

somewhere between [redacted] to [redacted] transfer orders.<sup>54</sup> This suggests that Onestream placed more than one transfer order in relation to a significant proportion of these customers.

- 3.83 The Openreach Response also shows that during the Relevant Period, approximately [redacted] (50%) of transfer orders placed by Onestream were cancelled by the Losing Provider on the basis that the customer had been Slammed.<sup>55</sup>
- 3.84 The evidence collected from Onestream and Openreach therefore shows that Onestream did put this policy into practice throughout the Relevant Period.

### Openreach transfer data

- 3.85 In order to verify whether Customers had been subjected to repeated Slamming, we requested transfer information from Openreach for 137 Customers in relation to 137 Calling Line Identifications (CLIs).<sup>56</sup> The Openreach Response provided Ofcom with all the transfer activity for these Customers' Fixed-line Telecommunications Services during the Relevant Period.
- 3.86 Our analysis of the Openreach transfer data provided evidence that, during the Relevant Period, Onestream placed at least two transfer orders in respect of 113 of these Customers.<sup>57</sup> This number supports our finding that a significant proportion (82%) of the 137 Customers that made a sales and marketing complaint to Ofcom's CCT had repeat transfer orders placed for their Fixed-line Telecommunications Services.
- 3.87 Openreach's transfer data also shows the degree of repetition and persistence with which Onestream placed these transfer orders, as shown in the information included in Annex 3 and summarised in Table 1 below.

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<sup>54</sup> The transfer information received from Openreach on 26 February 2019 (the Openreach Response) in response to an information request issued to Openreach on 12 February 2019 under s135 of the Act (the Openreach Notice) showed there was a total of [redacted] transfer orders placed by Onestream and the information received from Onestream in the First Response said there was [redacted] total transfer orders that it placed through [redacted]. For the purpose of both of these figures, we used transfer information for the entire months of April 2018 and January 2019.

<sup>55</sup> Ofcom receives monthly reports from Openreach which sets out the number of cancel others placed against transfer orders, split by RID code. In comparison, the CP who placed the most transfer orders during the Relevant Period had a total of approximately [redacted] cancel others placed against it amounting to 4.1% of all transfer orders.

<sup>56</sup> CLI means data that enables identification of the number from which a call could be made or to which a return call could be made.

<sup>57</sup> See Annex 3

Table 1: Repeat Transfer orders placed by Onestream

Total number of transfer orders placed by Onestream	Number of Customers impacted
2	40
3	48
4	19
5	4
6	2

Source: Openreach data received as part of the Openreach Response.

- 3.88 In total, Onestream placed 332 transfer orders for these 113 Customers, of which 219 were repeat transfer orders, and which were placed without the Customer’s express knowledge and/or consent. This evidence shows that in these cases, Onestream followed its policy to place repeat transfer orders in a systematic effort to transfer the Customer despite the previous transfer order being cancelled.
- 3.89 We note that Onestream only provided call recordings consisting of sales and verification calls in relation to the initial transfer orders placed and not for any repeat transfer orders it placed later on. This means that Onestream was not able to provide evidence to demonstrate that customers had consented to the 219 repeat transfer orders identified during the Relevant Period.
- 3.90 There was no clear pattern of how quickly Onestream would place repeat transfer orders once it had been notified that the previous transfer order had been cancelled. However, the Openreach transfer data shows that various lengths of time elapsed between a transfer order being cancelled and a repeat transfer order being subsequently placed. As set out at paragraph 3.90 below, some of these repeat transfer orders were placed within a short period of time and, in other cases, there was a longer period of time between a transfer order being cancelled and a repeat transfer order being placed.
- 3.91 We consider that this created a high level of uncertainty and potential concern for these Customers as they were not in a position to know if and when Onestream was going to place a repeat transfer order in relation to their Fixed line Telecommunication Services. This is indicative of a repeated and persistent practice. In particular, we noted the following examples:
- a) An elderly Customer had six transfer orders placed for her line over a period of 19 days between 11 April 2018 and 30 April 2018. This Customer was elderly and in her complaint to Ofcom, she advised that after she had requested her current provider to cancel the initial transfer order from Onestream, she contacted Onestream and told them she did not agree to any transfer and to cancel any requests. However, Onestream continued to place transfer orders for her Fixed-line Telecommunications Services and she had to contact her current provider to cancel the orders placed by

Onestream. The Customer complained to Ofcom on 26 April 2018, the date the fourth transfer order was placed, yet Onstream placed two further transfer orders on 27 April 2018 and 30 April 2018;<sup>58</sup>

- b) An elderly Customer had three transfer orders placed for her line between 25 September 2018 and 23 November 2018. Between the second transfer order being cancelled (11 October 2018) and the third transfer order being placed (23 November 2018), there was a period of 43 days in between. The Customer's son made the complaint to Ofcom on behalf of his mother as she passed away three days prior to the third transfer order being cancelled. In his complaint, he stated that after receiving notification from Onestream about their new contract, they wrote to Onestream during the cooling off period to cancel the contract and also requested that their current provider cancel the transfer order. Yet, following the initial transfer order being cancelled, Onestream placed two further transfer orders;<sup>59</sup>
- c) An 88 year old Customer had five transfer orders placed for her line during the period 5 April 2018 to 8 May 2018. Both the third and the fourth transfer orders were placed on the same day as the previous transfer order had been cancelled. The Customer complained to Ofcom on 3 May 2018, the date the fourth transfer order was cancelled and there was a further transfer order placed by Onestream on 8 May 2018;<sup>60</sup>
- d) An 81 year old Customer had three transfer orders placed for her line during a period of four days between 15 May 2018 and 18 May 2018 and then had a fourth transfer order placed for her line on 24 May 2018 which resulted in her switching to Onestream on 11 June 2018;<sup>61</sup>
- e) Another 81 year old Customer, with eye sight problems, had two transfer orders placed for her line on 19 June 2018 and 27 July 2018. There was a gap of 37 days in between the first transfer order being cancelled and the second transfer order being placed. The Customer complained to Ofcom on 31 July 2018 the day after the second transfer was cancelled;<sup>62</sup> and
- f) An elderly Customer, residing in a retirement village, had six transfer orders placed for her line during a period of 81 days between 5 November 2018 and 25 January 2019. She complained to Ofcom on 22 January 2019, the day before the fifth transfer order was cancelled and three days before the sixth transfer order was placed.<sup>63</sup>

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<sup>58</sup> [redacted Customer Fourteen].

<sup>59</sup> [redacted] on behalf of [redacted Customer Fifteen].

<sup>60</sup> [redacted] on behalf of [redacted Customer Sixteen].

<sup>61</sup> [redacted Customer Seventeen].

<sup>62</sup> [redacted Customer Eighteen].

<sup>63</sup> [redacted Customer Nineteen].

3.92 We have also assessed whether Onestream successfully transferred Customers as a result of placing transfer orders. This analysis shows that of the 113 Customers who had repeat transfer orders placed on their lines, 28 (25%) of them had their line successfully transferred to Onestream. This breaks down as follows: 15 were transferred on the second attempt, seven were transferred on the third attempt, five were transferred on the fourth attempt and one was transferred on the fifth attempt. We consider that this is, again, indicative of orders being placed systematically until Onestream was able to successfully transfer the line of the Customer.

#### **Conclusion on repeat transfer Slamming**

3.93 For the reasons set out above and as set out in further detail in Annex 3, our view is that Onestream contravened GC C7.3(a) in respect of at least 113 Customers during the Relevant Period by placing repeat transfer orders without contacting the Customer to obtain their authorisation to place a new transfer order.

