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

Confirmation Decision served on Care Free Communications Limited (Care Free) by the Office of Communications (Ofcom)

**This version is non-confidential. Confidential redactions are indicated by [X].**

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# Contents

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## Section

1. Executive Summary	1
2. The Investigation	3
3. Analysis and evidence of contravention	7
4. Penalty	11
5. List of Annexes	18

## Annex

A1. Confirmation Decision to Care Free Communications Limited of contravention of General Condition 14.5 under section 96C of the Communications Act 2003	19
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# 1. Executive Summary

- 1.1 This document explains Ofcom’s confirmation decision to Care Free Communications Limited (Care Free) under section 96C of the Communications Act 2003 (the Act) in respect of its contraventions of General Condition (GC) 14.5 (the Confirmation Decision). The Confirmation Decision is at **Annex 1**.
- 1.2 GC 14.5 seeks to protect consumers by ensuring that they are appropriately protected and empowered in their dealings with their Communications Providers (CPs) and have redress to a Dispute Resolution (ADR) Scheme where their complaints are not resolved to their satisfaction. Section 96C of the Act allows Ofcom to issue a decision to a person where that person has been given a notification under section 96A of the Act.
- 1.3 Having carefully considered the information and evidence provided to us, we are satisfied that, during 10 October 2016 to the present (the Relevant Period), Care Free contravened, and in one respect continues to contravene, GC 14.5 by failing to be a member of an ADR Scheme<sup>1</sup> and to comply with final decisions made under that Scheme. Specifically:
- a) Care Free has not been a member of an ADR scheme from at least 28 March 2017 and this contravention is ongoing; and
  - b) Care Free failed to comply with five final decisions of an ADR Scheme by the deadline stated in those decisions.
- 1.4 On 19 February 2018, Ofcom issued a notification under section 96A of the Act (the Section 96A Notification) to Care Free (a copy of which is at Annex 6 of this Confirmation Decision). The Section 96A Notification set out Ofcom’s reasonable grounds for believing that Care Free had contravened and, in some respects, was continuing to contravene GC 14.5. The Section 96A Notification also set out Ofcom’s proposals for imposing a financial penalty on Care Free.
- 1.5 Care Free was given an opportunity to make representations to Ofcom about the matters set out in the Section 96A Notification and accompanying explanatory statement. Care Free did not make any formal representations.
- 1.6 We have decided to impose a penalty on Care Free. Our decision is that a fixed penalty of £10,000 would be appropriate and proportionate to the contraventions in respect of which it would be imposed. We have also decided that a daily penalty of £100 would be appropriate and proportionate in respect of its ongoing failure to be a member of an ADR Scheme.
- 1.7 The daily penalty will apply from the date on which the Confirmation Decision is issued to Care Free and will continue to accrue for each calendar day that Care Free is not a member

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<sup>1</sup> There are two Ofcom-approved ADR schemes: (i) The Ombudsman Services (OS) Scheme; and (ii) the Communications and Internet Services Adjudication Scheme (CISAS).

of a Dispute Resolution Scheme during the period from 24 April 2018 until 24 May 2018 (inclusive) (the Compliance Period).

- 1.8 In Ofcom's judgement, the penalty imposed on Care Free:
- a) reflects the seriousness and duration of the contraventions;
  - b) reflects the harm to Customers and ensures that Care Free does not profit from its contraventions;
  - c) is sufficiently material having regard to Care Free's small size and turnover; and
  - d) is large enough to incentivise Care Free to change its behaviour and to deter similar misconduct by it and other CPs in the future.
- 1.9 In taking that view, we have had regard to all the evidence referred to in Sections 2-4 of this document, together with our published Penalty Guidelines.<sup>2</sup> The basis for our view as to the amount of the penalty is explained in Section 4.
- 1.10 Care Free has until **5pm on 24 May 2018** (the Deadline) to pay the fixed penalty. It must also, by the Deadline, pay to Ofcom the sum of £100 for each calendar day that it is not a member of a Dispute Resolution Scheme during the Compliance Period.

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<sup>2</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/106267/Penalty-Guidelines-September-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf)

## 2. The Investigation

### The Regulatory Framework

- 2.1 Care Free is a CP<sup>3</sup> providing telephone and broadband services to Domestic and Small Business Customers.<sup>4</sup> All CPs who offer services consisting in the provision of electronic communications networks or services are required to comply with a number of GCs which have been imposed under sections 45 to 55 of the Act.
- 2.2 GC 14 includes rules which are designed to ensure CPs handle customers complaints appropriately.
- 2.3 GC 14.5 states that *“The Communications Provider shall implement and comply with a Dispute Resolution Scheme, including any final decision of the Dispute Resolution Body made in accordance with that Scheme, for the resolution of disputes between the Communications Provider and its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services”*.<sup>5</sup>
- 2.4 A *“Dispute Resolution Scheme”* is defined in GC 14 as *“procedures approved or established from time to time by Ofcom for the purposes of this Condition in accordance with sections 52, 54 of 55 of the Act”*, and the *“Dispute Resolution Body”* is defined as *“the body of persons responsible for administering a relevant Dispute Resolution Scheme”*. Ofcom has approved two Dispute Resolution Schemes: the Ombudsman Services (OS) and the Communications and Internet Services Adjudication Scheme (CISAS).<sup>6</sup>
- 2.5 Therefore, GC 14.5 requires Care Free to hold membership of either the OS or CISAS ADR Scheme, and to comply with the final decisions of that Scheme.

### The decision to investigate

- 2.6 Ofcom’s decision to open the investigation followed a series of earlier engagements with Care Free regarding its compliance with GC 14.5.
- 2.7 Ofcom engaged extensively with Care Free during the period between 27 September 2016 and 21 March 2017, in order to highlight Ofcom’s concerns that Care Free did not have a complaints handling procedure on its website as required by GC 14.4.<sup>7</sup> This included three formal warnings. Our final warning on 21 March 2017 also informed Care Free that we were concerned that it may be operating in breach of GC 14.5 on the basis that it was no

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<sup>3</sup> “Communications Provider” is a defined term which, for the purposes of GC 14 means a person who provides Public Electronic Communication Services to Domestic and Small Business Customers (GC 14.13(b)).

<sup>4</sup> For the purposes of GC 14.5, a “Domestic and Small Business Customer” is defined as a customer of a CP who is neither “(i) himself a [CP]; nor (ii) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).” See also paragraphs 3.4.

