



LICENCE MODIFICATION: CONSUMER PROTECTION

T1676G

Final Decision

Date: 12 July 2024

Guernsey Competition & Regulatory Authority
Suite 4, 1st Floor,
La Plaiderie Chambers, La Plaiderie,
St Peter Port,
Guernsey, GY1 1WG
www.gcra.gg

1. Background

- 1.1. On 15 December 2023, the Guernsey Competition and Regulatory Authority (**GCRA**) issued notice of a proposed licence modification (**Proposed Decision**), which would remove certain clauses related to consumer complaint procedures from the “Consumer Protection” section of the licences of each telecommunications operator in Guernsey.
- 1.2. A copy of the Proposed Decision is attached to this document as Annex 1.
- 1.3. The Proposed Decision set out the modifications that the GCRA proposed to make and the reasons for proposing to make those modifications, as required by s. 8(2)(a), (b) of the Telecommunications (Bailiwick of Guernsey) Law, 2001 (**Telecoms Law**).
- 1.4. In accordance with s.8(3) of the Telecoms Law, the Proposed Decision invited any interested parties to submit comments to the GCRA by 5 p.m. on Friday 12 January 2024. Sure (Guernsey) Limited, (**Sure**) was the only licensed telecommunication operators to respond to the consultation.
- 1.5. In its representations, Sure agreed that having multiple avenues for dispute resolution could be confusing for consumers and licensed telecommunication operators.
- 1.6. Sure stated that it would be sensible for Trading Standards Services (TSS) and not the GCRA to oversee a telecom operator’s consumer codes.
- 1.7. Sure went on to suggest additional amendments to the consumer protection provisions in telecommunications licences to avoid the possibility of regulatory duplication, referring to potential areas of overlap between the powers of the GCRA and those of other regulators such as CIFO and the GFSC. Sure also proposed removing its requirement for licensed telecommunication operators to publish changes to their consumer codes 28 days in advance, arguing it may conflict with directions from other regulatory authorities such as the GFSC and CIFO.

2. Analysis

- 2.1. As regards the issue Sure has raised regarding transferring responsibility for oversight of consumer codes to TSS, the GCRA does not agree that this would be appropriate. TSS’s role largely relates to enforcement of individuals consumers’ legal rights regarding issues such as goods not being fit for purpose, goods not being as described and the right to cancel a contract. It is consumer complaints regarding issues of this type that the GCRA will transfer to TSS pursuant to the licence modification because TSS is better placed to deal with them. By contrast, the consumer codes generally relate to how each telecoms operator will treat its customers as a matter of good practice, covering matters such as customers requiring additional assistance, how to deal with malicious calls and what to do if a device is not working rather than dealing with breaches of legal obligations. As such, it appears that the possibility of actual regulatory overlap between TSS and the GCRA is likely to be low.

- 2.2. In any event, the MOU entered into between the GCRA and the TSS provides for flexible working between the GCRA and TSS to ensure that consumer complaints are dealt with appropriately. This may include transfer of complaints between the two organisations in appropriate cases. This will ensure that complaints are dealt with by the appropriate body.
- 2.3. A copy of the MOU will be published on the GCRA's website at the same time as the publication of this Decision.

3. Decision

- 3.1. Consequently, having followed the procedure set out in s.8(2) of the Telecoms Law, the GCRA directs, pursuant to s.8(3) of the Telecoms Law, that the following licence modifications shall come into effect on 12 July 2024.

- A. The following clause (the numbering of which is set out in the table in paragraph C. below) shall be amended by deleting the words struck through as follows:

"The consumer code shall identify a transparent, simple, inexpensive procedure in order to address, inter alia, the following:

(a) the appointment of a representative of the Licensee to be the first point of contact for members of the public;

(b) a means of recording complaints against and disagreements with the Licensee;

(c) the procedure and time frame in which the Licensee will respond to complaints and disagreements; and

(d) the method and duration of retention of records of complaints and disagreements; and

(e) the level of any compensation that the Licensee may offer where complaints have been upheld or not satisfactorily resolved.

~~*If a complaint or disagreement remains unresolved for 3 months, either party may refer it to the GCRA for determination."*~~

- B. The following clause (the numbering of which is set out in the table in paragraph C. below) shall be amended by deleting the words struck through as follows:

~~*"The Licensee shall participate in good faith in any dispute resolution procedure established by the GCRA for the resolution of disputes."*~~

- C. The clauses to be amended as described above are as follows:

Licensee	Licence Type	Relevant Clauses
5th Dimension (Guernsey) Limited	Mobile	15.6 and 15.8
BT Jersey Ltd (Guernsey)	Fixed	16.6 and 16.8
Business Telecom Limited	Fixed	16.6 and 16.8
Clear Mobitel Guernsey Ltd	Fixed	17.6 and 17.8
Flo Connect Ltd	Mobile	15.6 and 15.8
Gamma Telecom Holdings Ltd (Guernsey)	Fixed	16.6 and 16.8
Guernsey Airtel Ltd	Fixed	17.6 and 17.8
Guernsey Airtel Ltd	Mobile	15.6 and 15.8
JT (Guernsey) Ltd	Fixed	17.6 and 17.8
JT (Guernsey) Ltd	Mobile	15.6 and 15.8
Links Communication (Richard Bird)	Fixed	16.7 and 16.9
Logicalis Guernsey Ltd	Fixed	16.6 and 16.8
Starlink Internet Services Limited	Fixed	17.6 and 17.8
Sure (Guernsey) Limited	Fixed	17.6 and 17.8
Sure (Guernsey) Limited	Mobile	15.6 and 15.8

3.2. This document will be published on the GCRA's website and a copy will be provided to licensees. The GCRA will also publish notice of the modification in *La Gazette Officielle*.