## **Conclusion**

3.94 On the basis of our assessment above, Ofcom has found that Onestream contravened GC C7.3(a) during the Relevant Period by:

- i) placing transfer orders for Fixed-line Telecommunications Services where the Customers were contacted but did not give authorisation for Onestream to do so. As set above, we have found that Onestream did this in respect of at least 45 Customers; and
- ii) by placing repeat transfer orders following the cancellation of the initial transfer order by the Losing Provider, without first contacting the Customer to obtain their authorisation to place a new transfer order. As set out above, we have found that Onestream did this in respect of at least 113 Customers.

## 4. Penalty

- 4.1 Ofcom has imposed a penalty of £35,000 on Onestream for its contraventions of GC C7.3(a) during the Relevant Period. We also require Onestream to take steps to remedy its contraventions and to report back at the conclusion of its compliance audit.
- 4.2 In setting the penalty level, we have had regard to our Penalty Guidelines<sup>64</sup> and have taken into consideration that Onestream has co-operated with the Investigation and has taken proactive steps to remedy the contravention.

### Consideration of whether to impose a penalty

- 4.3 Ofcom's principal duty in carrying out our functions is to further the interests of citizens and consumers in relevant markets. GC C7.3(a) is an important consumer protection provision that protects consumers from Slamming, which we consider to be the most extreme form of mis-selling. It is fundamental to a well-functioning telecommunications industry that consumers are able to switch with ease and choose who they receive their Communications Services from without having to worry that they may be switched and subsequently billed by a company that they have not agreed to obtain services from. Slamming undermines confidence in the industry and can discourage consumers from switching.
- 4.4 Where a CP attempts to switch a consumer without their knowledge or consent, this can cause significant harm, including stress, anxiety, financial harm and requires customers to put time and effort into resolving the situation. This harm is magnified when the behaviour is repeated and systematic, when consumers are actually switched and when the switch impacts their ability to use the phone and broadband services and additional services such as care alarms, with confidence.
- 4.5 This is particularly the case for elderly and/or vulnerable consumers as their landline and broadband services are essential to connecting them to family and friends as well as important public services such as hospitals, GPs and emergency services including via care alarms.
- 4.6 Any contravention of GC C7.3(a) is serious. The level of seriousness is likely to increase wherever a significant number of consumers are affected, the CP has been in contravention over a long period of time, the contravention is repeated and systematic, deliberate or reckless and/or where consumers are elderly and/or vulnerable.

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<sup>64</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf)

- 4.7 In this case, Onestream engaged in Slamming for a period of almost ten months, during which time, it Slammed at least 118 Customers, a significant proportion of whom (at least 88) were elderly and/or vulnerable. In at least 113 of the cases, Customers were subject to repeated and sustained efforts by Onestream to switch their services despite these transfer orders being cancelled by the Losing Provider at the request of the Customer. We note that in assessing the number of consumers that were affected by Onestream's conduct, we have only relied on those Customers that complained to Ofcom's CCT, and on those cases where our finding is that a breach did occur.
- 4.8 The penalty is based on these cases where a breach has been established. However, we note that the process and policy that Onestream followed when placing repeat transfer orders was in place for the entire Relevant Period. In our view, this means that, based on the volume of outbound telesales calls made by Onestream and transfer orders placed during the Relevant Period (compared to the number of contracts it entered Customers into), it is likely that the number of consumers affected by Onestream's conduct was significantly higher. We also note that not all affected customers would have contacted Ofcom's CCT to complain about Onestream.
- 4.9 We have also had regard to the reckless and repeated nature of the contraventions, in that senior management did not put the correct policies and procedures into place (which we address further below) and the fact that the contraventions took place notwithstanding previous Ofcom enforcement action against other CPs on the same matters.
- 4.10 For all these reasons, we are satisfied that imposing a penalty on Onestream is appropriate in this case.

## Penalty amount

- 4.11 In considering the level of penalty which should be applied, Ofcom has had regard to its published Penalty Guidelines.<sup>65</sup>
- 4.12 The Penalty Guidelines set out a range of factors which may be relevant in any particular case. Ofcom has also considered whether there are any relevant precedents and the extent to which they should be followed in this case. The penalty in this case has been determined taking these factors into account in the round. The following sections set out Ofcom's consideration of each of these factors.

## Deterrence

- 4.13 As set out in the 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

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<sup>65</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf)

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 the regulatory requirements.

- 4.14 Any penalty we set should therefore be sufficiently high to discourage non-compliance both by Onestream and other CPs and incentivise Onestream's management to change the conduct of the company, encouraging good practices and a culture of compliance across the organisation.
- 4.15 Under section 97 of the Act, the maximum penalty Ofcom may impose on Onestream is 10% of its turnover for its relevant business for the period 1 April 2018 to 31 March 2019.<sup>66</sup> In the Second Response, Onestream stated that its turnover for its relevant business in that period was £[§<]. The maximum penalty we may therefore impose on it in respect of the contravention we have found is £[§<].
- 4.16 To assess the amount of penalty that might serve as an effective deterrent to prevent further wrongdoing by Onestream, as set out below, we have taken into account the seriousness of the contraventions and previous enforcement action Ofcom has taken against other CPs on the same matters.
- 4.17 In regard to previous enforcement action taken by Ofcom, we have previously imposed financial penalties on CPs for contraventions of the same rules where the conduct has been of a nature that is directly comparable to Onestream's conduct in this Investigation. This includes penalties of £60,000 on Supatel and £300,000 on True Telecom. These are discussed in more detail in paragraphs 4.69 to 4.72 below. However, these previous penalties do not appear to have had an appropriate deterrent effect on Onestream. These penalties 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.<sup>67</sup>

## Seriousness, harm and culpability

- 4.18 As explained above, GC C7.3(a) is an important consumer protection provision and any contravention of it is serious.
- 4.19 GC C7.3(a) sets out a complete prohibition on Slamming which means it is never acceptable for a CP to engage in Slamming. The seriousness of any contravention of GC C7.3(a) is exacerbated wherever a significant number of consumers are affected, the CP has been in contravention over a long period of time, the contravention was repeated, systematic, deliberate or reckless and/or where consumers are elderly and/or vulnerable.

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<sup>66</sup> Given that this Confirmation Decision is issued in December 2019, this is the relevant period for the purposes of calculating the maximum penalty Ofcom may impose, as defined in section 97(5) of the Act.

<sup>67</sup> As set out in the Penalty Guidelines, paragraph 1.8. In relation to the True Telecom case, while the final decision was issued on 16 November 2017, the provisional penalty was set on 1 August 2017 before the Penalty Guidelines were updated.

- 4.20 Onestream engaged in Slamming for a significant period of time (almost ten months), which resulted in it systematically placing at least 264 unsolicited transfer orders in relation to at least 118 Customers in a sustained and repeated attempt to transfer them from their current provider to Onestream without their express knowledge and/or consent. Forty-five of these unsolicited transfer orders were placed for Customers that were Slammed as a result of the first transfer order being placed, and an additional 219 unsolicited repeat transfer orders were placed for 113 Customers.<sup>68</sup>
- 4.21 Each of these 264 transfer orders, placed without the Customers' express knowledge and/or consent, amounts to a contravention of GC C7.3(a). The size of this contravention is therefore significant, particularly taking into account the complete prohibition on Slamming, the relative size of Onestream<sup>69</sup> and the number of repeat transfer orders it placed during the Relevant Period.
- 4.22 Further to this, there were a total of 29 Customers that actually transferred to Onestream with 22 of them being invoiced by Onestream. As set out in paragraph 3.91, 28 of these Customers were transferred as a result of Onestream placing repeat transfers for their lines with one Customer being transferred as a result of the initial transfer order.
- 4.23 The total amount of money Onestream invoiced these Customers was £4,351.09 at an average of £197.77 each.<sup>70</sup> Only 12 of these Customers paid any money to Onestream, with a total of £1,135.96 being paid at an average of £94.66 each.
- 4.24 There were also an additional eight Customers that did not transfer to Onestream, yet it invoiced them a total of £617.04 at an average of £77.13 each. Three of these Customers paid money to Onestream, with a total of £104.88 being paid at an average of £34.96 each.
- 4.25 While the total amount of money that Onestream received as a result of its contravention, £1,240.84, may not be regarded as significant, the individual amounts of money that Customers were invoiced and paid were not insignificant. This is likely to have increased the distress and anxiety suffered by these Customers, including in cases where Customers did not pay money to Onestream but had been invoiced by it. This distress and anxiety is likely to be exacerbated when taking into the consideration the demographic of the Customers, who were primarily elderly and/or vulnerable.
- 4.26 Also relevant in this regard is the fact that when their previous provider placed transfer orders to switch them back, Onestream cancelled transfers in relation to twelve Customers.<sup>71</sup> At the date of the Second Response, three of these Customers were still with Onestream. In one case, a Customer placed two separate transfer orders shortly after she transferred to Onestream and Onestream cancelled both of these transfer orders. This