<sup>5</sup> The full text of the General Conditions is available here:

[https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0026/86273/CONSOLIDATED\\_VERSION\\_OF\\_GENERAL\\_CONDITIONS\\_AS\\_AT\\_28\\_MAY\\_2015-1.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0026/86273/CONSOLIDATED_VERSION_OF_GENERAL_CONDITIONS_AS_AT_28_MAY_2015-1.pdf)

<sup>6</sup> CISAS is run by the Centre for Effective Dispute Resolution (CEDR), we refer to CISAS throughout this notification.

<sup>7</sup> Annexes 5.3-5.5 and 5.7; for more details see Annex 2 (Chronology).

longer a member of an ADR Scheme.<sup>8</sup> This was based on information provided to Ofcom by OS, advising us that it had expelled Care Free as a member of its ADR Scheme due to non-payment of “*case fees and remedies*”.<sup>9</sup> Details of this engagement are set out more fully in Annex 2 (Chronology).

- 2.8 On 25 May 2017, Ofcom opened an enquiry<sup>10</sup> into Care Free’s compliance with GC 14.5. We requested representations from Care Free by 9 June 2017. Care Free did not respond.
- 2.9 On 12 June 2017, we sent a further copy of the letter dated 25 May 2017 to Care Free’s trading address and extended the deadline for representations to 20 June 2017.<sup>11</sup> Care Free did not respond.
- 2.10 As part of our enquiry, we also contacted OS and CISAS in order to obtain information as to Care Free’s membership of an ADR Scheme.
- 2.11 CISAS confirmed that it terminated Care Free’s membership on 14 March 2016 for repeated non-payment of membership fees.<sup>12</sup> It also provided information that it had obtained a default judgment for unpaid fees in June 2016 which remained unpaid by Care Free and was eventually written off as a bad debt. CISAS said that Care Free has not been permitted to re-subscribe to its Scheme.<sup>13</sup>
- 2.12 OS confirmed that Care Free became a member of its Scheme on 29 April 2016. OS also provided information that, during its time as a member, Care Free had failed to comply with five final decisions by the deadline stated in the decision. It confirmed that Care Free was no longer a member of OS’s ADR Scheme.<sup>14</sup>
- 2.13 Having considered all the matters raised in the above correspondence, and in light of our Enforcement Guidelines,<sup>15</sup> we opened an investigation into Care Free’s compliance with GC 14.5 on 23 October 2017.<sup>16</sup>

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<sup>8</sup> Annex 5.7, p.14-16.

<sup>9</sup> Email from OS to Ofcom, 9 March 2017 (Annex 5.6, p.11-13); Email from OS to Ofcom, 29 June 2017 (Annex 5.11, p.33-34). “Case fees and remedies” refer to the fees that are charged if the provider of an ADR Scheme is required to handle a dispute which has been submitted to it by a customer.

<sup>10</sup> Annex 5.9 (p.21-26). An ‘enquiry’ is referred to as an ‘initial assessment’ under our revised Enforcement Guidelines that were published on 28 June 2017: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf)

<sup>11</sup> Annex 5.10 (p.27-32).

<sup>12</sup> Email CISAS to Ofcom dated 11 July 2017 enclosing letter CISAS to Care Free dated 14 March 2016 (Annex 5.12, p.35-38); confirmed in CISAS Response to s135 (Annex 4.6, p.93, 101-102). Email CISAS to Ofcom dated 12 February 2018 (Annex 5.16, p.55).

<sup>13</sup> Email CISAS to Ofcom dated 25 September 2017 (Annex 5.13, p.39-44).

<sup>14</sup> Email OS to Ofcom dated 12 October 2017 (confirmed in OS Response, Annex 4.8, p.151-152, 157-200).

<sup>15</sup> Ofcom, *Enforcement Guidelines*, 28 June 2017 -

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

<sup>16</sup> Annex 5.14, p.45-52.

## Information gathering

2.14 As part of the investigation we used our powers under section 135 of the Act to gather information from Care Free, CISAS and OS, about whether Care Free was a member of an ADR scheme, and had complied with any final decisions issued by an ADR Scheme from 10 October 2016 to 7 November 2017 (collectively referred to throughout this document as ‘Information Notices’).

### Care Free

2.15 Ofcom sent Care Free a formal request for information under section 135 of the Act on 7 November 2017<sup>17</sup> (the First Notice). Care Free responded to the First Notice on 21 November 2017<sup>18</sup> and 8 December 2017,<sup>19</sup> and it provided further clarification on 18 January 2018<sup>20</sup> (collectively referred to throughout this document as ‘the First Response’).

2.16 Ofcom sent Care Free a second formal request for information under section 135 of the Act on 20 December 2017 (the Second Notice).<sup>21</sup> Care Free responded to the Second Notice on 23 January 2018 (the Second Response).<sup>22</sup> As requested in the Second Notice, this provided details of its relevant turnover.

### CISAS

2.17 Ofcom sent CISAS a formal request for information under section 135 of the Act on 8 November 2017.<sup>23</sup> We received CISAS’s response on 9 November 2017,<sup>24</sup> which confirmed that Care Free was not a member of its ADR Scheme at any time during the Relevant Period.<sup>25</sup>

### OS

2.18 Ofcom sent OS a formal request for information under section 135 of the Act on 8 November 2017 (the OS Notice).<sup>26</sup> OS responded on 15 November 2017<sup>27</sup> and provided

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<sup>17</sup> Annex 4.1, p.1-12.

<sup>18</sup> Care Free’s 1<sup>st</sup> Response to First Notice (Annex 4.2, p.15), which did not provide all the information requested in the First Notice. On 27 November 2017, Ofcom wrote to Care Free reminding it of its obligation to provide that the information requested in the First Notice and setting a new deadline of 29 November 2017 (Annex 4.2, p.17).

<sup>19</sup> Care Free’s 2<sup>nd</sup> Response to First Notice (Annex 4.2, p.21-45), which was incomplete as it failed to include several attachments. On 20 December 2017, Ofcom requested that Care Free provide further clarification by 15 January 2018 (Annex 4.2, p.52-53).

<sup>20</sup> Care Free’s 3<sup>rd</sup> Response to First Notice, 18 January 2018 (Annex 4.2, p.47-66).

<sup>21</sup> Annex 4.3, p.71-74.

<sup>22</sup> Annex 4.4, p.79-81.

<sup>23</sup> CISAS Notice, Annex 4.5, p.83-90.

<sup>24</sup> CISAS Response, Annex 4.6, p.91-104.

<sup>25</sup> CISAS Response, see p.93. CISAS confirmed on 12 February 2018 that Care Free is not a member of its ADR Scheme (Annex 5.16, p.55) and again on 19 March 2018 (Annex 5.18, p.60).

<sup>26</sup> Annex 4.7, p.105-112.

