

Notice of intention to impose a financial penalty pursuant to section 30A(3) of the Gas Act and section 27A(3) of the Electricity Act 1989

Proposal of the Gas and Electricity Market Authority ("the Authority") to impose a financial penalty, following an investigation into compliance by E.ON Energy Solutions Limited ("E.ON") with its obligations under conditions 25 ("SLC 25") and 23 ("SLC 23") of the Standard Conditions of the Electricity and Gas Supply Licences.

16 May 2014

1. Summary

- 1.1 The Authority hereby gives notice that it proposes to impose a financial penalty on E.ON Energy Solutions Limited following an investigation by Ofgem into E.ON's compliance with SLC 25 (Marketing Gas/Electricity to Domestic Customers) and SLC 23 (Notification of Domestic Supply Contract Terms) of its gas and electricity supply licences.¹
- 1.2 E.ON has admitted that it breached SLCs 23 and 25 and has offered a fuel poverty package amounting to £12m, which will directly benefit consumers, as well as to contact and offer compensation to customers that may have been affected by September 2014. In addition, E.ON has improved its systems and suspended outbound sales in order to improve its sales practices.
- 1.3 The Authority considers the payments made by E.ON will be of greater benefit to energy customers than if a substantial penalty were imposed. Accordingly, the Authority considers it is appropriate in the circumstances of this investigation to impose a reduced penalty of £1. If E.ON were not making these contributions, the Authority would have considered it appropriate to impose a much larger penalty on E.ON.
- 1.4 The Objective of SLC 25 is to ensure that all information provided to consumers during the course of Marketing Activities (that is, face-to-face sales activities including doorstep sales) and Telesales Activities (that is, sales activities conducted by telephone) is complete, accurate, capable of being easily understood, not misleading and otherwise fair. SLC 25 also requires that the company has appropriate training and management arrangements in place to ensure compliance with SLC 25.
- 1.5 SLC 23.1 requires suppliers to take all reasonable steps to communicate the principal terms of the contract the customer is entering into, in plain and intelligible language.
- 1.6 These provisions are extremely important to safeguard the interests of consumers. When these provisions are breached, consumers risk being misled as to the actual costs of energy; estimates of charges and comparisons (as compared with the customer's existing supplier) can potentially be inaccurate and misleading. As a consequence, consumers may switch to a more expensive energy tariff and/or may not benefit from savings that they are led to expect. As such, they can suffer harm (financial harm and non-financial harm) and over time they may lose faith in the

¹SLCs 25 and 23 have identical wording in the gas and electricity supply licences and are interpreted by the Authority in an entirely consistent manner. In this document, a reference to an SLC by number refers to the identical condition in both licences. The term "customer" in this notice refers to "Domestic Customers" as defined in SLC 25. Similarly, "telesales", "charges", "Representatives" and "Marketing Activities" carry the same meaning as those defined terms in SLC 25. This notice refers to "principal terms" as "Principal Terms" in SLC1. All terms used in this notice are deemed to have the same definitions as those in the electricity and gas supply licences unless indicated otherwise.

market and become disengaged. Moreover, consumers' ability to make well-informed decisions and to actively participate in the market to drive effective competition can be hampered.

1.7 The Authority finds that in the Relevant Period² E.ON:

- provided misleading information to consumers, including poor estimates and comparisons of charges for the supply of energy with E.ON in contravention of SLC 25.2
- did not take all reasonable steps through management arrangements to ensure that its agents were compliant with SLC 25.2, including poor auditing provisions and failure to act adequately in response to poor audit results, even after Ofgem raised its concerns with E.ON
- used training which did not adequately train Representatives on how to sell energy in a way that was compliant with SLCs 25.2 and 25.5
- failed to have adequate management arrangements in place in accordance with SLC 25.16 to secure compliance by allowing the use of a tool for face to face sales that could be manipulated by agents and, in respect of small suppliers, did not contain all the information needed to make accurate quotes and comparisons
- did not always give principal terms of the contract to the consumer before they entered into a contract, in contravention to SLC 23.1.

1.8 A detailed description of the nature of these contraventions is provided in section 3.

1.9 E.ON has acknowledged these failings and made considerable changes and improvements to its processes. The Authority is therefore not making an enforcement order in this case.

1.10 In the circumstances, and in recognition of the payments and reimbursements to be made to the benefit of certain consumers, the Authority hereby gives notice under section 27A(3) of the Electricity Act 1986 ("the Electricity Act") and section 30A(3) of the Gas Act 1986 ("the Gas Act") of its proposal to impose a penalty of £1 on E.ON in respect of its failure to comply with SLCs 25 and 23.1 of its gas and electricity supply licences in the Relevant Period.

1.11 Any written representations on the proposed penalty must be received by Adam Crockett at Ofgem (adam.crockett@ofgem.gov.uk) by 5.00pm on 13 June 2014.

1.12 Any representations received that are not marked as confidential may be published on the Ofgem website. Should you wish for your response or part of your response to remain confidential, please indicate this clearly.