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<sup>68</sup> Of the 118 Customers, 113 had repeat transfer orders placed by Onestream for their Fixed-line Telecommunications Services, and of the 45 that were Slammed as a result of the first transfer order, only five were not subject to a repeat transfer order. Those 113 Customers had 219 repeat transfer orders placed.

<sup>69</sup> See Annex 2 A2.5.

<sup>70</sup> The Second Response.

<sup>71</sup> Nine of these Customers had one transfer order cancelled, two Customers had two transfer orders cancelled and one Customer had three transfer orders cancelled (from the Openreach Response).

Customer is still with Onestream and has paid it £447.50.<sup>72</sup> This Customer only switched to Onestream as a result of Onestream placing five transfer orders for her services and in her complaint to the CCT, she explained that she had a Piper Lifeline Service which only works with BT and that Onestream said there will be an early termination fee (ETF) of £200 if she left.<sup>73</sup>

- 4.27 Ofcom has also taken account of the degree of harm that would have been suffered by Customers. Ofcom's previous investigations into Slamming have demonstrated that customers, particularly customers who are vulnerable, are likely to experience significant harm, including distress, anxiety, financial harm as well as spending time and effort trying to resolve the situation. We consider that it is no different in this case.
- 4.28 In a significant proportion of these cases (at least 88 of the 118 Customers), it should have been evident to Onestream that many of these Customers were elderly and/or vulnerable. This is because the majority of Customers made it explicitly clear throughout their initial sales calls<sup>74</sup> in various ways, such as providing their date of birth and in other cases, despite the Customer not making it explicitly clear to the Onestream agent, it should have been clear that the Customer was vulnerable.<sup>75</sup>
- 4.29 Examples of where Customers made their age and/or vulnerability explicitly clear to Onestream are set out below:
- a) In at least 12 of the cases, the Customer informed the agent that they did not make their own financial decisions;
  - b) In two cases, the Customer informed the agent that they had a disability, and one of these Customers relied on a personal care alarm;<sup>76</sup>
  - c) In one case, the Customer informed the agent that they were recently bereaved;
  - d) In two cases, the Customer informed the agent that they had memory issues;
  - e) One Customer informed the agent that he had learning difficulties;
  - f) In at least one case, the Customer informed the agent that he had dementia;
  - g) In one case, the agent was made aware the Customer was in their 90s;
  - h) In 22 cases, the agents were made aware that the Customer was in their 80s;
  - i) In 36 cases, the agents were made aware that the Customer was in their 70s; and
  - j) In four case, the agent was made aware that the Customer was in their 60s.<sup>77</sup>

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<sup>72</sup> As of the date of the Second Response.

<sup>73</sup> [X Customer Twenty]

<sup>74</sup> The 113 Customers who were Slammed as a result of Onestream placing repeat transfer orders are included as they would have provided Onestream with this information in their initial sales and verification call.

<sup>75</sup> For instance because of the speed at which the Customer speaks or because the Customer asks the agent to repeat themselves and/or indicates that he/she does not understand what the agent is saying.

<sup>76</sup> Personal care alarms are dependent on a working telephone line, so that a vulnerable person can contact emergency services and/or a family member in emergency situations. Slamming potentially puts users of these personal care alarms in jeopardy.

<sup>77</sup> Some Customers may fall under one or more of these categories.

- 4.30 This is supported by complaints to the CCT, with 31 complaints being made by someone on behalf of their elderly or vulnerable relative/friend.
- 4.31 Further, as explained in more detail below, we have found there are a number of other factors that exacerbate the seriousness of Onestream’s contravention, in particular Onestream failed to take appropriate steps to prevent the contraventions from occurring and its senior management should have been aware that the contraventions were or were likely to be occurring.

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

- 4.32 We consider that Onestream failed to put in place steps to prevent the contravention identified. Furthermore, we have found that Onestream had in place and acted on a policy which was inconsistent with the requirements of GC C7.3(a).
- 4.33 Onestream is a small CP and during the Relevant Period its telesales team consisted of four agents rising to ten agents during the first six months of 2018. In March 2018 it recruited [redacted Senior Staff Two], specifically to reconfigure Onestream as an exclusively online sales operation.<sup>78</sup>
- 4.34 In the First Response, Onestream acknowledged it was a small business and, in response to a question about its customer relations and training of staff in relation to the selling of Onestream’s services, it provided two versions of its sales scripts and four versions of its verification scripts that were in use during the Relevant Period and noted *“There were no other documents used in relation to training or instructing Onestream staff.”*
- 4.35 However, it did provide some further information about the training it put in place. Specifically, it stated the following:
- “[redacted]<sup>79</sup>[redacted].”<sup>80</sup>*
- 4.36 As set out in Section 3, the agents, following the sales and verification scripts did not always make it clear to the Customer about who the agent was calling from, what the purpose of the call was or explicitly seek the Customer’s consent to place a transfer order for their services. Nor was there any specific guidance on the regulatory requirements that Onestream agents were required to follow to ensure they complied with GC C7.3(a).
- 4.37 Other than describing the [redacted] system as set out at paragraph 4.35, Onestream did not provide any other information about the content of any face-to-face training delivered by the [redacted Job role of Senior Staff One].
- 4.38 In addition, in the First Response, Onestream confirmed its policy was to place repeat transfer orders. It stated that during the Relevant Period, in order to make this policy

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<sup>78</sup> Page 3, of slides (May Meeting Slides), presented by Onestream at a meeting with Ofcom on 21 May 2019 (the May Meeting) (see Annex 2).

<sup>79</sup> [redacted Senior Staff One]

<sup>80</sup> First Response, question 9.

clearer to consumers, it made an addition to the verification script in use from 29 August 2018 to include the additional wording:

*“You must notify Onestream, not your existing provider that you wish to cancel within this period. We will attempt to re-process any rejected orders. If we do not hear from you then your agreed services will go live and you will incur termination fees.”<sup>81</sup>*

- 4.39 Onestream also provided an explanation of how it conducted quality assurance of its sales calls. Specifically, it stated:

*“Onestream’s quality control function would listen to entire calls to ensure they were of the necessary standard (e.g. the script was adhered to) and complete the QC Checklist. Where this process identified issues, they were notified to the relevant sales manager by email, and a note was added on our customer relationship management system. Calls to be checked were selected at random with the aim of listening to at least one successful set-up order call from each salesperson working on any particular day. Issues raised by the quality controllers would be remedied by the relevant salesperson, which may have involved telephoning the customer back to clarify certain information.”<sup>82</sup>*

- 4.40 It appears that Onestream relied primarily on the content of the sales and verification calls and the criteria in the QC Checklist to determine if there were any compliance issues with sales.