<sup>27</sup> Letter OS to Ofcom dated 13 November 2017 (received by email 15 November 2017), Annex 4.8, p.113-200. On 12 December 2017, we sought further clarification from OS (Annex 4.8, p.145-146), attaching email OS to Ofcom dated 12 October 2017 (Annex 4.8, p.151-200).

further clarification on 15 December 2017<sup>28</sup> (collectively referred to throughout this document as the 'OS Response').

- 2.19 As requested in the OS Notice, the OS Response included information about the period during which Care Free was a member of the OS ADR Scheme, prior to being expelled, and its compliance with OS's five final decisions during the Relevant Period.
- 2.20 OS also confirmed that Care Free had not re-joined its Scheme.<sup>29</sup>

## Section 96A Notification

- 2.21 After careful assessment of the information gathered, Ofcom issued a Section 96A Notification to Care Free on 19 February 2018, which set out its reasonable grounds for believing that Care Free had contravened, and in one respect, continued to contravene, GC 14.5 by failing to be a member of an ADR Scheme and to comply with final decisions made under that Scheme. Specifically:
- a) Care Free had not been a member of an ADR Scheme from at least 28 March 2017; and
  - b) Care Free had failed to comply with five decisions of an ADR Scheme by the deadline stated in those decisions.
- 2.22 Care Free had until 5.00pm on 16 March 2018 to make representations to Ofcom about the matters set out in the Section 96A Notification and accompanying explanatory statement. Care Free did not make any representations.

## Subsequent Events

- 2.23 Since the 16 March deadline, Ofcom has had further communications with Care Free, OS and CISAS. On 19 March 2018 both ADR Scheme providers confirmed to Ofcom that Care Free was not a member of their respective Scheme. On 4 April 2018, OS again confirmed that Care Free was not a member of its Scheme, and CISAS confirmed the same on 6 April 2018.<sup>30</sup>
- 2.24 CISAS has indicated that Care Free would not be permitted to re-subscribe to its Scheme until it received payment for these outstanding amounts (approximately £2,000).<sup>31</sup> Similarly, OS has indicated that repayment of outstanding amounts is also a prerequisite to joining its Scheme (see paragraphs 3.5c and 3.5d).
- 2.25 Care Free has not informed Ofcom that it has joined either Scheme.

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<sup>28</sup> Letter OS to Ofcom dated 13 December 2017 (received by email 15 December 2017), Annex 4.8, p.145-200.

<sup>29</sup> OS Response, Annex 4.8, p.150. OS confirmed on 13 February 2018 that Care Free is not a member of its ADR Scheme (Annex 5.15, p.53) and on 19 March 2018 (Annex 5.17, p.59).

<sup>30</sup> Annexes 5.17-5.20. CISAS provided further confirmation of this on 6 April 2018 (Annex 5.20, p.63).

<sup>31</sup> Email CISAS to Ofcom dated 25 September 2017 (Annex 5.13, p.39-44); File note of call with CISAS dated 4 April 2018 (Annex 5.19, p. 61)



## 3. Analysis and evidence of contravention

### Summary

- 3.1 We carried out an assessment of the information and evidence gathered as part of the investigation. This included information obtained from Care Free, CISAS and OS.
- 3.2 Having carefully considered this information and evidence, we are satisfied that, during the Relevant Period, Care Free contravened (and continues to contravene) GC 14.5.
- 3.3 Our reasons for reaching this decision are as follows:
- a) Care Free is a CP which has been providing Public Electronic Communications Services (PECS) to Domestic and Small Business Customers<sup>32</sup> during the Relevant Period;
  - b) Care Free was not a member of an ADR Scheme provided by CISAS during the Relevant Period<sup>33</sup> and has not been a member of an ADR Scheme provided by OS from at least 28 March 2017;<sup>34</sup> and
  - c) During the Relevant Period, Care Free did not comply with five final decisions issued by OS by the compliance deadline stipulated in those decisions.<sup>35</sup> It appears that Care Free did eventually comply with these final decisions, but only after significant delays (between 73 and 199 days in the cases where we have been provided with this information).<sup>36</sup>

### Care Free is a CP providing PECS to Domestic and Small Business Customers

- 3.4 In the First Response, Care Free confirmed that it was providing telephone and broadband services, which fall within the definition of PECS. Throughout the Relevant Period, Care Free was providing those PECS to customers who were not themselves CPs and who did not have more than ten people working for them (referred to throughout this document as 'Customers'). Care Free's customer base declined over the course of the Relevant Period; it had 510 Customers at the end of October 2016 and 369 Customers at the end of November 2017.<sup>37</sup> Nevertheless, at all times during the Relevant Period, Care Free was a CP providing PECS to Domestic and Small Business Customers.

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<sup>32</sup> See footnote 4 above.

<sup>33</sup> CISAS Response, Annex 4.6, p. 93.

<sup>34</sup> See paragraph 3.5 for explanation of 'at least' and Annex 2 (Chronology).

<sup>35</sup> See paragraphs 3.9-3.13 and Annex 3 (Final Decisions).

<sup>36</sup> See paragraphs 3.9-3.13 and Annex 3 (Final Decisions).

<sup>37</sup> Care Free's 2<sup>nd</sup> Response to the First Notice, Q1, Annex 4.2, p.25.

## Care Free was not a member of an ADR scheme

3.5 The responses to the Information Notices showed the following:

- a) Care Free was a member of CISAS's ADR Scheme during the period 1 July 2014 to 14 March 2016.<sup>38</sup>
- b) Care Free was a member of OS's ADR Scheme, for the period between 29 April 2016 to (at least) 26 January 2017;<sup>39</sup>
- c) OS removed Care Free as a member of its ADR Scheme for failing to pay the relevant "case fees".<sup>40</sup> There is a discrepancy as to when this occurred, but it was at some time between 26 January 2017 and 28 March 2017.<sup>41</sup>
- d) Care Free contacted OS on 28 March 2017 to discuss making payment of its outstanding debt (approximately £2,000)<sup>42</sup> so that it could re-join as a member of OS's ADR Scheme.<sup>43</sup> However, this payment was not made. On 19 April 2017, OS said that it would not accept Care Free's proposal for payment via instalments<sup>44</sup> and would require payment in full before Care Free could be "reinstated" as a member.<sup>45</sup>
- e) While Care Free stated in its response to the Information Notices that it had been in "regular communication" with OS about re-joining its ADR Scheme since that time,<sup>46</sup> it did not provide Ofcom with any evidence to support this assertion.<sup>47</sup>

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<sup>38</sup> CISAS Response, Annex 4.6, p.93.