2. Background to the licence conditions

2.1. Consumers are entitled to receive clear and accurate information which is fair both in terms of its content and in terms of how it is presented. Without such information, consumers are not able effectively to compare prices, identify value for money, and make active, informed decisions about whether to switch energy suppliers accordingly. Access to clear and accurate information also helps build consumer confidence. By contrast, where consumers receive information which is not accurate they lose faith in the market and become disengaged. A market with more engaged and informed consumers, who make better choices and get better deals, is good in itself, but also leads to competitive pressures on suppliers, which results in a more efficient and innovative market.

² For Telesales Activities: June 2010 to December 2013; for Marketing Activities, June 2010 to December 2013

The requirements under SLC 25

- 2.2. Following a formal statutory consultation in August 2009, the Authority strengthened a number of supply licence obligations, including the condition relating to the marketing of gas and electricity (SLC 25).
- 2.3. The Objective of SLC 25, which took effect on 21 October 2009, is to ensure that all information which suppliers provide to Domestic Customers in the course of their Marketing or Telesales Activities:
 - is complete and accurate;
 - is capable of being easily understood by Domestic Customers;
 - does not relate to products which are inappropriate for that particular Domestic Customer;
 - does not mislead that particular Domestic Customer; and
 - is otherwise fair both in terms of its content and in terms of how it is presented.
- 2.4. Furthermore, the Objective of SLC 25 is to ensure that in their Marketing or Telesales Activities all contact with, and the behaviour of, suppliers towards customers during the course of those Activities is conducted in a fair, transparent, appropriate and professional manner.
- 2.5. Suppliers are also required to take all reasonable steps to secure the achievement of the Objective of SLC 25 and to avoid doing anything which jeopardises their ability to achieve the Objective.
- 2.6. More detailed requirements setting out minimum steps when conducting Marketing Activities took effect on 18 January 2010. These included the requirement to provide to the customer, before entering into a Domestic Supply Contract:
 - an estimate of the total annual charges for the supply of energy; and
 - a comparison of the offered charges with the customer's currently payable charges where that customer is being supplied through a prepayment meter ('PPM') or where the sales agent claims that the offered charges will be lower than the customer's current charges.
- 2.7. The detailed requirements also set out obligations for the selection and training of sales representatives ("Representatives"). Suppliers are also required to take all reasonable steps to establish management arrangements that facilitate the licensee's compliance with its obligations under SLC 25.
- 2.8. In addition, Ofgem issued guidance in April 2010 on the new SLC 25 requirements ("the Guidance"). This Guidance was issued to provide to holders of gas and electricity more clarity on certain requirements of SLC 25. The guidance can be found at the following website: <https://www.ofgem.gov.uk/publications-and-updates/guidance-domestic-marketing-licence-condition-gas-and-or-electricity-standard-licence-condition-25>.

Requirements under SLC 23

- 2.9. The Authority introduced supplier obligations in SLC 23 in August 2007 in respect of the notification of domestic supply contract terms. SLC 23.1 requires energy suppliers to take all reasonable steps to communicate the principal terms of the contract the customers are entering into, in plain and intelligible language.
- 2.10. Compliance with the licence obligations is important as it allows consumers to make the right choice for their needs. This is crucial to healthy energy markets, giving

consumers choice and value resulting in more competitive markets. By contrast, when these provisions are breached, consumers risk being misled as to the actual costs of energy and as a consequence they may switch to a more expensive energy tariff and/or or may not benefit from the full amount of savings that they are led to expect. As such, they can suffer harm (financial harm and non-financial harm) and over time they may lose faith in the market and become disengaged. Moreover, consumers' ability to make well-informed decisions and to actively participate in the market to drive effective competition can be hampered.

The Authority's investigation

- 2.11. Following consumer complaints, the Authority opened an investigation into E.ON's compliance with SLC 25 in April 2012. This followed the announcement in September 2010 that Ofgem was opening similar investigations into compliance by SSE, EDF Energy, Scottish Power and RWE npower.

3. The Authority's decision on breaches

- 3.1. After considering the relevant information in the case, the Authority finds that E.ON was in breach of SLC 25 during the Relevant Period. These breaches have been admitted by E.ON. E.ON used three sales channels during the period of the investigation. These were outsourced Telesales undertaken by third parties, in-house Telesales and Marketing Activities. E.ON as the licensee is obliged to ensure that any Activities undertaken on their behalf are compliant with the Objective of SLC 25.

Outsourced Telesales Activities

- 3.2. For Telesales Activities, licensees and their Representatives are required to meet the Objective of SLC 25. Paragraph 2.3 outlines licensee requirements to meet the Objective of SLC 25.
- 3.3. As part of the investigation, Ofgem undertook a statistically robust sample of sales calls made by E.ON outsourced Telesales Activity. The Authority's findings are based on the analysis made of these calls. The Authority finds that between June 2010 and December 2013, E.ON contravened SLC 25.2 by failing to take all reasonable steps to ensure that they and their Representatives achieved the Objective of SLC 25, for the reasons set out below.

