

Investigation into BT's compliance with Contract Information and Contract Summary requirements

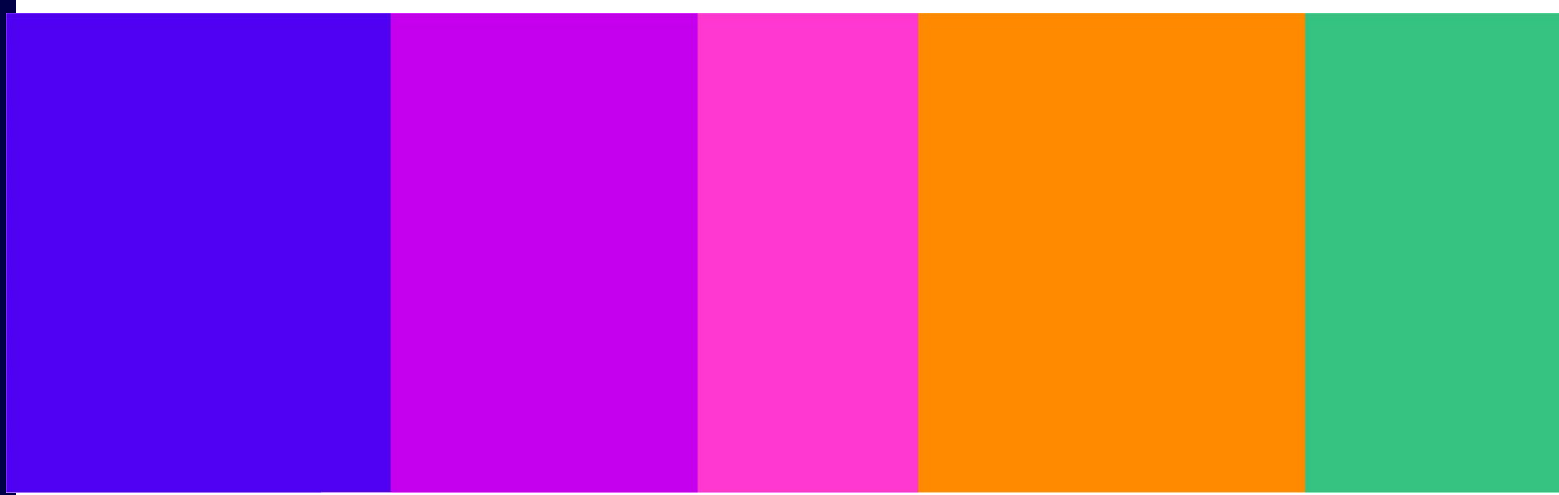
Confirmation Decision under section 96C of the Communications Act 2003, finding contraventions of General Conditions C1.3 to C1.7 by BT

Non-confidential version – redactions marked with [X]

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1. Overview

- 1.1 On 17 June 2022, new rules came into force requiring communications providers to give consumers and small businesses Contract Information and a Contract Summary before they sign up to a new deal. These documents are designed to give customers key information about the services they are considering buying, to help them make informed choices and to understand their contracts.
- 1.2 On 23 January 2023, Ofcom opened an investigation into British Telecommunications Plc (“BT”) after receiving information that BT may have failed to provide these documents to some EE and Plusnet (including John Lewis Broadband) customers.¹ This document sets out the findings of our investigation.

What we have found – in brief

BT failed to provide the required Contract Information and Contract Summary documents to some new and re-contracting EE and Plusnet customers from 17 June 2022. The documents were introduced on many affected sales channels within five months of this date. However, some sales channels are still non-compliant. As a result, BT has contravened General Conditions (GCs) C1.3 to C1.7, which require this information to be given to customers before they enter into a contract.

This is a serious breach of our consumer protection rules. BT did not give the required documents to customers party to approximately 1.3 million sales. The documents are designed to give customers clear, comparable information about the services on offer, so they can shop around with confidence and make informed choices about the right deal for them. They also allow customers to understand and evaluate their position throughout the duration of their contract. Affected customers would not have benefited from these enhanced consumer protections.

In some instances, BT chose not to comply with the rules on time. BT did not take adequate action to ensure that it could begin providing the Contract Information and Contract Summary documents to customers from the date it was required to do so. During BT’s programme to implement the GCs it became aware that this deadline would not be met for certain sales channels, and either chose to accept the risk of those channels being in breach of Ofcom regulations, or failed to put in place additional measures so that it could implement the new requirements on time. Once the 18 month implementation period for the new rules had passed, BT did not take sufficient action to bring the breach to an end in a timely manner.

BT has since taken some steps to remedy the consequences of the breach. Following engagement with Ofcom, BT contacted the majority of affected customers between June and September 2023, explaining that it had not provided them with the information they were entitled to and – because of this failure – those customers could request the information

¹ “John Lewis Broadband” is a trading name of John Lewis plc, but customer contracts for communications services are with Plusnet. John Lewis is not a party to this investigation.

and/or cancel their contract without charge, if they wished to. This is a positive development which we consider goes some way to addressing the harm to these customers.

However, some sales channels are still non-compliant and BT has not remedied all of the consequences of the breach. We have found that BT is still not providing the required information to some EE small business customers and is providing the information to EE pay as you go (PAYG) customers after the point of sale. We are requiring BT to amend these sales processes to ensure that all customers receive the right information at the right time and expect most of these changes to be made within 3 months of the Confirmation Decision. We are also requiring BT to identify and refund any affected customers who may have been charged for leaving their contract before the end of their contract period, within 5 months of the Confirmation Decision.

We are imposing a penalty of £2.8 million. This includes a 30% discount on the penalty figure of £4 million which we would have otherwise imposed. This discount reflects the resource savings achieved by Ofcom as a result of BT's admission of liability and its completion of Ofcom's settlement process. Our view is that this penalty is appropriate and proportionate to the contravention, having regard to all the evidence referred to in this document and our published Penalty Guidelines.

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

2. Introduction

- 2.1 This Confirmation Decision concerns the Contract Information and Contract Summary rules set out under General Conditions (“GCs”) C1.3 to C1.7 and C5.16,² and specifically BT’s failure to provide these documents when it was required to do so.³
- 2.2 From 17 June 2022, Communications Providers (“CPs”) have been required to give consumers and micro and small enterprise or not-for-profit customers Contract Information and Contract Summary documents before they enter into a contract. The Contract Summary is a short, usually one-page document and, alongside this, customers must be given the Contract Information, which has more detailed information about their contract. Both documents contain important information about the communications service on offer, helping customers to make well informed purchasing decisions.
- 2.3 CPs must give customers the Contract Summary before they enter a contract and the contract only becomes effective once the customer has given express consent following receipt of the Contract Summary.⁴ The contract will not be binding on the customer unless the CP has provided them with the Contract Information.⁵
- 2.4 This document sets out Ofcom’s finding that BT has contravened GCs C1.3 to C1.7, by failing to provide Contract Information and Contract Summary documents to new and re-contracting EE and Plusnet customers from 17 June 2022.
- 2.5 In 2022, BT admitted that it had failed to provide the required documents to new and re-contracting customers purchasing services through some of its EE and Plusnet sales channels, from 17 June 2022.⁶ Through the course of our investigation we have gathered information indicating that other EE and Plusnet sales channels were also affected. In total, we have found that EE and Plusnet made over 1.3 million sales without providing customers with the required Contract Summary and Contract Information documents to which they were entitled.
- 2.6 As part of this investigation, we also considered BT’s compliance with GC C5.16, which states that providers must make the Contract Information and Contract Summary documents available in an accessible format (such as in braille) to any customer who needs it because of

² [General Conditions of Entitlement: Unofficial Consolidated Version](#), 15 May 2023.

³ We have not analysed the content of BT, EE or Plusnet’s current Contract Information or Contract Summary documents as part of this investigation. This is because Ofcom is currently undertaking a separate, ongoing monitoring and compliance project looking at the information Communications Providers set out in their Contract Information and Contract Summary. BT has provided an analysis of the previous information it gave to customers (between 17 June 2022 and the dates it began to provide the current Contract Information and Contract Summary documents to its customers), and the extent to which these align with the requirements of the GCs – which we discuss in paragraphs 5.28 to 5.37.

⁴ [GC C1.5 and C1.6](#).

⁵ [GC C1.3](#).

⁶ In a letter from [redacted] (BT) to [redacted] (Ofcom) dated 22 July 2022, BT stated that it was “not able to meet the deadline for all sales channels” and “implementation for EE digital has slipped to the beginning of August, and for EE retail and EE PAYGO to the end of August 2022”. In a letter from [redacted] (BT) to [redacted] and [redacted] (Ofcom) dated 27 October 2022, BT stated that “Plusnet was unable to meet the deadline for its broadband customers transacting through contact centres and digital”.

their disability, on request and free of charge.⁷ We have not seen evidence that BT has contravened GC C5.16 in relation to its EE, Plusnet or John Lewis Broadband brands. Therefore, we are not making a finding in relation to GC C5.16 and do not discuss BT's compliance with that GC further in this document.

- 2.7 We consider that BT's contravention of GCs C1.3 to C1.7 is a serious breach of our consumer protection rules and it is appropriate to impose a penalty that will have a strong deterrent effect on BT and the industry more widely, to encourage compliance with this and other consumer protection regulations.⁸ We are therefore imposing a penalty of £2.8 million. This includes a 30% discount on the penalty figure of £4 million which we would have otherwise imposed, reflecting the resource savings achieved by Ofcom as a result of BT's admission of liability and its completion of Ofcom's settlement process. We consider this penalty to be appropriate and proportionate in relation to the contraventions for which it has been imposed.
- 2.8 In taking this decision, we have had regard to all the information and evidence referred to in this document, together with our published Penalty Guidelines.⁹ The basis for our penalty decision is explained in Section 5.
- 2.9 This document sets out the evidence that underpins our findings of contravention, our assessment of the appropriate penalty and the remedial actions that we consider that BT must take. The structure of this document is as follows:
- Section 3: regulatory framework;
 - Section 4: our findings;
 - Section 5: financial penalty; and
 - Section 6: remedial steps required of BT.
- 2.10 It also contains the following annexes:
- A1: Section 96C Notification;
 - A2: a timeline of Ofcom's investigation and information gathering;
 - A3: an explanation of EE and Plusnet's sales channels and services;
 - A4: tables of figures showing numbers of affected sales and related remedial action; and
 - A5: glossary.

⁷ [GC C5.16](#) states: "Regulated Providers, upon request, must make available free of charge to any Customer who requires it because of their disabilities, any Contract Information or Contract Summary in accordance with Conditions C1.3 to C1.7, in a reasonably acceptable format." / "An acceptable format, for these purposes, includes for example: print large enough for such Customer to read, print on coloured paper, Braille or an electronic format appropriate to the reasonable needs of the Customer."

⁸ These rules are also designed to protect small businesses and not-for-profit organisations, hence any reference to consumer protection rules should be understood as also covering these sets of customers.

⁹ [Penalty Guidelines](#), 14 September 2017.

3. Regulatory framework

Relevant regulatory requirements

- 3.1 BT is subject to a number of GCs which have been imposed by Ofcom under sections 45 to 55 of the Communications Act 2003 (“the Act”).
- 3.2 The relevant GCs in this case are the Contract Information and Contract Summary rules set out in GCs C1.3 to C1.7. These conditions apply to CPs providing publicly available communications services to consumers and, unless they expressly agree otherwise, microenterprise, small enterprise and not-for-profit customers (which we refer to here as “small business customers”).¹⁰
- 3.3 For the purposes of this Confirmation Decision, the relevant provisions of GCs C1.3 to C1.7 are as follows:
- a) GC C1.3 states:
“Before a Relevant Customer is bound by a contract for a Relevant Communications Service, Regulated Providers shall provide that Relevant Customer with the Contract Information set out in the Annex to Condition C1 to the extent that it relates to a service they provide.”
- b) GC C1.4 specifies the format in which the Contract Information should be provided, stating:
*“The Contract Information referred to in Condition C1.3 shall be provided:
(a) in a clear and comprehensible manner; and
(b) on a Durable Medium*
- Where its provision on a Durable Medium is not feasible, the Contract Information shall be made available in an easily downloadable document. The Regulated Provider shall expressly draw the attention of the Relevant Customer to the availability and the importance of downloading such document.”*
- c) GC C1.5 states:
“Before entering into a contract, [the CP] shall provide the Relevant Customer, free of charge, with a Contract Summary.”
- d) GC C1.6 specifies:
“The contract shall only become effective once the Relevant Customer has given their Express Consent to enter into the contract after receiving the Contract Summary.”

¹⁰ [GC C1.1](#). Microenterprise and small enterprises are businesses (other than a CP) for which no more than 10 individuals work. Similarly, a not-for-profit customer is a body for which no more than 10 individuals work. For full definitions, see [General Conditions of Entitlement: Unofficial Consolidated Version](#), 15 May 2023.

- e) GC C1.7 highlights the importance of these requirements, and states that:
“The Contract Information and Contract Summary shall become an integral part of the contract between the Regulated Provider and the Relevant Customer. The Contract Information and Contract Summary shall not be changed unless the parties to the contract expressly agree otherwise.”
- f) The Contract Information referred to in these conditions is defined as:
“the information set out in the Annex to Condition C1;”

This is to be provided to customers before there is a binding contract.

- g) The Contract Summary referred to in these conditions is defined as:
“the information required and set out in accordance with the contract summary template specified by the European Commission under Commission Implementing Regulation (EU) 2019/2243 of 17 December 2019 establishing a template for the contract summary to be used by providers of publicly available electronic communications services pursuant to Directive (EU) 2018/1972;”¹¹

Importance of these requirements

- 3.4 GCs C1.3 to C1.7 are important consumer protection rules, intended to ensure consumers and small business customers have access to clear and comparable information, before they are bound by a contract. We discuss the purpose of each document below.

Contract Summary

- 3.5 From 17 June 2022, CPs have been required to give customers a Contract Summary document,¹² before they enter a contract.¹³
- 3.6 The Contract Summary is a short, usually one-page document, which must follow a specified template.¹⁴ It must include key information about the product(s) or service(s) on offer, including the price and length of the contract, the speed of the service and any conditions that will apply if the customer decides to end the contract early, such as whether the customer will be required to pay an Early Termination Charge (“ETC”).
- 3.7 The contract only becomes effective once the customer has given their express consent to enter into the contract after receiving the Contract Summary.¹⁵

¹¹ See [Commission Implementing Regulation \(EU\) 2019/2243](#).

¹² Up until this point, there was no existing requirement in our GCs for providers to provide a Contract Summary to customers. [Statement and Consultation: Fair treatment and easier switching for broadband and mobile customers](#), 27 October 2020, paragraph 5.20.

¹³ [GC C1.5](#). The Contract Summary must be provided free of charge.

¹⁴ The Contract Summary Template is set out in the [Commission Implementing Regulation \(EU\) 2019/2234](#) as amended by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020](#). The Contract Summary for bundled services can be up to three pages long.

¹⁵ [GC C1.6](#).

- 3.8 As explained in our consultation document of December 2019 that proposed these requirements (“the December 2019 Consultation”), the Contract Summary gives customers information about their contracts in a standardised format, making it easier for customers to compare different offers and identify the important information in the contract being offered to them.¹⁶ The purpose of this provision is to enable customers to easily make comparisons between offers and providers, helping them to make informed choices about what to buy, before they enter a contract.¹⁷

Contract Information

- 3.9 Before customers are bound by a contract they must be given details of the terms and conditions of the contract on offer in the Contract Information.¹⁸ It must be given in a clear and comprehensible manner and – where feasible - on a durable medium.¹⁹
- 3.10 The Contract Information must include important information about the product(s) or service(s) on offer, including, amongst other things, the main characteristics of the service, the price and length of the contract, conditions for renewal or termination of the contract, compensation and refund arrangements (where relevant) and the type of action that might be taken by the provider in reaction to security incidents or threats or vulnerabilities.
- 3.11 As explained in the December 2019 Consultation, the purpose of this document is to ensure that customers are given the appropriate information, in a manner which they can understand, about the communications service being offered to them before they are legally bound by the contract, so they can make a well-informed choice. It also provides transparency of information and legal certainty, as customers are given information in a form that enables them to refer to it and understand and evaluate their position throughout the duration of their contract.²⁰
- 3.12 Both the Contract Information and Contract Summary are integral parts of the contract between a communications provider and their customer. These documents cannot be changed without the customer’s consent.²¹
- 3.13 It is important that customers have the necessary information to make informed choices about the right deal for them. This is particularly the case in the current economic climate, in which UK households are facing higher costs of living and just under three in ten households have difficulty affording communications services.²²

¹⁶ [Consultation: Fair treatment and easier switching for broadband and mobile customers](#), 17 December 2019, paragraph 4.36.

¹⁷ *Ibid.*, paragraph 4.28.

¹⁸ [GC C1.3](#).

¹⁹ [GC C1.4](#). Durable medium means “paper or email, or any other medium that: (a) allows information to be addressed personally to the recipient; (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and (c) allows the unchanged reproduction of the information to be stored;”. Where provision on a Durable Medium is not feasible, the Contract Information must be made available in an “easily downloadable document”, and the provider must “expressly draw the attention of the Relevant Customer to the availability and the importance of downloading such document.”

²⁰ [Consultation: Fair treatment and easier switching for broadband and mobile customers](#), 17 December 2019, paragraph 4.8.

²¹ [GC C1.7](#).

²² See Ofcom’s [communications affordability tracker](#), 27 February 2024.

Implementing these requirements

- 3.14 The Contract Information and Contract Summary requirements formed part of a package of consumer protection rules which were introduced when Ofcom implemented the European Electronic Communications Code (“EECC”).
- 3.15 The EECC is an EU directive which the UK was required to implement by December 2020. It updated the regulatory framework for communications services,²³ and specified a new package of measures that were designed to protect customers, inform consumer choice, and allow for more effective competition within the sector.
- 3.16 In December 2019, Ofcom began consulting on changes to its GCs to reflect the new EECC measures. This was done in accordance with the terms of the Withdrawal Agreement 2020 and Ofcom’s long-standing priority to ensure fairness for customers.
- 3.17 In the December 2019 Consultation, Ofcom initially proposed that the Contract Information and Contract Summary rules would come into force on 21 December 2020; in effect, giving providers 12 months to comply.²⁴ Many providers raised concerns about having a 12-month implementation period,²⁵ so in our October 2020 Statement and Consultation Ofcom took the decision to give providers 18 months from the date of the final notification containing the revised GCs to implement the Contract Information and Contract Summary provisions i.e. until June 2022.²⁶ When we took this decision, we recognised that providers would need to make a number of changes to their sales processes and systems to implement these requirements and we allowed an appropriate period to enable them to make the necessary changes before the new obligations took effect. Accordingly, the date by which providers were required to comply with the new rules was 17 June 2022.
- 3.18 Ofcom engaged with providers during the implementation period to ensure that they were on track to meet their obligations. As part of this engagement Ofcom met with BT on 21 February 2022. At this meeting Ofcom asked BT whether it had any concerns or queries about the upcoming June 2022 implementation deadline. BT told us that it was working towards the June 2022 changes and that there were a few issues to “iron out” around the Contract Summary, including some specific use cases like information for PAYG mobile services being sold in stores. BT also told us that timescales were tight but that it was confident that the implementation deadline would be met; BT said that it would email Ofcom directly with any issues or queries in relation to EECC implementation as and when they arose.²⁷ Ofcom did not receive any such communication.

²³ [Directive \(EU\) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code \(Recast\).](#)

²⁴ [Consultation: Fair treatment and easier switching for broadband and mobile customers](#), 17 December 2019, paragraph 4.85.

²⁵ BT was one of the providers that expressed concerns about our initial implementation date and proposed additional time for implementation of the Contract Information and Summary requirements, stating that it would require 24 months from publication of the final statement. [Statement and Consultation: Fair treatment and easier switching for broadband and mobile customers](#), 27 October 2020, paragraph 5.158.

²⁶ [Statement and Consultation: Fair treatment and easier switching for broadband and mobile customers](#), 27 October 2020, paragraphs 5.155 to 5.163.

²⁷ Meeting note from Consumer Protection Monitoring and Compliance meeting with BT on 21 February 2022.

Ofcom's Enforcement powers

- 3.19 Under the Communications Act 2003, CPs do not require a licence to operate in the UK, but they can be made subject to conditions of general application. CPs providing services in the UK must comply with the GCs that apply to them.
- 3.20 Under this regulatory regime, Ofcom has the power to take enforcement action against providers failing to comply with the GCs. This includes opening investigations into providers, where appropriate and proportionate, in line with our Regulatory Enforcement Guidelines.
- 3.21 Where Ofcom decides that there are reasonable grounds for believing that the subject of the investigation is contravening or has contravened the relevant regulatory requirements, Ofcom will issue a provisional decision under section 96A of the Communications Act. The provisional decision will specify the contravention, and where applicable, the period within which the subject should comply with the notified condition(s) and remedy the consequences of the notified contravention(s).²⁸
- 3.22 Where Ofcom remains satisfied that the subject of the investigation is contravening or has contravened any of the relevant statutory requirements, Ofcom will issue a final decision under section 96C of the Communications Act.
- 3.23 As a result of an Enforcement Investigation, Ofcom may be minded to issue a penalty. In determining the amount of any such penalty Ofcom will have regard to our Penalty Guidelines.²⁹

²⁸ [Enforcement Guidelines](#), 12 December 2022, table on page 45.

²⁹ [Penalty Guidelines](#), 14 September 2017.