- 4.41 We consider this approach was insufficient to ensure its agents complied with GC C7.3(a). As set out at paragraph 4.36 above and detailed in Section 3, the content of the scripts did not amount to adequate training to ensure agents complied with GC C7.3(a) or to ensure that Customers understood who they were talking to, the purpose of the call or to obtain the Customer’s consent to transfer. In addition, the QC Checklist had no specific categories or guidance about compliance with GC C7.3(a) or any other rules, nor did it have any obvious marking criteria to determine whether a call met the standards required to ensure the sale was compliant rather than just following the relevant scripts.

- 4.42 Even to the extent that Onestream did monitor calls, we found that the process in place was flawed and was not designed to ensure sales agents complied with GC C7.3(a). This is evidenced by the fact that despite having a small sales team where it should be relatively easy to monitor compliance, the contravention continued in relation to the same sales agents for a period of almost ten months while Onestream continued to make outbound sales calls.<sup>83</sup>

- 4.43 In a business of this size, senior management should have been responsible for producing, and have direct oversight over, the policies and procedures that are put in to place. In this

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<sup>81</sup> First Response, question 4(a).

<sup>82</sup> Response to question 10 of the First Response.

<sup>83</sup> In relation to the 45 contraventions, the initial sales calls were carried out by seven different agents. However, of these seven agents, two in particular made the majority of the calls over a period lasting from April to December ([<] and [<]).

case, [REDACTED Senior Staff One], was responsible for producing all versions of the sales and verification scripts that were in place during the Relevant Period and the QC Checklist. [REDACTED Senior Staff Two], was responsible for signing off all versions of the scripts from 1 May 2018.<sup>84</sup>

4.44 Both [REDACTED Senior Staff One and Senior Staff Two] were aware and supported the policy to place repeat transfer orders. They were also responsible for producing and signing off scripts, which were part of the training process, that did not make clear to customers that the agent was calling from Onestream and that the purpose of the call was to place a transfer order on the line.

4.45 At a very minimum, the senior management of Onestream should have known that Slamming was likely to occur as a result of (i) the lack of training provided to sales agents about the relevant regulatory rules on Slamming and (ii) its policy to place repeat transfer orders which was included in Verification Script Four, in use from 29 August 2018. Despite this, Onestream failed to take appropriate steps to prevent the contraventions from occurring and the contraventions were therefore a result of Onestream's recklessness.

4.46 Further evidence that demonstrates the recklessness of Onestream's senior management is its response to the IA which was sent to Ofcom by [REDACTED Senior Staff Two].<sup>85</sup> In the IA, Ofcom shared the details of 100 customer complaints with Onestream, all of which alleged that Onestream had engaged in Slamming. The purpose of sharing these complaints with Onestream was to set out our initial concerns and provide it with an opportunity to provide representations in relation to the complaints.

4.47 Some of the key findings from Onestream's response to the IA are as follows:

*"As part of our call with the customer, we are very clear that the customer has the right to cancel and that "you must notify Onestream, not your existing provider, that you wish to cancel". We believe this to be in line with C7 (and the consumer's statutory cancellation rights) ... Where we have not received a request to cancel from the customer and the Losing Provider has used Cancel Other, we have sought to repeat the transfer order as we have had no instruction to the contrary from the customer"; and*

*"We've conducted a review of the complaints you've provided details of, and attach a spreadsheet updated with our findings. All customers have consented to switching to Onestream on a recorded call".*

4.48 The closing line of Onestream's response to the IA was *"Based on the information we have provided, we trust that you will determine that a formal investigation is not warranted."*

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<sup>84</sup> [REDACTED Senior Staff One] was responsible for producing and signing off the version of the sales and verification scripts that were in use up until 1 May 2018.

<sup>85</sup> See Annex 2.

- 4.49 Of these 100 customers, we have found that Onestream Slammed 79 of them. Thirty of these were Slammed as a result of the initial sales call with 76 of them being subject to repeat Slamming.<sup>86</sup> Even when presented with an opportunity to review complaints and provide representations on its compliance with GC C7.3(a), the senior management of Onestream failed to identify the failures of its sales process and that it had engaged in Slamming. We consider this provides further evidence that Onestream’s approach to compliance with GC C7.3(a) was reckless.
- 4.50 We note that it was only later during the Investigation and once an internal review by Onestream had been conducted that it identified that its processes had been insufficient.<sup>87</sup>
- 4.51 In our view we do not consider that Onestream had in place during the Relevant Period, any effective policies and procedures which could have prevented the contraventions from occurring. Instead, the policies and procedures it had in place did not ensure that any training that was provided was consistent and resulted in the appropriate training of its agents on how to comply with GC C7.3(a). Of particular relevance, is that senior management were heavily involved in face-to-face training, and responsible for producing the relevant sales and verification scripts and the QC Checklist. Senior management were also aware of the process to place repeat transfer orders and in its response to the IA, considered that it had not engaged in Slamming of any kind and that its process to place repeat transfer orders was compliant with GC C7.3(a).
- 4.52 To this extent, we consider that the contravention was reckless, and that the failings by Onestream’s senior management significantly contribute to the seriousness of this case.

## **Whether Onestream took timely and effective steps to end the contravention**

- 4.53 The last case of Slamming we have identified occurred on 25 January 2019. By February 2019, Onestream had completely ceased all outbound telesales and changed its customer acquisition strategy to be 100% through online sales.<sup>88</sup>
- 4.54 In the May Meeting, Onestream explained that the decision to cease outbound telesales and focus on online sales was based on commercial considerations noting that “[<]”.<sup>89</sup> At the same time, Onestream also noted the benefits of improved compliance by moving to online sales, specifically stating *“This online customer acquisition provides a more stable and safer environment for ensuring full compliance and delivering high-quality customer relationships”*.

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<sup>86</sup> These are included in the 45 and 113 cases for which we have concluded that a breach of GC C7.3(a) occurred.

<sup>87</sup> At the May Meeting (see Annex 2), as a response to the Investigation, Onestream’s (then) shareholder, Onecom commissioned a review of calls and practices, and Onestream told us that it had established that in some cases *“Onestream’s telesales operatives did not fulfil the company’s commitments to its customers”* and *“Onestream’s processes to ensure (telesales) compliance were insufficient”*

<sup>88</sup> See Annex 2.

<sup>89</sup> Slide 4 of the May Meeting Slides. Slide 5 of the May Meeting Slides demonstrated [<].

- 4.55 A letter received from Onestream on 14 June 2019 (The June Letter)<sup>90</sup> also noted that “*By early 2019, independently of Ofcom’s investigation, Onestream had taken a commercial decision to cease all outbound telesales. By February 2019, telesales had ceased.*” Again, Onestream noted that the online sales journey improves compliance “*...and as with any online sales compared to telesales, the information made available to consumers is more tightly controlled, improving compliance.*”
- 4.56 We consider the steps taken by Onestream have likely had the effect of ending the contravention. This view is supported by the significant decrease in sales and marketing related complaints to the CCT about Onestream since the start of 2019.<sup>91</sup> Nevertheless, it is our view that if Onestream had put in place an effective compliance monitoring process, the contravention could have been halted much sooner.
- 4.57 We have also considered whether Onstream has taken action to improve its future compliance.
- 4.58 At the May Meeting, Onestream informed us of its intention to strengthen its compliance through using external counsel to carry out a “*thorough, end-to-end review of all business processes*”. In response to questions about progress made, Onestream in its Second Response confirmed:
- a) The current status of the identified actions is:
    - i) Regulatory compliance audit: In progress
    - ii) Compliance programme: To be completed following the audit
    - iii) Regular compliance reviews: To be completed following the audit
- 4.59 We welcome the steps Onestream is carrying out and its planned regular compliance reviews, which includes external counsel overview. However, we note that, given that Onestream is no longer carrying out outbound telesales calls, the impact is most likely to be minimal.