<sup>39</sup> Care Free's 2<sup>nd</sup> Response to First Notice, Annex 4.2, p. 25; OS Response, Annex 4.8, p. 115.

<sup>40</sup> OS Response, Annex 4.8, p. 115; See also paragraph 2.7 and Annex 5.6, p.11-13 and Annex 5.11, p.33-34 which refer to "case fees and remedies".

<sup>41</sup> See Annex 2 (Chronology). OS Response states that it removed Care Free from its ADR Scheme on 26 January 2017, although it has no record confirming the formal termination of Care Free membership (Annex 2 and Annex 4.8, p.115), while Care Free disputes that OS informed it of this decision (Annex 5.8, p.17, Annex 4.2, p.57). Care Free's 2<sup>nd</sup> Response to First Notice says that it was a member of OS from 29 April 2016 to "April 2017" (Annex 4.2, p.25); however, Ofcom advised Care Free that it had information from OS that it was not a member on 21 March 2017 (Annex 5.7, p.15-16) and Care Free has provided correspondence between itself and OS discussing "reinstating" it as a member on 28 March 2017 (Annex 4.2, p.25-27).

<sup>42</sup> OS have provided us with correspondence between itself and Care Free seeking payment of outstanding invoices from 28 July 2016 to 14 December 2016 (OS Response, Annex 4.8, p.133-138). On 14 December 2016, the outstanding debt was £1,606 and OS required "full payment within 7 days" for Care Free to retain its membership of OS (Annex 4.8, p.138). Care Free's 2<sup>nd</sup> Response to First Notice (Annex 4.2, p.61) suggests that the outstanding debt was £2,000; while an email from Care Free to OS on 18 April 2017 suggests that the outstanding debt was £2,100 (Annex 4.2, p.62).

<sup>43</sup> OS says to Care Free that "Upon receipt of the outstanding payment, we will reinstate you as a member of our service". Email correspondence between Care Free and OS on 28 March 2017 provided in Q5, Care Free's 2<sup>nd</sup> Response to First Notice, Annex 4.2, p. 25-26.

<sup>44</sup> Email Care Free to OS on 18 April 2017 provided in Q5, Care Free's 2<sup>nd</sup> Response to First Notice, Annex 4.2, p. 26.

<sup>45</sup> Email OS to Care Free on 19 April 2017 provided in Q5, Care Free's 2<sup>nd</sup> Response to First Notice, Annex 4.2, p. 27.

<sup>46</sup> Care Free's 1<sup>st</sup> Response to First Notice stated, "We are and have been in regular communication with the Ombudsman, which can be confirmed by them also... We have now been in communication again and have been issued a new invoice to which payment will be made on 1st December 2017." Annex 4.2, p.15.

<sup>47</sup> We requested that Care Free provide us with "any documents that support your ongoing communication with OS about membership since 28 March 2017 as requested under Q5 of the 1<sup>st</sup> s135", Email Ofcom to Care Free, 20 December 2017, Annex 4.2, p.52. Care Free did not produce any documentation to support this in its 3<sup>rd</sup> Response to the First Notice, Annex 4.2, p.49-65 – at p.60 it states "previously sent – all screenshots from emails between myself and OS" referring to the information provided in Care Free's 2<sup>nd</sup> Response to First Notice (p.61-63) which only details the contact referred to in paragraph 3.5d).

- 3.6 On 19 March 2018, we received confirmation from OS and CISAS that Care Free was not a member of their respective ADR Schemes.
- 3.7 As at 6 April 2018, CISAS confirmed that Care Free had not re-joined as a member of its ADR Scheme.<sup>48</sup> As at 4 April 2018, OS confirmed that Care Free had not re-joined as a member of its ADR Scheme.<sup>49</sup> Further, Care Free has not informed us that it has subsequently become a member of an ADR Scheme.
- 3.8 Therefore, Ofcom is satisfied that Care Free was not a member of an ADR Scheme, as required by GC 14.5, from at least 28 March 2017. We also find that this contravention is ongoing and has been continuing for a period of at least 12 months.

### **Care Free did not comply with five final decisions issued by OS by the compliance deadline stipulated in those decisions**

- 3.9 Under GC 14.5, CPs must comply with any final decision made by the relevant Dispute Resolution Body in accordance with an ADR Scheme. OS requires CPs to provide remedies to complainants within 28 days of the date of its final decisions.<sup>50</sup> The OS Response and the First Response stated that there were five decisions that Care Free was required by OS to comply with during the Relevant Period.<sup>51</sup> There is no evidence to suggest that Care Free complied with these five decisions, as required by GC 14.5, by the deadline required by OS.<sup>52</sup>
- 3.10 On the basis of the information received from OS and Care Free, we note there are discrepancies as to how many of the five decisions Care Free may have complied with (either wholly or in part), subsequent to the deadline stipulated in those decisions. The OS Response suggests that, from the information held on its records:
- a) the remedies required in three final decisions were at least partly completed by Care Free after the deadline for compliance;<sup>53</sup> and
  - b) it has no record as to whether or not the remedies were completed for two final decisions.<sup>54</sup>
- 3.11 Care Free stated in its 1<sup>st</sup> response to the First Notice that “*all final decisions have been complied with*”.<sup>55</sup> Care Free provided us with subsequent detail about the individual decisions.<sup>56</sup>

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<sup>48</sup> Annex 5.21, p.63. See also Annex 4.6, p.93, Annex 5.16, p.55, Annex 5.18, p.60, Annex 15.19, p.61.

<sup>49</sup> Annex 5.20, p.62. See also Annex 4.8, p.150, Annex 5.15, p.53.

<sup>50</sup> OS Response, Annex 4.8, p.159, 169, 173, 181, 191. See also Annex 3, ‘date of final decision’ and ‘deadline’ columns.

<sup>51</sup> See Annex 3 for summary of these final decisions; First Response, Q6, Annex 4.2, p.28 and OS Response, Annex 4.8, p.149-200.

<sup>52</sup> See Annex 3, specifically the ‘date of final decision’, ‘deadline’ and ‘date complied’ columns.

<sup>53</sup> See Annex 3, specifically the ‘remedies’ and ‘OS response’ columns, final decisions 2, 4, 5.

<sup>54</sup> See Annex 3, specifically the ‘remedies’ and ‘OS response’ columns, final decisions 1 and 3.

<sup>55</sup> Care Free’s 2<sup>nd</sup> Response to First Notice, Q6(d), Annex 4.2, p.28. Our assessment of the evidence provided about Care Free’s compliance with these final decisions in response to the Information Notices is summarised at Annex 3.