4. Our findings

- 4.1 We have found that BT contravened GCs C1.3 to C1.7 by failing to provide the required Contract Information and Contract Summary documents to a number of new and re-contracting EE and Plusnet customers from 17 June 2022, when these obligations came into force.
- 4.2 In this section we set out the evidence and reasoning that underpins our breach findings. Further information about how this investigation was conducted can be found in Annex 2.

Assessment of compliance with GCs C1.3 to C1.7

BT, EE and Plusnet

- 4.3 This case concerns the conduct of two of BT's wholly-owned subsidiaries, EE and Plusnet, which between them sell a range of mobile, broadband and landline services to consumers and business customers. These services can be purchased by customers through a variety of sales channels, including retail (purchases made in a BT/EE store or third-party shop), digital (through a website or app) and via phone.
- 4.4 BT organises its business through what it describes as an *"integrated model"*, where each division provides services to a different customer segment and company resources, such as personnel and brands, are shared across divisions.³⁰ In this Confirmation Decision we are considering the actions of the *"BT Consumer"* division which was responsible for sales to consumers across the EE and Plusnet brands (including John Lewis Broadband, as customers purchasing John Lewis Broadband services contracted with Plusnet for their communication services) and the *"BT Enterprise"* division, which was responsible for sales to small business customers, also across the EE and Plusnet brands.³¹ For the avoidance of doubt, John Lewis Plc is not a party to this investigation.
- 4.5 From 17 June 2022, GCs C1.3 to C1.7 required BT to provide its consumer and small business customers with the Contract Information and Contract Summary documents, before they went on to make a purchase through any sales channel. This obligation applied irrespective of the type of communications service being purchased.
- 4.6 However, as we set out below, we have found that BT failed to provide this information to customers who purchased services under the EE, Plusnet and John Lewis Broadband brands through certain sales channels. This meant that those groups of customers were not given the information they were entitled to before signing up to a service, and they would not have been able to refer back to the required Contract Summary and Contract Information documents throughout the duration of their contract.

³⁰ See page 11 of BT's Annual Report 2023 for a description of how its business is organised and a description of the BT Consumer and BT Enterprise divisions [BT Group plc - Annual Report 2023](#).

³¹ See Second response, 12 April 2023, Q1 for an explanation of the partnership agreement between John Lewis Broadband and Plusnet.

Affected sales

- 4.7 The evidence provided by BT shows that it failed to give a number of new and re-contracting EE, Plusnet and John Lewis Broadband customers the required Contract Information and Contract Summary documents for a period of time after the 17 June 2022 implementation deadline. Additionally, the evidence indicates that BT is: (i) still failing to provide the required documents to some small business customers; and (ii) is giving the required documents to EE PAYG customers after the point that they enter into a contract (which is not in line with the rules).
- 4.8 BT estimates that this has affected over 1.3 million sales, across several sales channels, to date. BT has been unable to provide the actual number of affected customers for some sales channels due to limitations with how it internally reports its data. It has therefore provided an estimate of the number of affected sales with a supporting explanation, noting that some figures may be marginally higher than the actual number of affected customers.³²
- 4.9 Below we set out if or when BT began providing the required information to customers on each affected EE, Plusnet and John Lewis Broadband sales channel and the number of sales that have taken place without customers being given the required information.

Affected EE sales

- 4.10 The evidence shows that BT failed to give the required information to customers party to over [§<] [950,000] EE sales. This includes sales of **EE pay monthly contracts (“PAYM”) to consumers**, via:
- a) **EE Retail stores.** BT began providing the required information to new or re-contracting customers using this sales channel on [§<] September 2022, [§<] [approximately three months] after the implementation deadline. During this time, [§<] sales took place without customers being given the required information.³³

³² BT provided estimated figures for some sales channels due to the following internal reporting issues:

(a) Unable to split out small business customers with ten or less employees from larger businesses. This affected the EE Business Retail, EE BT Local Business, EE Business Digital (non-automated) and Plusnet Business (Contact Centre and Digital (Online)) channels. Second Response, 12 April 2023, Q12(c); Third response, 20 April 2023, Q12(b) and (c); and, Fifth Response, 11 September 2023 Q1(b);

(b) Weekly reporting as opposed to daily reporting, affecting the EE Business Retail and EE Business Digital (non-automated) channels. First response, 8 December 2023, Q9(c) and Fifth Response, 11 September 2023, Q1(b);

(c) Unable to split out reporting for EE Consumer Digital Website / App sub-channels and therefore provided the number of sales up until the latest date for introduction of the required documents on these sub-channels ([§<] August 2022). First Response, 8 December 2023, Q4(c);

(d) Discrepancy in sales data versus the number of customers who ultimately connected to the network for EE Retail Business Consultants channel, Third Response, 20 April 2023, Q9. BT subsequently provided updated figures in an email from [§<] (BT) to [§<] (Ofcom) dated 9 November 2023; and,

(e) Reporting based on individual customer “lines” and one customer may have multiple lines. This affected the EE Business Retail and EE Retail Business Consultant channels. Third response, 20 April 2023, Q9 and Q12(c).

³³ EE Consumer Retail sales between 17 June 2022 and [§<] September 2022. First response, 8 December 2022, Q4(c).

b) **EE Digital (the EE Website or ‘My EE’ App)**. BT began providing the required information to customers using these sales channels on [REDACTED] and [REDACTED] August 2022,³⁴ [REDACTED] [approximately two months] after the implementation deadline. During this time, [REDACTED] sales took place without customers being given the required information.³⁵

4.11 The evidence also indicates that BT failed to provide the required documents to customers purchasing **EE pay as you go (“PAYG”)** services, regardless of where these services were purchased.³⁶ BT began providing the required information to customers purchasing PAYG products on [REDACTED] August 2022,³⁷ [REDACTED] [approximately two months] after the deadline. During this time, [REDACTED] sales took place without customers being given the required information.³⁸ However, while the required information was introduced for EE PAYG customers at the end of August 2022, we understand that BT is currently providing Contract Information and Contract Summary documents to customers after they have purchased a device and/or SIM (see paragraphs 4.29 to 4.31). This is not in line with the GCs, which require this information to be provided before a customer enters/is bound by a contract. Therefore, we consider that EE PAYG sales are currently non-compliant, meaning that more sales are likely to have been affected since [REDACTED] August 2022.

³⁴ There are 5 sales channels through which customers can make a digital purchase depending on, for example, whether they are upgrading or a new customer. BT began offering the required information on four of these channels on [REDACTED] August 2022 and the final sales channel on [REDACTED] August 2022. Third response, 20 April 2023, Q7.

³⁵ EE Consumer Digital sales between 17 June 2022 and [REDACTED] August 2022. First response, 8 December 2022, Q4(c).

³⁶ For example, via an EE store, the website, phone or Third Party Retailers sales (“A retail setting where a customer can purchase a product off the shelf with no interaction with an advisor. This channel would also include airports where purchases can be made via vending machines.”) Third response, 20 April 2023, Q1 and First response, 8 December 2022, Q1 and ‘Q1%20Channels.xlsx’.

³⁷ First response, 8 December 2022, Q2/3, ‘Q2 and 3 Third Party Retail_PAYG process’.

³⁸ EE PAYG sales between 17 June 2022 and [REDACTED] August 2022. First response, 8 December 2022, Q4(c).

Table 1: Affected EE Consumer sales

Contract type	Sales channel(s)	Services	Date CI/CS provided to new customers	Number of days before CI/CS provided before point of sale (from 17/06/22)	Number of affected sales	Total affected sales
PAYM	Retail (EE stores)	Mobile Phone contract, SIM only contract, Mobile Broadband	[§<] Sep 2022	[§<] [approximately 3 months]	[§<]	[§<]
	Digital Website/App	As above	[§<] Aug 2022 ³⁹	[§<] [approximately 2 months]	[§<]	
			[§<] Aug 2022 ⁴⁰	[§<] [approximately 2 months]	[§<]	
PAYG	Retail (EE stores) Digital Website/App Third Party Retailers	Pay as you go device, Pay as you go SIM	[§<] Aug 2022 (but after the point of sale)	Ongoing	[§<] ⁴¹	[§<]
Total affected EE Consumer sales						[§<] [900,000 to 1,100,000]

4.12 Further, the evidence shows that BT failed to give the required information to **small business customers** purchasing EE PAYM services via:

- a) **EE Retail stores and EE Retail Business Consultants sales.**⁴² BT began providing the required information to small business customers using these sales channels on [§<] September 2022,⁴³ [§<] [approximately three months] after the implementation deadline. During this time, up to [§<] sales took place without customers being given the required information;⁴⁴ and,

³⁹ Four Digital sales sub-channels provided the information on [§<] August 2022 as follows: (i) "Acquisition"; (ii) "Upgrade (new)" (iii) "Addline"; and (iv) "LO Unauthenticated Upgrade". Third Response, 20 April 2023, Q7(b).

⁴⁰ The fifth Digital sales sub-channel "Upgrade (existing)" provided the information on [§<] August 2022. Third Response, 20 April 2023, Q7(b).

⁴¹ Between 17 June 2022 and [§<] August 2022. First response, 8 December 22, Q4(c). This figure is likely to have increased since, see paragraph 4.11.

⁴² Retail Business Consultant sales are defined by BT as "Specialist business sales reps selling standard volume products to SOHO and SME customers." These sales either take place via retail stores or at desk e.g., through telephone/webchat but our concerns only relate to sales made via retail stores. First response, 8 December 2022, Q6 and 'Question%206.xlsx'.

⁴³ Third response, 20 April 2023, Q3.

⁴⁴ Up to [§<] affected EE business Retail sales and [§<] affected EE retail business consultants sales, equalling a total of [§<] affected sales across both channels. Emails [§<] (BT) to [§<] (Ofcom), 19 October 2023 and from [§<] (BT) to [§<] (Ofcom), 9 November 2023. In relation to previous Retail Business Consultant figures, BT noted that "These are individual lines sold, a customer will likely purchase multiple lines in one order. We have gathered this information using data from the till [...] this data can sometimes be different to the figures for customers who are ultimately connected to the network." Third Response, 20 April 2023, Q9 and Q12.

- b) The **EE Business Digital Website**⁴⁵ and **EE BT Local Business** sales.⁴⁶ BT is still not providing all of the required information to new or re-contracting small business customers using these sales channels, as discussed in more detail in paragraphs 4.16 to 4.28. According to our latest information, [redacted] [50,000 to 100,000] sales have taken place without customers being given the required information.⁴⁷

Table 2: Affected EE Business sales

Contract type	Sales channel(s)	Services	Date CI/CS provided to new customers	Number of days before CI/CS provided before point of sale (from 17/06/22)	Number of affected sales	Total affected sales
PAYM	Business Retail (sales in EE stores)	Pay Monthly, SIM only contract, Handset plan, Mobile broadband	[redacted] Sep 2022	[redacted] [approximately 3 months]	[redacted]	[redacted]
	Retail Business Consultants (store sales)	As above	[redacted] Sep 2022	[redacted] [approximately 3 months]	[redacted]	
PAYM	Digital Website (non-automated)	As above	Ongoing	Ongoing	[redacted] ⁴⁸	[redacted] [50,000 to 100,000]
	EE BT Local Business	As above	Ongoing	Ongoing	[redacted] ⁴⁹	
Total affected EE Business sales, to date						[redacted] [50,000 to 100,000]

Affected Plusnet sales

4.13 The evidence also shows that BT failed to give the required information to customers during over [redacted] [150,000] Plusnet and John Lewis Broadband sales. This includes:

- a) Sales to **Plusnet consumers** via **phone (through the Contact Centre)** and **website (through Digital Online)** channels. BT began providing the required information to a number of customers using the Contact Centre on [redacted] September 2022, [redacted] [approximately three months] after the implementation deadline, and subsequently to

⁴⁵ Defined by BT as a "Website where SOHO and SME customers can purchase standard volume products online." First response, 8 December 2022, Q6, 'Question%206'.

⁴⁶ EE BT local business sales "Consists of [redacted] partners which are split across [redacted] regions in the UK who can sell standard EE products to SOHO and SME customers." First response, 8 December 2022, Q6, 'Question%206'.

⁴⁷ This includes [redacted] EE Business Website sales between 11 June 2022 and [redacted] August 2023 and [redacted] EE BT Local Business sales between 17 June 2022 and [redacted] August 2023. Fifth response, 11 September 2023, Q1(b).

⁴⁸ "EE Business Digital (non-automated) – [redacted] between 11th June 2022 and [redacted] August 2023. We can only report by trading week. Please note that although the customer completes their basket online an agent will call each customer to run through their order and make sure it's right for them before the agent places the order." Fifth response, 11 September 2023, Q1(b). This figure is likely to have increased since, as we understand that BT continue to sell services to these customers in the same manner.

⁴⁹ "BT Local Business - [redacted] between 17th June 2022 and [redacted] August 2023. The majority of these customers will be larger customers." Fifth response, 11 September 2023, Q1(b). This figure is likely to have increased since, as we understand that BT continue to sell services to these customers in the same manner.

all Contact Centre and website customers on [redacted] October 2022, [redacted] [approximately four months] after the implementation deadline.⁵⁰ During this time, [redacted] sales took place without customers being given the required information.⁵¹

- b) Sales to **John Lewis Broadband consumers** via **phone** and **website** channels. Customers did not receive the required information at any point up to the date when BT stopped selling the branded John Lewis Broadband service on [redacted] October 2022,⁵² a period of [redacted] [approximately four months]. During this time [redacted] sales took place without customers being given the required information.⁵³

Table 3: Affected Plusnet and John Lewis Broadband Consumer sales

Contract type	Sales channel(s)	Services	Date CI/CS provided to new customers	Number of days before CI/CS provided before point of sale (from 17/06/22)	Number of affected sales	Total affected sales
PAYM (Plusnet Consumer)	Contact Centre (temporary solution)	Broadband and land line services	[redacted] Sep 2022	[redacted] [approximately 3 months]	[redacted]	[redacted]
	Contact Centre (permanent solution)		[redacted] Oct 2022	[redacted] [approximately 4 months]		
	Digital (Online)	As above	[redacted] Oct 2022	[redacted] [approximately 4 months]	[redacted]	
PAYM (John Lewis Broadband)	Contact Centre	As above	Not provided – stopped selling product on [redacted] Oct 2022	[redacted] [approximately 4 months]	[redacted]	[redacted]
	Digital (Online)				[redacted]	
Total affected Plusnet Consumer sales						[redacted] [150,000 to 200,000]

4.14 Additionally, this issue affected sales of broadband services to relevant **Plusnet Business customers** via **phone** and **website** channels, at any point up to the date where BT stopped

⁵⁰ BT implemented a temporary solution to provide the required information to a number of Plusnet customers purchasing services through the contact centre channel on [redacted] September 2022. Then on [redacted] October 2022, BT implemented a permanent solution for the contact centre and website sales channels. Second response, 12 April 2023, Q19(b) and (c).

⁵¹ Emails from [redacted] (BT) to [redacted] (Ofcom), 13 October 2023 and from [redacted] (BT) to [redacted] (Ofcom), 31 October 2023.

⁵² BT/Plusnet ceased its partner agreement with John Lewis plc to sell broadband and fixed voice services on [redacted] October 2022. It said “We did not introduce changes to the John Lewis [Broadband] channels because (as explained in our response to Question 1 above) we knew we were about to terminate our partner agreement with John Lewis plc and so prioritised resource on the implementation of Pre-contract information / Contract Summary (PCI/CS) for Plusnet consumer.” Second response, 12 April 2023, Q1 and 4(b).

⁵³ Between 17 June 2022 and [redacted] October 2022. Second response, 12 April 2023, Q6(c).

selling that service on [redacted] November 2022,⁵⁴ a period of [redacted] [approximately five months]. During this time [redacted] [0 to 50,000] sales took place without customers being given the required information.⁵⁵

Table 4: Affected Plusnet Business sales

Contract type	Sales channel(s)	Services	Date CI/CS provided to new customers	Number of days before CI/CS provided before point of sale (from 17/06/22)	Number of affected sales	Total affected sales
PAYM (Plusnet Business)	Contact Centre	As above	Not provided – stopped selling product on [redacted] Nov 2022	[redacted] [approximately 5 months]	[redacted]	[redacted] [0 to 50,000]
	Digital (Online)				[redacted]	
Total affected Plusnet Business sales						[redacted] [0 to 50,000]

4.15 The table below shows the total number of affected sales on each affected EE, Plusnet and John Lewis Broadband sales channel from 17 June 2022 to date.

Table 5: Overall affected BT (EE/Plusnet) sales to date

Segment	Number of affected sales, to date
EE Consumer	[redacted] [900,000 to 1,100,000]
EE Business, to date	[redacted] [50,000 to 100,000]
Plusnet Consumer (inc. John Lewis Broadband)	[redacted] [150,000 to 200,000]
Plusnet Business	[redacted] [0 to 50,000]
Overall affected BT (EE/Plusnet) sales to date	1,315,193

Ongoing failure to provide the required documents to certain small business customers

4.16 As noted above, the evidence provided by BT indicates that it is still failing to give two groups of small business customers, purchasing services from EE Business sales channels, the required Contact Information and Contract Summary documents before they enter into a contract, and that these channels are therefore non-compliant. This impacts customers purchasing services through:

- a) EE BT Local Business sales; and
- b) EE Business Digital Website (non-automated) sales.

⁵⁴ Plusnet Business decided to exit the market and stopped selling broadband and fixed voice services on [redacted] November 2022. It said “PCI/CS was not introduced for Plusnet Business, we made the strategic decision to exit the business market in February 2022, with a desired stop sell date of June 2022. So, with limited resources we concentrated on delivery for consumer. However, our actual stop sell date was November 2022.” Second response, 12 April 2023, Q11 and Q12(a) and (b).

⁵⁵ Between 17 June 2022 and [redacted] November 2022. Second response, 12 April 2023, Q12(c).

No evidence of waiver

4.17 The rules require providers to give all relevant small business customers the required Contract Information and Contract Summary documents “*unless they have expressly agreed otherwise*”.⁵⁶ In this case, BT has confirmed that it does “*not allow business customers to waive receipt of contract information / contract summary*” documents.⁵⁷ Accordingly, both the Contract Information and Contract Summary should be given to these customers.

EE BT Local Business sales

4.18 The evidence provided by BT indicates that EE BT Local Business customers are not given a Contract Summary and are not provided with all of the specified Contract Information before they are bound by a contract.

4.19 Instead, EE BT Local Business customers are given an EE Business Service Agreement (“BSA”) before they sign up to a contract.⁵⁸ BT has provided a copy of the BSA,⁵⁹ which is a 25 page document, including 20 pages of terms and conditions.

4.20 The BSA does not contain a Contract Summary, and we have not received any other evidence to suggest that BT gives EE BT Local Business Customers a separate Contract Summary document. We therefore infer that a Contract Summary is not provided to these customers. The requirement to provide a separate, one page Contract Summary is a key part of the new provisions which is important for ensuring that customers can quickly understand what they are signing up to and to put them in a position to make comparisons with competing offers, before they enter into a contract.⁶⁰

4.21 The BSA does contain important information about EE BT Local Business customer’s contracts, including much of the information required by the Contract Information provisions. However, BT has provided analysis indicating it is only “*partially*” providing some of the required information or providing some of the required information to customers after the point of sale.⁶¹ We therefore consider that EE BT Local Business Customers are not provided with all of the specified Contract Information before they are bound by a contract.

EE Business Digital Website sales

4.22 BT had explained that small business customers purchasing a product or service through the EE website are taken through a “*non-automated*” sales journey.⁶² Customers have a call with

⁵⁶ [GC C1.1](#).

⁵⁷ Fifth response, 11 September 2023, Q1(a).

⁵⁸ BT has explained that it gives EE BT Local Business customers a “*EE Business Service Agreement. Including information on services and equipment, speeds of IAS, Price, Duration, Renewal and Cancellation, as per the General Condition requirements*”, “*In durable medium*” and that the “*Customer has to sign and date the Business Service Agreement*” which is “*provided before the customer signs up*”. First response, 8 December 2023, Q7(a).

⁵⁹ BT provided an example of a typical EE Business Service Agreement in its Third response, 20 April 2023, Q8, ‘Question 8 SME EEBA 24.03.23.pdf’.

⁶⁰ The Contract Summary can be up to three pages for bundled products. See the [Commission Implementing Regulation \(EU\) 2019/2234 \(4\)](#), as amended by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020](#), and [Ofcom’s guidance under General Condition C1 – contract requirements \(December 2023\)](#), paragraph 1.16(a).

⁶¹ See paragraph 5.36 and Fifth response, 11 September 2023, Q1, ‘Comparison Business Sept SIR.pdf’.

⁶² Up until 12 December 2022, some customers would have been taken through an “*automated*” sales journey. This “*automated*” sales journey appeared to have been compliant with the GCs C1.3 to C1.7, as customers

an agent for part of this journey, during which the Contract Information and Contract Summary are “supplied verbally”, and a link to a written, static Contract Information document is also provided before signing up.⁶³ Our October 2020 Statement and Consultation clearly states that the Contract Summary must be provided in writing and that it is not sufficient to provide this information verbally.⁶⁴ BT has not demonstrated that these customers are given a written Contract Summary document as required by the GCs.