## **Taking initial steps to remedy the contravention**

- 4.60 In its Second Response, Onestream explained the steps it has proactively taken which it considers remedy the consequences of the contravention. The remedial actions Onestream has taken extend beyond the contravention. Specifically, in July 2019, Onestream
- a) wrote to all [X] customers that it had identified had transferred to Onestream as a result of telesales (the Exit Letter) and informed them that their “*...contract has been selected as eligible to be moved to a rolling contract. This means that you now need to submit only 30 days written notice should you wish to cease your services or transfer to another provider.*”; and

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<sup>90</sup> See Annex 2

<sup>91</sup> As of 27 November 2019, the CCT has received [X] sales related complaints against Onestream since February 2019.

b) wrote to all [X] customers that were no longer a customer of Onestream but had transferred to it as a result of a telesales and had paid it an ETF (the Refund Letter), informing them that *“Onestream prides itself on delivering unparalleled service to its customers and has a continued commitment to put excellence in customer service at the heart of its operations. We are very sorry to have lost you as a valued customer and as such we would like to refund the early termination fee you paid. Please contact us to confirm your account details so we can arrange any refund that may be due.”*

- 4.61 These letters were sent during a five working day period beginning 22 July 2019. Although Onestream has not put a time limit for a customer to take any action in relation to these letters, as of 24 September 2019, the date of the Second Response, only [X 3%] out of [X] customers had transferred away from Onestream without paying an ETF. A further [X 6%] out of the [X] customers who had previously switched away from Onestream, have since requested and obtained a refund. See Annex 2 for further details of the remedial steps taken.
- 4.62 While we acknowledge that these remedial steps extend beyond the contravention, they are consistent with the types of remedial steps we have previously imposed on other CPs for similar contraventions.<sup>92</sup> In this respect, we have given credit to Onestream in relation to the remedial steps it has put in place when considering the level of penalty. While we welcome the steps taken by Onestream, we do not consider that these have been wholly effective at remedying the consequences of the contravention. This is discussed in more detail below.
- 4.63 First, Onestream has taken no specific action in relation to the 118 Customers we have specifically identified as being contravened, such as proactively refunding any money they paid to Onestream as a result of being Slammed. Onestream acknowledged at the May Meeting that its compliance procedures were insufficient, but took no specific action to review the compliance of the sales in relation to the 137 Customers that complained to Ofcom and were communicated to Onestream as part of the First Notice (from which the 118 Customers were taken) and to assess whether any further remedial steps were required. This is particularly relevant in light of Onestream’s IA response where it considered *“All customers have consented to switching to Onestream on a recorded call”*.
- 4.64 Second, the letters sent by Onestream, as set out in paragraphs 4.60 above, were ambiguous about their purpose. The letters failed to clearly explain why the customers were being contacted, in particular, they did not make reference to the Ofcom Investigation nor did they inform customers that Onestream was taking proactive steps to remedy failings that it had identified as part of this Investigation and following an internal review of its compliance with the relevant rules. Instead, the letters placed a requirement on customers to write to Onestream with 30 days’ notice if they wished to transfer to another CP without an ETF or to call Onestream to obtain a refund for an ETF they had previously paid.

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<sup>92</sup> See paragraph 6.3 of the True Telecom investigation  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/108885/true-telecom-confirmation-decision.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/108885/true-telecom-confirmation-decision.pdf)

- 4.65 Lastly, for customers that have already potentially had a negative experience with Onestream, receiving one of these Exit or Refund Letters is unlikely to provide them with any confidence that they are in fact able to switch away without an ETF or be refunded a previously paid ETF. This view is consistent with the fact that only [~~3~~ 3%] customers have taken up the opportunity to switch away without an ETF and only [~~6~~ 6%] of [~~3~~] customers have requested and obtained a refund.<sup>93</sup>
- 4.66 However, despite the issues we have identified with the remedial steps taken by Onestream, we note that we would normally require a CP to (i) allow all customers who believed they were Slammed to be released from their contract without an ETF or any other charges and (ii) where the customer has already switched away from the CP and incurred charges in doing so, to be compensated for those charges in full. Further, we would only require a CP to proactively contact those customers in relation to whom we have established that a breach occurred.
- 4.67 In this case, we note that Onestream went beyond the remedies we would normally impose as it has proactively contacted those customers who were transferred as a result of telesales calls and not just the customers in relation to whom a contravention occurred. We have taken this into account in our penalty assessment.

## History of contraventions

- 4.68 Onestream has no history of contraventions of the GCs.

## Precedents

- 4.69 As set out in our Penalty Guidelines, Ofcom will have regard to any relevant precedents set by previous cases where they are relevant.<sup>94</sup>
- 4.70 As explained above, Ofcom has issued two previous penalties to CPs in contravention of GC C7.3(a).<sup>95</sup> In determining the penalty in this case, we have had particular regard to the cases below.
- 4.71 Ofcom imposed a penalty on Supatel<sup>96</sup> in 2013, for placing repeat transfer orders for 87 CLIs, 83 of which occurred over a period of two months; 56 of the 83 CLIs actually transferred to ‘timetalk’<sup>97</sup>. The penalty reflected Supatel’s lack of effective documented policies and procedures for training on, securing, monitoring and auditing compliance with GC24.3(d), the degree of relevant knowledge, responsibility and recklessness on the part of Supatel’s senior management; and Supatel’s failure to take adequate appropriate steps in all circumstances to prevent the contravention from occurring. The penalty imposed was £60,000 (2.24% of its Relevant Turnover).

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<sup>93</sup> As of the date of the Second Response.

<sup>94</sup> Penalty Guidelines, paragraphs 1.7 and 1.14.

<sup>95</sup> Which, at the time of issuing the Notifications was the previous slamming prohibition set out under GC22.3(d).

<sup>96</sup> [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01096](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01096)

<sup>97</sup> Supatel was registered in Cyprus but traded in the UK under the names “Supanet” and “timetalk”.

4.72 Ofcom imposed a penalty on True Telecom<sup>98</sup> in 2017, for contraventions of GC22.3(d), GC22.8 and GC9.4<sup>99</sup>. Specifically, True Telecom engaged in Slamming by placing initial transfer orders without the customer's express knowledge and/or consent in respect of 26 customers; and by placing repeat transfer orders without the customer's express knowledge and/or consent for 90 CLIs in respect of 86 customers. The penalty reflected the size and the seriousness of the contravention, notably that many of the customers were elderly and/or vulnerable. Of the 96 who were Slammed 34 had their Communications Services transferred to True Telecom. The penalty also reflected that True Telecom did not appear to have effective policies and procedures in place to train its staff about Slamming and to ensure its staff were complying with GC22.3(d). The penalty imposed was £300,000 (6.9% of its Relevant Turnover).

### **Co-operation with Ofcom's investigation**

4.73 We have also taken account of the fact that Onestream has provided us with information in a timely manner and has co-operated fully with the Investigation. We have no reason to add to the penalty on account of any non-cooperation.

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

4.74 Considering all of the above factors in the round, we have imposed a penalty of £35,000 on Onestream in respect of its contravention of GC C7.3(a). This includes a 30% discount applied to the penalty of £50,000 we would otherwise have set, as a result of Onestream admitting liability and entering into a settlement with Ofcom.

4.75 Ofcom's regulatory judgment is that this is an appropriate and proportionate penalty, taking into account the overall seriousness of the contravention, the recklessness with which Onestream acted by not having in place effective and compliant policies and procedures, the harm caused by the contravention on Customers who were primarily elderly and/or vulnerable, Onestream's size and turnover and the need to secure an appropriate deterrent effect to Onestream and other CPs.

4.76 We have taken into consideration Onestream co-operating with the Investigation, and taking proactive steps to remedy the contravention, which went beyond the 137 Customers who had complained to Ofcom. We also acknowledge that Onestream has invested in carrying out a full compliance review. However, the impact of these positive steps is limited, when weighed against the fact that we consider Onestream was slow to take steps to stop the contravention. In addition, we consider that, to be more effective, the letters that Onestream sent to customers should have clearly set out the reasons for contacting those customers (i.e. Ofcom's Investigation into a provisional breach of GC C7.3(a)).