<sup>56</sup> Care Free’s 3<sup>rd</sup> Response to First Notice, Annex 4.2, p. 58-59. On 20 December 2017, we asked Care Free to provide documents to support this assertion at Q6(d) (Annex 4.2, p.52).

- 3.12 We have taken account of the fact that some of the information provided by OS and Care Free relating to Care Free's compliance with OS decisions during the Relevant Period is conflicting.<sup>57</sup> In the circumstances where there is conflicting information, we have given Care Free the benefit of the doubt as to the number of final decisions with which it has complied.<sup>58</sup>
- 3.13 Therefore, taking into account the information we have received from OS and Care Free, we have found that Care Free did not comply with five final decisions by the compliance deadline, as required by GC 14.5, during the Relevant Period. In particular, we find that it has only belatedly complied with these decisions after significant delays (between 73 and 199 days).<sup>59</sup> Therefore, taking into account the information we have received from OS and Care Free, we have decided that Care Free did not comply with five final decisions by the compliance deadline, as required by GC 14.5, during the Relevant Period. In particular, we note that it has only belatedly complied with these decisions after significant delays (between 73 and 199 days in the cases where we have been provided with this information).<sup>60</sup>

## Conclusion

- 3.14 For the reasons set out above, we are satisfied that Care Free contravened GC 14.5 during the Relevant Period by failing to maintain membership of a Dispute Resolution Scheme and implement and comply with any final decision of the Dispute Resolution Body made in accordance with that Scheme. Specifically, our assessment is that Care Free contravened GC 14.5 in the following ways during the Relevant Period:
- a) it was not a member of an ADR scheme from at least 28 March 2017 and is still not a member of an ADR Scheme; and
  - b) it failed to comply with five final decisions of an ADR Scheme by the deadline stated in those decisions.

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<sup>57</sup> See Annex 3, 'OS response' and 'Care Free response'

<sup>58</sup> See Annex 3, 'Ofcom's assessment'

<sup>59</sup> In the cases where we have been provided with this information: See Annex 3, specifically the 'date of final decision', 'deadline' and 'date complied' columns.

<sup>60</sup> See Annex 3, specifically the 'date of final decision', 'deadline' and 'date complied' columns.

## 4. Penalty

- 4.1 Ofcom's decision is to impose a fixed penalty of £10,000 on Care Free for its contraventions of GC 14.5. We have also decided to impose on Care Free a daily penalty of £100 in respect of its continuing contravention of GC 14.5 in respect of its ongoing failure to be a member of an ADR Scheme. The daily penalty will apply from and accrue for each calendar day that Care Free is not a member of a Dispute Resolution Scheme during the Compliance Period.
- 4.2 In reaching this decision, Ofcom has had regard to the need to incentivise CPs to comply with their regulatory obligations and to our principal duty of furthering the interests of citizens and consumers. When setting a penalty that would achieve that objective, we have considered a number of factors in the round.
- 4.3 Our decision is that Care Free's conduct warrants the imposition of a penalty which:
- a) reflects the seriousness and duration of the contraventions;
  - b) reflects the harm to Customers and ensures that Care Free does not profit from its contraventions;
  - c) is sufficiently material having regard to Care Free's small size and turnover; and
  - d) is large enough to incentivise Care Free to change its behaviour and to deter similar misconduct by it and other CPs in the future.
- 4.4 Our reasons for reaching this decision are set out fully in this Section.

### Consideration of whether to impose a penalty

- 4.5 Ofcom may impose a penalty on a person where that person has contravened a General Condition.<sup>61</sup> It may also apply a daily penalty for continuing contraventions.<sup>62</sup>
- 4.6 In this case, we are satisfied that it is appropriate and proportionate to impose a penalty. Care Free has contravened important consumer protection provisions set out in GC 14.5. This General Condition is designed to ensure that consumers are able to resolve any dispute that they may have with their CP, by having recourse to an independent Dispute Resolution Body. GC 14.5 is, therefore, important in protecting consumers from harm and distress and maintaining consumer trust in the integrity of CPs.
- 4.7 Ofcom considers that imposing a penalty on Care Free is an appropriate course of action to secure Ofcom's objective of furthering the interests of citizens and consumers by incentivising Care Free and other CPs to comply with their regulatory obligations. We also consider that the daily penalty should act as an incentive for Care Free to quickly bring

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<sup>61</sup> Section 96C of the Act provides that, where Ofcom has issued a notice under section 96A of the Act and has allowed the relevant person an opportunity to make representations on the matters set out in that document, we may issue a decision under section 96C of the Act, confirming the requirements set out in the notification.

<sup>62</sup> Section 96B(5) states the amount of any such penalty must not exceed £20,000 per day as Ofcom determine to be appropriate, and proportionate to the contravention for which it is imposed.

itself into compliance by joining an ADR Scheme, given that the penalty would accumulate for each day that it fails to do so, up until (and inclusive of) the day on which it is required to pay the fixed penalty.

## Level of penalty

4.8 In considering the level of penalty which should be applied, Ofcom has had regard to the approach set out in its published Penalty Guidelines.<sup>63</sup>

### The Penalty Guidelines and relevant factors

4.9 As set out in the Penalty Guidelines, the central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient to have a material impact on the regulated body so that it is incentivised to bring itself into compliance and avoid recurrences of the contraventions in future. It is also important that the penalty imposed serves to deter the wider industry from contravening the regulatory requirements.

4.10 A relevant factor in securing this objective is setting a penalty at a level which, having regard to the turnover of the regulated body, will have an impact on the body that deters it from misconduct in future and which signals to other bodies that misconduct by them would result in penalties having a similar impact.

4.11 The Penalty Guidelines set out a range of further factors which may be relevant in any particular case and Ofcom has assessed those factors carefully. Ofcom has also considered whether there are any relevant precedents and the extent to which they should be followed in this case. The appropriate and proportionate amount of penalty in this case has been determined taking these factors into account in the round. The following sections set out Ofcom's consideration of each of these factors.

### Turnover of Care Free

4.12 Section 97 of the Act sets out that the 'relevant period' to be taken into account in determining turnover of the regulated body is one year ending 31 March prior to the date of the notification of contravention.<sup>64</sup> In the Second Response, Care Free stated its turnover for its relevant business in the relevant period was £171,011.<sup>65</sup> The maximum

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<sup>63</sup> Section 392 of the Act requires Ofcom to prepare and publish guidelines for determining penalties under sections 96A to 96C of the Act. Section 392(6) of the Act requires us to have regard to those guidelines when determining such penalties. The current version of the Penalty Guidelines was published on 14 September 2017:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/106267/Penalty-Guidelines-September-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf)

<sup>64</sup> Section 97 of the Act 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.

