



Notification of Contravention of General Condition 14.4 under section 96C of the Communications Act 2003

Notification issued to Vodafone Limited (“Vodafone”)
by the Office of Communications (“Ofcom”)

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Section 1

Explanatory Statement

1.1 This document explains Ofcom's confirmation decision to Vodafone Limited ("Vodafone") under section 96C of the Communications Act 2003 (the "Act"), in respect of its contravention of the regulatory condition known as General Condition ("GC") 14.4 (the "Confirmation Decision"). The Confirmation Decision itself is at Annex 1.

Executive summary

1.2 Ofcom has determined that between 1 January 2014 and 5 November 2015, Vodafone breached GC 14.4 which relates to complaints handling. We have imposed a penalty of £925,000 on it.

1.3 For consumers, pursuing a complaint can result in varying degrees of frustration, anger, stress, and unnecessary expenditure of time and money. Whilst a fair and effective complaints handling procedure cannot necessarily eliminate these negative experiences, it mitigates them and protects and empowers consumers. The rules improve the prospect of a satisfactory resolution being achieved, and provide information to consumers who remain unhappy with the response of their options (particularly free Alternative Dispute Resolution ("ADR")). This supports the wider public good of maintaining general consumer confidence and trust in the market.

1.4 Vodafone's procedures:

- were not, as required, effective to "ensure" the fair and timely resolution of complaints (as defined by Ofcom), to clearly established timeframes;
- nor did they, as required, secure that a Written Notification of the consumer's right to free ADR was sent to customers if a complaint remained unresolved after 8 weeks and no relevant exceptions applied.

1.5 Ofcom has considered all the circumstances of the particular case and determined that the penalty is appropriate and proportionate. It is lower than it would otherwise have been because Vodafone entered into a settlement agreement with Ofcom, thereby saving the public money and resources that would have been required to complete the case.

Process

1.6 General Condition 14.4 requires:

"The Communications Provider shall have and comply with procedures that conform to the Ofcom Approved Code of Practice for Complaints Handling when handling Complaints made by Domestic and Small Business Customers about its Public Electronic Communications Services."

1.7 The Ofcom Approved Code of Practice for Complaints Handling when handling Complaints made by Domestic and Small Business Customers about its Public Electronic Communications Services (the "Code of Practice") is contained in Annex 4 to GC14. It requires that Communications Providers have complaints handling

procedures which are “effective” to ensure the fair and timely resolution of Complaints, to clearly established timeframes.

- 1.8 Sections 96A – 96C and 97 of the Communications Act 2003 (the “Act”) give Ofcom powers to enforce this condition.
- 1.9 Section 96A provides for Ofcom to issue a notification where we have reasonable grounds to believe a person has contravened such a condition. Amongst other things, that notification can specify a penalty Ofcom is minded to impose and must specify a period within which the person notified may make representations in response.
- 1.10 Section 96C provides for Ofcom to issue a confirmation decision, once the period for making representations has expired, if after considering any representations we are satisfied the person has contravened the relevant condition. A confirmation decision may, amongst other things, confirm imposition of the penalty specified in the section 96A notification or a lesser penalty.
- 1.11 Section 97 provides that a penalty may be such amount not exceeding ten per cent of the notified person’s turnover for relevant business for the relevant period as Ofcom determine to be appropriate and proportionate to the contravention for which it is imposed. Section 392 of the Act requires Ofcom to publish and have regard to guidelines for determining penalties.
- 1.12 On 11 June 2015, Ofcom opened an own-initiative investigation into Vodafone’s compliance with GC 14.4. On the basis of the information and evidence gathered as part of its investigation, Ofcom concluded that it had reasonable grounds for believing that Vodafone contravened GC14.4 between 1 January 2014 and 5 November 2015 (the “Relevant Period”). Ofcom issued Vodafone with a notification under section 96A of the Act (the “section 96A Notification”) on 3 June 2016.
- 1.13 The section 96A Notification set out Ofcom’s provisional finding that Vodafone has contravened GC14.4 during the Relevant Period by failing to have procedures that conform to the Code of Practice when handling Complaints made by Domestic and Small Business Customers about its Public Electronic Communications Services.
- 1.14 Specifically, the section 96A Notification set out that Vodafone’s procedures:
 - were not, as required by paragraph 3 of the Code of Practice, effective to “ensure” the fair and timely resolution of Complaints, to clearly established timeframes;
 - nor did they, as required by paragraph 4(d) of the Code of Practice, secure that a Written Notification was sent to customers if a Complaint (as defined in the Code of Practice) remained unresolved after 8 weeks and no relevant exceptions applied.
- 1.15 The basis for Ofcom’s findings in the section 96A Notification was twofold. First, Vodafone’s systems and processes were insufficient to ensure that all complaints were treated as such. Second, its processes were insufficient to ensure that complaints were escalated to appropriate timetables.
- 1.16 The section 96A Notification further notified Vodafone that Ofcom was minded to impose a penalty on Vodafone in respect of the contravention.