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<sup>98</sup> [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01189](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01189)

<sup>99</sup> GC22.3(d) related to Slamming rules, GC22.8 refers to the previous rules for failing to create and retain relevant records of consent, and GC9.4 relates to entering consumers into contracts that exceeded 24 months and including terms requiring them to pay early termination charges for the period following the initial commitment period.

4.77 Having regard to Onestream's turnover, we are satisfied that the penalty is at such a level which can secure these objectives in a proportionate way. It would reflect each of the factors described in more detail above, taking particular account of the seriousness of the contraventions and the objective of deterrence. We consider that to set a penalty at this level is not disproportionate and does not exceed the maximum penalty Ofcom may impose.<sup>100</sup>

## **Actions required of Onestream**

4.78 Onestream must also take the following steps, to the extent it has not already taken them, to remedy the consequences of the contravention of GC C7.3(a):

- a) allow any customers who believe they were Slammed by Onestream to cease their contract with Onestream, regardless of the period for which the contract has been in force, with no requirement to pay an ETF or disconnection fee and no requirement to pay any charges (including charges for transferring away from Onestream) for services other than those the customer has used;
- b) for any customers who believe they were Slammed by Onestream but who have already transferred away from Onestream and have incurred charges in doing so, compensate them in full for those charges;
- c) For those Customers identified in Annex 3 and 4 that are still with Onestream, proactively take steps to inform them that as a result of this Investigation, Onestream is required to allow them to terminate their contract with no payment of an ETF or disconnection fee; and
- d) for all Customers identified in Annex 3 and 4, (i) proactively take steps to contact and inform them, that as a result of the Investigation, Onestream is required to refund them, and (ii) proactively refund them in full, any money paid by those Customers to Onestream, including interest. Onestream must also refund the Customers, in full, for any other costs which may have been incurred as a result of being Slammed, including payment of ETFs to their previous CP or the loss of upfront line rental which was paid to their previous CP.

4.79 Onestream must report back when the scheduled compliance audit is complete.

4.80 Onestream must comply with the requirements imposed on it by this Confirmation Decision as soon as possible and, in any event, not later than 3 months from the date of this Confirmation Decision.

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<sup>100</sup> The maximum penalty that Ofcom could impose is £[REDACTED].

# A1. Confirmation Decision to Onestream Limited of contravention of General Condition C7.3(a) 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. 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>101</sup> or may specify a period within which the person must comply with those requirements; and
  - d) may require the person to pay:
    - i) the penalty specified in the notification issued under section 96A of the Act, or
    - ii) such lesser penalty as Ofcom consider appropriate in light of the person’s representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, and may specify the period within which the penalty is to be paid.

## General Conditions

- A1.3 Section 45(1) of the Act gives Ofcom the power to set conditions, including General Conditions, binding on the person to whom they are applied.

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<sup>101</sup> 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.

A1.4 The Schedule to a Notification issued by the Director General of Telecommunications on 22 July 2003 under section 48(1) of the Act, which took effect from 25 July 2003, set out the General Conditions of Entitlement (the “General Conditions” or “GCs”) which applied to all Communications Providers (“CPs”) defined in each GC until 1 October 2018. The GCs were amended from time to time between 2003 and 2018 and, on 1 October 2018, a new set of GCs came into effect.

### General Condition C7.3

- A1.5 GC C7 sets out the rules on switching. This GC is aimed at protecting domestic and small business customers during the process of switching their landline and/or broadband services (either when moving from one CP to another, when moving location or when changing services but staying with the same CP).
- A1.6 Prior to the amendment of the GCs on 1 October 2018, Slamming rules were set out in GC22.3(a). The same rules are now set out at GC C7.3(a) and references to GC C7.3(a) throughout the Confirmation Decision should be read accordingly.
- A1.7 GC C7.3 sets out obligations to prevent mis-selling. Specifically, GC C7.3(a) states that when selling or marketing Relevant Communications Services, the Regulated Provider<sup>102</sup> that is the Gaining Provider<sup>103</sup> must ensure that “it does not engage in Slamming”.
- A1.8 “Slamming” means where:
- “(a) a request for a CPS, WLR, SMPF and/or MPF<sup>104</sup> has been made;*
- [...];*
- (c) a Transfer Order<sup>105</sup> or a Working Line Takeover Order has been placed on Openreach or on KCOM (as applicable), without the Switching Customer’s express knowledge and/or consent,*

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<sup>102</sup> For the purpose of GC C7, any such Communications Providers is a ‘Regulated Provider’ (GC C7.2(a)) and any such Fixed-line Telecommunications Services and/or DSL Broadband Services are ‘Relevant Communications Services.’ (GC C7.2(b)).

<sup>103</sup> For the purpose of the GCs, the definition of ‘Gaining Provider’ includes a Communications Provider to whom a Switching Customer is transferring. ‘Switching Customer’ means a Customer that is a Domestic or Small Business Customer in relation to a Communications Provider which provides Fixed-Line Telecommunications Services and/or DSL Broadband Services using Openreach’s or KCOM’s Access Network (as defined in the Act).

<sup>104</sup> ‘CPS’ stands for ‘Carrier Pre-Selection’ which is defined by the GCs as a facility which allows a Customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a Telephone Number. ‘WLR’ stands for ‘Wholesale Line Rental’ and is defined as a regulated wholesale service sold by a Communications Provider, which is used by the Communications Provider to provide retail Customers with exchange lines and, in turn, access to other narrowband telephony services (for example, telephone calls, facsimile and dial-up internet access). ‘Shared Metallic Path Facility’ (or ‘SMPF’) means access to the non-voiceband frequencies of the MPF. ‘Metallic Path Facility’ (or ‘MPF’) means a circuit comprising a pair of twisted metal wires between a Customer’s premises and a main distribution frame in a local access node that employs electric magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey Signals when connected to an Electronic Communications Network.

<sup>105</sup> ‘Transfer Order’ is defined by the GCs as an order submitted by, or on behalf of, a Gaining Provider to Openreach, or KCOM, or other applicable wholesaler, requesting for the Target Line (as defined in the Act) to be transferred from the Losing Provider to the Gaining Provider. ‘Losing Provider’ means the CP from whom a Switching Customer is transferring.

*That is in the following circumstances:*

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

*(ii) where the Switching Customer has contacted, or has been contacted by, the Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of their Fixed-line Telecommunications Services and/or DSL Broadband Services;*

*[...];*

- A1.9 GC C7.3 (a) is an important consumer protection provision which seeks to protect consumers from suffering harm and distress caused as a result of being Slammed by a CP.

## **Subject of this Confirmation Decision**

- A1.10 This Confirmation Decision is addressed to Onestream Limited (“Onestream”), whose registered company number is 10389581. Onestream’s registered office is Onestream House 4400 Parkway, Whiteley, Fareham, England, PO15 7FJ.

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

- A1.11 On 29 November 2019, Ofcom issued a Notification under section 96A of the Act (the Section 96A Notification) to Onestream, as Ofcom has reasonable grounds for believing that between 13 April 2018 and 25 January 2019 (the Relevant Period) Onestream contravened GC C7.3(a).
- A1.12 The Section 96A Notification also specified the penalty that Ofcom was minded to impose on Onestream in respect of its contraventions of GC C7.3(a).
- A1.13 The Section 96A Notification allowed Onestream the opportunity to make representations to Ofcom about the matters set out in the Section 96A Notification.