<sup>65</sup> Given that the Section 96A Notification was issued in February 2018, the relevant period for the purposes of calculating the maximum penalty Ofcom may impose, as defined in section 97(5) of the Act, is 1 April 2016 to 31 March 2017. See Second Response, Annex 4.4, p.81.

penalty which Ofcom may impose in respect of a contravention by Care Free during this period may not therefore exceed £17,101.<sup>66</sup>

### **Seriousness and duration**

- 4.13 GC 14.5 is designed to ensure that Domestic and Small Business Customers are appropriately protected and empowered in their dealings with their CPs. It ensures Domestic and Small Business Customers have an accessible forum in which to pursue complaints should attempts to do so directly with CPs fail. In this way, it helps reduce the imbalance of power between Domestic and Small Business Customers and CPs. It can also improve the prospect of customers achieving satisfactory resolution of complaints. Pursuing complaints can cause customers varying degrees of difficulty, frustration, anger, stress and unnecessary expenditure of time and money. While access to an ADR Scheme cannot necessarily eliminate these potential harms, it can mitigate them.
- 4.14 The ability for customers to pursue complaints under an ADR Scheme may also provide CPs with an incentive to:
- a) comply with their regulatory obligations and provide levels of quality and service that reduce the prospect of complaints arising in the first place; and
  - b) resolve complaints effectively and efficiently themselves.
- 4.15 As such, GC 14.5 provides important consumer protection. We consider the penalty factors relating to seriousness below.
- 4.16 As set out in paragraphs 2.7-2.13 and 3.5-3.8, Ofcom informed Care Free in March 2017 that it was aware that the CP may not be a member of an ADR Scheme and that it may not, therefore, be complying with GC 14.5. Despite informing Care Free in May 2017 that we were reviewing its compliance, and further engagement with Care Free during the course of the investigation, Ofcom is satisfied that Care Free has still not secured membership to an ADR Scheme.
- 4.17 Further, as set out in paragraphs 3.9-3.13, we are satisfied that, during the Relevant Period, Care Free failed to comply with five final decisions issued by OS by the deadlines stated in those decisions. While it appears that Care Free has subsequently complied with these final decisions, it appears this only occurred after a significant delay (between 73 and 199 days in the cases where we have been provided with this information).
- 4.18 Ofcom considers Care Free's failure to comply with GC 14.5 is serious. This is because Care Free's Customers have been without recourse to an ADR Scheme for at least 12 months.<sup>67</sup> Further, Care Free has taken a significant and, in Ofcom's view, unacceptably long time in which to comply with the final decisions issued by OS, in circumstances where the timeliness of the remedies is integral to their effectiveness.

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<sup>66</sup> Ofcom notes that where multiple contraventions may have occurred in the same period, a penalty of 10% of turnover for the relevant period may be imposed in respect of each contravention. Ofcom has not considered in this case whether it may have been possible to impose a penalty in respect of each contravention since Ofcom's assessment of the appropriate level of penalty does not exceed 10% of turnover for the relevant period in any event.

<sup>67</sup> See paragraph 3.8.

## Degree of harm

- 4.19 We are satisfied that Care Free’s contraventions of GC 14.5 may, or were likely to, have resulted in consumer harm to its Customers in two direct ways:
- a) Customers may have suffered harm in circumstances where they wished to refer a dispute to the provider of an ADR Scheme, but were denied the opportunity to do so by virtue of Care Free not being a member of such a Scheme. These Customers may have suffered financial and emotional harm (for example, stress, frustration and anger) by not being able to secure the resolution of their complaint(s). The potential for such harm to arise has now subsisted for at least 12 months and is still ongoing for its approximately 300 Customers;<sup>68</sup> and
  - b) As set out in paragraphs 3.12-3.13, five Customers were likely to have suffered actual financial and non-financial harm as a result of Care Free’s failure to comply, on time, with the remedies required by OS in five final decisions.<sup>69</sup> In addition to not receiving the monetary remedy to which they were entitled on time, these Customers may also have suffered emotional harm through lack of timely resolution of their complaint. Although it appears that Care Free has subsequently complied with these decisions, this seems to have been after significant delay.<sup>70</sup>
- 4.20 Further, Ofcom considers that indirect harm may have been, and continue to be, caused to Care Free’s Customers. Such harm may arise in circumstances where Care Free may have less incentive to handle and resolve complaints effectively and provide appropriate levels of quality and service because it is not a member of an ADR Scheme, and its customers cannot therefore access the services provided by such a Scheme.

## Any gains made (financial or otherwise)

- 4.21 We are satisfied that Care Free’s contraventions of GC 14.5 are likely to have led to financial gain. This is in circumstances where it appears that Care Free has not paid the administrative costs of being a member of an ADR Scheme, including the £2,000 (approximately) in outstanding ‘case fees’ charged by OS (as set out in paragraphs 3.5c and 3.5d) and the £2,000 (approximately) in outstanding fees owed to CISAS (as set out in paragraph 2.24). It is therefore Ofcom’s view that Care Free has gained, and continues to gain, as a result of the contraventions.

## Steps taken by Care Free to prevent, stop or remedy the contraventions, including the extent to which the contraventions occurred deliberately or recklessly and whether senior management was aware

- 4.22 Despite repeated warnings from Ofcom about its obligations under GC 14.5, we are satisfied that Care Free is not currently a member of an ADR Scheme.<sup>71</sup> Ofcom warned Care Free about this as part of our GC 14 monitoring and enforcement programme (paragraph

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<sup>68</sup> See paragraph 3.4.

<sup>69</sup> OS prescribed both financial and non-financial remedies – see: Annex 3, ‘remedies’.

<sup>70</sup> Annex 3.

<sup>71</sup> See paragraph 4.16 and Annex 2 (Chronology).



2.7) and both before and during the current investigation (paragraphs 2.8-2.9). We note that Care Free did offer OS part-payment of outstanding sums to re-join as a member of an ADR Scheme on 28 March 2017. However, since that time, and despite our enquiry and investigation, Care Free has not taken sufficient steps to become a member of any ADR Scheme (paragraphs 3.5-3.8).