Quotes and comparisons

- 3.4. The methodology and sales process that E.ON used to calculate estimates of charges and potential savings did not meet the requirements of SLC 25.2. As a result of E.ON's actions, consumers were provided with information that was misleading and was not complete and accurate. The Authority finds, between June 2010 and December 2013, the following breaches of SLC 25.2 by E.ON's outsourced Telesales Activities:

- (a) There is evidence that E.ON's Representatives used a methodology using a consumer's existing expenditure on energy to derive estimates of consumption. Agents would calculate the consumption level that the consumer's spend implied. E.ON would then make an estimate of charges and a comparison between suppliers.

Sales Representatives did not always gather all the information required in order to make an accurate estimate of charges. Agents failed to ask consumers if they were in debt or credit on their account. In either situation, a customer's spend may not be an accurate reflection of their current level of consumption. Agents did not robustly account for seasonal variations in

consumption. Agents also failed to ask a customer if they had an Economy 7 meter. All of these failings can lead to inaccurate estimates of charges and mean a licensee is not providing accurate information to a consumer.

- (b) If a supplier chooses to make a comparison of charges during Telesales Activities, a supplier must ascertain accurate information on the customer's existing supplier, including current tariff information. There can be a significant difference in the price of tariffs, even with the same supplier. Standard tariffs are generally among the most expensive tariffs on the market. Although the majority of customers are on their supplier's standard tariff, approximately 25% of customers are not on this type of tariff. By failing to ascertain correct tariff information, a supplier could overestimate savings claims, inducing a customer to switch who otherwise would not have done so.

Related to this, by assuming standard tariff, E.ON risked underestimating a customer's consumption. If a consumer was on a competitive, non-standard tariff, they would be using more consumption for the given spend, than for a consumer on a standard tariff with the same level of expenditure. This may then have led to estimated charges with E.ON being lower than they should have been. For some consumers, this may have prompted them to switch to E.ON.

Management Arrangements

- 3.5. In order to be compliant with SLC 25, licensees must ensure they have adequate management arrangements to ensure their Representatives are compliant with the Objective. This includes outsourced agencies, selling energy on behalf of a licensee.
- 3.6. The Authority has always regarded that having adequate processes and oversight in place is a requirement of taking all reasonable steps to ensure achievement of the Objective. Poor processes mean a greater risk of energy being missold to consumers. Poor oversight will mean licensees are slow to identify and correct problems, ensuring that the detriment to consumers continues.
- 3.7. The Authority finds that E.ON's management arrangements and oversight of how energy was sold by outsourced Telesales agencies were poor. After Ofgem had raised its concerns with E.ON there was some improvement, but Ofgem had to raise concerns for a second time before the issues were resolved. This made a significant contribution to failings in the way energy was sold to consumers. This also made a significant contribution to financial and non-financial detriment to consumers as poor practices were allowed to continue due to poor management oversight. E.ON's management did not have sufficient safeguards in place to ensure that outsourced sales were compliant with licence obligations.
- 3.8. For Telesales Activities, the Authority finds that E.ON breached SLC 25.2, by failing to take all reasonable steps to achieve the Objective. By having inadequate processes and oversight of external Telesales agencies, E.ON failed to ensure its Representatives were selling energy in a way that was complete, accurate, not misleading and otherwise fair. The relevant breach period is June 2010 to December 2013. The Authority finds that E.ON contravened SLC 25.2 with its outsourced Telesales in the following ways:
 - (a) Audits provided to E.ON by outsourced agencies highlighted that a significant number of outsourced Telesales Activities were not compliant with SLC 25. E.ON took action to try to remedy this in June 2012 and put in place a detailed Sales Improvement Plan in October 2012 but the Authority finds that the breach continued until December 2013. The remedial action that E.ON

put in place to become compliant with SLC 25 had insufficient impact on audit results.

- (b) The auditing arrangements E.ON had in place with outsourced agencies were insufficient to ensure Representatives were complying with their obligations and hence it was harder to remedy issues that were occurring. Audits took place with outsourced sales agencies every quarter. During these audits, the initial level of auditing was 12 calls per agency, per quarter. In 2012, this increased to 20 per agency, per quarter and by the third quarter of 2012 this increased to 30 calls. This level of auditing was insufficient for E.ON's management to identify all problems with outsourced Telesales, given the scale of sales activity occurring at outsourced agencies. The increase in auditing did not go far enough to remedy this issue. The level of auditing did increase with the introduction by E.ON of the Sales Improvement Plan in October 2012.
- (c) Sales agents were rewarded for successful sales with commission payments. A robust commission structure should also consider compliance with appropriate rules and legislation. Without this, agents may be incentivised to sell in a way that is not compliant with SLC 25. Between June 2010 and 2012, the commission structure for some external Telesales agencies rewarded the agents for their sales performance only, without considering whether the sales had been made in a compliant way. This encouraged agents to maximise sales in any way possible. This increased the likelihood of misselling occurring.
- (d) At E.ON's outsourced Telesales agencies, team managers were also largely rewarded with commission based on the sales performance of their team. Auditing of outsourced Telesales agents was undertaken by team managers, who were assessing their own team's performance. Follow up of non-compliant sales was left to the managers. They had a conflict of interest as they were incentivised by sales of the agents they were auditing.
- (e) There were deficiencies in E.ON's auditing criteria. Green audits were those sales that were deemed to be acceptable. E.ON's auditing required an agency to achieve 85% compliance to be considered to have sold energy in a way that was compliant with SLC 25. The requirements of the Objective of SLC 25 mean that this figure is not high enough. The Authority is of the view that it is unacceptable for 15% of sales to be non-compliant with SLC 25.