BT’s view on the compliance of these sales channels

- 4.23 In response to our fifth information request, BT explained that it considers that both of these EE Business sales channels are compliant with the Contract Information and Contract Summary rules.⁶⁵
- 4.24 BT explained that it is difficult to distinguish business customers which have “fewer than 10 employees” (and which are therefore captured by our rules) and those who have more than 10 employees (which are not captured by the rules) and therefore by “setting out the information in a ‘clear and easily readable’ way that supports customers in making an informed choice, [BT] considered this approach to be compliant with the EECC regulations and Ofcom guidance.”⁶⁶ BT shared a document comparing the information it provides to EE BT Local Business and EE Business Digital Website (non-automated) customers to the information required under GCs C1.3 to C1.7.⁶⁷
- 4.25 BT also said that when it was determining the format of the documents for customers purchasing these services it referred to Ofcom’s guidance, and particularly the statement that “When assessing compliance with the above requirements, and whether to take enforcement action, [Ofcom] expect to focus our assessment on whether the format used for the Contract Summary is clear and easily readable, and the extent to which it has therefore

were given the Contract Information and Contract Summary in a durable medium “on the last webpage at the point when the customer signs up and must be accepted before sign up”. However, BT no longer uses this sales journey. First response, 8 December 2022, Q7(a).

⁶³ BT has explained these EE Website customers are taken through the “non-automated” journey where the Contract Information and Contract Summary are “supplied verbally and a link to static pre-contract information given before the customer signs up [here](#)”. BT has further explained that alongside the [pre-contract information](#), customers are also given links to BT’s [business terms of use and individual plan terms](#) and [privacy policy](#), but these links do not contain a Contract Summary document. First response, 8 December 2022, Q7(a) and Third response, 20 April 2023, Q10.

⁶⁴ “Whilst the [Contract Summary] does not have to be provided in any particular medium, it is clear that the contract summary must be provided in writing and it would not be sufficient to only set out the details of the contract summary verbally to a customer during the sales phone journey”. The Statement further said that “While a provider may set out the key terms of the contract verbally as part of a sales call, before the contract actually comes into effect the customer must have received the contract summary, and then confirmed they wish to enter into the contract.” [Statement and Consultation: Fair treatment and easier switching for broadband and mobile customers](#), 27 October 2020, paragraphs 5.51 and 5.52

⁶⁵ BT said “Both the BT Local Business and EE Business Digital (Nonautomated) processes were deemed compliant.” Fifth response, 4 September 2023, Q1.

⁶⁶ Fifth response, 11 September 2023, Q1.

⁶⁷ Fifth response, 11 September 2023, Q1, ‘Comparison Business Sept SIR.pdf’.

achieved the objective of these requirements (to support customers in making an informed decision about the services they are choosing to buy),” and another, similar paragraph.⁶⁸

- 4.26 As discussed above, we have found that BT failed to provide: (i) the Contract Summary and some elements of the required Contract Information as specified in the GCs to EE BT Local Business customers; and (ii) a Contract Summary document to EE Business Digital Website (non-automated) customers.
- 4.27 We note that the guidance BT has referred to relates to the format of the Contract Summary document, rather than the Contract Information, and the evidence indicates that no Contract Summary document was provided to these customers.
- 4.28 Having reviewed the information provided by BT, we are of the view that:
- a) sales to EE BT Local Business customers are currently non-compliant with GCs C1.3 to C1.7; and
 - b) sales to EE Business Digital Website (non-automated) customers are currently non-compliant with GCs C1.5 to C1.7.

Ongoing failure to provide the required documents to EE PAYG customers before the customer enters into a contract

- 4.29 BT began providing Contract Information and Contract Summary documents to new EE PAYG customers from [§<] August 2022, across all sales channels e.g. retail purchases made in store, from a vending machine or online.
- 4.30 However, BT has provided a sales process diagram showing that these documents are provided to EE PAYG customers after the customer enters the contract, via a link in an SMS sent to the customer’s new SIM card.⁶⁹
- 4.31 Our rules are clear that this information should be provided before the customer is bound by/enters a contract, so providing this information after that point does not meet our requirements.⁷⁰ We have therefore decided that this sales channel is currently non-compliant with GCs C1.3 to C1.7.

Ofcom’s determination of contravention

- 4.32 In light of the facts and evidence set out above, we have found that BT has contravened GCs C1.3 to C1.7 as a result of its failure to provide the required Contract Information and Contract Summary documents to a number of new and re-contracting EE, Plusnet and John Lewis Broadband customers.

⁶⁸ BT referred to paragraphs A11.19 and A11.39 of the draft Guidance to on GC C1 ([A11. Revised guidance on GC C1 contract requirements June 2022](#)) in its Fifth response, 11 September 2023, Q1(b). The latest version of this Guidance document can be found here: [Ofcom’s guidance under General Condition C1 – contract requirements \(December 2023\)](#).

⁶⁹ First Response, 8 December 2022, Q2/3, ‘Q2 and Q3 Third Party Retail_PAYG process.pdf’.

⁷⁰ [GCs C1.3 and C1.5](#).

- 4.33 Additionally, we have found that BT is: (i) still failing to provide the required information to some small business customers; and (ii) is giving the required information to EE PAYG customers after the point that they enter a contract (which is not in line with the rules).
- 4.34 We set out our consideration of whether to impose a penalty, and the penalty amount in Section 5, below.
- 4.35 Where we have found evidence of ongoing non-compliance, as is the case for EE BT Local Business, EE Business Digital Website and all EE PAYG sales, we expect BT to take remedial steps to bring these sales channels into compliance, as described in more detail in Section 6.

5. Financial penalty

Summary

- 5.1 Ofcom's view is that BT's contravention of GCs C1.3 to C1.7 is a serious breach, and therefore it is appropriate to impose a penalty of £2.8 million. This includes a 30% discount on the penalty figure of £4 million which we would have otherwise imposed, reflecting the resource savings achieved by Ofcom as a result of BT's admission of liability and its completion of Ofcom's settlement process.
- 5.2 Ofcom considers this to be an appropriate and proportionate penalty in this case. In reaching this decision, we have considered all of the factors set out in our Penalty Guidelines, which we discuss in more detail below.⁷¹

Consideration of whether to impose a penalty

- 5.3 Ofcom's principal duty in carrying out its functions is to further the interests of citizens and consumers in relevant markets. As discussed below, the rules being examined in this case are important consumer protection regulations, designed to ensure customers have access to clear and comparable contract information to allow them to make informed purchases and exercise choice in a competitive market.
- 5.4 We consider BT's failure to provide this information to be a serious breach of our consumer protection rules, particularly given the high number of affected sales (1.3 million) and the potential harm to consumers resulting from the breach.
- 5.5 For these reasons, our decision is that a penalty is appropriate in this case. We consider that the penalty should be set at a sufficient level to create an effective deterrent for BT and other businesses from contravening regulatory requirements and to send a clear message to industry that they must take their obligations seriously, including implementing those obligations on time, and treating customers fairly.

Penalty amount

- 5.6 In considering the level of penalty which should be applied, Ofcom has had regard to the penalty factors set out in Ofcom's Penalty Guidelines.⁷² We discuss each factor in more detail below.

Duration of the contravention

- 5.7 As set out in Section 4, we have found that BT failed to provide Contract Information and Contract Summary documents to customers party to over 1.3 million sales from 17 June 2022. This number is likely to have increased over time as BT continues to sell services to

⁷¹ Ofcom's [Penalty Guidelines](#), 14 September 2017. See also [Section 392 of the Communications Act 2003](#).

⁷² *Ibid.*

customers through several sales channels where it is not providing the information as required by GCs C1.3 to C1.7.⁷³

- 5.8 BT began providing the required information on most of the affected sales channels within five months of the introduction of the Contract Information and Contract Summary rules, after 805,903 affected sales had taken place on those channels.
- 5.9 However, as noted, we have found that BT is: (a) still failing to provide the required information to some small business customers purchasing services through the EE Business Digital Website and EE BT Local Business sales channels; and (b) is giving the required information to EE PAYG customers after the point at which they enter a contract (which is not in line with the rules). We note that:
- a) The most recent evidence provided by BT shows that [X] [50,000 to 100,000] affected EE Business Digital Website and EE BT Local Business sales took place between 17 June 2022 to [X] September 2023. However, this figure is likely to have increased since, as we understand that BT continues to sell services to these customers in the same manner; and,
 - b) The latest evidence provided by BT shows that [X] affected EE PAYG sales took place between 17 June to [X] August 2022.⁷⁴ This figure is likely to have increased as we understand that, while BT has been providing these customers with Contract Information and a Contract Summary since this date, this information is provided after the point at which the customer enters the contract – which is not in line with GCs C1.3 to C1.7.⁷⁵
- 5.10 Tables 6 and 7 below show the relevant affected sales channels, the length of time (in days) before Contract Information and a Contract Summary were provided on each channel, and the number of customers affected.
- 5.11 In our discussion of the potential harm, we also consider the extended period of time during which customers affected by the breach were left without the required information (or an offer to receive that information) or a right to exit their contract without paying an ETC - see paragraphs 5.18 to 5.20.

⁷³ As set out in paragraphs 4.16 to 4.31 above, we have found that BT is not currently providing: (i) the Contract Summary and all of the required Contract Information as specified in the GCs to EE BT Local Business customers; or (ii) a Contract Summary document to EE Business Digital Website (non-automated) customers; and (iii) while BT is providing Contract Information and Contract Summary documents to new EE PAYG customers, it is doing so after the point that they enter the contract, which is not in line with GC C1.3 to C1.7.

⁷⁴ First response, 8 December 2022, Q4(c).

⁷⁵ BT has provided a sales process diagram showing that these documents are provided to EE PAYG customers after the customer enters the contract, via a link in an SMS sent to the customer's new SIM card. First Response, 8 December 2022, Q2/3, 'Q2 and Q3 Third Party Retail_PAYG process.pdf'.

Table 6: Sales channels where Contract Information and Contract Summary documents began to be provided within five months of the 17 June 2022 implementation deadline

Sales channel	Date CI/CS introduced	Number of days before CI/CS provided (from 17/06/22)	Number of affected sales, to date
EE Consumer PAYM: Digital Website/App	[X – X] Aug 2022	[X] [approximately 2 months]	[X]
EE Consumer PAYM: Retail (EE Stores)	[X] Sep 2022	[X] [approximately 3 months]	[X]
EE Business PAYM: Retail (EE Stores)	“	“	[X]
EE Business PAYM: Retail Business Consultants	“	“	[X]
Plusnet Consumer PAYM: Contact Centre	[X] Sep 2022	[X] [approximately 3 months]	[X]
Plusnet (John Lewis Broadband) Consumer: Contact Centre and Digital (Online)	N/A - stopped selling product on [X] Oct 2022	Stop sell [X] [approximately 4 months] after deadline	[X]
Plusnet Consumer PAYM: Digital (Online)	[X] Oct 2022	[X] [approximately 4 months]	[X]
Plusnet Business: Contact Centre and Digital (Online)	N/A - stopped selling product on [X] Nov 2022	Stop sell [X] [approximately 5 months] after deadline	[X]
Total			805,903

Table 7: Sales channels where we have found evidence of ongoing non-compliance

Sales channel	Date CI/CS introduced	Number of days before CI/CS provided (from 17/06/22)	Number of affected sales, to date
EE Consumer PAYG	[X] Aug 2022 (after point of sale)	Ongoing	[X]
EE Business PAYM: EE BT Local Business	N/A	Ongoing	[X]
EE Business PAYM: EE Digital Website (non-automated)	N/A	Ongoing	[X]
Total, to date			509,290

Degree of harm caused by the contravention, or any gain made by BT

Potential harm to consumers

Lack of information and contractual certainty

- 5.12 The introduction of the GCs C1.3 to C1.7, requiring the provision of a Contract Summary and Contract Information, represented a marked and deliberate change from the previous GCs.
- 5.13 Providers must now give customers a Contract Summary document before they enter into a contract. This change was made to ensure customers had a clear and easy to understand document summarising the key terms of their contract. This puts the consumer in a better position to decide whether they want to enter into a contract with the provider, or take advantage of other competing offers within the market. A customer cannot enter into a binding contract unless this Contract Summary has been given to them.
- 5.14 Providers must also give Contract Information, which meets certain requirements (as set out in the Annex to GC C1). The Contract Information provides a transparent and comprehensible set of information to the customer to allow them to understand their rights and obligations under their contract. The required format also means that customers can refer to it and understand and evaluate their position throughout the duration of their contract.
- 5.15 These changes were made to ensure that providers give customers information in a way that can be more easily understood so they can secure a better understanding of their rights under their contract. The reasoning behind these changes was made clear to all providers, including BT, in our December 2019 Consultation, which highlighted that the GCs were being revised in order for people to “shop around with confidence, make informed choices [...] and get a fair deal”.⁷⁶ Reducing the scope for consumer harm was at the heart of these changes.
- 5.16 We have found that at least 1.3 million sales took place in which customers were sold BT products and services without the required Contract Summary and Contract Information documents. The number of individual customers affected by the contravention is likely to be smaller than the number of affected sales because some customers will have purchased more than one service affected by the failure. Nonetheless, we consider our finding about the extent of the contravention must represent a substantial number of affected customers. As a rough proxy, BT contacted 1,081,855 customers as part of its remediation plan, although this is likely to under-represent the total number given that not all affected customers were within the scope of that plan (see paragraphs 5.99 to 5.111).⁷⁷
- 5.17 BT’s failure to provide a Contract Summary and Contract Information meant that these customers were not given clear, upfront information about the key terms of their contract. As a result, these customers suffered potential harm by not receiving information, before entering into a contract, which would help ensure they were fully informed and could take advantage of competition in the communications market. Additionally, they may have

⁷⁶ [Consultation: Fair treatment and easier switching for broadband and mobile customers](#), 17 December 2019, page 1.

⁷⁷ Email from [redacted] (BT) to [redacted] (Ofcom), 19 October 2023.

suffered further detriment since they did not have the information in the required form to refer to throughout the duration of their contract.

Delayed remedial action

- 5.18 As we have set out above, affected customers were potentially harmed by not receiving the required Contract Information and Contract Summary documents before entering into a contract. This potential harm lies in the fact that customers did not have this information in an upfront format, to inform their purchasing decisions, and that they did not have all the required information to refer back to throughout the duration of their contract.⁷⁸
- 5.19 Additionally, approximately 1.1 million of those affected customers were not informed that this had occurred, or given the option to receive this information or cancel their contract without charge, if they wished to, until a year or more after the implementation deadline. This meant that the period of potential harm for these affected customers may have extended to over a year from when they purchased their service from BT.
- 5.20 Furthermore, we note that BT still has not contacted three groups of affected customers (party to approximately [X] sales). We are requiring BT to contact two of these three groups - see paragraphs 5.99 to 5.111.

Early Termination Charges

- 5.21 BT contacted the majority of affected customers between 26 June 2023 and 30 September 2023 to notify them that because the required information had not been provided, these customers had the right to leave their contract without paying an ETC. However, evidence from BT indicates that there were affected customers who were charged an ETC because they had left BT before the end of the minimum contract term specified in their contracts, and before these communications were sent.⁷⁹ As set out explicitly in GCs C1.3 and C1.6, if the required Contract Summary and Contract Information documents are not provided, the CP does not have a binding contract with the customer. As a result, an ETC should not have been payable by these customers.

Impact of price rises

- 5.22 The rules and associated guidance introduced on 17 June 2022 sought to provide customers with clearer information about their core subscription price, including how the price might change over the course of their contract as a result of annual in-contract price variation

⁷⁸ In addition, the evidence suggests that some new and re-contracting EE small business customers are still not receiving the required documents before they enter into a contract and in respect of these customers, the potential harm is ongoing, over a year and half after the rules came into force. This is in respect of EE BT Local Business and EE Business Digital Website (nonautomated) sales channels.

⁷⁹ We do not know the exact number of customers affected by this issue. BT has explained that [X] affected Plusnet customers asked to leave their contract before the end of their contract term and that this figure “captures customers who churned, regardless of whether they were charged Early Termination Charges”, in the same response BT said “None of the customers who left their contract since 17 June 2022 did so because of not receiving PCI/CS. Therefore, all customers would have been charged early termination charges in line with their contract terms”. BT has not explained how many EE customers left their contract after 17 June 2022 but before the end of their contract term, so we cannot accurately estimate the number of affected customers. Second response, 12 April 2023, Q21.

terms.⁸⁰ For example, the guidance sets out our expectation that, as part of the Contract Information, customers would be given a worked example of what their subscription price might look like after any annual increase in line with the in-contract price variation term.⁸¹ The guidance also notes that it would be helpful to present price information in a consistent way across both the Contract Information and Contract Summary.⁸²

- 5.23 A consequence of the contravention set out above, was that affected customers were not provided with this clearer information about annual increases to their subscription price, and instead received information in line with the previous rules. This may have reduced the opportunities for customers to be made aware, both upfront and during the course of their contract, of possible increases to their subscription price potentially leading to bill shock when BT applied a 14.4% price increase in March 2023.⁸³
- 5.24 Any potential consumer harm resulting from this is likely to have been exacerbated in an economic climate where consumers are facing higher costs of living.

Other potential harms and/or gain

- 5.25 BT's contravention of GCs C1.3 to C1.7 may also have resulted in competitive harm. Part of the benefit of the new provisions requiring key terms and conditions to be presented in a similar format is that it allows for customers to more easily understand and compare different competitive offers so that they are in a better position to take advantage of the one that best suits them. Where information is not presented in the same format, the intended competitive benefits of these rules are undermined.
- 5.26 Furthermore, other CPs dedicated the resource required to meet the implementation deadline for these new rules. In some cases, it may have been necessary for CPs to divert the required resource from other areas of business operations. The evidence set out in this document indicates that BT did not allocate adequate resource to meet the regulatory implementation deadline.⁸⁴ Our decision makes it clear that we expect all CPs to take the necessary steps to comply with Ofcom's regulatory rules within any given implementation period.

⁸⁰ Annual in-contract price variation terms are written into some communications provider's contracts and allow the provider to increase the core subscription price (i.e. the monthly price) paid by a customer at different times throughout their contract. Not all providers have this type of term in their contract and, if they do, they may take different forms, such as a 'Consumer Price Index + X%' increase or flat X% increase. BT and its subsidiaries currently apply a Consumer Price Index + 3.9% increase in March each year, in 2023 this increase was 14.4%.

⁸¹ [Ofcom's guidance under General Condition C1 – contract requirements \(December 2023\)](#) states that "an estimate of the price, including any increment for inflation, should be included, in an accessible way, such that the customer has an indication of how the relevant inflation index might affect the price they will pay," and contains the following example: "For example, using last year's RPI value of 2%, this would mean your monthly price of £40 would increase to £40.80 from April next year", paragraphs 1.21 to 1.24.

⁸² [Ofcom's guidance under General Condition C1 – contract requirements \(December 2023\)](#), paragraph 1.38(b).

⁸³ We note that Ofcom is currently considering [new rules and guidance](#) prohibiting inflation-linked in-contract price rises or price rises that are set out in percentage terms in contracts. Ofcom is concerned that inflation-linked price rise terms make it hard for people to find the best deal and make competition less effective. We are therefore proposing that, where companies' contracts provide for any price rises during the contract period, companies must set this out up-front in pounds and pence.

⁸⁴ See paragraphs 5.49 to 5.71.

5.27 As set out below (paragraph 5.41), BT has identified resourcing constraints as a reason for its failure to meet the implementation deadline. Given this, we infer that BT would have needed to dedicate additional resource, including personnel, to meet the implementation deadline and that by not doing so it is likely to have saved costs. We have not sought to establish an estimate of any cost savings but, taking into account our findings that BT missed the deadline by up to five months in most cases and that some sales channels are still non-compliant, this is likely to be a non-trivial amount.

BT's view on the information provided to customers

Information provided to customers

- 5.28 BT has said that the existing contract information it gave to customers, before it began providing the required Contract Information and Contract Summary documents, contained much of the information required under the revised GCs.⁸⁵ In response to our first and second Information Notices, BT said it did not proactively contact customers about this issue and that it *"did not believe there was any consumer harm as customers would have had the majority of the same information from other sources"*.⁸⁶
- 5.29 In response to our fifth Information Notice BT provided an analysis of the information it gave to customers after 17 June 2022 (when the rules came into force), compared to what should have been provided under the updated requirements set out in GCs C1.3 to C1.7. BT's analysis was based on a sample of six documents (some with accompanying general terms and conditions) from seven sales channels, that were provided to customers after the implementation date had passed.⁸⁷
- 5.30 We have reviewed this analysis in light of BT's view that much of the information required under GCs C1.3 to C1.7 would have been provided to customers in some form, either during

⁸⁵ These documents constitute those which BT provided its customers between 17 June 2022 and the date on which it began providing the required Contract Information and Contract Summary documents to each of its channels.

⁸⁶ BT said this in relation to EE sales as part of its First response, 8 December 2022, Q4(d), it made a similar statement (that *"customers did receive the majority of the required information from other sources"*) in relation to Plusnet sales in its Second response, 8 December 2022, Q6(d).

⁸⁷ The sample documents and general terms and conditions BT provided were as follows:

(a) The following documents were provided in the Fifth response, 4 September 2023, Q12, 'PCI CS comparison v2 – word version':

(i) EE Retail – document titled 'Consumer service/upgrade agreement', file name '[UPDATED] Q4a(i) Customer information form.pdf'.

(ii) EE Digital - document titled 'Essential 40GB £33', file name 'Q4a(i) 17 June 2022.pdf' and [Pay Monthly Service Terms and Conditions](#).

(iii) EE PAYG – document titled 'New 5GB Data £10', file name 'TDI T1834-12 270121_£10_PAYG_Wallet (1).pdf'.

(iv) Plusnet Retail and Digital – document titled 'Unlimited Fibre Extra', file names 'Q6ai%20-%20Plusnet%20Home%20Order' and 'Q6ai – PCI CS – Plusnet Mobile – Post-imp Mobile.pdf', [Plusnet Standard Terms from 1 June 2022](#) and [Plusnet Broadband Terms from 1 June 2022](#).