- 4.23 This breach could have been prevented by Care Free paying OS's fees in a timely way to maintain its membership of an ADR Scheme. We note that Care Free's CEO acknowledges that Care Free is not a member of an ADR Scheme but points to a dispute between Care Free and OS about "*portal access*" as a reason for its non-payment of fees.<sup>72</sup> A further point raised by Care Free in the course of the investigation was that its failure to secure agreement from OS to a payment plan had meant that it had been unable to join the OS Scheme. In Ofcom's view, however, regardless of any such disputes or disagreements, it is incumbent upon Care Free to ensure that it complies with its regulatory obligations, including those set out under GC 14.5, and that it takes such steps as are necessary to achieve this.
- 4.24 It also appears that Care Free was warned repeatedly about the importance of complying with OS's final decisions, with OS sending multiple reminders to Care Free (including reminders addressed to its directors)<sup>73</sup> requesting that it provide confirmation that it had performed the remedies required.<sup>74</sup> Care Free failed to take appropriate steps to remedy the contraventions in a timely manner and appears to have only complied with OS's final decisions after a significant delay.<sup>75</sup>
- 4.25 Therefore, on the basis of the information received from OS and Care Free, it appears that Care Free (including its senior management) knew, or ought to have known, at least from 28 March 2017, that it was in breach of GC 14.5 by failing to be a member of an ADR Scheme. Despite being so aware, it is Ofcom's view that Care Free has not taken sufficient steps to stop the contravention or to prevent it from continuing. Our decision, therefore, is that Care Free was reckless in failing to take steps to prevent or rectify the contraventions.

### History of contraventions

- 4.26 Care Free does not have a history of contravening the General Conditions.

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<sup>72</sup> First Response, Annex 4.2, p.15.

<sup>73</sup> Various letters OS to Care Free (James Bradley) dated 12 September 2016, 24 October 2016, 17 November 2016, 14 December 2016 in OS Response, Annex 4.8, p.133-138. OS's final warning stated: "*We should remind you as a communication company you operate in a regulated market. A key part of that regulation is embodied in the 2003 Communication Act which requires you to be a member of an Alternative Dispute Resolution Scheme and abide by its rules. Failure to pay our fees and the binding remedies can result in us asking you to leave the scheme. At that point we would inform Ofcom that you were no longer a member of an ADR scheme and it could revoke your right to trade*".

<sup>74</sup> OS Response, Annex 4.8, p. 157-200. This contains various correspondence from OS reminding Care Free to comply with its "*legally binding*" final decisions: see, for example, OS email to Care Free on 11 July 2017 (p.199).

<sup>75</sup> Paragraphs 3.9-3.13; Annex 3.

## Co-operation with Ofcom's investigation

- 4.27 We have also taken account of the level of Care Free's co-operation with our investigation. Care Free has generally not provided Ofcom with information in a timely manner and co-operated fully with the investigation. It provided incomplete and inaccurate responses to the First Notice, which caused delay to our investigation.<sup>76</sup>
- 4.28 Ofcom's ability to require CPs to provide us with information is a critical regulatory tool in enabling us to carry out our functions. It is in the interests of citizens and consumers that we make appropriately evidenced decisions. It is therefore important that CPs, such as Care Free, take seriously their obligations to provide correct, complete and timely information.

## Precedent cases

- 4.29 We have not previously issued a penalty in respect of a contravention of GC 14.5, so there are no precedents which are specifically relevant in considering the appropriate level of any penalty in this case.

## Deterrence

- 4.30 In reaching a decision on the appropriate penalty in this case, we have also considered how likely it is to secure our central objective of deterrence. In particular, the level of the penalty must be sufficiently high to have the appropriate impact on the regulated body at an organisational level. It should incentivise the management (which is ultimately responsible for the conduct and culture of the regulated body) to change the conduct of the regulated body as a whole, and bring it into compliance. The level of the penalty should be high enough that the management recognises that it is not more profitable for a business to contravene its regulatory requirements and pay the consequences, than it is to comply with those requirements at first instance.
- 4.31 As set out above, Care Free has no previous regulatory contraventions. We note, however, the ongoing requirements of GC 14.5 and that, despite the warnings Care Free has received to date, it is still not compliant. Therefore, we consider that a daily penalty, accumulating every day that Care Free fails to join an ADR Scheme during the Compliance Period, would have a greater deterrent effect on its continued non-compliance than a fixed penalty by itself.
- 4.32 We also note that Care Free is a small CP with a relatively modest turnover (see paragraph 4.12). Any penalty designed to secure the appropriate deterrent effect should reflect this level of turnover.

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<sup>76</sup> Annex 2 (chronology).

## Ofcom's conclusion on the penalty amount

- 4.33 Considering all of the above factors in the round, the penalty we have decided to impose on Care Free a fixed penalty of £10,000 and a daily penalty of £100 in respect of its ongoing failure to be a member of an ADR Scheme. The daily penalty will apply from and accrue for each calendar day that Care Free is not a member of a Dispute Resolution Scheme during the Compliance Period. Ofcom has determined that this level of fixed penalty is appropriate and proportionate to the contraventions in respect of which it is imposed. Our objectives in setting it are to:
- a) impose an appropriate and proportionate sanction that reflects the seriousness and duration of Care Free's contraventions of GC 14.5 and its culpability in those contraventions;
  - b) reflect the harm to Care Free's Customers and ensure that the CP does not profit from its contraventions;
  - c) ensure that the impact of the penalty is sufficiently material, having regard to Care Free's small size and turnover; and
  - d) deter Care Free (and other CPs) from contravening the GCs, and GC 14.5, in particular.
- 4.34 Ofcom determines that this level of daily penalty would be appropriate and proportionate to the contravention in respect of which it would be imposed. Our objectives in setting it are:
- a) to reflect the ongoing nature of its contravention; and
  - b) to incentivise Care Free to join an ADR Scheme.
- 4.35 Having regard to Care Free's turnover, we have decided that a fixed penalty of £10,000 and daily penalty of £100 would secure these objectives in a proportionate way. It would reflect our assessment of the factors set out in the Penalty Guidelines, as described above, and does not exceed the maximum penalty Ofcom may impose.<sup>77</sup>

## Conclusion

- 4.36 On the basis of the evidence and reasoning contained in this document, Ofcom has issued the Confirmation Decision set out in **Annex 1**. The Confirmation Decision sets out the steps that Care Free must take (to ensure compliance with GC 14.5 and to remedy the consequences of its contraventions) and the penalty, including daily penalty that Care Free is required to pay. For the reasons set out above, our judgement is that these penalties are appropriate and proportionate to the seriousness of the contraventions and will deter Care Free (and other CPs) from similarly serious and ongoing contraventions of the GCs.

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<sup>77</sup> Care Free's relevant turnover is £171,011 (Second Response, Annex 4.4, p.81). Therefore, the maximum fixed penalty Ofcom may impose is £17,101.