- 1.17 Vodafone made written representations on the section 96A Notification (the “Written Representations”) on 1 July 2016.
- 1.18 On 24 October 2016 Vodafone wrote to Ofcom:
- Admitting its liability in relation to the nature, scope and duration of the contravention as set out in this document;
 - Confirming its acceptance that this document would be published, being a formal finding of contravention against it;
 - Confirming that it would pay the penalty set out in this finding;
 - Confirming its acceptance it will no longer benefit from the settlement discount if it appeals the decision or it fails to comply with the requirements of the settlement; and
 - Confirming that it would accept a streamlined administrative process.

Ofcom’s findings

- 1.19 Based on the information and evidence gathered as part of our investigation (as set out in the Section 96A Notification)¹, and having carefully considered Vodafone’s Written Representations, Ofcom is satisfied that Vodafone contravened GC 14 (specifically GC14.4). We are satisfied that, during the Relevant Period, Vodafone’s procedures:
- were not, as required by paragraph 3 of the Code of Practice, effective to “ensure” the fair and timely resolution of Complaints, to clearly established timeframes;
 - nor did they, as required by paragraph 4(d) of the Code of Practice, secure that a Written Notification was sent to customers if a Complaint (as defined in the Code of Practice) remained unresolved after 8 weeks and no relevant exceptions applied.
- 1.20 Ofcom’s decision is that the documents provided by Vodafone up until November 2015 did state that an unresolved “complaint” would need to be escalated but gave insufficient and ambiguous guidance to frontline agents about what a complaint is. Use of broader words like “issue” and “challenge” within working instructions and the training was not sufficient to ensure that all complaints would be treated appropriately by frontline agents because it occurred within a framework that was expressed to apply only to “complaints”. Frontline agents were not given clear guidance on whether to treat a customer contact as a complaint to begin with, and they were not consistently told in the extant documents that they should consider all “issues” or “challenges” as complaints or how to address complaints arising in relation to how a customer communication was handled. Vodafone’s quality assurance (evaluation) process for staff involved the review of too small a proportion of customer contacts to make up for the ambiguity and inconsistency in staff instructions.² Its approach to the

¹ These are information and evidence obtained in Vodafone’s responses to First and Third Information Notices and the Clarification Letter (as defined in the section 96A Notification).

² The customer contacts reviewed were of all kinds, and were not necessarily complaints. Based on the evidence provided by Vodafone in its Written Representations and attachment 44 of Vodafone’s Third Response, over the

escalation of queries was also not made sufficiently clear. We consider that our finding on this matter is corroborated by Vodafone's representations and by the findings of Vodafone's own internal documents and staff communications.³