Failure to provide principal terms to a consumer before entering into a contract (SLC 23.1)

- 3.9. SLC 23.1 requires licensees to take all reasonable steps to communicate the principal terms of a domestic supply contract before entering into a contract with a consumer. Principal terms include (but are not limited to): unit rates, standing charges, contract length and termination fees.
- 3.10. The Authority finds that E.ON failed to take all reasonable steps to provide principal terms to consumers who entered into a contract following a Telesales Activity. E.ON failed to act on poor audit results, which showed agents were not complying with SLC 23.1. The relevant breach period is June 2010 to December 2013.
- 3.11. Principal terms are a key piece of information a consumer must have in order for them to decide whether to enter into a contract. Without that, the consumer cannot make an accurate assessment of whether to enter into a contract.

- 3.12. E.ON's audit results from outsourced Telesales agencies show that Representatives repeatedly failed to provide tariff rates that customers would pay if they joined E.ON. As part of the investigation, Ofgem analysed a sample of Telesales calls. Analysis of these calls showed that in the majority of cases, tariff rates were not provided. The Authority is clear that tariff rates must be provided – this is not optional as this is crucial information to a consumer to make informed decisions.
- 3.13. As a result of E.ON's actions, consumers were not given all the necessary information to make an informed decision on whether to change energy supplier. Therefore E.ON breached SLC 23.1.

In-house Telesales Activities

- 3.14. E.ON did not systematically record the Telesales Activities undertaken by its in-house Telesales staff, so analysis of call recordings was not possible. However, as similar training was rolled out to both in-house and external sales staff. There is sufficient evidence for the Authority to find similar breaches to those found in the call recordings from external sales agents. As the licensee, E.ON is required to ensure their own in-house sales agents are compliant with SLC 25. E.ON did not take all reasonable steps to meet the Objective of SLC 25 and hence contravened SLC 25.2.

Quotes and comparisons

- (a) As with outsourced Telesales, in-house Telesales used a methodology focussing on spend to calculate quotes and comparisons. Training was identical for both outsourced and in-house Telesales. Some training material stated that customer usage was the preferred method of calculating quotes and comparisons. Other training material placed more emphasis on gathering information on customer spend. E.ON's training did not accurately account for whether a consumer was in debt or credit on their account, or for seasonal variations in consumption. E.ON accepted that its training material could have had more focus on obtaining the customer's consumption from a bill or statement. Therefore, E.ON failed to meet the Objective of SLC 25 by failing to take all reasonable steps to give information that was complete, accurate, not misleading and otherwise fair.
- (b) E.ON did not always establish a consumer's existing tariff when providing a quote and comparison of charges. As part of the investigation, E.ON provided audit results from in-house Telesales Activities. These showed evidence that Representatives did not systematically obtain a customer's existing tariff. The Authority considers that this would likely result in E.ON incorrectly assuming they were on the standard tariff with their existing supplier. This meant that some estimated comparisons made to consumers will have been inaccurate and may have been too high. This may have induced consumers to switch that otherwise would not have done so. The information was not complete, accurate, not misleading or fair, breaching SLC 25.2.

Management Arrangements

- 3.15. E.ON had insufficient management arrangements in place to ensure they met the requirements of the Objective of SLC 25. The Authority finds the following breaches related to management arrangements of in-house Telesales:
- (a) For in-house Telesales there was no call recording facility in order to monitor and audit agents until February 2013. Without this E.ON was unable to review calls when a complaint was made and could not proactively monitor agents. It was harder for E.ON to identify if there were issues with the way

energy was being sold and to remedy these problems. Agents were aware they were not being monitored and this increased the likelihood of energy being sold in a non-compliant way.

- (b) The commission structure used for E.ON's in-house sales rewarded sales staff in accordance with the number of contracts sold and in the period. Between June 2010 and October 2012, E.ON did not include compliance with SLC 25 as part of its commission structure. This means agents were not penalised if they sold energy in a non-compliant way. The Authority considers that this commission structure was not adequate to ensure compliance with SLC 25 and likely contributed to an increased likelihood of misselling as a way of gaining more sales and thus higher commission.
- (c) Monitoring and auditing of sales agents was undertaken predominantly by internal managers. There was not sufficient independence from the agents to ensure that auditing was undertaken in a robust way. This means E.ON did not take all reasonable steps to ensure agents were giving information in a way that was compliant with the Objective of SLC 25.

Marketing Activities

- 3.16. During the investigation period, E.ON undertook Marketing Activities which included agents selling energy on the doorstep and face-to-face at venues and events. In addition to the requirements of the Objective, SLC 25 has specific rules on how energy must be sold during Marketing Activities.
- 3.17. The Authority finds that E.ON had a number of failings in the way that energy was sold to consumers during Marketing Activities.