(v) Plusnet Business – document titled 'Unlimited Business Broadband', file name 'Q12%20-520EPNB0001_Biz_Welcome_EEC.pdf' and Third response, 20 April 2023, Q8, 'Question 8 SME EEBA 24.03.23.pdf'.

(b) EE BT Local Business – document titled 'Business Service Agreement' which also included 'EE Pay Monthly Terms of Service (Version 7 Date 1 June 2022 Terms and Conditions)', Fifth response, 11 September 2023, Q1, 'Comparison Business Sept SIR.pdf'.

or soon after the end of their sales journey, thus mitigating the consumer harm.⁸⁸ Notwithstanding that there were some information gaps in the analysis BT provided,⁸⁹ we acknowledge BT's view that the sample documents contained much of the substance of the information required under the revised GCs.

- 5.31 However, the new regulatory requirements to provide a Contract Summary and Contract Information were intended to improve the position of consumers with respect to the requirements that were previously in place, by ensuring customers have access to clear, standardised information to help them make informed purchases and to refer back to during their contract. As described above, these benefits were denied to a considerable number of BT's consumers (who received information in line with the previous requirements, rather than the new rules) and it is this consumer harm that we are concerned about. It is not a mitigation for BT to claim it has complied with previous, less extensive, regulatory requirements.
- 5.32 In any event, we do not think that the information actually provided, particularly when considering the timing, any content gaps and the format, would have fully mitigated the consumer harm. Further details are set out below.
- 5.33 Most significantly, we have found that BT did not give affected customers a Contract Summary document, before they entered into a contract.⁹⁰ The introduction of a Contract Summary document was a key part of the changes introduced in June 2022 to ensure that customers were fully informed about the contract they were entering into, giving them an upfront, usually one-page, written summary of the key terms and conditions of their contract, such as price rises and minimum service levels. It is essential in allowing customers to quickly understand what they are signing up to and to facilitate comparison with competing offers.
- 5.34 The importance of this document is indicated by the requirements that the customer must have received the Contract Summary before they enter into the contract and that the contract only becomes effective once the customer has given their express consent to enter into the contract after receiving the Contract Summary.
- 5.35 We have also reviewed BT's analysis of the information that was provided to its customers in this interim period. BT's analysis said that customers were given critical and relevant information about their contract. For instance:

⁸⁸ The pre-existing documents that BT has referred to appear to be the same documents that were given to customers before 17 June 2022, when these rules came into force. This indicates BT had made no substantive modifications to the information it provided to customers in response to the updated rules.

⁸⁹ In their response, BT failed, for some sections, to provide a full analysis for each sub-section within the Annex to C1. For instance, for Plusnet Contact Centre and Digital customers they only reference "*Broadband terms section 4*" in an attempt to identify and explain how, they believe, they have provided sufficient information to address the multiple sub-sections *within "Service characteristics (as part of information in Table A, 2 a)"*, which they are required to provide under [GC C1, Annex to C1, Table B \(1\)](#). Fifth response, 4 September 2023. 'PCI CS Comparison v2 – word version', page 34.

⁹⁰ See above in Footnote 87 which identifies the sample documents upon which BT based their analysis.

- a) key provisions relating to the price of the contract were provided to EE Retail customers, including the core subscription price and some information on usage charges for additional services.⁹¹
- b) Plusnet Contact Centre and Digital customers were also given information on speed and quality of their broadband service within these documents.⁹²

5.36 While we accept that much of the substantive information was provided, across all affected sales channels, we have found that there were gaps in the information customers received and issues with its timing. In our view, consumers have been affected, to varying extents, by this failure to both: (i) provide them with the entirety of the required Contract Information under the revised GCs; and (ii) follow the correct timing (i.e. provide this information before the customer signs up to a deal). Specifically, we have found:

- a) Plusnet customers were given the majority of their contract information after signing up to a deal. For example, information relating to the price and length of the contract were given to customers in the order confirmation.⁹³ Additionally, the information provided did not fully meet the requirements of the information required under the revised GCs. For example, BT has acknowledged that information on Provider responses to security incidents was not delivered for Plusnet Contact Centre and Digital customers.⁹⁴
- b) For the remaining sales channels, BT has acknowledged that customers were given some of their contract information: (i) after signing up to a deal; or (ii) in an incomplete or partial format. For example:
 - i) BT has said that EE Consumer Digital and EE BT Local Business customers were provided with some information after signing up to a deal,⁹⁵ alongside other information which BT acknowledged was only partially delivered.⁹⁶

⁹¹ Under the rules, providers must set out “the Core Subscription Price” and “any usage charges for any additional use of services or facilities” ([GC C1, Annex to C1, Table A \(3\)\(ai\)\(aia\)](#)). Fifth response, 4 September 2023. ‘PCI CS Comparison v2 – word version’, pages 2 and 3.

⁹² According to [GC C1, Annex to C1, Table A \(2\)\(a\)](#), providers are to provide a description of “the main characteristics of the service provided”. Fifth response, 4 September 2023. ‘PCI CS Comparison v2 – word version’, page 27.

⁹³ BT stated that information relating to [GC C1, Annex to C1, Table A \(3\) and \(5\)](#), for Plusnet sales channels, was found in the “order confirmation”. Fifth response, 4 September 2023. ‘PCI CS Comparison v2 – word version’, pages 28 to 29 and 30 to 31.

⁹⁴ Under the rules, providers are meant to give customers information on the “type of action that might be taken by the Regulated Provider in response to security incidents, threats or vulnerabilities”. ([GC C1, Annex to C1, Table A \(6\)\(a\)](#)). BT acknowledged that this was “Not delivered for Contact Centre and Digital” sales channels. Fifth response, 4 September 2023. ‘PCI CS Comparison v2 – word version’, page 31.

⁹⁵ For example, under the rules, providers must set out “the Core Subscription Price” of the service within the contract before the point of sale. [GC C1, Annex to C1, Table A \(3\)\(ai\)](#). BT acknowledged that for EE digital customers, this was provided in the “order confirmation”, which we understand is provided after the point that the customer enters/is bound by a contract. Fifth response, 4 September 2023. ‘PCI CS Comparison v2 – word version’, pages 2 and 3.

Providers must also give customers information relating to the “duration of the contract including the Commitment Period” ([GC C1, Annex to C1, Table A, \(5\)\(a\)](#)). BT acknowledged that this information was provided to EE BT Local Business customers in the order confirmation, which we understand is provided after the point that the customer enters/is bound by a contract. Fifth response, 11 September 2023. ‘Comparison Business Sept SIR.pdf’, page 4.

⁹⁶ For example, under the rules, providers must give information on the “details on products and services designed for End-Users with disabilities.” [GC C1, Annex to C1, Table B \(6\)\(a\)](#). BT acknowledged that this

- ii) BT has said that EE Retail customers were provided with information before signing up to a deal, but some of this information was only partially delivered.⁹⁷
- iii) BT also said that EE PAYG customers were given contract information before signing up to a deal, including the information listed on the outside of the PAYG packaging.⁹⁸ However, the rest of the information, which was provided after the point of sale, still failed to include the full range of required information under the revised GCs.⁹⁹

5.37 In summary, we do not consider that the information BT provided mitigates the potential harm we have identified. This is because BT did not provide a Contract Summary to affected customers, and, as BT itself has acknowledged, the information it provided was either given after the customer had signed up to a deal, or did not contain all of the required information, failing to meet the requirements of the new GCs. Affected BT customers may therefore have been less well-informed and less able to exercise choice than customers of compliant CPs. These customers would also not have had the greater transparency and legal certainty from being able to refer back to the Contract Summary and full set of Contract Information throughout the duration of their contract.

Customers have a ‘cooling off’ period to further consider the information provided

5.38 In addition to the above, BT has also noted that customers had *“the two-week distance selling cooling off period if they changed their mind once they had received their welcome pack”*.¹⁰⁰

5.39 This is not a sufficient justification for failing to provide the required Contract Summary and Contract Information documents at the right time. The rules are clear that both documents must be given to a customer before the point at which a customer agrees to enter into and is bound by a contract. The requirements are designed to provide protections additional to those already available under distance selling rules, which in any event only apply to consumer contracts, not those with small business customers.¹⁰¹ Therefore, the ability to

information was *“Partially delivered”* for EE Digital customers. Fifth response, 4 September 2023. ‘PCI CS Comparison v2 – word version’, page 16.

BT also stated that information relating to rights of cancellation (required under [GC C1, Annex to C1, Table A, \(8\)\(a\)](#)) was *“Partially delivered”* for EE BT Local Business Customers. Fifth response, 11 September 2023. ‘Comparison Business Sept SIR.pdf’, page 7.

⁹⁷ For example, under the rules, providers must give information on *“the conditions of termination of the Bundle or of elements thereof”*. [GC C1, Annex to C1, Table B \(4\)\(a\)](#). BT acknowledged that this information was *“Partially delivered”* for EE Retail customers. Fifth response, 4 September 2023. ‘PCI CS Comparison v2 – word version’, page 15.

⁹⁸ BT provided sample images of the packaging that EE PAYG products would have been sold to customers in, which listed some key information regarding price and data allowances. Fifth Response, 12 September 2023, ‘TDI T1834-12 270121_£10_PAYG_Wallet (1).pdf’.

⁹⁹ Some information was provided inside the PAYG packaging and would have been inaccessible until after the point of sale. Additionally, BT stated that when customers bought their EE PAYG Sim Card, a text message was sent to the customer with further information about their contract, which we understand is sent after the point that the customer enters/is bound by the contract. This included a link to the EE website, which contains a generic set of terms and conditions, containing some pieces of limited information, such as that relating to the description of service, which providers are required to include under [GC C1, Annex to C1, Table A\(2\)\(aii\)](#). First response, 8 December 2022, Q2/3, ‘Q2 and 3 Third Party Retail_PAYG process’ and Q4(a)(i); Fifth response, 4 September 2023, ‘PCI CS Comparison v2 – word version’, pages 1 and 2; and, Fifth Response, 12 September 2023, ‘TDI T1834-12 270121_£10_PAYG_Wallet (1).pdf’.

¹⁰⁰ First response, 8 December 2022, Q4(d) and Second response, 12 April 2023, Q6(d).

¹⁰¹ Regulation 27, Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

cancel the contract on receipt of the welcome pack does not provide a mitigation for the potential harm resulting from the absence of the Contract Summary and Contract Information at the time the customers entered their contracts.

Steps taken to prevent the contravention

- 5.40 This section discusses the steps BT took to introduce the required Contract Summary and Contract Information and therefore to comply with GCs C1.3 to C1.7. In summary, we have found that BT took insufficient steps to try and prevent the breach of this contravention, because:
- a) it did not take adequate action to ensure that it could begin providing the required documents to customers from 17 June 2022, when the obligations came into force; and,
 - b) in some cases, it was aware that this deadline would not be met and chose to accept the risk that it would be non-compliant with the obligations.
- 5.41 BT has explained that it faced resourcing constraints during its implementation programme. These resourcing issues occurred both during the normal course of business and as a result of the conflict in Ukraine. We accept that the conflict affected certain resource provided by BT's third-party contractor, but this did not fully explain the delayed implementation. In any event, it is BT's overall responsibility to manage its outsourcing arrangements effectively so that it is able to fulfil its regulatory obligations. We also consider that business-as-usual resourcing issues are not an acceptable reason for failing to comply with a regulatory obligation. We discuss these points in more detail below.

BT-wide implementation programme

- 5.42 BT has explained that the programme it set up to implement the new consumer protection measures introduced by the EECC, including the Contract Information and Contract Summary requirements, *"was a large and complex 18-month programme, across all of our brands, for mobile and broadband, consumer and business. The size and complexity of the EECC implementation, took up a significant amount of our roadmap time and resource."*¹⁰²
- 5.43 In total, there were around 60 BT staff working on the implementation programme, with around 30 staff dedicated to EE and 16 staff assigned to Plusnet. The staff fulfilled various roles across project management, technical, commercial, legal and regulatory functions. The implementation of the Contract Information and Contract Summary obligations was one workstream within this wider programme.

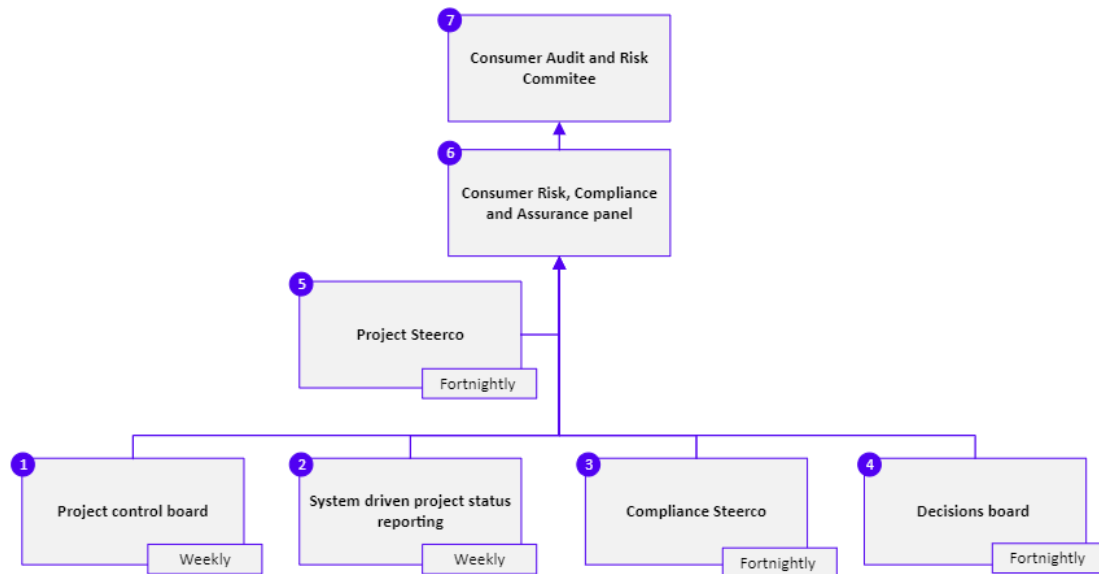
Governance of the implementation programme

- 5.44 BT had a governance structure in place in the BT Consumer division allowing it to report on the progress of the overall EECC programme and escalate issues. This governance structure and process was used for the implementation of the Contract Information and Contract Summary rules for the EE, Plusnet and John Lewis Broadband brands.¹⁰³ It was made up of seven parts from working level groups to committees providing more senior oversight, as set out in Figure 1.

¹⁰² First Response, 8 December 2022, Q13.

¹⁰³ BT stated that *"Small, Micro [Enterprise] and Not For Profit Retail [customer] channel delivery was part of the Consumer governance structure and process"*. First Response, 8 December 2022, Q14.

Figure 1: BT Governance Structure Chart For Implementation of the General Conditions¹⁰⁴



5.45 BT has explained the role of each part of the governance structure as follows:

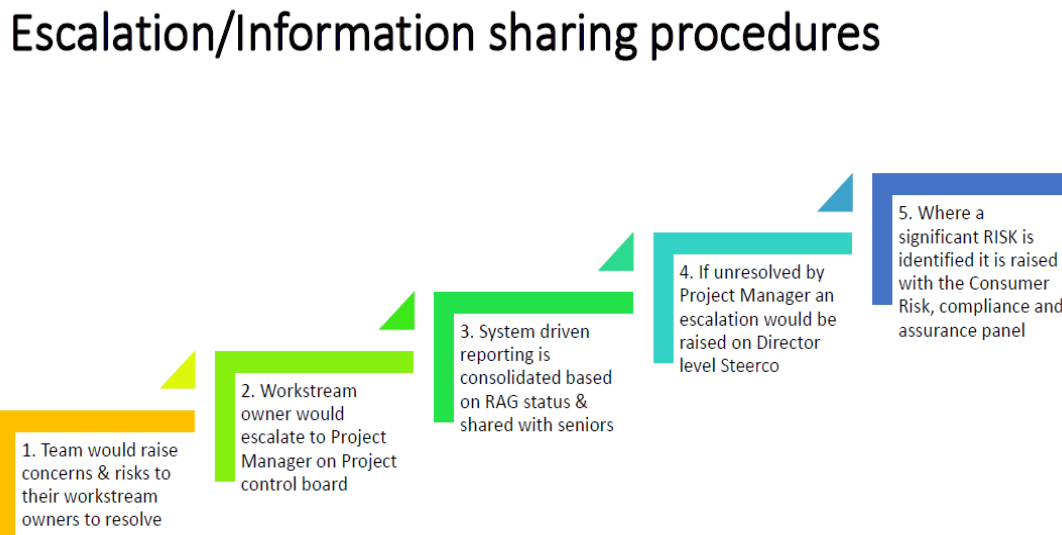
- 1) **Project Control Board:** this is where the project team discussed the progress of the implementation project, along with risks and ways to resolve them. This was attended by workstream leads and project team members.
- 2) **System driven project status reporting:** this was an automated project status report which was sent to senior staff including the Directors of Transformation, Strategy and Programme Delivery & Business Design.
- 3) **Compliance Steerco:** this steering committee reviewed all projects owned by the compliance team within BT (including the implementation programme). This was attended by senior compliance stakeholders including one director, compliance managers and project managers.
- 4) **Decisions Board:** this committee acted as a decision-making forum and was attended by project managers and workstream leads, as well as staff from regulatory, legal, policy and product functions.
- 5) **Project Steerco:** this steering committee reviewed project updates and discussed any escalations or decisions that required sign-off. This was attended by senior managers and directors.
- 6) **Consumer Risk Compliance and Assurance Panel:** this committee identified and managed consumer risk in the BT Consumer division. This was attended by the Managing Director for Safety & Transformation, a Consumer Risk and Compliance Director, and staff from risk, compliance, regulatory, legal and group internal audit functions.

¹⁰⁴ Governance structure information summarised by Ofcom based on BT's: (i) First Response, 8 December 2022, Q14 and document 'Q14 EE EECC PCI governance structure.pdf'; (ii) Second Response, 12 April 2023, Q16 and document 'Q16 Plusnet - EECC PCI governance structure.pdf'; and (iii) Third Response, 20 April 2023, Q14.

7) **Consumer Audit and Risk Committee:** this was the most senior level risk and audit committee within the BT Consumer division, where the most significant risks were escalated. This was attended by the CEO of the BT Consumer division, and directors and senior managers from risk, compliance, finance, internal and external audit and legal functions.

5.46 BT provided a diagram to show the process for escalating implementation issues and risks to more senior managers via the governance structure. This is set out in Figure 2.¹⁰⁵

Figure 2: Diagram of BT escalation process



5.47 Based on the governance structures set out above, BT had processes in place to escalate and manage risks to implementation of the EECC requirements. For example, the **Project Control Board** could escalate unresolved issues or risks to the **Project Steerco** for review. Alternatively, where a significant risk was identified it could be raised directly at the **Consumer Risk Compliance and Assurance Panel**, and where risks were unresolved at this committee they could be further escalated to the **Consumer Audit and Risk Committee** (the most senior level risk and audit committee within the BT Consumer division). Based on the evidence we have gathered, the potential risk of non-compliance with GCs C1.3 to C1.7 appears to have been raised at the Consumer Risk Compliance and Assurance Panel only once,¹⁰⁶ and was not further escalated to the Consumer Audit and Risk Committee.

5.48 BT also explained that some decisions for Plusnet were escalated to the Plusnet Marketing Director for review and sign-off, while “*major changes such as slippage in delivery date*” could be escalated from the Project Manager to the Plusnet CEO for sign off.¹⁰⁷ It is not clear from the evidence if there were equivalent escalation and decision-making processes for EE outside of the common governance structure.

¹⁰⁵ First response, 8 December 2022, Q14, ‘Q14 EE EECC PCI governance structure’.

¹⁰⁶ On 20 May 2022. Third response, 20 April 2023, Q14, ‘Consumer EECC CS Slides.pdf’.

¹⁰⁷ Second Response, 12 April 2023, Q16 and document ‘Q16 Plusnet – EECC PCI governance structure.pdf’.

Progress of the implementation programme and BT's forecast that some sales channels would not meet the deadline

- 5.49 BT provided a range of governance documents which show the progress of the implementation programme between 1 January 2022 and 17 June 2022 (when these rules came into force) and beyond.
- 5.50 The governance documents show that various aspects of the EE and Plusnet projects were still being agreed or finalised between January and February 2022, some four to five months before the rules came into force – despite all providers having 18 months to comply with these requirements. This included some decisions on resourcing, project scope and project requirements, for example:
- a) On 11 January 2022 EE Mobile¹⁰⁸ project requirements were signed off by stakeholders, while some scoping of project tasks was still in progress;¹⁰⁹ and,
 - b) On 24 February 2022 projected delivery dates for Plusnet Broadband and landline services had not yet been approved by the commercial team, so resource had not been assigned.¹¹⁰
- 5.51 Furthermore, the documents show that BT was aware from as early as January 2022 that some channels might be non-compliant, for example:
- a) Between January 2022 and May 2022, at various stages BT forecast that all Plusnet Broadband sales channels would be delivered late (i.e. the required documents would not be provided to customers from the 17 June 2022 deadline);¹¹¹
 - b) In January 2022, BT noted that there was a risk that the EE PAYG channel would be delivered late and, by April 2022 a revised forecast also showed that the EE Consumer Contact Centre, EE Consumer Digital and EE Retail (Consumer and Business) sales channels would be delivered late;¹¹² and,
 - c) During May 2022, BT continued to forecast that the EE Consumer Digital, EE Retail (Consumer and Business segments) and EE PAYG/SIM local sales channels would deliver after the implementation deadline.¹¹³

¹⁰⁸ BT references the “EE Mobile” business line in its Steerco papers, which includes the following mobile services sold to consumer and micro and small enterprise and not-for-profit customers: mobile phone contract; SIM only contract; Pay as you go device; and Pay as you go SIM. First Response, 8 December 2022, Q1 and document ‘Q1%20Channels.xlsx’, and Q6 and document ‘Question%206.xlsx’.