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

- A1.14 On 3 December 2019, in a letter to Ofcom, Onestream confirmed that it waived its rights to make representations about the matters notified and admitted liability for the contravention. The period for Onestream to make representations has therefore expired.
- A1.15 Accordingly, Ofcom is satisfied that, during the Relevant Period, Onestream contravened GC C7.3(a) by engaging in Slamming by placing transfer orders without the Customer's express knowledge and/or consent. We have found that Onestream Slammed at least 118 Customers in the following circumstances:
- a) where the Customer was contacted but did not give authorisation for Onestream to place a transfer order for their Fixed-line Telecommunications Services. Ofcom found that Onestream did this in respect of at least 45 of the 118 Customers; and

b) by placing repeat transfer orders following the cancellation of the initial transfer order by the Losing Provider, without first contacting the Customer to obtain their authorisation to place a new transfer order. Ofcom found that Onestream did this in respect of at least 113 of the 118 Customers.

A1.16 Ofcom has therefore decided to give Onestream a Confirmation Decision confirming its contravention of GC C7.3(a) and our decision to impose a financial penalty on Onestream of £35,000 in respect of this contravention.

A1.17 The extent of these contraventions and the reasons for Ofcom's decision are set out in the document to which this Confirmation Decision is annexed.

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

A1.18 Onestream must also take the following steps, to the extent it has not already taken them, to remedy the consequences of the contravention of GC C7.3(a):

- a) allow any customers who believe they were Slammed by Onestream to cease their contract with Onestream, regardless of the period for which the contract has been in force, with no requirement to pay an ETF or disconnection fee and no requirement to pay any charges (including charges for transferring away from Onestream) for services other than those the customer has used;
- b) for any customers who believe they were Slammed by Onestream but who have already transferred away from Onestream and have incurred charges in doing so, compensate them in full for those charges;
- c) For those Customers identified in Annex 3 and 4 that are still with Onestream, proactively take steps to inform them that as a result of this Investigation, Onestream is required to allow them to terminate their contract with no payment of an ETF or disconnection fee; and
- d) for all Customers identified in Annex 3 and 4, (i) proactively take steps to contact and inform them, that as a result of the Investigation, Onestream is required to refund them, and (ii) proactively refund them in full, any money paid by those Customers to Onestream, including interest. Onestream must also refund the Customers, in full, for any other costs which may have been incurred as a result of being Slammed, including payment of ETFs to their previous CP or the loss of upfront line rental which was paid to their previous CP.

A1.19 Onestream must report back when the scheduled compliance audit is complete.

A1.20 Onestream must comply with the requirements imposed on it by this Confirmation Decision as soon as possible and, in any event, not later than 3 months from the date of this Confirmation Decision.

## Penalty

- A1.21 Ofcom has determined that Onestream must pay a penalty of **£35,000** in respect of its contravention of GC C7.3(a) during the Relevant Period. This includes a 30% discount to the penalty Ofcom would otherwise have imposed, as a result of Onestream admitting liability and entering into a settlement with Ofcom.
- A1.22 Onestream has until 5.00pm Thursday 2 January 2020 to pay Ofcom the penalty. If not paid within the period specified it can be recovered by Ofcom accordingly.<sup>106</sup>

## Interpretation

- A1.23 Words or expressions used in this Confirmation Decision have the same meaning as in the GCs or the Act except as otherwise stated in this Confirmation Decision.



Gaucho Rasmussen, Ofcom

5 December 2019

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<sup>106</sup> Section 96C(7) Communications Act 2003.

## A2. Chronology of Ofcom's Investigation

### The initial assessment (IA) and the decision to investigate

- A2.1 Between June 2017 and March 2018, the CCT received a total of 18 sales and marketing related complaints about Onestream.<sup>107</sup> However, from April 2018, the sales and marketing related complaints about Onestream increased significantly with the CCT receiving a total of 72 complaints about Onestream during the period 1 April 2018 to 27 September 2018.
- A2.2 This represented a disproportionately high level of complaints in comparison to other CPs and, on that basis, we carried out a detailed analysis of these complaints to get a better understanding of what was causing customers to complain to the CCT. Our analysis identified a number of concerns related to Slamming and there was evidence that a significant proportion of the customers appeared to be elderly and/or vulnerable.
- A2.3 On the basis of the concerns identified, we wrote to Onestream on 3 December 2018 informing it that we were opening an IA into its compliance with GC C7 (the IA Letter). In the IA Letter we set out our concerns, provided Onestream with details of complaints made to the CCT from the previous six months, and invited Onestream to make representations and/or provide information that would help us to understand the issues better and make a decision whether to open an investigation or not.
- A2.4 Onestream responded by email on 21 December 2018<sup>108</sup> setting out its assessment of the complaints we sent it and provided us with additional information about its processes and procedures. Onestream set out that:
- i) It was *“fully aware of our obligations under this condition and have set up our procedures accordingly”*;
  - ii) Having reviewed the 100 complaints that Ofcom had shared with it, its findings were that *“All customers have consented to switching to Onestream on a recorded call”*;
  - iii) In response to Ofcom's concerns around Slamming, and repeat transfers, it stated that *“As part of our call with the customer, we are very clear that the customer has the right to cancel and that “you must notify Onestream, not your existing provider, that you wish to cancel”. We believe this to be in line with C7 (and the consumer's statutory cancellation rights)...Where we have not received a request to cancel from the customer and the Losing Provider has used Cancel Other, we have sought to repeat the transfer order as we have had no instruction to the contrary from the customer.”*; and

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<sup>107</sup> June 2017 was the first month the CCT received a sales and marketing related complaint about Onestream.

<sup>108</sup> [S< Senior Staff Two], sent the response on behalf of Onestream.

iv) *“47 of the customer orders identified were cancelled by the Losing Provider without the customer contacting Onestream to request cancellation – this goes against C7 and our request to the customer to contact us if they wish to cancel.”*

- A2.5 During the period from 27 September 2018 to the completion of the IA, despite being a small CP<sup>109</sup>, sales and marketing related complaints to the CCT about Onestream remained disproportionately high with Onestream generating the third most complaints of all CPs. This represented approximately 10% of the total sales and marketing complaints received by the CCT during the period.
- A2.6 To put this into perspective, for every transfer order that Onestream placed, between 2% and 2.38% resulted in a complaint to the Ofcom CCT. When using the number of contracts it entered customers into as the relevant proxy, this ratio increased to 3.37%.
- A2.7 In comparison, the CP who generated the most sales and marketing complaints to the CCT had a ratio of complaints to transfer orders of just 0.12%.
- A2.8 Having considered all the information provided by Onestream, our assessment of the CCT complaints, and in light of our Enforcement Guidelines,<sup>110</sup> on 22 January 2019 we decided to open the Investigation into Onestream’s compliance with GC C7.3(a) and (b).

## Information gathering

### Information requests and key engagement with Onestream

- A2.9 We issued two formal notices to Onestream and one formal notice to Openreach under section 135 of the Act, requiring them to provide information to us.

#### First Notice

- A2.10 On 7 February 2019, Ofcom issued Onestream with an information request under section 135 of the Act (the First Notice). The First Notice required Onestream to provide information about its sales process, its process for placing transfer orders, the size of its customer base, the Record of Consent and sales call for each successful set-up order placed in relation to Customers who had complained to the CCT,<sup>111</sup> and information about its training and quality assurance processes.

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<sup>109</sup> As set out in paragraph 3.81, Onestream only placed somewhere between [X] to [X] transfer orders during the Relevant Period and entered [X] consumers into contracts (using the period of 1 April 2018 to 31 January 2019).

<sup>110</sup> Ofcom, *Enforcement Guidelines*, 28 June 2017, available here.