Management arrangements

- 3.18. The monitoring and auditing E.ON had in place for its Marketing Activities were insufficient to ensure that agents were selling energy to consumers in a way that was compliant with SLC 25. SLC 25.16 and 25.2 require that a licensee takes all reasonable steps to establish management arrangements and have appropriate controls in place to ensure they are compliant with SLC 25.
- 3.19. The Authority has identified the following contraventions in relation to E.ON's management arrangements for its Marketing Activities:
 - (a) As part of the investigation, E.ON provided information on the size and scale of auditing that they undertook of their Marketing Activities. The Authority is of the view that the level of auditing E.ON undertook was not sufficient. Between June 2010 and August 2011, just 0.1% of all sales were audited. The scale of auditing was not significant enough for management to identify systemic problems with Marketing Activities. This meant that, if poor sales practices or misselling occurred, they were less likely to be detected.
 - (b) Agents used a tool to help them make sales called the Pentabilet. This contained tariff information to enable them to calculate bills and make comparisons between suppliers. Live auditing was introduced to audit face to face sales in August 2011. This involved a sale being audited before a contract was agreed. The Pentabilet would inform the agent that they needed to contact the audit team to have the sale assessed for compliance. The audit team would ask the customer a series of questions about the sale. This would include are they the bill payer, what product had they agreed to and what was the savings claim promised.

However, agents had the ability to bypass a live audit. They could self-select which sales were to be subjected to a live audit. E.ON's own information indicated that the majority of requested audits were bypassed by agents. Of the sales that were audited, a significant number showed compliance issues. By self-selecting, agents knew that they could omit, from auditing, any sales which were potentially non-compliant with SLC 25. This had the potential to cause significant harm to consumers, as agents could be providing false and misleading information to consumers without being detected.

Quotes and comparisons

- 3.20. The Authority finds E.ON used poor quotation practices during the course of its Marketing Activities. Specifically, the Authority has identified the following breaches of SLC 25:
- (a) Between June 2010 and September 2012, E.ON used a methodology for estimating consumption that took a customer's existing expenditure and calculated the consumption this spend implied. From this information, E.ON was able to make quotes and comparisons of charges. E.ON's training also prioritised spend over consumption for the purposes of quotes and comparisons. Training documents did not place enough emphasis on the need for complete information from consumers, for example the need to understand whether a customer was in debt. It is a requirement of SLC 25.7 that estimates must either be based on the consumer's actual consumption or the best estimate of that consumption, taking into account any relevant information that is available. By prioritising spend over consumption, and by failing to take account of important information such as levels of debt or credit, E.ON's Representatives were failing to reach the requirements of SLC 25.7. This may result in consumers being misled about the actual level of charges and potential savings from switching. Consumers may have been enticed to switch when it was not in their benefit to do so.
 - (b) Between June 2010 and January 2011, when a consumer could not recall their existing level of expenditure on energy or how much they consumed, E.ON's Pentabket used 'industry averages'. These values only represent average consumption and an individual consumer's consumption may vary significantly from these values. Both the specific requirements of SLC 25.7 and the Guidance prohibit the use of pre-formulated information that fails to take account of a customer's individual circumstances. The Authority considers the use of these averages to be a breach of SLC 25.
 - (c) When making quotes and comparisons for potential dual fuel customers, E.ON's training suggested that agents should use a 65% gas, 35% electricity share, if a consumer could not provide their own split. An individual consumer's share of gas and electricity consumption may differ significantly from the 65%/35% figures E.ON used and estimates made on this basis may entice a consumer to switch when it is not in their best interests to do so. E.ON was more competitive for gas, so this assumption on high gas shares than normal may have benefited them. The Authority considers the use of pre-formulated splits such as this to be a breach of the requirements of SLC 25.7 and is contrary to the Guidance, as it is not based on the individual characteristics of the customer.

Off walkbook sales

- 3.21. E.ON's Representatives used the Pentabket during Marketing Activities, which provided agents with 'walkbook' data. The walkbook was a list of addresses which an agent could approach to conduct sales. Agents were also allowed, at times, to sell

'off walkbook'. This means they could visit any address rather than only those in the Pentablot. Agents were permitted to work off walkbook once they reached their sales targets. While an agent had to gain approval from their team manager to work off walkbook in a general geographical location, the team manager did not control the specific addresses which the agent would approach.