¹⁰⁹ The relevant governance document said “Requirements signed off by all stakeholders. Awaiting t shirt sizing from [X], [X] and [X] before SA can complete work on blueprint.” First Response, 8 December 2022, Q13 and ‘EECC Chapter 4 Status Report 110122.pdf’.

¹¹⁰ The relevant governance document states “Current plan dates propose delivery date of Oct 22, not yet approved by Commercial so resource has not yet been assigned.” Third Response, 20 April 2023, Q13(a), ‘EECC Chapter 4 Status Report 240222’.

¹¹¹ Second Response, 12 April 2023, Q17 and documents ‘EECC Chapter 4 Status Report 250122.pptx’, ‘EECC Steerco 230322.pdf’, ‘EECC Steerco 200422.pptx’, ‘EECC Chapter 4 180522.pptx’, and ‘EECC Chapter 4 310522.pptx’. See also Third Response, 20 April 2023, Q13(a), ‘EECC Chapter 4 Status Report 240222’.

¹¹² Second response, 12 April 2023, ‘EECC Chapter 4 Status Report 250222’ and First Response, 8 December 2022, Q13, ‘190422 EE - EECC Chapter Weekly Review.pdf’.

¹¹³ However, BT forecast that it would begin providing the required information during EE phone (contact centre) sales by the 17 June 2022 implementation deadline. Updates on this were provided to the Consumer Risk, Compliance and Assurance Panel on 20 May 2022 and the Project Steering Committee on 31 May 2022. Third Response, 20 April 2023, Q14, ‘Consumer EECC CS Slides.pdf’ and First Response, 8 December 2022, Q13, ‘EECC Chapter 4 310522.pdf’.

5.52 All of these sales channels, with the exception of the EE Contact Centre sales channel, were delivered late as forecast.

BT accepted that it would not provide the required information on some sales channels by the implementation deadline

5.53 Despite identifying the risk that some sales channels would not be compliant by 17 June 2022, BT was unable to control that risk or in some cases decided or accepted that it would not begin offering the required documents to customers using some sales channels by the implementation deadline.

5.54 The evidence indicates that BT decided not to provide the required information for those Plusnet sales channels where it was planning to stop selling services. These particular sales channels were the John Lewis Broadband and Plusnet Business sales channels, which BT removed from the scope of the implementation programme some time after March 2022.¹¹⁴

5.55 In respect of the John Lewis Broadband sales channel BT stated *“We did not introduce changes to the John Lewis [Broadband] channels because [...] we knew we were about to terminate our partner agreement with John Lewis plc and so prioritised resource on the implementation of Pre-contract information / Contract Summary (PCI/CS) for Plusnet consumer.”*¹¹⁵ Similarly for the Plusnet Business sales channel BT said *“PCI/CS was not introduced for Plusnet Business, we made the strategic decision to exit the business market in February 2022, with a desired stop sell date of June 2022. So, with limited resources we concentrated on delivery for consumer. However, our actual stop sell date was November 2022.”*¹¹⁶

5.56 Furthermore, BT accepted late delivery for a number of channels without attempting to control the risk of non-compliance during the implementation period and in advance of the deadline. This included the following channels:

- a) On **7 March 2022**, BT accepted that the **EE PAYG** channel would be delivered in August 2022, 2 months after the rules came into force. The relevant governance document stated: *“There is a risk that SMS link for PAYG/Sim Local won't be ready until August due to lack of resource availability, making us non compliant in this area for 2 months [...] It has been accepted to deliver late in August”*.¹¹⁷
- b) On **23 March 2022**, BT accepted that all **Plusnet** and **John Lewis Broadband** (including Plusnet consumer, John Lewis Broadband consumer and Plusnet Business) sales would be delivered between July and October 2022, one to four months after the rules came into force. The relevant governance document stated: *“4 releases July-Oct for PN BB [Plusnet Broadband], but PN [Plusnet] mobile due to be ready for June 22. Sign off received from [S&C] [Director of Plusnet] to accept commercial risk”*.¹¹⁸ As mentioned in

¹¹⁴ *“Plusnet Business and John Lewis Broadband were removed from scope in light of our decision to stop sell both services, therefore prioritising and protecting our Plusnet Residential launch”*, Second Response, 12 April 2023, Q19(b) and (c).

¹¹⁵ Second Response, 12 April 2023, Q4(b).

¹¹⁶ Second Response, 12 April 2023, Q12(a) and (b).

¹¹⁷ First Response, Q13(b) and ‘EECC Chapter 4 Status Report 070322.pdf’.

¹¹⁸ Second Response, 12 April 2023, Q17 document ‘EECC Steerco 230322’. BT’s Steerco documents refer to four releases for Plusnet Broadband, which we understand are Plusnet Acquisition, Plusnet In life, John Lewis Broadband In Life and John Lewis Broadband Acquisition, as described in the Second Response, 12 April 2023,

paragraphs 5.54 to 5.55, BT ultimately removed Plusnet Business and John Lewis Broadband sales channels from scope of the implementation programme, and Plusnet Consumer customers did not begin receiving the required information until [REDACTED] September 2022 (Contact Centre sales) or [REDACTED] October 2022 (Digital Online sales).

5.57 These decisions were taken despite there being a period of time (around three months) during which BT could have attempted to implement temporary solutions to ensure that these channels would be compliant by 17 June 2022.

BT took unsuccessful action to provide the required information on some sales channels by the implementation deadline

5.58 In some cases, BT implemented temporary solutions or took other action in relation to affected sales channels. However, these actions did not lead to the introduction of the required documents by the deadline. For example:

- a) On 20 April 2022 BT said that it agreed to develop a “*tactical ‘plan B’ solution*” for the **EE Consumer Digital Website** and provided additional budget for the **EE Retail (Consumer and Business)** sales channels.¹¹⁹ In its response to an information request in December 2022, BT said it “*had estimated delivery dates of very early August for Digital and Retail but had actions in place such that we thought we could bring these dates forward in time for the implementation deadline*”.¹²⁰ However this is not borne out by the contemporaneous documents when the actions in question were taken. At the point of agreeing these actions for EE Consumer Digital and EE Retail (Consumer and Business) BT was forecasting a late delivery for these channels. Furthermore, the 31 May 2022 Steerco document shows that just prior to the 17 June 2022 implementation date and with these mitigations in place BT still expected EE Consumer Digital to deliver by [REDACTED] August 2022, while EE Retail (Consumer and Business) was forecast for an August delivery.¹²¹ BT did not begin giving the required information to customers using these channels by the deadline. Our assessment of these documents is confirmed by the fact that the estimated timelines coincide closely with the dates when BT did start providing Contract Summary and Contract Information documents: for EE Consumer Digital customers on [REDACTED] August 2022 and [REDACTED] August 2022, and to EE Retail (Consumer and Business) customers on [REDACTED] September 2022.
- b) On 18 May 2022, a temporary manual solution was agreed for the **Plusnet Contact Centre** sales channel, however BT stated that on “*14 June 2022, it was reported to Steerco that the interim solution was likely to be delayed*” due to “*technical difficulties*”.¹²² The temporary solution meant that BT began providing the required documents to some Plusnet Contact Centre customers from [REDACTED] September 2022, around three months after the deadline.

Q13 document ‘EECC Chapter 4 Status Report 250122.pptx’. We understand that “*Acquisition*” relates to new customers or re-signs, whereas “*In Life*” refers to upgrades, and that these categories map to the Plusnet consumer (including John Lewis Broadband) and Plusnet business sales channels listed in paragraphs 4.13 and 4.14.

¹¹⁹ First response, 8 December 2022, Q13(a) and (b) and document ‘EECC Steerco 200422 DRAFT’.

¹²⁰ First response, 8 December 2022, Q13(a) and (b).

¹²¹ First response, 8 December 2022, Q13(a) and (b) and document ‘EECC Chapter 4 310522’.

¹²² Second response, 12 April 2022, Q17(a) and (b).

- 5.59 The mitigations introduced for the EE Consumer Digital, EE Retail (Consumer and Business) and Plusnet Contact Centre channels did not have the effect of helping BT meet the implementation deadline. The reported timescales in the above-mentioned documents indicate that this is something which was understood and accepted by BT ahead of the implementation deadline.
- 5.60 In respect of the **EE BT Local Business** and **EE Business Digital Website** channels that we have found to be non-compliant, due to the fact that customers are not receiving the required documents, BT has not acknowledged that it is non-compliant on these channels and we have seen no evidence that it has taken steps to prevent this non-compliance.¹²³

Resourcing constraints

- 5.61 During the period from January 2022 to the June implementation date, BT said that both EE and Plusnet experienced resourcing issues which impacted its delivery of the project.¹²⁴

EE resourcing constraints

- 5.62 The technical resource for a number of BT projects was provided by BT's third-party service provider, [X]. For the EE Contract Information and Contract Summary work BT stated that *"at least 15 [X] staff [were] working on the implementation of the relevant General Conditions or involved in it at different times"*, and these staff provided technical resource in respect of the implementation of the new rules.¹²⁵ Plusnet did not use this third-party provider for its projects.
- 5.63 BT explained that EE faced resourcing issues as a result of the flexible model [X] used to supply staff and because a number of those staff were affected by the conflict in Ukraine.¹²⁶
- 5.64 BT has said that it requested resourcing for EE projects from [X], but that the third party had a finite pool of technical staff, had responsibility for staff allocation, and often moved staff between BT projects. BT described the impact of this as follows: *"[X] regularly replaced staff assigned to this project with new staff (for reasons unrelated to the war in Ukraine), and according to [X] this happened "quite frequently." In our view, it is a natural consequence of the commercial model that the high rotation of staff leads to disruption while new staff get up to speed. Although usually we are able to manage this within project planning, it did compound the issue of resourcing that was exacerbated by the war in Ukraine."*¹²⁷
- 5.65 With regard to the conflict in Ukraine, nine out of 15 (60%) of [X] staff were impacted by the conflict, seven of whom were relocated from Ukraine and Belarus during the relevant period.¹²⁸ In response [X] recommended contingency plans to replace impacted staff with new personnel, which BT accepted. BT said *"While [X] may have considered that no time was lost because the contracted hours were still performed, in reality, the quality and value of those hours was inferior such that the project did lose momentum and delivery timescales*

¹²³ See paragraphs 4.16 to 4.28.

¹²⁴ First Response, 8 December 2022, Q16; First Response 22 December 2022, Q16 to Q18; and Second Response, 12 April 2023, Q19(a) to (c).

¹²⁵ First Response, 22 December 2022, Q16(b).

¹²⁶ First Response 22 December 2022, Q16 to Q18.

¹²⁷ First Response, 22 December 2022, Q16(a).

¹²⁸ First Response, 22 December 2022, Q17(b).

*were affected. This was not only because of the relocation of relevant staff but also because the new staff who replaced the Ukrainian and Belarusian staff did not have the background to the project and needed time to get up to speed.*¹²⁹

Plusnet resourcing constraints

- 5.66 Plusnet reported that it lost a number of experienced personnel during 2022. This included one experienced member of the core team of 16 staff dedicated to implementing the Contract Information and Contract Summary requirements on Plusnet services.¹³⁰
- 5.67 There was also a high turnover in its Software Engineering department supporting the implementation work (from January to June 2022).¹³¹ Plusnet highlighted that four key software engineering managers/specialist roles were replaced in the department, including the Head of Software Engineering, the person overseeing the Software Engineering team.¹³²
- 5.68 More broadly, BT confirmed that 40 out of 100 full-time employees in the Software Engineering department left their roles during the implementation period, while 34 employees (out of 100) in the department worked on the introduction of the Contract Information and Contract Summary documents at some point.¹³³
- 5.69 BT said that this impacted the Software Engineering Department as: *“We could not recruit all vacant roles in the department quickly because of a lack of experienced staff available in the market to be recruited. Ultimately, we had to go to an external 3rd party contractor to backfill the roles of those who were promoted to the above roles towards the end of June. Generally, once a team member leaves, there is a 3-6 month lead time to get new staff hired and get them up to speed with the project.”*¹³⁴

Impact of these resourcing constraints on BT’s compliance

- 5.70 BT cited resourcing issues for both EE and Plusnet as a significant factor for late delivery of the Contract Information for a number of sales channels. We agree the conflict in Ukraine was a challenging and unforeseen factor which will have impacted technical staff provided by [§<] working on delivery of the EE project. However, in our view this mitigating factor does not fully explain or account for the delayed EE implementation. First, the change in personnel occurred toward the end of the 18-month implementation period in April 2022, so any adverse effects of this would only have been felt for up to a period of two and a half months. Second, EE accepted [§<]’s proposed contingency plans and it is ultimately the responsibility of BT to manage resourcing overall, as well as the delivery of third-party services and any risks arising from those arrangements. As noted above Plusnet was not impacted by these third-party resourcing issues as it did not use [§<].
- 5.71 The other resourcing issues that BT has referred to including staff turnover and retention, training new staff and the employment market are all business-as-usual factors which BT

¹²⁹ First Response, 22 December 2022, Q18.

¹³⁰ Fourth response, 19 June 2023, Q19. BT said [§<].

¹³¹ BT has explained that its Software Engineers *“develop and implement the required functionality”*. Fourth Response, 19 June 2023, Q19.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid.

should have been able to plan for, and manage, within the 18-month period allowed for the implementation of GCs C1.3 to C1.7.

We have found that BT took insufficient steps to prevent the contravention

- 5.72 The evidence outlined above indicates that BT did not take the action necessary to meet the implementation date. BT's acceptance of certain implementation risks, and failure to deliver effective mitigations for other implementation risks, for example, the resourcing challenges it faced, resulted in non-compliance with GCs C1.3 to C1.7 for a number of sales channels.
- 5.73 The risk of non-compliance was highlighted to various committees within the governance structure at Figure 7. However, the evidence indicates this risk was only raised at the Consumer Risk Compliance and Assurance Panel once, and was not escalated to the Consumer Audit and Risk Committee, the most senior committee in the BT Consumer division governance structure. We are concerned that the lack of the most senior oversight within BT and the willingness of governance bodies to accept late implementation suggest that BT failed to give sufficient weight to compliance with its regulatory obligations, and specifically the importance of implementing the Contract Information and Contract Summary requirements on time.
- 5.74 We acknowledge that the implementation of the Contract Information and Contract Summary requirements was only one part of a broader package of consumer protection rules that BT had to implement. BT allocated material resource to the project, including a project and governance structure that met regularly throughout the period during which it implemented the new rules. Despite this, BT was not able to implement on time and, for the reasons set out above, we consider that the steps it took to prevent the breach occurring were insufficient. The fact that the breach occurred despite the planning, resourcing and project management described by BT points to the ineffectiveness of those processes.

The extent to which the contravention occurred deliberately or recklessly

- 5.75 We have no reason to believe that BT had a deliberate strategy of not implementing the new Contract Information and Contract Summary obligations. In fact, as set out above, it has provided evidence of the project and governance structure it established for implementing the new requirements. However, although Ofcom extended the period for implementation from 12 to 18 months following consultation, the evidence indicates that key aspects of BT's implementation remained to be determined at the beginning of 2022, only four to five months before the deadline.¹³⁵
- 5.76 While we do not consider that BT had a deliberate strategy of non-compliance there were specific instances where BT decided or accepted that it would not begin offering the required documents to customers using some sales channels by the implementation deadline (see paragraphs 5.53 to 5.57 above). This impacted sales to Plusnet Business and John Lewis Broadband customers, where BT took the decision not to provide the required documents to new or re-contracting customers because it was planning to stop selling those services. This also impacted sales to EE PAYG customers, where BT accepted that it would not begin providing the required documents to customers until August 2022, two months

¹³⁵ See paragraph 5.50 above.

after the rules came into force. We consider that these examples of BT deciding or accepting not to provide the required information by the deadline of 17 June 2022 amount to deliberate behaviour.

- 5.77 Further, because it appears that BT did not progress the implementation of its obligations in a timely fashion over the course of the 18 month period available, it was unable to introduce effective mitigations to address the various challenges that emerged between February and June 2022 so as to be in a position to introduce the required documents across all of its sales channels by the implementation deadline (see paragraphs 5.58 to 5.59 above). We consider that this demonstrates poor planning or processes on the part of BT but does not amount to deliberate or reckless behaviour.
- 5.78 In its response to Ofcom’s December 2019 Consultation,¹³⁶ BT described Ofcom’s proposal to introduce the Contract Summary and Contract Information as “*a significant change impacting systems and advisors*” and argued for a longer implementation period given “*the size of the changes proposed*”.¹³⁷ Notwithstanding BT’s assessment that the changes were significant, as discussed in paragraph 5.47, the risk that it would fail to meet the deadline for implementation of GCs C1.3 to C1.7 was not raised to the top committees in the BT Consumer governance structure (except for one instance of reporting to the Consumer Risk Compliance and Assurance Panel), or indeed beyond to more senior levels in BT.
- 5.79 We are concerned that the evidence in this case appears to demonstrate that substantial compliance risks (taking account of BT’s own forecasts as regards its ability to meet the implementation deadline, the number of sales channels affected across two of BT’s three consumer brands and the significance which BT apparently attached to the changes needed), were not deemed sufficiently serious to warrant oversight by the most senior management levels within the organisation. In our view, this is a failing of BT’s governance arrangements in circumstances where we would have expected greater importance, including at the most senior management levels of the organisation, to be attached to regulatory compliance risks.

Steps taken to end the contravention

- 5.80 We have found that BT did not take sufficient action to bring the breach to an end in a timely manner.
- 5.81 The evidence shows that, as a result of poor planning or processes and a failure to manage various implementation risks, BT:
- a) Continued to sell services to many new and re-contracting EE and Plusnet customers without providing the required Contract Information and Contract Summary documents for up to five months after 17 June 2022, when the rules came into force;¹³⁸
 - b) Continued to sell services to John Lewis Broadband and Plusnet Business channels, without providing the required Contract Information and Contract Summary documents (and without the intention of introducing these documents) until October and November 2022 respectively, four to five months after the rules came into force,¹³⁹ and,

¹³⁶ [Consultation: Fair treatment and easier switching for broadband and mobile customers](#), 17 December 2019.

¹³⁷ [BT response to Ofcom’s consultation](#), pages 2 and 15.

¹³⁸ See paragraphs 4.7 to 4.15.

¹³⁹ See paragraphs 4.13(b) and 4.14.

c) Is still failing to provide some of the required information to two groups of EE business customers, and is failing to provide this information at the right time to PAYG customers, over a year and a half after the implementation deadline.¹⁴⁰

5.82 Accordingly, we have found that BT did not take adequate and timely steps to bring the contraventions to an end and this contributed to the duration of this issue and the potential for consumer harm.

Steps taken to remedy the consequences of the contravention

5.83 As noted, we have found that BT made over 1.3 million sales to EE and Plusnet customers without providing the required Contract Information and Contract Summary documents, contravening GC C1.3 to C1.7.

5.84 While the number of individual customers affected by this issue is likely to be smaller than this – as one customer may make multiple purchases or be party to multiple sales – we expect the total number of affected customers is substantial (BT has contacted almost 1.1 million customers to make them aware that they were affected by this issue).¹⁴¹

5.85 BT did not take sufficient action to address the consequences of the contravention until Ofcom wrote to it in March 2023. Since then, BT has taken remedial action; this is a positive development which we have taken into account as part of our penalty decision. We discuss these points in more detail below.

Initial insufficient action by BT

5.86 Based on the evidence provided, we consider that BT took insufficient steps to reduce or remedy the impact of the suspected contravention on its customers for at least a year after the implementation deadline.

5.87 During this time, BT has said that if a customer complained about failing to receive the Contract Information or a Contract Summary it would allow the customer to leave their contract penalty free. It also said that it was “*not aware of any complaints*” related to EE sales,¹⁴² and that “*none of the [Plusnet] customers who left their contract since 17 June 2022 did so because of not receiving [Contract Information / Contract Summary]*”.¹⁴³

5.88 However, BT did not proactively contact customers to make them aware that they were not given the required information, nor that they have the right to exit penalty free, regardless of the reason for leaving the contract (because the contract was not binding on them).¹⁴⁴

¹⁴⁰ See paragraph 4.11 and 4.12(b).

¹⁴¹ See paragraph 5.95 and the accompanying Table 8.

¹⁴² BT did not have a procedure in place to track complaints about lack of Contract Information and Contract Summary, so to understand EE complaints BT reviewed agents notes from [redacted] executive complaints which were coded as “*misselling*” between 17 June 2022 and 26 October 2022 and found that none of these notes referred to Contract Information and Contract Summary as a reason to complain. First Response, 8 December 2022, Q20.

¹⁴³ Second Response, 12 April 2023, Q21(b).

¹⁴⁴ In relation to EE sales, BT said that “*We did not proactively contact customers about the changes to the process, as while we knew we had not provided the documents in the expected format for Retail, Digital and Third Party PAYG channels, we did not believe there was any consumer harm, as customers would have had the majority of the same information from other sources. Furthermore, any customers who transact via digital had the two-week distance selling cooling off period if they changed their mind once they had received their*

Without such information from BT, it is unlikely that customers would have been in a position to make a complaint; further, any affected customer wishing to exit their contract may have been deterred from doing so because they were unaware that ETCs were not in fact payable.