- 1.21 It follows from the conclusion that Vodafone's procedures were not such as to secure that all complaints were handled appropriately (in that they were not escalated), that they were also not effective to secure that they were resolved fairly, in a timely way or consistently with the requirement to issue Written Notifications within 8 weeks. However, this conclusion on its own only relates to the risk that staff did not recognise that they needed to take action (at all) in relation to some complaints.
- 1.22 Ofcom has also considered further evidence suggesting that complaints were not resolved in a timely way, and that Written Notifications were not issued when required, relating to how clear the procedures were about the escalation timeframes and responsibilities. This would have affected any customer contact which was in effect being treated as a complaint (even if not identified as one), so potentially captures customer contacts that were not of a type affected (as set out above) by ambiguity over what counted as a complaint.
- Work instructions contained no timeframes for the steps within the escalation process. Also, though they made it clear that customers had to be informed of their right to ADR after 8 weeks, they did not make it clear that all the steps in the escalation process would need to have been carried out and the complaint reach Customer Relations before this would happen, nor, though they identified the person responsible at each step in the escalation process, did they make it clear whose responsibility it was overall to make sure complaints were forwarded in good time.
 - The instruction to escalate "immediately" was given in only one document⁴, (though it was a document that was available on the intranet at all times) and was not consistent with what was possible in the reality of all cases since Vodafone has explained that where, for example, resolving the complaint "straightaway" involved a bill recalculation, this would be carried out in accordance with Vodafone's billing cycle and accordingly may take up to 30 days to be completed. Training given in January 2015 said that "Escalations [to Customer Relations] must only be raised after an Operations Manager has spoken with the customer." This suggests that if it was not possible to contact the customer, it was not clear whether, or when, it should be escalated.
 - There is no evidence of any Service Level Agreement for a call back being communicated to the relevant staff prior to January 2015 or otherwise than by the training of that date, and Vodafone tells us that that this training was only delivered to frontline agents.
 - Vodafone told us in its Clarification Response that "should an agent not capture the details of the interaction with the customer and follow up on the same, Vodafone does not currently have a consistent process to track and

Relevant Period 0.37% of total customer contacts were subject to Quality Assurance. Taking the period just from January 2015 to the end of the Relevant Period, the percentage of contacts subject to review was 0.42%.

³ Page 24 of the Third Response; Slide 3 of attachment 15 to the Third Response; attachment 49 of the First Response, slide 4 and 5 of Attachment 31 of the First Response.

⁴ "ADR fast help": Response to the First Information Notice, Annex 2, attachment 50 and the Clarification Response, Annex 2, attachment 13

escalate complaints which have been unresolved for 8 weeks”.⁵ Ofcom accepts that agents were told to take notes. However, Vodafone provided evidence suggesting that effective procedures were not in place to ensure that staff did so.

- Our view is corroborated by Vodafone’s own representations and internal documents⁶ and also by the findings of an independent study commissioned by Ofcom and carried out by Mott MacDonald that Vodafone had only logged a start date for a complaint in 35 out of 173 cases (20%) and that an 8-week letter ought to have been sent in 129 cases (75%) but was not.⁷

Penalty

- 1.23 As set out in our Penalty Guidelines⁸, the amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty. Based on its preliminary results released on 17 May 2016, Vodafone’s turnover for relevant business for the year to 31 March 2016 was in the region of £6bn.⁹
- 1.24 For consumers, pursuing a complaint can result in varying degrees of frustration, anger, stress, and unnecessary expenditure of time and money. Whilst a fair and effective complaints handling procedure in line with that set out in the GC 14 and the Ofcom Code cannot necessarily eliminate all these negative experiences, they nonetheless mitigate them and protect and empower consumers when they are in dispute with their Communications Provider (“CP”).
- 1.25 In particular, the rules ensure that consumers who expect either a response or resolution to their expression of dissatisfaction receive one in a fair and timely manner. They improve the prospect of a satisfactory resolution being achieved, and provide information to consumers who remain unhappy with the response of their options (particularly free ADR). Even where the outcome is not the one sought by the consumer, the consumer has the comfort of knowing that their complaint has been considered in an appropriate way, going through to a written communication setting out their options should they wish to take the matter further. This supports the wider public good of maintaining general consumer confidence and trust in the market.
- 1.26 We accept that it is likely that Vodafone staff would have identified the “most complaining” customers as complaints, and have reduced the penalty we initially proposed for Vodafone in this regard. However, we remain of the view that while we do not have evidence of actual consumer harm arising directly from Vodafone’s contravention, it caused potential non-trivial consumer harm throughout the Relevant Period and we have given this potential consumer harm significant weight.
- 1.27 We accept that the contravention was neither deliberate nor reckless, and that senior management were involved in seeking to address the issues from October 2014.