- 3.22. When an agent was working off walkbook, they were not required to enter the addresses they visited or the outcome of contacts unless a successful sale was made. The Pentablot only recorded the details of properties visited when a successful sale was made off walkbook. E.ON did not maintain a list of locations, or specific addresses, visited when the agent was working off walkbook and no sale was concluded. This risked customers repeatedly being approached by agents, and made it more difficult for E.ON to identify the agent concerned in the event of a complaint from a prospective customer approached as part of an unsuccessful sale attempt. The Authority considers that the failure to control or monitor where specific agents were approaching customers was a failure to take all reasonable steps to ensure that Marketing Activities were conducted in a fair, transparent, appropriate and professional manner, in accordance with SLC 25.2.
- 3.23. Between September 2010 and December 2011, off walkbook sales represented more than half of E.ON's doorstep sales. The majority of customers sold to off walkbook were prepayment customers. E.ON's training materials instructed agents that under no circumstances were agents to sign up pre-payment customers off walkbook. However, E.ON's management took no action over agents who sold in this way.
- 3.24. Off walkbook customer approaches were not subject to the same scrutiny and auditing as customer approaches on walkbook. However, the audit procedures in relation to sales were the same on and off walkbook customer approaches. Agents were permitted to work off walkbook once they reached their sales targets. Representatives were already incentivised to sell as many tariffs as possible because of the commission structure E.ON used. The Authority considers the use of the possibility to sell off walkbook as a reward or incentive was an inappropriate process and management arrangement, and that E.ON therefore contravened SLCs 25.16 and 25.2.

Provision of poor training

- 3.25. SLC 25.5 (b) requires that a licensee provide or procure training for Representatives who are engaging in Marketing Activities, including its obligations under SLC 25. Robust training is important to ensure that employees and Representatives are capable of selling energy to consumers in a compliant way. Poor training will mean an increased likelihood of energy being missold. Ultimately, poor training is likely to cause detriment to consumers. Through the investigation, the Authority found that there was insufficient focus on the obligations under SLC 25 in training and therefore finds that E.ON breached the requirements of this provision, and its requirements to take all reasonable steps to ensure compliance in accordance with SLC 25.2.
- 3.26. Furthermore, the Authority finds that E.ON did not put in place appropriate training to ensure that Marketing Representatives were adequately trained to sell energy. For example, Ofgem guidance was issued in April 2010, but E.ON's training was not updated until August 2010 so that, until then, agents were trained to use 'industry averages' to estimate consumption. Also, when consumers did not know the split of gas and electricity consumption, E.ON's training informed Representatives to use a 65% gas share, with no consideration of an individual customer's circumstances (for example was gas the primary heating source). E.ON's training did not sufficiently instruct agents to ensure that they should be seeking a customer's consumption in the first instance for the purposes of quoting for the supply of energy.

- 3.27. Once training was completed, sales agents did not have direct access to training materials. Training materials help clarify rules and obligations regarding the way energy sales should take place. Agents will want to review these materials from time-to-time to ensure they are selling energy in a compliant way. By not giving agents access to training materials after it had been completed, E.ON were not taking all reasonable steps to achieve the Objective, SLC 25.2.

Potential manipulation of the Pentablot

- 3.28. The Pentablot, used during Marketing Activities between June 2010 and December 2013, contained tariff information for other energy suppliers. Agents used the tablet to make comparisons between E.ON and the customer's existing supplier. The Authority considers that the controls in place on the Pentablot were not sufficient to ensure compliance with SLC 25.16 and 25.2, as the information provided could be manipulated to entice customers to switch when it was not in their best interests to do so.
- 3.29. Information from E.ON's audits highlighted the Pentablot could potentially be manipulated by agents during a sale. E.ON's Representatives could input incorrect information, which would enable them to show a significant savings claim from switching supply to E.ON. Once the customer had agreed to switch, the agent would input the correct information, without the customer being aware this was happening. This practice could result in a less favourable savings claim or potentially with the customer being made worse off by switching to E.ON. The Pentablot only recorded final details entered into the system, so would not record the previous inaccurate information being inputted into the system. E.ON's auditing highlighted that some agents had been deliberately inputting incorrect information into the Pentablot to inflate savings claims. E.ON's management arrangements were not sufficient to prevent or appropriately monitor these abuses.

Quoting against a supplier not listed on the Pentablot

- 3.30. As part of the investigation, E.ON was asked to outline any issues they had identified with the Pentablot. Internal auditing identified the Pentablot did not have tariff information for some small suppliers and some agents were using the tariff information of other suppliers to make a comparison of charges. This practice would mean that a customer would not receive an accurate comparison of charges. Depending on the supplier that was wrongly inputted, this may have resulted in over inflated savings claims or a customer switching for a worse tariff than they were currently on.
- 3.31. E.ON failed to resolve this problem in a timely manner. E.ON became aware of this issue in June 2012, yet did not provide any specific instruction to agents on actions they should take if the customer's supplier was not listed in the Pentablot.
- 3.32. The Authority finds that E.ON breached SLC 25.2, which requires that licensees take all reasonable steps to secure the Objective of SLC 25. By failing to use correct supplier information E.ON's sales Representatives made misleading quotes and comparisons, against the Objective of SLC 25. The relevant breach period is June 2010 to December 2013.

4. The Authority's proposed decision on whether to impose a financial penalty

- 4.1 Under section 27A(1) of the Electricity Act 1989 and section 30A(1) of the Gas Act 1986, where the Authority is satisfied that a licence holder has contravened or is contravening any relevant condition or requirement, then it may impose a penalty of such an amount as is "reasonable in all the circumstances of the case".