- 5.89 The briefings BT provided to its customer support team, explaining how to handle complaints from EE¹⁴⁵ and Plusnet¹⁴⁶ customers who did not receive the required Contract Information or Contract Summary documents, were provided after the implementation deadline and did not cover all groups of affected customers.¹⁴⁷ Additionally, BT did not “record [missing Contract Information or Contract Summary] as a specific code when customers called in to frontline teams to leave their contract [...]”.¹⁴⁸ It is therefore possible that even if customers did make a complaint about this issue, it may not have been handled as per the briefings and may not have been tracked and escalated to the correct team.
- 5.90 We consider that BT’s failure to proactively contact customers and to fully brief staff or adequately track complaints about this issue represents a shortcoming in BT’s initial action.

BT’s remedial action from June 2023

- 5.91 On 1 March 2023, Ofcom encouraged BT to contact affected customers to make them aware that they: (i) did not receive the required Contract Information and Contract Summary documents to which they are entitled; (ii) have the option to request this information; and (iii) have the ability to leave their contract without incurring an ETC, at any point throughout their contract including within any minimum term.¹⁴⁹
- 5.92 BT subsequently created a remediation plan to contact most affected customers between 26 June 2023 and 30 September 2023.¹⁵⁰ When BT initially discussed this plan with Ofcom on 28 June 2023, it explained that it had already contacted [X] PAYG customers with more to follow.

welcome pack,” First Response, 8 December 2022, Q4(d) and 9(d). In relation to Plusnet sales, it said “We did not proactively contact customers about the changes to the process. While we did not provide the newly required documents, customers did receive the majority of the required information from other sources (see Q6). Furthermore, customers had the two-week distance selling cooling off period if they changed their mind once they had received their welcome pack”. Second Response, 12 April 2023, Q6(d).

¹⁴⁵ The EE staff briefings took effect from 4 July 2022, less than a month after the implementation deadline. Third Response, 20 April 2023, Q16.

¹⁴⁶ The Plusnet staff briefings did take effect in its Executive Complaints Resolution team from the implementation deadline on 17 June 2022 (this team “deals with complaints that have been escalated by an advisor to their team leader and where the team leader unable to come to a resolution the customer is happy with”), however it was only on 27 July 2022 that “an article went live on the central website used by the business to share updates with all Team Leaders” which included an updated complaints pack. Second Response, 12 April 2023, Q20(c).

¹⁴⁷ The briefings applied to: (i) Plusnet customers; (ii) EE consumers who had contacted via Digital and Retail sales; and (iii) EE micro and small enterprise and not-for-profit customers who contracted through Retail sales (i.e. the Business Retail and Retail Business Consultant sales channels). They did not apply to: (i) EE PAYG; (ii) EE BT Local business; or (iii) EE Business Digital customers. First response, 8 December 2022, Q19(a); Second response, 12 April 2023, Q20; Fifth Response, 4 September 2023, Q4.

¹⁴⁸ This quote relates to EE sales. First Response, 8 December 2022, Q20.

¹⁴⁹ Letter from [X] (Ofcom) to [X] (BT), 1 March 2023.

¹⁵⁰ Remedial plan discussed in a meeting between Ofcom and BT, 28 June 2023, ‘280623 Ofcom PCI_CS meeting’.

5.93 BT has since contacted most affected customers via text message, email and/or letter,¹⁵¹ explaining that: (i) it had not provided them with the information they were entitled to and – because of this failure – those customers can (ii) request or access copies of the information and, where relevant, can (iii) cancel their contract without charge, if they wish to.¹⁵² An example is shown below.

Figure 3: Example of text message sent to affected EE customers¹⁵³

Hello, [Name].

When you purchased with us on [contact start date], we were unable to supply your Contract Summary & Pre-Contract Information documents. This was due to an issue on our side. These documents include details about your purchased product, plan, and other relevant information.

We're very sorry about this. Don't worry, it doesn't impact your current service. If you'd like to request a copy of the documents, please fill in a quick form, found here: [link to form]. We'll then be in touch.

As this was our error, you can cancel without any charge, just call 150. Please aim to call us within 30 days.

Remember, you can count on EE to keep you connected to what matters most to you – whether it's calling, streaming, gaming or browsing. It's why we've been named the UK's best network 9 years in a row.

We're here to help. If you ever need to get in touch, your call will always be answered in the UK or Ireland.

Thank you,

EE

5.94 Customers who called BT about this issue were routed to the relevant retentions team.¹⁵⁴ Advisors in this team were briefed to handle these calls in different ways depending on the sales channel used to purchase the communications service. However, in general, advisors were alerted to the fact that the customer had not received the required information and were asked to take steps to retain the customer but were advised that if customers wished to end their contract they could do so without penalty.¹⁵⁵

Progress of BT's remedial action

5.95 BT has concluded its remedial action plan and has contacted almost 1.1 million customers (98.6% of the affected customers included in its plan). A small proportion of these customers have utilised their right to exit. Table 8 below sets this out in more detail.

¹⁵¹ Fifth Response, 4 September 2023, Q6.

¹⁵² Fifth Response, 4 September 2023, Q5, 'EE PAYM Comms' and 'Plusnet BB comms'.

¹⁵³ This is an example of the text sent via SMS to EE Pay Monthly consumers with one EE account, who entered contracts through EE's consumer Retail and Digital sales channels. Customers with more than one account or who entered contracts via different EE or Plusnet sales channels received slightly different messages. Fifth Response, 4 September 2023, Q5, 'EE PAYM Comms'.

¹⁵⁴ Consumers are automatically routed by flags on their account. Businesses are routed to the EE retentions team using dedicated 0800 numbers. Fifth Response, 4 September 2023, Q8.

¹⁵⁵ Fifth Response, 4 September 2023, Q7, 'PCI PAYG Briefing pack V2.6', 'EE PAYM Brief', 'Plusnet PCI Brief' and 'EE Retail Store Pre Contract Mailer_ - General Sales and service v1 (002)'.

Table 8: Summary of remedial action taken by BT¹⁵⁶

Area	Number of affected customers in scope of BT's remedial plan	Number of these customers that BT intended to contact*	Number contacted	% contacted	Number of contacted customers who then exited their services	% of contacted customers who then exited their services
EE PAYM	[redacted]	[redacted]	[redacted]	100	[redacted]	0.95
EE PAYG	[redacted]	[redacted]	[redacted]	100	N/A	N/A
EE Business (Retail and Retail Business Consultant customers)	[redacted]	[redacted]	[redacted]	100	[redacted]	1.41
Plusnet Consumer (exc. John Lewis Broadband)	[redacted]	[redacted]	[redacted]	100	[redacted]	1.13
Total	1,229,291[§]	1,081,855	1,081,855	98.6[†]	[redacted]	0.85

§ This figure is lower than the c.1.3m total number of affected sales because BT did not contact customers who were party to EE BT Local Business, EE Business Digital Website, John Lewis Broadband consumer or Plusnet Business sales as part of its remediation plan, as discussed in paragraphs 5.99 to 5.111 below, which account for [redacted] of the total number of affected sales.

** In most cases, the difference between the number of affected customers and the number of these customers that BT plans to contact is "a result of customers either leaving the network or upgrading onto another BT Group product prior to the comms start date for PCI/CS. [BT] have therefore not attempted to contact these customers." In the case of EE Business Retail and Retail Business Consultant sales, these figures are different because BT has "remove[d] those customers with more than 10 employees, and a cohort of customers found not to be affected. Additionally, some customers have churned or upgraded".*

† BT has said that "the number and percentage contacted are accurate at 100%; however, the number and percentage delivered are slightly smaller ([redacted], or 98.9%) as some of the SMS messages remained undelivered after several days and small numbers of direct mail were returned to us marked as 'gone away' from the address".

Timing and scope of BT's remedial action

5.96 While we accept that BT has taken significant remedial action, we note that this could have been taken more quickly and the scope could have been expanded to include all affected customers.

5.97 Regarding the timing of BT's remedial action, as previously discussed, the purpose of the Contract Summary and Contract Information rules is to ensure customers have access to clear information before they enter a contract, to facilitate their understanding and enable them to make well-informed purchases, and to refer back to throughout the duration of their contract. Affected customers did not receive the required information before entering into the contract and should have been made aware of this as soon as practicable to allow them to take action, if needed.

¹⁵⁶ Emails from [redacted] (BT) to [redacted] (Ofcom), 13 and 19 October 2023 and email from [redacted] (BT) to [redacted] (Ofcom), 9 November 2023.

- 5.98 With this in mind, we note that BT began to inform the majority of affected customers that they had not received this information between June and September 2023, following Ofcom’s suggestion that it should do so: one year after the rules came into force and over three months after BT applied a 14.4% price increase to customers’ bills.¹⁵⁷ We consider that BT could have taken more timely and proactive steps to contact affected customers to ensure that they were aware that they had not received this information and the options available to them.
- 5.99 Regarding the scope of BT’s remedial action, we note that three groups of affected customers were not contacted by BT as part of its remediation plan. As a result, these customers have not received the same information as other customers and may still be unaware that they did not receive the required information and of the options available to them. We discuss each group below.

Group 1: EE BT Local Business and EE Business Digital Website customers

- 5.100 BT has not contacted affected EE BT Local Business or EE Business Digital Website (non-automated) customers as part of its remediation plan.
- 5.101 As discussed in more detail in paragraphs 4.23 to 4.28, BT considers that these sales channels are compliant with GCs C1.3 to C1.7.¹⁵⁸ However, we disagree with this view and have found that BT failed to provide all of the required information to these customers.¹⁵⁹ We therefore consider that these customers would benefit from clear communications from BT explaining that they have not received the information they are entitled to and the options available to them.
- 5.102 We are requiring BT to contact these customers in the same way as it has contacted other affected customers, as set out in more detail in Section 6.

Group 2: John Lewis Broadband consumers and Plusnet Business customers

- 5.103 BT has not contacted affected John Lewis Broadband consumers or Plusnet Business customers as part of its remediation plan, even though it did not give these customers the required Contract Information and Contract Summary documents when they purchased their services (see paragraph 4.13(b) and 14.4).
- 5.104 BT has explained that it has not contacted these customers as part of its remediation plan because it has already contacted them separately with advice that they will need to switch

¹⁵⁷ See the example related to annual price increases in paragraphs 5.22 to 5.24 for more information. At the time of the price rise, these customers were not informed about their right to leave their contracts and may have instead been told that they could not leave their contracts without paying a penalty.

¹⁵⁸ BT has said these sales channels were “*deemed compliant*” with the relevant GCs. Fifth response, 4 September 2023, Q1.

¹⁵⁹ We have found that BT failed to provide all of the required Contract Information and a Contract Summary document to its EE BT Local Business customers and that it failed to provide a Contract Summary document to its EE Business Digital Website customers, from 17 June 2022 to date. See paragraphs 4.16 to 4.28.

to a new communications service,¹⁶⁰ so BT considers that contacting these customers again “would likely lead to confusion.”¹⁶¹

- 5.105 We do not consider that the previous correspondence that BT had with these customers is equivalent to the information that it has sent to other affected customers because it did not:
- a) explain that these customers had not received the Contract Information and Contract Summary they were entitled to; or,
 - b) set out the remedial options available to them.
- 5.106 Furthermore, the emails to these customers implied that BT would only waive their ETC if they switched to another BT service.¹⁶² This is not the same as the offer made to other affected customers, who are allowed to exit their services without paying an ETC regardless of whether they switch to BT or another provider.
- 5.107 However, BT has confirmed that none of these John Lewis Broadband or Plusnet Business customers have unduly paid an ETC, and that they will not be charged an ETC going forward, reducing the likelihood that this group of customers will be harmed by undue charges.¹⁶³
- 5.108 Therefore, taking on board BT’s view that further communication may cause confusion, we are not requiring BT to send any further communication to these customers.

Group 3: Customers who left their BT contract without receiving the remedial communications from BT

- 5.109 BT has also not contacted customers who purchased services on or after 17 June 2022 – without receiving the required Contract Information and Contract Summary documents – and then left their services before BT began contacting affected customers. This was on the basis that these customers had already exited their services.
- 5.110 This group of customers may not be aware that they did not receive the information they were entitled to. Additionally, because these customers already exited their services before BT informed affected customers that they could leave their contract without charge, some of these customers may have paid an ETC to leave their contract.
- 5.111 We are therefore requiring BT to take remedial actions to identify these customers and remedy any potential harm, as set out in more detail in Section 6.

¹⁶⁰ These communications were issued between October 2022 and June 2023 and further communications were planned between October to November 2023. BT sent the following communication to customers: “any provider who uses the Openreach network, including Plusnet, will no longer be able to place orders for new services that run over traditional analogue telephone lines from the 5th September 2023.” / “If you wish to retain your existing landline service you need to [move from Plusnet Business / John Lewis Broadband] before the 5th September 2023.” Email from [redacted] (BT) to [redacted] (Ofcom), 14 July 2023.

¹⁶¹ BT has said it does not “intend to include these customers in [its] communication plan, as this would likely lead to confusion [...]”. Email from [redacted] (BT) to [redacted] (Ofcom) 14 July 2023.

¹⁶² Fifth response, 4 September 2023, Q5, and email from [redacted] (BT) to [redacted] (Ofcom) 14 July 2023, ‘Plusnet business comms.pdf’ and ‘JL business comms.pdf’.

¹⁶³ BT stated that “no existing customers have been migrated off JLB or Plusnet Business. Customers who have upgrade to another BT Group service had their ETCs waived from the date of the initial communication. From 28th of April 2023, all customers have had their ETCs waived.” Fifth response, 4 September 2023, Q9.

Impact of BT's remedial action on the penalty

5.112 Overall, we consider that BT has taken significant remedial actions, which we consider go some way towards remedying the consequences of this contravention. We have taken these actions into account when forming our decision on an appropriate penalty in this case.

BT's cooperation with the investigation

5.113 BT has cooperated with this investigation by self-reporting its failure to provide the required information to some Plusnet and John Lewis Broadband customers. BT made Ofcom aware of this four months after the implementation deadline had passed, and three weeks after Ofcom opened its investigation into EE's compliance with these rules.¹⁶⁴

5.114 However, BT did not: (i) make Ofcom aware that it would miss the implementation deadline on some of its sales channels, despite evidence indicating that BT was aware – from at least March 2022 – that it was unlikely to be able to provide the required information on some of its sales channels by the deadline; or (ii) inform Ofcom that it had failed to meet the deadline for some of its EE sales channels once the implementation deadline had passed. It is important that providers bring known non-compliance to Ofcom's attention as soon as possible to allow Ofcom to investigate as appropriate and in this regard, we consider that BT could have been more proactive in making Ofcom aware of this issue.

5.115 We also note that there were errors or delays in some of BT's responses to the six information notices we sent as part of our information gathering.¹⁶⁵ This repeated provision of untimely, incomplete or inaccurate information, regardless of whether it was intentional, increased the amount of time and resource required to complete this investigation.

5.116 Overall, we consider that BT has co-operated with our investigation once it had launched, including by self-reporting its failure to provide information in areas outside the initial scope of our investigation (i.e. in relation to Plusnet and John Lewis Broadband sales). However, the weight we place on BT's overall regulatory cooperation is limited by its failure to self-report that it had not implemented on time the relevant rules in relation to EE sales, despite having given Ofcom the clear impression that it was capable of meeting the deadline, and issues with its responses to Ofcom's information notices.

¹⁶⁴ BT informed Ofcom that it had failed to meet the implementation deadline for some Plusnet and John Lewis Broadband sales on 27 October 2022, over four months after the implementation deadline (17 June 2022) and three weeks after Ofcom opened its [investigation into EE's provision of Contract Information and a Contract Summary](#) (4 October 2022). Letter from [redacted] (BT) to [redacted] and [redacted] (Ofcom), 27 October 2022.

¹⁶⁵ BT gave: (i) a late response to the majority our First information request, including some inaccessible files; (ii) a late response to the majority of our Second request; and (iii) an incomplete response to our Fifth request, including some inaccessible files. Additionally, it became apparent over time that some of the information BT had provided was inconsistent or inaccurate, requiring us to ask BT to confirm or correct some information in subsequent information requests, further adding to the administrative burden of this investigation. Further information about the topic/timings of each of these requests can be found in Annex 2.

History of BT contraventions

- 5.117 Our Penalty Guidelines state that we may consider whether the regulated body in breach has a history of contraventions and repeated contraventions may lead to significantly increased penalties.¹⁶⁶
- 5.118 BT, including its wholly owned subsidiaries EE and Plusnet has a high number of regulatory decisions recorded against it, relative to other CPs. These include serious compliance failings for breaches of other GCs with a consumer protection objective, for which we have imposed significant penalties under section 96C of the Act, as set out below. We have taken account of the following penalties as part of our consideration of an appropriate and proportionate penalty in this case, while giving thought to the need to set the penalty at such a level that it deters BT and other providers from future non-compliance. Please note that this list references the GCs that were in force at the time of each decision, rather than the current GCs:
- a) On 12 March 2020, Ofcom imposed a penalty of £245,000 (this included a 30% settlement discount on a penalty of £350,000) on BT for breaches of B1.5, B1.19 and B1.21(b) by overcharging customers of EE for calls to Directory Enquiry (“DQ”) services. On 1 April 2019, new rules came into force which set a price cap on service charges for calls to DQ services, which are provided on 118 numbers. BT failed to implement this price cap for calls made by a number of its EE customers to 118 numbers, meaning some EE mobile customers were charged too much for those calls between 1 April 2019 and 26 June 2019. We note that prior to this incident BT had commenced a review of processes and systems at EE in response to a finding against EE in November 2018 regarding ETCs (see immediately below). That project was continuing at the time of this 2020 decision – however it does not appear to have been sufficient to prevent the non-compliance that we found in this instance.¹⁶⁷
 - b) On 16 November 2018, Ofcom imposed a penalty of £6.3 million (this included a 30% settlement discount on a penalty of £9 million) on EE for contravening GCs 9.2(j) and 9.3, requiring providers to clearly state their ETCs upfront and to ensure that conditions and procedures for contract termination do not act as a disincentive for consumers against switching. We found that the breaches, which lasted for over 6 years, were serious, causing about 400,000 of EE’s customers to be billed excessive amounts. Taking account of ETCs that were not paid, EE’s customers overpaid by around £3 million to £4.3 million. We said that the penalty and the action we had taken provided EE with incentives to comply with the GCs in the future and warned that if we were to find it in breach again, we would take into account the opportunity we gave it to comply and reflect this in any future penalty.¹⁶⁸
 - c) On 17 January 2017, Ofcom imposed a penalty of £2.7 million (this included a 10% settlement discount on a penalty of £3 million) on EE for contraventions of GC 11.1, prohibiting CPs from rendering inaccurate bills and billing information to its subscribers. We found that an issue with EE’s billing systems resulted in two separate incidents: in

¹⁶⁶ [Penalty Guidelines](#), 14 September 2017, paragraph 1.12.

¹⁶⁷ CW/01242/05/19: [Investigation into BT's compliance with the 118 price cap](#), non-confidential version, 27 May 2020.

¹⁶⁸ CW/01217/03/18: [Confirmation Decision under section 96C of the Communications Act 2003](#), non-confidential version, 16 November 2018.

the first incident EE overcharged at least 32,000 customers approximately £245,000 for calls to its Customer Service number, and in the second incident EE overcharged at least 7,500 customers approximately £2,200 for calls and texts to the same number. The penalty Ofcom imposed was lower than it otherwise would have been on account of steps EE proactively took to end and to remedy the contraventions.¹⁶⁹

- d) On 22 March 2017, Ofcom imposed a penalty of £880,000 (this included a 20% settlement discount on a penalty of £1.1 million) on Plusnet for breaching GC 11.1. We found that Plusnet continued to bill 1,025 customers for a phone or broadband service after it had ceased to provide the service to them and, as a result, overcharged them over £500,000 in total. Plusnet discovered this billing error in April 2015 and took a number of proactive positive steps to address its mistake, which were taken into account when deciding the penalty in this case.¹⁷⁰

Precedents

5.119 As set out in our Penalty Guidelines, Ofcom will have regard to any relevant precedents, but previous penalties do not place an upper threshold on the amount of any penalty.

5.120 There have been no previous breach findings under GCs C1.3 to C1.7 as there are relatively new provisions. However, as these are important consumer protection rules, we consider that any past decisions we have taken in relation to consumer protection are relevant precedents for this case. We have therefore taken account of the following penalties:

- a) On 21 November 2023, Ofcom imposed a penalty of £1.4 million (this included a 30% settlement discount on a penalty of £2 million) on Shell Energy Retail Limited (“Shell Energy”) for failing to provide end-of-contract notifications (“ECNs”) and annual best tariff notifications (“ABTNs”) containing specified information, as required by the GCs. Our investigation found that 72,837 customers were affected by errors between 26 March 2020 and 14 June 2022.¹⁷¹
- b) On 12 February 2021, Ofcom imposed a penalty of £10.5 million (this included a 30% settlement discount on a penalty of £15 million) on Telefónica UK Limited (trading as “O2”) for breaches of GC C3.2 (and former GC 11.1) by failing to render or make available accurate final bills to be issued to customers after their cancellation of services (i.e. termination bills) and by overcharging a significant number of customers terminating their pay monthly services. We found that c.250,000 customers were overcharged c.£41 million (although £38 million of this amount was not ultimately paid by customers) over a seven-year period.¹⁷²
- c) On 30 July 2019, Ofcom imposed a penalty of £1.4 million (this included a 30% settlement discount on a penalty of £2 million) on giffgaff Limited (“giffgaff”) in relation to a contravention of GC 11.1. We found that giffgaff had overcharged around 2.6 million

¹⁶⁹ CW/01174/12/15: [Notification of contravention of General Condition 11 under section 96C of the Communications Act 2003](#), non-confidential version, 17 January 2017.