ANNEX 1



LICENCE MODIFICATION: CONSUMER PROTECTION

T1676G

Proposed Decision

Date: 15 December 2023

Guernsey Competition & Regulatory Authority
Suite 4, 1st Floor,
La Plaiderie Chambers, La Plaiderie,
St Peter Port,
Guernsey, GY1 1WG
www.gcra.gg

1. Summary

- 1.1. The Guernsey Competition and Regulatory Authority (**GCRA**) is issuing this notice of a proposed licence modification, which removes certain clauses related to consumer complaint procedure from the “Consumer Protection” section of the licence of each telecommunications operator in Guernsey.
- 1.2. The Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023 (**Trading Standards Ordinance**), gives statutory recognition to the Trading Standards Service (**TSS**) as a service within the Committee for Home Affairs. Under the Trading Standards Ordinance, the TSS has a duty to deal with consumer complaints in relation to contract terms and has powers to deal with non-compliance by traders with their legal obligations.
- 1.3. Because telecommunication licences currently designate the GCRA as a consumer dispute resolution body, there is a risk that this function will overlap with the statutory functions of the TSS, creating uncertainty for consumers and licensees.
- 1.4. For that reason, the GCRA proposes to remove the consumer dispute resolution clauses from each licensee’s licence. This is consistent with the intention of the Trading Standards Ordinance, which has given the relevant consumer protection powers to the TSS and will also promote consistency and certainty in the resolution of telecoms related consumer disputes.

2. Structure of this Document

- 2.1. The document is structured as follows:

Section 3	Outlines the legal background to this Proposed Decision
Section 4	Sets out the reasoning that underpins the Proposed Modification
Section 5, Annexes A and B	Set out the Proposed Licence Modification Decision and Further Steps

3. Legal Background

- 3.1. Section 8(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001 (**Telecoms Law**) provides as follows:

“Having regard to the objectives set out in section 2 of the Regulation Law, and subject to the provisions of any States' Directions and the following provisions of this section, the [Authority] may modify a licence by amending or revoking any condition included in it or by adding any condition to it (including, subject to the provisions of section 9, any condition as to the application in relation to the licensee of the code).”

3.2. Before making any modifications to a licence, the GCRA must follow the procedure set out in section 8(2) of the Telecoms Law, which provides as follows:

“(2) Before making modifications under this section to a licence, the [Authority] shall publish, and (in the case of an individual licence) give to the holder of the licence, notice –

- (a) stating the modifications that [it] proposes to make,
- (b) stating the reasons why [it] proposes to make those modifications, and
- (c) specifying the time (not being less than 7 days from the date of publication of the notice) within which written representations or objections in respect of the proposed modifications may be made by interested parties.”

4. Reasoning Underpinning the Proposed Modification

4.1. For the reasons set out in section 1 above, the GCRA proposes to modify the telecommunications licence of each licensee as set out in Annexes A and B to this Proposed Decision.

5. Proposed Modification Decision and Further Steps

5.1. The GCRA hereby:

- 5.1.1. gives notice to all its current telecommunications licensees (who hold both mobile and fixed telecommunications licences) of its proposed decision to modify their licences as set out in Annexes A and B to this Proposed Decision,
- 5.1.2. gives notice to the public of the above proposed licence modification,
- 5.1.3. requests any written objections or representations from any interested party to this proposed modification and its terms (as per Annex A), before 5pm on Friday 12 January 2024, in the manner and to the address indicated below.
- 5.1.4. Responses can be submitted by email to info@gcra.gg or alternatively in writing to:

GCRA, Suite 4, 1st Floor,

La Plaiderie Chambers, La Plaiderie,

St Peter Port, GY1 1WG

All written comments should be clearly marked ‘Matter T1676: Proposed Licence Modification’. The GCRA’s normal practice is to publish responses on its website. If any part of a response is held to be commercially confidential, it should be clearly marked (by highlighting the confidential sections in colour) when the response is submitted.

5.2. The proposed licence modification and the reasons for it will be notified to licensees in the relevant regulated sectors, publicised on the GCRA website and in the *La Gazette Officielle* for any public comment and/or objection.

Annex A

Within the amendments below, lines struck through any words indicate current wording which will be removed by the modification.

Proposed Amendments

1. The GCRA proposes to amend the “Customer Protection” clause in the licences of all its telecommunications licensees as indicated below. Relevant section numbers for each licensee are presented as **Annex B**.

The below clause is amended as follows:

“The consumer code shall identify a transparent, simple. Inexpensive procedure in order to address, inter alia, the following:

(f) the appointment of a representative of the Licensee to be the first point of contact for members of the public;

(g) a means of recording complaints against and disagreements with the Licensee;

(h) the procedure and time frame in which the Licensee will respond to complaints and disagreements; and

(i) the method and duration of retention of records of complaints and disagreements; and

(j) the level of any compensation that the Licensee may offer where complaints have been upheld or not satisfactorily resolved.

~~*If a complaint or disagreement remains unresolved for 3 months, either party may refer it to the GCRA for determination.”*~~

The below clause is amended as follows:

~~*“The Licensee shall participate in good faith in any dispute resolution procedure established by the GCRA for the resolution of disputes.”*~~

Annex B

Licensee	Licence Type	Relevant Clauses
5th Dimension (Guernsey) Limited	Mobile	15.6 and 15.8
BT Jersey Ltd (Guernsey)	Fixed	16.6 and 16.8
Business Telecom Limited	Fixed	16.6 and 16.8
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