⁵ Clarification Response page 19.

⁶ Cover letter page 6 of the First Response; slide 4 and 5 of Attachment 31 of the First Response; page 19 and 28 of the Clarification Response;

⁷ Mott MacDonald investigated 173 complaints which reached the ADR scheme between January and June 2014 and in relation to which the customer said they had not received a Written Notification. Some of these cases may, of course, have related to cases which were dealt with by Vodafone prior to the beginning of the Relevant Period. However, the first set of working instructions applicable within the Relevant Period dated back to May 2013.

⁸ <https://www.ofcom.org.uk/about-ofcom/policies-and-guidelines>

⁹ Vodafone news release on 17 May 2016, page 29

http://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2016/dl_prelim2016.pdf

However, we consider that Vodafone was aware of the matters giving rise to this contravention finding from October 2014 and we do not consider that the steps taken were effective or sufficient until (at the earliest) November 2015.

- 1.28 We consider that the fact the contravention continued for around a year after a penalty was imposed on Three for breach of the same condition and in a context where EE was under investigation too means that those cases had an insufficiently deterrent effect. The Explanatory Note to Ofcom's Penalty Guidelines made it clear that if, in any particular case, we consider that the level of penalties set in previous cases is not sufficient effectively to enforce against the regulatory contravention concerned, and to deter future breaches, Ofcom may set higher penalties under the guidelines. We placed significant weight on the need for deterrence in this case. However, having had regard to Vodafone's representations, we have determined that the penalty we provisionally proposed was too high, and have therefore reduced it.
- 1.29 Ofcom does not consider the time Vodafone spent responding to our information requests to be a factor tending towards a smaller penalty. Compliance with an information request is a legal duty.
- 1.30 However, we have taken into account Vodafone's co-operation in settling the case in determining the appropriate penalty. Ofcom considers the discount to be appropriate and proportionate given the saving of public money and resources that completion of the case would otherwise have required.
- 1.31 Taking account of our Penalty Guidelines and Vodafone's very large turnover, our judgment is that a penalty of £925,000 would secure our objective of deterrence and be appropriate and proportionate to the contravention for which it is imposed.

Annex 1

Notification to Vodafone Limited of contravention of General Condition 14.4 under section 96C of the Communications Act 2003

Section 96C of the Communications Act 2003

A1.1 Section 96C of the Communications Act 2003 (the “Act”) allows the Office of Communications (“Ofcom”) to issue a decision (a “Confirmation Decision”) confirming the imposition of requirements on a person where that person has been given a notification under section 96A of the Act, Ofcom has allowed that person an opportunity to make representations about the matters notified, and the period allowed for the making of representations has expired. Ofcom may not give a Confirmation Decision to a person unless, having considered any representations, we are satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 96A.

A1.2 A Confirmation Decision:

- a) must be given to the person without delay;
- b) must include the reasons for the decision;
- c) may require immediate action by the person to comply with the requirements of a kind mentioned in section 96A(2)(d) of the Act,¹⁰ or may specify a period within which the person must comply with those requirements; and
- d) may require the person to pay:
 - i) the penalty specified in the notification issued under section 96A of the Act, or
 - ii) such lesser penalty as Ofcom consider appropriate in light of the person’s representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, and may specify the period within which the penalty is to be paid.

General Conditions

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

A1.4 The Schedule to a Notification issued by the Director General of Telecommunications on 22 July 2003 under section 48(1) of the Act, which took effect from 25 July 2003, sets out the General Conditions of Entitlement (the

¹⁰ Such requirements include those steps that Ofcom thinks should be taken by the person in order to comply with a General Condition, or to remedy the consequences of a contravention of a General Condition.

“General Conditions” or “GCs”) which apply to all Communications Providers (“CPs”) defined in each GC. The GCs have, from time to time, been amended.¹¹

General Condition 14.4

A1.5 On 22 July 2010, Ofcom published the statement “*A Review of Consumer Complaints Procedures*” and notified the establishment of the Ofcom Approved Code of Practice for Complaints Handling (the “Ofcom Code” which is Annex 4 to GC14). The rules around the handling of complaints came into force on 22 January 2011, while the requirements regarding facilitating access to ADR came into force on 22 July 2011.