¹⁷⁰ CW/01178/04/16: [Notification of a contravention of General Condition 11 under section 96C of the Communications Act 2003](#), non-confidential version, 22 March 2017.

¹⁷¹ CW/01259/04/22: [Confirmation Decision under section 96C of the Communications Act 2003](#), non-confidential version, 10 January 2024. This relates to a contravention of GCs C1.21, C1.23, C1.24, C1.27, C1.30, C1.32, C1.33 and C1.34 (previously GCs C1.10, C1.11, C1.13, C1.16, C1.17, C1.18 and C1.19).

¹⁷² CW/01248/07/19: [Confirmation Decision under section 96C of the Communications Act 2003](#), non-confidential version, 12 February 2021.

customers by an estimated £2.9 million over a 7-to-8-year period as a result of a billing error. We said that the penalty would have been significantly higher had giffgaff not self-reported the contravention, co-operated closely with our investigation and proactively taken steps to remedy the contravention following discovery of the issue, including the implementation of a comprehensive refund plan.¹⁷³

- d) On 16 November 2018, Ofcom imposed a penalty of £7 million on Virgin Media Limited (“Virgin Media”) for breaches of GCs 9.2(j) and 9.3. We found that Virgin Media had: (i) contravened GC 9.2(j) by not publishing clear and up-to-date information on its website to allow customers to easily identify the ETC which applied to their Virgin package; and (ii) contravened GC 9.3 by setting and charging ETCs that were higher than the amounts customers on fixed term contracts had agreed pay, ultimately overcharging almost 82,000 customers a total of just under £2.8 million, in a period of just under a year.¹⁷⁴

Deterrence

- 5.121 As stipulated in our Penalty Guidelines, the central objective of imposing a penalty is deterrence. Any penalty that we set should therefore be high enough to discourage bad conduct and incentivise BT’s management to require good practice and compliance across BT. The penalty should be set at a level that highlights to BT’s senior management the adverse financial consequences of non-compliance. It should not be more profitable for the business to break the law and pay the consequence, than to comply with the law in the first instance. The penalty must be sufficient to deter recurrences of the contraventions in the future. It is also important that the penalty imposed serves to deter the wider industry from contravening regulatory requirements.
- 5.122 In line with our Penalty Guidelines, we have also had regard to the large turnover and size of BT, including its substantial retail business, in setting the penalty at a level which is appropriate for a deterrent effect to be achieved.
- 5.123 We have set out within this document a summary of BT’s history of past contraventions. BT has had an ongoing, poor track record of compliance with a high number of past contraventions. As outlined above, there have been four separate incidents of BT contravening its obligations under the GCs over the last seven years, with two of these directly related to their failure to provide customers with correct information related to their contracts and one directly related to its failure to implement new rules on time.
- 5.124 In the most recent EE cases (2018 and 2020), Ofcom imposed penalties of £6.3 million and £245,000 respectively. In 2020, we found that BT had failed to meet a compliance deadline to fulfil its regulatory obligations. This happened in spite of its previous failure to comply in 2018, in which we recognised in our penalty assessment that BT had been given significant incentives to comply, and that if this failed to secure appropriate compliance going forward, we would take this account in our assessment of the deterrent effect of a penalty in future cases.

¹⁷³ CW/01230/09/18: [Confirmation Decision under section 96C of the Communications Act 2003](#), non-confidential version, 30 July 2019.

¹⁷⁴ CW/01198/06/17: [Confirmation Decision under section 96C of the Communications Act 2003](#), non-confidential version, 16 November 2018.

5.125 These decisions were imposed against the background of BT already having a poor record of compliance, and were intended to have a significant deterrent effect. As a result of continued non-compliance, it is our view that a more substantial penalty is needed in this case.

BT's relevant turnover

5.126 In accordance with the Act,¹⁷⁵ any penalty we impose must be appropriate and proportionate to the contravention for which it is imposed and must not exceed 10% of BT's turnover for its relevant business¹⁷⁶ for the relevant period.¹⁷⁷

5.127 BT's turnover for its relevant business for the financial year ending 31 March 2023 was [X].¹⁷⁸ Accordingly, the penalty does not exceed the statutory cap.

Conclusion on the penalty amount

5.128 Considering the specific circumstances of this case and all of the relevant factors discussed above we have decided to impose a penalty of £2.8 million. This includes a 30% discount on the penalty figure of £4 million which we would have otherwise imposed, reflecting the resource savings achieved by Ofcom as a result of BT's admission of liability and its completion of Ofcom's settlement process.

5.129 Ofcom's view is that this penalty is appropriate and proportionate to the contraventions in respect of which it is imposed. Our objectives in setting the penalty are to impose an appropriate and proportionate sanction that reflects:

- a) BT's contravention of important consumer protection regulations, taking into account:
 - i) the significant scale and scope of the contravention;
 - ii) the duration, including the period of up to five months before the required documents were introduced on most sales channels; the year before BT began contacting the majority of affected customers to make them aware of this issue; and the ongoing period during which the Contract Summary or some Contract Information is not being provided (or provided at the right time) to customers using three EE sales channels; and

¹⁷⁵ See [Section 97 of the Communications Act 2003](#).

¹⁷⁶ [Section 97\(5\)](#) defines "relevant business" as meaning "(subject to the provisions of an order under subsection (3) and to subsections (6) and (7)) so much of any business carried on by the [person] as consists in any one or more of the following—(a) the provision of an electronic communications network; (b) the provision of an electronic communications service; (c) the making available of associated facilities; (d) the supply of directories for use in connection with the use of such a network or service; (e) the making available of directory enquiry facilities for use for purposes connected with the use of such a network or service; (f) any business not falling within any of the preceding paragraphs which is carried on in association with any business in respect of which any access-related condition is applied to the person carrying it on;"

¹⁷⁷ [Section 97\(5\)](#) defines "relevant period", "in relation to a contravention by a person of a condition set under section 45 [or of a commitment that is made binding by a commitments decision], means — (a) except in a case falling within paragraph (b) or (c), the period of one year ending with the 31st March next before the time when notification of the contravention was given under section 94 [or 96A]; (b) in the case of a person who at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which he has been carrying it on; and (c) in the case of a person who at that time has ceased to carry on that business, the period of one year ending with the time when he ceased to carry it on".

¹⁷⁸ Sixth Response, 14 December 2023, Q1.

- iii) the significant degree of potential harm.
- b) BT's failure to take appropriate steps to ensure compliance by the implementation date, including for those sales channels where BT was aware of the risk of non-compliance and chose to accept this risk.
- c) The need to deter BT and other CPs from contravening the GCs, and in particular GCs C1.3 to C1.7, in future.

5.130 Having regard to BT's turnover, our judgement is that a penalty of £2.8 million will secure these objectives in a proportionate way. It appropriately reflects each of the factors described above, taking particular account of the seriousness of the breach, and the need for effective deterrence, taking BT's poor compliance history into account.

6. Remedial steps required of BT

- 6.1 We consider it appropriate to direct BT to take the following remedial actions in order to comply with GCs C1.3 to C1.7.

Actions required of BT in relation to EE PAYG customers

- 6.2 BT must amend its EE PAYG sales process to ensure that all relevant new and re-contracting customers are provided with the required Contract Information and Contract Summary documents before being bound by a contract, in line with the GCs C1.3 to C1.7.
- 6.3 In doing so, BT may wish to refer to paragraph 5.99 of our October 2020 Statement and Consultation document which suggests some ways in which communications providers can provide the relevant information to customers purchasing prepay mobile services in-store via third party retailers.¹⁷⁹ If BT plans to provide the Contract Information in an easily downloadable document it must expressly draw the customer's attention to the availability and the importance of downloading the document, in line with GC C1.4.

Actions required of BT in relation to EE business customers

- 6.4 BT must take the following action in relation to relevant EE BT Local Business and EE Business Digital Website customers, in scope of the GCs C1.3 to C1.7,¹⁸⁰ who we understand are still not receiving the required Contract Information and Contract Summary documents:
- a) amend the EE BT Local Business and EE Business Digital Website (non-automated) sales processes, to ensure that all relevant new and re-contracting customers are provided with the required Contract Information and Contract Summary documents before entering/being bound by a contract, in line with the GCs C1.3 to C1.7;
 - b) contact all relevant EE BT Local Business and EE Business Digital Website (non-automated) customers who entered contracts from 17 June 2022 to the date that the sales process is amended (as per (a) above), explaining that they: (i) have not received the required information; (ii) have the option to request this information; and (iii) have the ability to leave their contract without incurring ETCs, at any point throughout their contract including within any minimum term, if they wish to (i.e. the same remedial action BT has taken for the majority of other customers).

Actions required of BT in relation to EE and Plusnet customers who have been charged an Early Termination Charge

- 6.5 We expect BT to take all reasonable steps to identify and refund any EE and Plusnet customers the amount of any ETC incorrectly charged and paid by virtue of the contraventions. Based on the information available to Ofcom, these are customers that fall within Groups 1 and 3 (as set out in paragraphs 5.100 to 5.102 and 5.109 to 5.111). BT should make such repayments by refunding the relevant sum to the customer's billing or bank account or, where that is not possible, by cheque.

¹⁷⁹ [Statement and Consultation: Fair treatment and easier switching for broadband and mobile customers](#), 27 October 2020, paragraph 5.99.

¹⁸⁰ The scope of GCs C1.3 to C1.7 is set out at GC C1.1(a) of the [General Conditions of Entitlement: Unofficial Consolidated Version](#), 15 May 2023.

- 6.6 In the event that BT is unable to trace or refund affected customers, it must ensure that it does not benefit from the contravention by donating to charity an amount equivalent to the sums it has been unable to refund.

Deadline

- 6.7 We expect BT to have taken the following actions within **3 months** of the Confirmation Decision:
- a) the actions required of BT in relation to EE PAYG customers, for sales made via BT/EE retail stores, digital website/app or contact centre; and,
 - b) the actions required of BT in relation to EE business customers.
- 6.8 We expect BT to take the following actions within **5 months** of the Confirmation Decision:
- a) the actions required of BT in relation to EE PAYG customers, for sales made via third party retail stores; and,
 - b) the actions required of BT in relation to EE and Plusnet customers who were incorrectly charged and then paid an ETC.

Reporting requirements

- 6.9 So that we may verify that BT has taken the action required to bring itself into compliance and to remedy the consequences of the contraventions we have found, we require BT to report on the action it has taken. In relation to the repayment of ETCs, we require BT:
- a) no later than 3 months from the date of the Confirmation Decision, to provide Ofcom with its best estimate of the total amount it must refund and an update of its progress in terms of making the specified repayments; and
 - b) no later than five months from the date of the Confirmation Decision, to provide Ofcom with an account of the repayments it has made, by setting out in a schedule the total amount of repayments made, the number of affected customers who have received them and the identity of any charity to which BT has donated and the amount of such donation.
- 6.10 We also require BT to provide written confirmation that it has completed the steps specified in paragraphs 6.2 to 6.4, in each case by no later than the end of the period we have allowed for the specified action to be taken.

A1. Confirmation Decision under section 96C

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 Confirmation Decision to a person where that person has been given a Notification under section 96A of the Act; that person has been given the opportunity to make representations about the matters notified, and the period allowed for the making of representations has expired. However, Ofcom may not give a Confirmation Decision to a person unless, having considered any representations, it is satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 96A.
- A1.2 A Confirmation Decision under section 96C of the Act is one which, among other things:
- 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, or may specify a period within which the person must comply with those requirements;
 - d) may require the person to pay: the penalty specified in the notification issued under section 96A of the Act, or such lesser penalty as Ofcom consider appropriate in light of the person’s representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention; and may specify the period within which the penalty is to be paid.

The General Conditions of Entitlement

- A1.3 Under the regulatory regime set out in the Act, communications providers do not require a licence to operate in the United Kingdom, but they can be made subject to conditions of general application. The General Conditions of Entitlement (“GCs”) are the regulatory conditions that all providers of electronic communications networks and services of a particular description specified for the respective GCs must comply with if they want to provide their services in the United Kingdom.
- A1.4 Section 45(1) of the Act gives Ofcom the power to set conditions, including GCs, binding on the person to whom they are applied.
- A1.5 GCs are imposed, and amended from time to time. On 17 June 2022 a new set of General Conditions came into effect.
- A1.6 GC C1 is an important consumer protection provision which sets out the general conditions relating to contract requirements. GCs C1.3 to C1.7 require Communication Providers to give customers a Contract Summary and Contract Information documents before they enter into a contract. These are important consumer protection rules, intended to ensure consumers

and small business customers have access to clear and comparable information, before the point that they are bound by a contract. The wording of these conditions is set out below.

Contract Information and contract information: General Conditions C1.3, C1.4, C1.5, C1.6 and C1.7

A1.7 GCs C1.3 to C1.7 in relation to Contract Information and Contract Summary rules require that:

- a) C1.3: *“Before a Relevant Customer is bound by a contract for a Relevant Communications Service, Regulated Providers shall provide that Relevant Customer with the Contract Information set out in the Annex to Condition C1 to the extent that it relates to a service they provide.”*
- b) C1.4: *“The Contract Information referred to in Condition C1.3 shall be provided:*
 - (a) in a clear and comprehensible manner; and*
 - (b) on a Durable Medium.*

Where its provision on a Durable Medium is not feasible, the Contract Information shall be made available in an easily downloadable document. The Regulated Provider shall expressly draw the attention of the Relevant Customer to the availability and the importance of downloading such document.”

- c) C1.5: *“Before entering into a contract, Regulated Providers shall provide the Relevant Customer, free of charge, with a Contract Summary.”*
- d) C1.6: *“The contract shall only become effective once the Relevant Customer has given their Express Consent to enter into the contract after receiving the Contract Summary.”*
- e) C1.7: *“The Contract Information and Contract Summary shall become an integral part of the contract between the Regulated Provider and the Relevant Customer. The Contract Information and Contract Summary shall not be changed unless the parties to the contract expressly agree otherwise.”*

Subject of this Notification

A1.8 This Notification is addressed to British Telecommunications Plc (“BT”), whose registered company number is 01800000. BT’s registered office is 1 Braham Street, London, E1 8EE.

Notification given to BT under section 96A of the Act

A1.9 On 20 May 2024 Ofcom gave a notification under section 96A of the Act (“the section 96A Notification”) to BT, as Ofcom had reasonable grounds for believing that:

- a) BT contravened GCs C1.3, C1.4, C1.5, C1.6 and C1.7 from 17 June 2022 until [§<] November 2022 (inclusive), in that:
 - i) in relation to EE-branded pay monthly services, it failed to provide certain Relevant Customers with the Contract Information and Contract Summary documents from 17 June 2022 to [§<] September 2022 (inclusive);

- ii) in relation to John Lewis Broadband-branded services, it failed to provide Relevant Customers with the Contract Information and Contract Summary documents from 17 June 2022 until [§<] October 2022 (inclusive); and
 - iii) in relation to Plusnet-branded services, it failed to provide Relevant Customers with the Contract Information and Contract Summary documents from 17 June 2022 until [§<] November 2022 (inclusive);
- b) in relation to EE BT Local Business sales and EE pay as you go sales, BT is contravening C1.3, C1.4, C1.5, C1.6 and C1.7 and has done so since 17 June 2022 by failing to provide the Contract Summary and the Contract Information documents meeting the specified requirements to Relevant Customers before they enter into a contract; and
- c) BT is contravening C1.5, C1.6 and C1.7 and has done so since 17 June 2022 by failing to provide the Contract Summary document to Relevant Customers purchasing services through the EE Business Digital Website (nonautomated sales).

A1.10 The section 96A Notification also specified the penalty that Ofcom was minded to impose on BT in respect of its contraventions of the above GCs. It further specified the steps that Ofcom thought should be taken by BT in order to comply with the above GCs and remedy the consequences of the contraventions.

A1.11 The section 96A Notification allowed BT the opportunity to make representations to Ofcom about the matters set out in the section 96A Notification.

Confirmation Decision under section 96C of the Act

A1.12 BT confirmed in a letter to Ofcom on 15 May 2024 (and reiterated in an email on 21 May 2024), that it waived its rights to make representations about the matters notified and admitted liability for the contraventions. The period for BT to make representations has therefore expired.

A1.13 Accordingly, Ofcom is satisfied that BT has contravened GCs C1.3 – C1.7 as set out in paragraph A1.9(a), is contravening GCs C1.3 – C1.7, as set out in paragraph A1.9(b) and is contravening GC C1.5 – C1.7, as set out in paragraph A1.9(c).

A1.14 Ofcom has therefore decided to give BT this Confirmation Decision confirming its contraventions of the above GCs.

A1.15 The extent of these contraventions and the reasons for Ofcom’s decision are set out in the explanatory statement to which this Confirmation Decision is annexed.

Steps to be taken by BT

A1.16 To the extent it has not already done so, Ofcom requires BT to bring itself into compliance with GCs C1.3 to C1.7 by ensuring that:

- a) within three months of the date of this Confirmation Decision, all new and re-contracting Relevant Customers for EE pay as you go services sold directly by EE and for services sold via EE BT Local Business and EE Business Digital Website (non-automated)

sales channels are provided with Contract Information and Contract Summary documents (as applicable) before being bound by a contract.

- b) within five months of the date of this Confirmation Decision, all new and re-contracting Relevant Customers for EE pay as you go services sold via third-party retail stores are provided with Contract Information and Contract Summary documents before being bound by a contract.

A1.17 To remedy the consequences of the contraventions, Ofcom requires BT, to the extent it has not already done so, to take the following steps:

- a) within three months of the date of this section 96C Notification, BT must contact all Relevant Customers who have purchased since 17 June 2022 a fixed term contract via EE BT Local Business and EE business Digital Website (non-automated) to:
 - i) inform them of their entitlement to leave the contract without incurring an early termination charge;
 - ii) provide them with the Contract Summary and Contract Information documents;
- b) within five months of the date of this section 96C Notification, BT must take all reasonable steps to refund any Relevant Customers for EE or Plusnet-branded services, who have paid an early termination charge which should not have been levied by virtue of BT's contraventions set out at paragraphs A1.9(a)(i) and (iii), A1.9(b) in relation to EE BT Local Business sales, and A1.9(c) in relation to EE business Digital Website (non-automated sales), by:
 - i) refunding an amount equivalent to the sum paid as an early termination charge to the Relevant Customer's billing or bank account or, where that is not possible, by cheque; and
 - ii) donating to charity an amount equivalent to sums (in total) that BT has been unable to refund to ensure that it does not benefit from the contraventions.

A1.18 BT must provide written confirmation to Ofcom that it has completed the steps specified in paragraphs A1.16 and A1.17(a), in each case no later than the end of the period specified for coming into compliance or, as the case may be, taking remedial action.

A1.19 In relation to the remedial action specified at paragraph A1.17(b), BT must:

- a) no later than three months from the date of this Confirmation Decision, provide Ofcom with its best estimate of the total amount it must refund and an update of its progress in terms of making the specified repayments; and
- b) no later than five months from the date of this Confirmation Decision, provide Ofcom with a schedule setting out the total amount of repayments made, the number of Relevant Customers who received them and the identity of any charity to which BT has donated and the amount of such donation.

A1.20 The duty to comply with any requirement imposed by a Confirmation Decision is enforceable in civil proceedings by Ofcom for an injunction, for specific performance or any other appropriate remedy or relief.¹⁸¹

Penalty

A1.21 Ofcom is imposing a penalty of **£2.8 million** on BT in respect of its contraventions of GCs C1.3 to C1.7 set out in paragraph A1.9 of this Notification. This includes a 30% discount on the penalty figure of £4 million which we would have otherwise imposed, reflecting the resource savings achieved by Ofcom as a result of BT's admission of liability and its completion of Ofcom's settlement process.

A1.22 Ofcom is requiring BT to pay that penalty to Ofcom by no later than **4 weeks** from the date of this Confirmation Decision issued under section 96C of the Communications Act. If not paid by that deadline, it can be recovered by Ofcom accordingly.¹⁸²

Interpretation

A1.23 For the purposes of this Confirmation Decision, Relevant Customer means a customer as defined in GC C1.1(a).

A1.24 Except insofar as the context otherwise requires, words or expressions used in this Confirmation Decision have the meaning assigned to them in this Confirmation Decision and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of General Conditions or the Act.

Signed by

[✂]

Ian Strawhorne

Enforcement Director

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

22 May 2024

¹⁸¹ Section 96C(6) of the Act.

¹⁸² Section 96C(7) of the Act.

A2. Ofcom's investigation

A2.1 We have set out a timeline of the investigation process below.