- 4.2 In considering whether it would be appropriate to impose a penalty and, if so, what level of penalty, the Authority must have regard³ to the Statement of Policy with respect to financial penalties⁴ (“the Penalties Statement”).
- 4.3 The Authority is required to carry out all of its functions, including the taking of any decision as to financial penalty, in the manner which it considers is best calculated to further its principal objective and having regard to its other duties. The principal objective is to protect the interests of existing and future customers in relation to electricity conveyed by distribution or transmission systems and in relation to gas conveyed by pipes.
- 4.4 In concluding the imposition and appropriate level of penalty in this notice, the Authority has taken full account of the particular facts and circumstances of the contraventions under consideration.
- 4.5 On the basis of the evidence available in its possession, the Authority finds that the contraventions of the relevant licence obligations as described above were of a very serious nature. E.ON sales staff provided poor information regarding prices and savings to potential customers which may have enticed them to switch when it was not in their best interests to do so. The Authority also considers that the poor management practices and the slow action to remedy the breaches by E.ON potentially lengthened the period that these breaches occurred.
- 4.6 Given the scale of E.ON’s sales activities and the number of contracts entered into, the Authority finds that a significant number of customers may have been misold to.
- 4.7 The Authority considers that the breaches should have been apparent to a diligent licensee and that they were not of a trivial nature. The Authority found that E.ON did not have in place systems and processes to identify these breaches or to take sufficient actions to prevent them from occurring.
- 4.8 The Authority considers that E.ON should have been well aware of its obligations as E.ON and other licensees had been consulted on the proposed amendments to the marketing licence condition as part of the Probe in 2009. Some of the breaches continued to occur after the decisions were published for other SLC 25 investigations.
- 4.9 It was E.ON’s responsibility to have systems and processes in place to ensure that both it and its sales Representatives complied with the relevant licence obligations. The extent to which E.ON was able to provide support and fund those systems and processes was entirely within its control. This is the case in relation to contracted agency staff as well as in relation to E.ON’s own staff.
- 4.10 In addition, the Authority considers that some breaches were apparent to E.ON while others should have been apparent to E.ON. However, the Authority found that E.ON did not always have in place systems and processes in the Relevant Period to identify these breaches or to take appropriate actions to prevent them from occurring.
- 4.11 There is nothing in the Authority’s principal objective and duties that precludes the imposition of a penalty in this case.

³ Electricity Act 1989, section 27B(2); Gas Act 1986, section 30B(2)

⁴ Available at <http://www.ofgem.gov.uk/About%20us/Documents1/Utilities%20Act%20-%20Statement%20of%20policy%20with%20respect%20to%20financial%20penalties.pdf>

- 4.12 After consideration of the above, the Authority considers that it is appropriate to impose a penalty in this case.

5. Criteria relevant to the level of financial penalty

- 5.1. In accordance with section 27O(1) of the Electricity Act 1989 and section 30O(1) of the Gas Act 1986, the Authority may impose a financial penalty of 10 per cent of the turnover of the legal entity holding the relevant licence.⁵
- 5.2 In proposing the level of financial penalty, the Authority has considered all the circumstances of the case, including the following specific matters set out in the Penalties Statement.

The seriousness of the contravention and failure

- 5.3 As set out above, the Authority considers that the contraventions by E.ON of SLCs 25 and 23 were of a serious nature and has taken this into account.
- 5.4 In particular, monitoring and auditing of sales activities is a matter of particular concern to the Authority. The Authority finds that such management arrangements were inadequate, and allowed instances of misselling, particularly in relation to the provision of information about estimates and comparisons. While the Authority is of the belief that this auditing was inadequate, the Authority has also taken particular note of the fact that E.ON's management should have been aware of the potential breaches of SLC 25 because of the audits which showed consistent poor performance of its Representatives.
- 5.5 In addition, E.ON provided some customers with inaccurate estimates of total annual charges payable and with inaccurate comparisons of such charges against other suppliers' charges. As a result, some consumers were misled as to the actual charges payable and may have switched to a more expensive energy tariff as a consequence, or may have saved less than they were led to expect. In addition, consumers' ability to make well-informed decisions and thereby drive effective competition in the market would have been hampered.
- 5.6 E.ON continued doorstep sales for almost a year after its large competitors had ceased selling through that channel. The Authority considered that this continuation was a factor which increased the seriousness of the contraventions.
- 5.7 Given the scale of E.ON's sales activities and the number of contracts entered into, the Authority finds that a significant number of customers were likely to be affected by the contraventions.

The degree of harm or increased cost incurred by customers or other market participants after taking account of any compensation paid

- 5.8 The Authority considers that affected customers and other market participants were likely to be harmed by the contraventions.
- 5.9 The Authority has set out in general terms at paragraphs 5.3-5.6 the detriment that consumers would likely have suffered as a result of inaccurate estimates and comparisons provided to consumers.
- 5.10 The degree of consumer detriment would have varied by breach and depends on certain factors including: duration, the tariffs in question, the level and type of energy consumption, any variations in consumption, and the number of consumers

⁵Electricity Act 1989, section 27O(1); Gas Act 1986, section 30O(1)

affected. Some of the above factors would also have affected the level of detriment suffered by other licensees.