A1.6 GC14.4 requires:

“The Communications Provider shall have and comply with procedures that conform to the Ofcom Approved Code of Practice for Complaints Handling when handling Complaints made by Domestic and Small Business Customers about its Public Electronic Communications Services.”

A1.7 The Ofcom Approved Code of Practice for Complaints Handling when handling Complaints made by Domestic and Small Business Customers about its Public Electronic Communications Services requires that a CP have complaints handling procedures which:

“**Are effective:**

a) *A CP must ensure the fair and timely resolution of Complaints.*

b) *There must be clearly established timeframes and a clear and reasonable escalation process for dealing with Complaints*”¹²

and

“**Facilitate appropriate access to Alternative Dispute Resolution**

...

d) *A CP must ensure Complainants receive prompt Written Notification of their right to go to Alternative Dispute Resolution eight weeks after the Complaint is first brought to the attention of the CP, unless:*

(i) *it is reasonable to consider the Complaint has been resolved; or*

(ii) *it is reasonable to consider the Complaint to be vexatious: or*

(iii) *the subject-matter of the Complaint is outside the jurisdiction of the CP’s Alternative Dispute Resolution scheme.*”¹³

¹¹ A consolidated version of the General Conditions as at 28 May 2015 is available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0026/86273/CONSOLIDATED_VERSION_OF_GENERAL_CONDITIONS_AS_AT_28_MAY_2015-1.pdf

¹² Paragraph 3

¹³ Paragraph 4(d)

Subject of this Confirmation Decision

A1.8 This Confirmation Decision is addressed to Vodafone Limited (“Vodafone”), whose registered company number is 01471587. Vodafone’s registered office is Vodafone House, The Connection, Newbury, Berkshire, RG14 2FN.

Notification given by Ofcom under section 96A

A1.9 On 3 June 2016, Ofcom issued a notification under section 96A of the Act (“the section 96A Notification”) to Vodafone. That notification stated that Ofcom had reasonable grounds for believing that between 1 January 2014 and 5 November 2015 (the “Relevant Period”), Vodafone contravened GC14.4 by failing to have procedures that conform to the Code of Practice when handling Complaints made by Domestic and Small Business Customers about its Public Electronic Communications Services.

A1.10 The section 96A Notification also specified the penalty Ofcom was minded to impose on Vodafone.

A1.11 Vodafone was given until 1 July 2016 to make written representations to Ofcom about the matters set out in the section 96A Notification. It did so on that date.

Confirmation Decision

A1.12 Having served the section 96A Notification on Vodafone, which allowed it the opportunity to make representations, the period allowed for making representations having now expired, having carefully considered Vodafone’s representations and in light of the admissions Vodafone made to us in a letter dated 24 October 2016, Ofcom is satisfied that Vodafone has, in the respects notified, been in contravention of the condition specified in the section 96A Notification (specifically GC14.4) in the Relevant Period. Ofcom has decided to give Vodafone a Confirmation Decision, and to impose a financial penalty, in accordance with section 96C of the Act. The reasons are set out in the Explanatory Statement to which this Confirmation Decision is annexed.

Requirements

A1.13 Taking full account of the steps it has taken in these regards, and to the extent, if any, it has not already done so, the steps which Ofcom confirms should be taken by Vodafone to comply with GC14.4 are such steps as are necessary for ensuring that its procedures:

- a) are effective to ensure the fair and timely resolution of Complaints, to clearly established timeframes; and
- b) secure that a Written Notification is sent to customers if a Complaint (as defined in the Code of Practice) remains unresolved after 8 weeks and no relevant exceptions apply.

Penalty

A1.14 Ofcom has determined that a penalty of £925,000 be imposed on Vodafone. Vodafone has until 5.00pm on Tuesday 22 November 2016 to pay Ofcom the penalty.

Interpretation

A1.15 Words or expressions used in this Confirmation Decision have the same meaning as in the GCs or the Act except as otherwise stated in this Confirmation Decision.

Lindsey Fussell, Ofcom

25 October 2016