Investigation process

- **17 June 2022:** The date on which the GCs C1.3 to C1.7 came into force, requiring all communications providers to provide Contract Information and a Contract Summary to relevant customers.
- **22 June 2022:** Ofcom receives a complaint alleging that EE was not complying with the GCs C1.3 to C1.7 in respect to its mobile customers.
- **11 July 2022:** Ofcom contacts BT, noting the complaint and requesting information about EE compliance.
- **22 July 2022:** BT explains that it had failed to provide the required information to some EE customers.
- **4 October 2022:** Ofcom opens an investigation into EE's compliance with the GCs C1.3 to C1.7.
- **27 October 2022:** BT explains that it had also failed to provide the required information to some Plusnet and John Lewis Broadband customers.
- **17 November 2022:** First information request, focusing on EE compliance. BT responded to this request in December 2022 – see the “information gathering” table below.
- **23 January 2023:** Ofcom opens an investigation into BT's, including EE and Plusnet, compliance with the GCs C1.3 to C1.7. Given Ofcom is assessing EE's compliance as part of this wider BT investigation, the EE investigation (opened on 4 October 2022) is closed.
- **1 March 2023:** Ofcom writes to BT encouraging it to contact affected customers to raise awareness of the missing information and customers' option to request this information and/or to leave their contract without incurring an ETC.
- **8 March 2023:** Second information request, focusing on Plusnet and wider BT compliance. BT responded to this request in April 2023.
- **23 March 2023:** Third information request, gathering further information about EE compliance. BT responded to this request in April 2023.
- **26 May 2023:** Fourth information request, gathering further information about Plusnet compliance. BT responded to this request in June 2023.
- **28 June 2023:** In response to Ofcom's letter on 1 March 2023, BT provides its plan to contact affected customers.
- **3 August 2023:** Fifth information request, clarifying previous information and gathering information about BT contact with affected customers. BT responded in September, October and November 2023.
- **30 November 2023:** Sixth information request, gathering updated information on BT's relevant turnover. BT responded to this request in December 2023.
- **10 May 2023:** Ofcom issued a Notification under section 96A of the Act to BT, explaining that we have reasonable grounds to believe BT contravened GCs C1.3 to C1.7 by failing to provide the required Contract Information and Contract Summary

documents to some new and re-contracting EE and Plusnet customers from 17 June 2022.

- **15 May 2023:** BT confirmed that it wishes to settle and that, as part of the settlement procedure it has entered into with Ofcom, it:
 - a) admits it had contravened General Conditions C1.3 to C1.7;
 - b) waives its rights to submit representations in respect of this case;
 - c) will take any steps required to comply with the relevant regulatory requirement(s) and to remedy the consequences of the contravention; and,
 - d) confirmed its recognition that the penalty imposed by Ofcom in respect of the contravention would be reduced as a result of the successful completion of the settlement process.
- **20 May 2023:** Ofcom issued a revised section 96A Notification with updated wording about one of the remedial steps to be taken by BT.
- **21 May 2023:** BT confirmed that the changes to the section 96A Notification did not alter its agreement to settle.

Information gathering

We have sent six information Notices to BT throughout this investigation. For ease of reference, we have set out timings and references in the table below.

Notice	Topic	Date sent	Response(s) received	Reference
First	EE compliance	17 November 2022	8 December 2022 22 December 2022	First response, date, question number e.g. First response, 8 December 2022, Q1
Second	Plusnet / BT compliance	8 March 2023	12 April 2023 21 April 2023	Second response, date, question number
Third	EE follow-up	23 March 2023	20 April 2023	Third response, date, question number
Fourth	Plusnet follow-up	26 May 2023	12 June 2023 19 June 2023	Fourth response, date, question number

Notice	Topic	Date sent	Response(s) received	Reference
Fifth	Clarifications BT remediation plan	3 August 2023	4 September 2023 11 September 2023 <u>With further update emails on:</u> 12 September 2023 25 September 2023 13 October 2023 19 October 2023 31 October 2023 9 November 2023	Fifth response, date, question number
Sixth	BT turnover	30 November 2023	14 December 2023	Sixth response, date, question number

A3. EE and Plusnet sales channels and services

- A3.1 A summary of the EE and Plusnet sales channels and associated services which are the focus of this investigation are set out in the tables below.
- A3.2 Both EE and Plusnet sell communications products or services to customers through other sales channels which are not listed here. Where we have not listed a product or service it is because: (i) the product is not in scope of our investigation; or (ii) the sales channel provided the required information by the implementation date.¹⁸³

Table 1: EE Sales Channels and Services

EE Consumer Sales Channels	Services ¹⁸⁴
Retail ¹⁸⁵	Mobile Phone contract, SIM only contract, Mobile Broadband, Pay as you go device, Pay as you go SIM
PAYG (including sales via Third Party Retailers) ¹⁸⁶	Pay as you go device, Pay as you go SIM
Digital Website/App ¹⁸⁷	Mobile Phone contract, SIM only contract, Mobile Broadband, Pay as you go device, Pay as you go SIM
EE Business Sales Channels	Services
Retail ¹⁸⁸	Pay Monthly, SIM only contract, Handset plan, Mobile Broadband
Digital Website ¹⁸⁹	
BT Local Business ¹⁹⁰	
Retail Business Consultants ¹⁹¹	

¹⁸³ We deem the following information not to be relevant for the purposes of the investigation. (1) Sales channels where the required information was provided by the implementation date: (i) EE Inbound and Outbound telephone calls; (ii) EE Digital chat/messaging (Consumer); (iii) EE Indirect Partners; and (iv) EE Desk. (2) Services where information was provided across multiple sales channels by the implementation date: (i) EE Home Broadband; and (ii) Plusnet Mobile. (3) Services which do not meet the definition of an electronic communications service e.g. the sale of watches, laptops and tablets.

¹⁸⁴ Pay monthly services (“PAYM”) include: (i) Mobile Phone contracts; (ii) SIM only contracts; (iii) Mobile Broadband; and (iv) Handset plans. Pay as you go (“PAYG”) services include Pay as you go devices and Pay as you go SIMs.

¹⁸⁵ EE Consumer Retail sales channel: “A high street store where the customer can enter and discuss options face to face with an advisor.” First Response, 8 December 2022, Q1 and ‘Q1%20Channels.xlsx’.

¹⁸⁶ EE Third Party Retailer sales channel: “A retail setting where a customer can purchase a product off the shelf with no interaction with an advisor. This channel would also include airports where purchases can be made via vending machines”. First response, 8 December 2022, Q1 and ‘Q1%20Channels.xlsx’.

¹⁸⁷ EE Consumer Digital Website/App sales channel: “An online service where the customer can make purchases using the internet”. BT has explained that “Ordering through the My EE app, follows the digital customer journey.” First response, 8 December 2022, Q1 and ‘Q1%20Channels.xlsx’.

¹⁸⁸ EE Business Retail stores sales channel: “High street EE Stores selling standard volume products to SOHO and SME customers.” First response, 8 December 2022, Q6 and ‘Question%206.xlsx’.

¹⁸⁹ EE Business Digital sales channel: “Website where SOHO and SME customers can purchase standard volume products online.” First response, 8 December 2022, Q6 and ‘Question%206.xlsx’.

¹⁹⁰ EE BT Local Business sales channel: “Consists of [redacted] partners which are split across [redacted] regions in the UK who can sell standard EE products to SOHO and SME customers.” First response, 8 December 2022, Q6 and ‘Question%206.xlsx’.

¹⁹¹ EE Retail Business Consultants sales channel: “Specialist business sales reps selling standard volume products to SOHO and SME customers.” These sales either take place via retail stores or at desk e.g., through telephone/webchat. First response, 8 December 2022, Q6, ‘Question%206.xlsx’ and Q7(a).

Plusnet and John Lewis Broadband

A3.3 We have provided a summary of the Plusnet sales channels and associated services which are the focus of this investigation in the table below.

Table 2: Plusnet Sales Channels and Services

Plusnet Consumer Sales Channels	Services
Plusnet Contact Centre ¹⁹²	Broadband and landline
Plusnet Digital (Online) ¹⁹³	
John Lewis Broadband ¹⁹⁴ Contact Centre	
John Lewis Broadband Digital (Online)	
Plusnet Business Sales Channels	
Plusnet Business Contact Centre	
Plusnet Business Online	

¹⁹² Plusnet and John Lewis Broadband consumer / Plusnet Business Contact Centre sales channels: “The sale is facilitated by a telephone call into one of our contact centres where the customer can have a 2-way conversation with a contact centre sales representative”. Second response, 12 April 2023, Q2 and Q8(a).

¹⁹³ Plusnet and John Lewis Broadband consumer / Plusnet Business Digital (Online) sales channels: “An online service via [www.plus.net/ www.johnlewisbroadband.com] where the customer can make purchases using the internet. Customers can sign up for one of Plusnet’s services without having to interact with a sales representative, but customers can contact an agent via the chat function, which allows a 2-way written conversation if they so wish.” Second response, 12 April 2023, Q2(a) and (b).

¹⁹⁴ “John Lewis Broadband” is a trading name of John Lewis plc, but its services are provided by Plusnet with all contracts existing between Plusnet and its customers. Second response, 12 April 2023, Q1.

A4. Table of figures showing number of affected sales and related remedial action

- A4.1 These tables show the sales channels we have found in breach, the volume of affected customers and the number of customers contacted under BT's remediation plan.
- A4.2 BT has been unable to provide the actual number of affected customers for some sales channels due to limitations with how it internally reports its data. It has therefore provided an estimate of the number of affected sales with a supporting explanation, noting that some figures may be marginally higher than the true number of affected customers.¹⁹⁵

¹⁹⁵ BT provided estimated figures for some sales channels due to the following internal reporting issues:

- (a) Unable to split out small business customers with ten or less employees from larger businesses. This affected the EE Business Retail, EE BT Local Business, EE Business Digital (non-automated) and Plusnet Business (Contact Centre and Digital (Online)) channels. Second Response, 12 April 2023, Q12(c); Third response, 20 April 2023, Q12(b) and (c); and, Fifth Response, 11 September 2023 Q1(b);
- (b) Weekly reporting as opposed to daily reporting, affecting the EE Business Retail and EE Business Digital (non-automated) channel. First response, 8 December 2023, Q9(c) and Fifth Response, 11 September 2023, Q1(b);
- (c) Unable to split out reporting for EE Consumer Digital Website / App sub-channels and has therefore provided the number of sales up until the latest date for introduction of the required documents on these sub-channels ([redacted] August 2022). First Response, 8 December 2023, Q4(c);
- (d) Discrepancy in sales data versus the number of customers who ultimately connected to the network for EE Retail Business Consultants channel, Third Response, 20 April 2023, Q9. BT subsequently provided updated figures in an email from [redacted] (BT) to [redacted] (Ofcom) dated 9 November 2023; and
- (e) Reporting based on individual customer "lines" and one customer may have multiple lines. This affected the EE Business Retail and EE Retail Business Consultant channels. Third response, 20 April 2023, Q9 and Q12(c).

EE Consumer¹⁹⁶

Brand	Customer type	Contract type	Sales channel(s)	Services (in scope)	Implementation deadline for CI/CS	Date CI/CS provided to new customers	Number of days before CI/Cs provided (from 17/06/22)	Number of affected sales	Total affected sales	Number of customers BT intended to contact in its remedial action plan ¹⁹⁷	Customers contacted in BT plan	Customers contacted in BT plan %
EE	Consumer	PAYM	Retail (EE stores)	Mobile Phone contract, SIM only contract, Mobile Broadband	17 June 2022	[§<] Sep 2022	[§<] [approximately 3 months]	[§<]	[§<]	[§<]	[§<]	100%
			Digital Website/App	As above	17 June 2022	[§<] Aug 2022 ¹⁹⁸	[§<] [approximately 2 months]	[§<]				
						[§<] Aug 2022	[§<] [approximately 2 months]	[§<]				
EE	Consumer	PAYG	Retail (EE stores) Digital Website/App Third Party Retailers	Pay as you go device, Pay as you go SIM	17 June 2022	[§<] August 2022 (after the point of sale)	Ongoing	[§<]	[§<]	[§<]	[§<]	100%
Total affected EE Consumers									[§<] [900,000 to 1,100,000]	[§<]	[§<]	100%

¹⁹⁶ First response, 8 December 2022, Q2/3, ‘Q2 and 3 Third Party Retail_PAYG process’ and Q4(c); Third response, 20 April 2023, Q3(a) and Q7; and, an email from [§<] (BT) to [§<] (Ofcom), 13 October 2023.

¹⁹⁷ In most cases, the difference between the number of affected customers and the number of these customers that BT plans to contact is “a result of customers either leaving the network or upgrading onto another BT Group product prior to the comms start date for PCI/CS. [BT] have therefore not attempted to contact these customers.” Email from [§<] (BT) to [§<] (Ofcom), 13 October 2023.

¹⁹⁸ The sales process for four of the Digital sales sub-channels was updated on [§<] August 2022: (i) “Acquisition”; (ii) “Upgrade (new)”; (iii) “Addline”; and (iv) “LO Unauthenticated Upgrade”. The fifth sub-channel “Upgrade (existing)” was updated on [§<] August 2022. Third response, 20 April 2023, Q7.

EE Business¹⁹⁹

Brand	Customer type	Contract type	Sales channel(s)	Services (in scope)	Implementation deadline for CI/CS	Date CI/CS provided to new customers	Number of days before CI/Cs provided (from 17/06/22)	Number of affected sales	Total affected sales	Number of customers BT planned to contact in its remedial action plan†	Customers contacted in BT plan	% Customers contacted in BT plan
EE	Business	PAYM	Business Retail (sales in EE stores) ²⁰⁰	Pay Monthly, SIM only contract, Handset plan, Mobile broadband	17 June 2022	[X] Sep 2022	[X] [approximately 3 months]	[X]	[X]	[X]	[X]	100%
			Retail Business Consultants (store sales) ²⁰¹	As above	17 June 2022	[X] Sep 2022	[X] [approximately 3 months]					
EE	Business	PAYM	Digital Website (nonautomated)	As above	17 June 2022	Ongoing	Ongoing	[X]	[X] [50,000 to 100,000]	Not part of remediation plan		0%
			EE BT Local Business	As above	17 June 2022	Ongoing	Ongoing	[X]				0%
Total affected EE Business customers, to date									[X] [50,000 to 100,000]	-	-	

¹⁹⁹ Third response, 20 April 2023, Q3(a) and (b); Fifth response, 11 September 2023, Q1(b); and, emails from [X] (BT) to [X] (Ofcom), 13 October 2023 and from [X] (BT) to [X] (Ofcom), 9 November 2023.

²⁰⁰ In the case of EE Business Retail and Retail Business Consultant sales, these figures are different because BT has “remove[d] those customers with more than 10 employees, and a cohort of customers found not to be affected. Additionally, some customers have churned or upgraded.” Email from [X] (BT) to [X] (Ofcom), 19 October 2023.

²⁰¹ Ibid.

Plusnet consumer²⁰²

Brand	Customer type	Contract type	Sales channel(s)	Services (in scope)	Implementation deadline for CI/CS	Date CI/CS provided to new customers	Number of days before CI/CS provided (from 17/06/22)	Number of affected sales	Total affected sales	Number of customers BT planned to contact in its remedial action plan†	Customers contacted in BT plan	% Customers contacted in BT plan
Plusnet	Consumer	PAYM	Contact Centre (interim solution)	Broadband and fixed voice services	17 June 2022	[§<] Sep 2022	[§<] [approximately 3 months]	[§<]				
			Contact Centre (full solution)			[§<] Oct 2022	[§<] [approximately 4 months]					
			Digital (Online)	As above	17 June 2022	[§<] Oct 2022	[§<] [approximately 4 months]	[§<]				
Plusnet (John Lewis Broadband)	Consumer	PAYM	Contact Centre	As above	17 June 2022	Not provided. Stopped selling product on [§<] Oct 2022.	[§<] [approximately 4 months]	[§<]		Not part of remediation plan		0%
			Digital (Online)	As above	17 June 2022		[§<]	[§<]				
Total affected Plusnet Consumers									[§<] [150,000 to 200,000]	-	-	

²⁰² Second response, 12 April 2023, Q4(b): ‘Plusnet Home Contact Centre from [§<]/2022’ and ‘Plusnet Home Online from [§<]/2022’ diagrams, Q5, Q6(c), Q7(a), Q12(a) and (b), Q19(b) and (c); and, emails from [§<] (BT) to [§<] (Ofcom), 13 October 2023 and from [§<] (BT) to [§<] (Ofcom), 31 October 2023.

Plusnet Business²⁰³

Brand	Customer type	Contract type	Sales channel(s)	Services (in scope)	Implementation deadline for CI/CS	Date CI/CS provided to new customers	Number of days before CI/Cs provided (from 17/06/22)	Number of affected sales	Total affected sales	Number of customers BT planned to contact in its remedial action plan†	Customers contacted in BT plan	% Customers contacted in BT plan
Plusnet	Business	PAYM	Contact Centre	As above	17 June 2022	Not provided. Stopped selling product on [§<] Nov 2022.	[§<]	[§<]	[§<] [0 to 50,000]	Not part of remediation plan		0%
			Digital (Online)	As Above	17 June 2022		[§<]					
Total affected Plusnet Business customers									[§<] [0 to 50,000]	-	-	

† See Footnote 195 for an explanation of the difference between the number of affected customers and the number of these customers that BT planned to contact.

²⁰³ Second Response, 12 April 2023, Q11 and Q12(c) and Fourth response, 12 June 2023, Q11.

Overall number of affected BT sales to date

A4.4 This table shows the overall number of affected BT sales to date. Please see the tables above for further information.

Segment	Number of affected sales, to date
All EE Consumer	[X] [900,000 to 1,100,000]
All EE Business customers, to date	[X] [50,000 to 100,000]
All Plusnet Consumer (inc. John Lewis Broadband)	[X] [150,000 to 200,000]
All Plusnet Business customers	[X] [0 to 50,000]
Overall affected BT (EE/Plusnet) sales to date	1,315,193

A5. Glossary

Many of the terms used in this document have the meaning assigned in the [General Conditions](#) (“GCs”). However, for ease we have set out some of the relevant definitions below.

Term	Meaning
Act	the Communications Act 2003
BT	British Telecommunications Plc, registered company number 01800000
Communications Provider or ‘CP’	a person who (within the meaning of section 32(4) of the Act) provides an Electronic Communications Network or an Electronic Communications Service
Consumer	any natural person who uses or requests a Public Electronic Communications Service or Bundle for purposes which are outside his or her trade, business, craft or profession
Contract Information	means the information set out in the Annex to Condition C1
Contract Summary	means the information required and set out in accordance with the contract summary template specified by the European Commission under Commission Implementing Regulation (EU) 2019/2243 of 17 December 2019 establishing a template for the contract summary to be used by providers of publicly available electronic communications services pursuant to Directive (EU) 2018/1972 ²⁰⁴
Customer	in relation to a Communications Provider, means the following (including any of them whose use or potential use of the network, service or Bundle is for the purposes of, or in connection with, a business): (a) the persons to whom the network, service or Bundle is provided in the course of any business carried on as such by the Communications Provider; (b) the persons to whom the Communications Provider is seeking to secure that the network, service or Bundle is so provided; (c) the persons who wish to be so provided with the network, service or Bundle, or who are likely to seek to become persons to whom the network, service or Bundle is so provided
Directory	means a printed document containing Directory Information on Subscribers of Number-based Interpersonal Communications Services in the United Kingdom which is made available to members of the public
Durable Medium	means paper or email, or any other medium that: (a) allows information to be addressed personally to the recipient; (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and (c) allows the unchanged reproduction of the information to be stored
Early Termination Charge	means a charge that may be payable by the Subscriber for terminating a contract before the end of the Commitment Period
EE	EE Limited, registered company number 02382161

²⁰⁴ See [Commission Implementing Regulation \(EU\) 2019/2243](#)

Electronic Communications Service	means any of the following types of service provided by means of an Electronic Communications Network, except so far as it is a Content Service: ²⁰⁵ (a) an Internet Access Service; (b) a Number-based Interpersonal Communications Service; and (c) any other service consisting in, or having as its principal feature, the conveyance of Signals, such as a Machine-to-Machine Transmission Service or a transmission service used for broadcasting
General Conditions	Ofcom's General Conditions of Entitlement, see an unofficial consolidated version of the General Conditions that came into force on 15 May 2023
Handset Plan	customers agree to pay a regular monthly fee for a handset(s) for a set period
Implementation Date	17 June 2022, the date when new rules on Contract Information and Contract Summaries came into force
Micro or Small Enterprise Customer	in relation to a Communications Provider which provides services to the public, means a Customer of that provider acting in the course of a business which is carried on by that Customer, and for which not more than 10 individuals work (whether as employees or volunteers or otherwise), but who is not himself a Communications Provider
Mobile Broadband	broadband which connects through the mobile network, using a wireless router to share the signal
Mobile Phone Contract or Pay Monthly (PAYM) services	customers agree to pay a regular monthly fee for their communications service for a set period. The contract will usually include an allowance of inclusive minutes, texts and data each month
Not-For-Profit Customer	in relation to a Communications Provider which provides services to the public, means a Customer of that provider, which is a body for which no more than 10 individuals work (whether as employees or otherwise but excluding volunteers) and which, by virtue of its constitution or any enactment: (a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes; and (b) is prohibited from directly or indirectly distributing among its members any part of its assets (otherwise than for charitable or public purposes)
Pay as you go (PAYG)	customers pay for minutes, texts and data in advance by topping up their SIM with credit and can change or end their deal at any time
Plusnet	Plusnet Plc, registered company number 03279013
Public Electronic Communications Service	means any Electronic Communications Service that is provided so as to be available for use by members of the public
SIM-only Contract	a SIM-card only contract where customers have a monthly allowance of calls, texts and data, usually on one-month or 12-month plans

²⁰⁵ Content Service “means so much of any service as consists in one or both of the following: (a) the provision of material with a view to its being comprised in Signals conveyed by means of an Electronic Communications Network; (b) the exercise of editorial control over the content of Signals conveyed by means of such a network.”

SME	a segmentation of business customers, defined by BT as having <i>"up to 99 employees"</i>
SoHo	defined by BT as <i>"A segmentation of business customers, standing for "Small Office Home Office" which we categorise as 6 employees and fewer"</i>