## 5. List of Annexes

1.	Section 96C Confirmation Decision
2.	Chronology – [X] redacted from the non-confidential version
3.	OS's final decisions – [X] redacted from the non-confidential version
4.	s135 evidence – [X] redacted from the non-confidential version
5.	Other evidence – [X] redacted from the non-confidential version
6.	Section 96A Notification – [X] redacted from the non-confidential version

# A1. Confirmation Decision to Care Free Communications Limited of contravention of General Condition 14.5 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 making the 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 respects notified, been in contravention of a condition specified in the notification under section 96A.
- A1.2 A Confirmation Decision:
- a) must be given to the person without delay;
  - b) must include the reasons for the decision;
  - c) may require immediate action by the person to comply with the requirements of a kind mentioned in section 96A(2)(d) of the Act<sup>78</sup>, or may specify a period within which the person must comply with those requirements; and
  - d) may require the person to pay:
    - i) the penalty specified in the notification issued under section 96A of the Act; or
    - ii) such lesser penalty as Ofcom considers appropriate in light of the person’s representations or steps taken by the persons to comply with the condition or remedy the consequences of the contravention, and may specify the period within which the penalty is to be paid.

## General Conditions

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

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<sup>78</sup> 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.

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 “General Conditions” or “GCs”) which apply to all Communications Providers (“CPs”) defined in each GC. The GCs have, from time to time, been amended.<sup>79</sup>

## General Condition 14.5

A1.5 General Condition 14.5 (“GC 14.5”) states: *“The Communications Provider shall implement and comply with a Dispute Resolution Scheme, including any final decision of the Dispute Resolution Body made in accordance with that Scheme, for the resolution of disputes between the Communications Provider and its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.”*

A1.6 A “Dispute Resolution Scheme” is defined in GC 14.13(f) as *“procedures approved or established from time to time by Ofcom for the purposes of this Condition in accordance with sections 52, 54 of 55 of the Act”*. The “Dispute Resolution Body” is defined in GC 14.13(e) as *“the body of persons responsible for administering the relevant Dispute Resolution Scheme.”*

## Subject of this Confirmation Decision

A1.7 This Confirmation Decision is addressed to Care Free Communications Limited (“Care Free”), trading as Care Free, whose registered company number is 08075379. Care Free’s registered office is Lingley House, Commissioners Road, Rochester, ME2 4EE.

## Notification given by Ofcom under section 96A

A1.8 On 19 February 2018, Ofcom issued a notification under section 96A of the Act (“the Notification”) to Care Free, stating that Ofcom had reasonable grounds for believing that, during the period 10 October 2016 to the date of the Notification, Care Free had contravened, and was continuing to contravene, GC 14.5 by failing to ensure that it was a member of a Dispute Resolution Scheme and to comply with final decisions made in accordance with such a Scheme. Specifically, Ofcom considered that each of the following incidents amounted to a contravention of GC 14.5:

- a) Care Free had not been a member of an ADR scheme from at least 28 March 2017 to the date of the Notification and that contravention was ongoing; and
- b) Care Free had failed to comply with five final decisions of an ADR Scheme by the deadline stated in those decisions.

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<sup>79</sup> 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](https://www.ofcom.org.uk/data/assets/pdf_file/0026/86273/CONSOLIDATED_VERSION_OF_GENERAL_CONDITIONS_AS_AT_28_MAY_2015-1.pdf)

- A1.9 The Notification also notified Care Free that Ofcom was minded to impose a fixed penalty of £10,000 in respect of its contraventions of GC 14.5 and a daily penalty of £100 for each day that it failed to become a member of a Dispute Resolution Scheme after any period specified in any Confirmation Decision under section 96C of the Act.
- A1.10 Care Free was given until 5pm on 16 March 2018 to make representations to Ofcom about the matters set out in the Notification. It did not make any formal representations.

## Confirmation Decision

- A1.11 Having served the Section 96A Notification on Care Free, which allowed it the opportunity to make representations, the period allowed for making representations having now expired, having not received any representations, Ofcom is satisfied that Care Free has, in the respects notified, been in contravention of a condition specified in the Notification (specifically GC 14.5) in the Relevant Period and continues to contravene that condition by failing to be a member of a Dispute Resolution Scheme. Therefore, Ofcom has decided to give Care Free a Confirmation Decision and to impose a financial penalty, in accordance with section 96C of the Act. The reasons for Ofcom's determination are set out in the explanatory statement to which this Confirmation Decision is annexed.

## Steps that should be taken by Care Free

- A1.12 Ofcom confirms that the steps that must be taken by Care Free to comply with the requirements of GC 14.5 are to, within 31 days of the date of this Confirmation Decision:
- a) join, and maintain membership of, a Dispute Resolution Body and provide Ofcom with proof that it has done so; and
  - b) put in place procedures to ensure that it complies with all final decisions made against it by a Dispute Resolution Body by the deadline set out in the decision and the applicable Dispute Resolution Body's terms of reference or rules.
- A1.13 Ofcom further confirms that Care Free should take reasonable steps to remedy the consequences of the contraventions of GC 14.5 as follows:
- a) make payments, beyond any imposed in the final decision, to all those customers in whose favour a Dispute Resolution Body made a relevant final decision, as compensation for loss or damage suffered by them or in respect of annoyance, inconvenience or anxiety to which they have been put and/or as ex gratia payments; and
  - b) identify any Domestic and Small Business Customer with a Complaint that should have been issued a Deadlock Letter during the period that Care Free was not a member of a Dispute Resolution Scheme (i.e. from at least 28 March 2017 to the present) and make payments as compensation for loss or damage suffered by them or in respect of annoyance, inconvenience or anxiety to which they have been put and/or as ex gratia payments.

## Penalty

A1.14 Ofcom has decided to impose a fixed penalty of £10,000 on Care Free in respect of its contraventions of GC 14.5 during the Relevant Period and a daily penalty of £100 for each calendar day that it fails to become a member of an ADR Scheme from the date on which this Confirmation Decision is issued (i.e. 24 April 2018) until (and including) 5pm on 24 May 2018.

## Next Steps

A1.15 Care Free has until **5.00pm on 24 May 2018** (the Deadline) to pay Ofcom the fixed penalty of £10,000. It must also, by the Deadline, pay to Ofcom the sum of £100 for each calendar day that it is not a member of a Dispute Resolution Scheme during the period starting on the date on which this Confirmation Decision is issued and ending on the date of the Deadline (inclusive).

## Interpretation

A1.16 Words or expressions used in this Notification have the same meaning as in the GCs or the Act except as otherwise stated in this Notification.



**Gaucho Rasmussen, Director of Investigations and Enforcement, Ofcom**

24 April 2018