<sup>111</sup> A successful set-up order was defined as an order that has been submitted by Onestream via the wholesale gateway for the transfer of a customer’s Communications Service from another CP and has been confirmed as a successful set-up order (i.e. has not been rejected). A successful set-up order does not mean the successful transfer of that customer’s line to the Gaining Provider (Onestream). For example, if the successful set-up order is cancelled by the Losing Provider or Onestream, that would still count as a successful set-up order. This definition of successful set-up order was clarified during our call with Onestream on 12 March 2019. It was confirmed in the note of the May Meeting *“that if Onestream had agreed a contract with a customer and then placed a transfer order which was accepted by the Openreach gateway but was subsequently cancelled by the losing CP, if Onestream then placed another transfer order for that customer, this would count as 2 successful set-up orders and one contract”*.

- A2.11 We received Onestream’s response on 21 February 2019 (the First Response). As part of the First Response, Onestream only provided one call recording (sales and verification call) for each Customer.
- A2.12 On 12 March 2019, we had a follow-up call with Onestream to clarify some of the information in the First Response, including the definition of successful set-up order. Following this call, on 8 April 2019, Onestream provided two updated documents from the First Response and made one amendment to the note of the call that took place on 12 March 2019.

### May Meeting

- A2.13 On 21 May 2019, we met with Onestream and its external counsel at Onestream’s request. At the May Meeting, Onestream presented a slide pack (the May Meeting Slides) that set out some background about Onestream, the changes it had made to its sales process during and after the Relevant Period, an acknowledgement that it had identified some compliance issues and that it was proactively taking steps to strengthen compliance and provide redress to customers.

#### Onestream’s response to the Investigation

- A2.14 As a response to the Investigation, Onestream’s (then) shareholder, Onecom commissioned a review of calls and practices, and Onestream told us that it had established that in some cases:

- *“Onestream’s telesales operatives did not fulfil the company’s commitments to its customers*
- *Onestream’s processes to ensure (telesales) compliance were insufficient”.*

- A2.15 As a result of these findings, Onestream management took the following action:

*“ 1) Dismissed sales staff that had proven to be unreliable*

*2) Recruited additional experienced senior staff in order to establish the required foundation for sustainable future growth*

*3) commissioned a thorough, end-to-end review of all business processes using external counsel.”*

The May Meeting Slides was also the first time where Onestream set out information about two particular steps that it was going to take to 1) provide redress to customers and 2) strengthen compliance management.

### Change in sales channel

- A2.16 At the May Meeting Onestream informed us that following the introduction of its online sales channel, it gradually decreased its outbound telesales activity while at the same time increasing its online sales activities. It did this through more advertising and by partnering with a number of affiliates such as uSwitch, comparethemarket.com and Go Compare.
- A2.17 At the May Meeting Onestream explained that the decision to move to an online sales channel was based on commercial considerations [redacted].<sup>112</sup>
- A2.18 In the May Meeting Slides, Onestream also noted that *“This online acquisition provides a more stable and safer environment for ensuring full compliance and delivering high-quality customer relationships”*.

### **June Letter**

- A2.19 On 14 June 2019, Ofcom received a letter from Onestream via its external counsel [redacted] (the June Letter) as a follow-up to the May Meeting which set out in more detail the steps Onestream had taken and was intending to take to improve compliance and provide redress to customers. Specifically, the June Letter confirmed that:
- i) From November 2018, Onestream’s online sales function became fully operational and it completely ceased all outbound telesales activity in February 2019;
  - ii) Onestream would write to all customers that joined Onestream via outbound telesales calls offering them the opportunity to exit their contract without facing Early Termination Fees (ETFs);
  - iii) would fully refund all ETFs that had been paid by previous customers, who had joined via outbound telesales and had since left Onestream; and
  - iv) it had taken steps to strengthen compliance.

### **Second Notice**

- A2.20 We issued a second information request to Onestream under section 135 of the Act on 17 September 2019 (the Second Notice). The Second Notice required Onestream to provide information concerning any charges it levied on customers that had complained to the CCT, to clarify the remedial steps it had taken or was still to take, to confirm the current status of its compliance review and to provide information relating to its annual turnover.
- A2.21 We received Onestream’s responded on 24 September 2019 (the Second Response).

### Remedial steps

- A2.22 In the Second Response, Onestream confirmed that in relation to refunds, the following steps had been taken:

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<sup>112</sup> It appears that since May 2019, based on the May Meeting Slides, there was an [redacted].

- a) It had identified that a total of [redacted] customers had transferred to Onestream via telesales but had switched away from Onestream and paid an ETF;
- b) The total value of ETF's paid to Onestream by these [redacted] customers was £9417.49. The total amount of ETF's raised against customer accounts was £10,800.62;
- c) In the week commencing 22 July 2019, over a period of two days, Onestream issued these [redacted] customers with a letter, informing them of their right to a refund; and
- d) Since issuing the letter, a total of [redacted 6%] customers have had their ETF refunded, but Onestream note that *"The total value of refunded ETF's is £732.02 however Onestream has credited all outstanding ETF's onto the customers account."*

A2.23 The Second Notice also requested information about the letters Onestream planned to issue, allowing its customers to exit their contracts without paying an ETF. Onestream confirmed that:

- a) A total of [redacted] customers had been identified that had transferred to Onestream via telesales that were eligible to switch away from Onestream without paying an ETF;
- b) In the week commencing 22 July 2019, over a period of five days, Onestream issued all [redacted] customers with a letter, informing them of their right to exit without paying an ETF; and
- c) Since issuing the letter, a total of [redacted 3%] customers have left Onestream without paying an ETF.<sup>113</sup>

#### Strengthened compliance

A2.24 The Second Notice asked Onestream to confirm the status of the steps it had set out in the May Meeting Slides as well as provide timings of any planned reviews. In the Second Response, Onestream confirmed that:

*"a) The current status of the identified actions is:*

- i. Regulatory compliance audit: In progress*
- ii. Compliance programme: To be completed following the audit*
- iii. Regular compliance reviews: To be completed following the audit"*

#### **Openreach Notice**

A2.25 Ofcom also issued Openreach with an information request under section 135 of the Act on 12 February 2019 (the Openreach Notice). Openreach retains the records of the services it provides to CPs using the local BT network, including "transfer order records" for each CP. These records provide details of the date on which a CP placed a customer's order for services (i.e. "their transfer order") and the date on which those transfer orders were completed or cancelled.

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<sup>113</sup> As of the date of the Second Response.

- A2.26 The Openreach Notice requested transfer information in relation to 137 Customers who had complained to the CCT. It also requested information about the total volume of transfer orders Onestream had placed during the period 1 January 2018 to 12 February 2019.
- A2.27 We received the Openreach Response on 26 February 2019 (the Openreach Response).

## **Ofcom's provisional notification and the settlement period**

- A2.28 On 29 November 2019, Ofcom issued a notification under 96A of the Act (the "Section 96A Notification") to Onestream setting out our view that we had reasonable grounds to believe that during the period 13 April 2018 to 25 January 2019 (the Relevant Period), Onestream contravened GC C7.3(a) by Slamming at least 118 Customers. It did this in the following ways:
- a) where the Customer was contacted but did not give authorisation for Onestream to place a transfer order for their Fixed-line Telecommunications Services. Ofcom's provisional view was that Onestream did this in respect of at least 45 of the 118 Customers; and
  - b) by placing repeat transfer orders following the cancellation of the initial transfer order by the Losing Provider,<sup>114</sup> without first contacting the Customer to obtain their authorisation to place a new transfer order. Ofcom's provisional view was that Onestream did this in respect of at least 113 of the 118 Customers.
- A2.29 On 3 December 2019, Onestream wrote to Ofcom as part of the voluntary settlement procedure it had entered into with Ofcom:
- a) admitting it had contravened GC C7.3(a) as set out in the Section 96A Notification;
  - 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.

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<sup>114</sup> As defined in the GCs.

## A3. Repeat transfer Slamming evidence

[8<]

## A4. Initial transfer Slamming evidence

[8<]