- 5.11 As set out above, consumers' ability to make well-informed decisions and thereby drive effective competition in the market would have been hampered as a result of the contraventions. The intensity of competition in the market may therefore have been decreased. In addition, potential distrust and reluctance to engage in these markets in the future could mean that customers will miss out on potential available savings.
- 5.12 Finally, the breaches may have acted as a barrier to entry or created an uneven playing field for competitors who were willing to comply with marketing obligations.
- 5.13 As part of the agreement to settle the investigation, E.ON has agreed to offer compensation and in some instances pay automatic compensation to customers that were affected by their breaches which could be identified. This level and availability of compensation has been considered by the Authority for the purposes of setting the general level of penalty in this case.

The duration of contravention or failure

- 5.14 The duration of the infringements was significant. Evidence shows that the breaches have been ongoing since at least June 2010, some of which continued until December 2013. Whilst E.ON made considerable changes and improvements to its processes in that period, some of these breaches continued despite Ofgem raising concerns about E.ON's sales practices.

The gain (financial or otherwise) made by the licensee

- 5.15 Energy suppliers engage in marketing and sales activities in order to maintain their existing customer base and to win new customers from their competitors. The Authority finds that E.ON may have won some customers who would otherwise have stayed with their existing supplier or switched elsewhere had E.ON not acquired those customers through a breach of the licence conditions (which included providing customers with inaccurate estimates and comparisons). The revenue acquired by E.ON from these customers would represent the financial gain made by E.ON.
- 5.16 In addition, E.ON will have gained financially by not devoting sufficient company resources to compliance procedures, for example:
- (a) providing or procuring sufficient training for sales agents; and/or
 - (b) providing or procuring adequate monitoring and auditing procedures to ensure compliance.

Factors tending to increase or decrease the level of financial penalty

- 5.17 The Authority has also considered whether there are any aggravating or mitigating factors on the basis of which it should adjust the quantum of penalty which it would award based on the considerations above, as set out in the Penalties Statement at paragraphs 5.3 and 5.5.

Factors tending to increase the level of financial penalty

Repeated contravention or failure

- 5.18 There has been no previous enforcement action against E.ON in relation to these licence conditions.

Continuation of a contravention or failure after either becoming aware of the contravention or failure or becoming aware of the start of Ofgem's investigation

- 5.19 The Authority finds that some of the breaches continued after E.ON became aware of the contravention. Furthermore some of the breaches also continued after the point at which E.ON became aware of Ofgem's investigation in April 2012 and after Ofgem raised specific concerns with E.ON.
- 5.20 The Authority has seen evidence that E.ON self-identified that the continued use of industry average bands would amount to a breach of SLC 25.7 in May 2010. However, despite this report being drawn to the attention of senior management within E.ON, E.ON did not change its training material until August 2010 and its Pentablot until January 2011.
- 5.21 The Authority notes that in relation to outsourced Telesales Activities, E.ON was aware from June 2010 onwards from its own auditing of outsourced agencies, that there were significant issues with the compliance. Whilst E.ON took action to seek to deal with this, it took insufficient action to remedy these issues. In October 2012, Ofgem notified E.ON of our concern regarding outsourced Telesales. While E.ON implemented further measures to address issues seen at outsourced telesales agencies, the Authority notes that these were insufficient and the breaches continued until December 2013 when E.ON ceased outsourced Telesales Activities.
- 5.22 The Authority considers the above information to be an aggravating factor in assessing the level of penalty.

Involvement of senior management in any contravention or failure

- 5.23 The evidence the Authority has seen does not show that E.ON senior management had direct involvement in the contravention in the sense that they actively instructed or caused the breaches. However, the evidence shows in some instances E.ON's senior management had insufficient oversight, including by the Board of breaches occurring. In other instances, management had knowledge of breaches occurring and took insufficient action to prevent the continuation of the breaches.
- 5.24 In respect of the industry average breach, the report which identified that the use of industry averages would amount to a breach was addressed to E.ON's Head of Residential Sales, who the Authority considers to be senior management of E.ON. The Authority notes that this report was also circulated for information to E.ON's Retail Board in May 2010. Whilst E.ON's training materials were updated to reflect the Authority's guidance of April 2010 on the use of industry averages in August 2010, the Pentablot was not updated until January 2011. Accordingly, despite knowledge of the breach, senior management allowed it to continue.
- 5.25 In respect of outsourced Telesales Activities, E.ON's Board member responsible for Sales and Head of Residential Sales began to be copied in to the audit results from June 2012. It is at this point that E.ON increased the steps taken to attempt to achieve compliance, including suspending sales to allow for retraining. However, this did not result in significantly improved results the following quarter.
- 5.26 In 2012, Ofgem raised concerns with E.ON about the compliance of their sales processes. As a result of this E.ON took additional steps to achieve compliance, including through Board sub-Committee oversight. Auditing conducted by E.ON during 2013 showed improvements in performance but there continued to be significant issues with E.ON's outsourced Telesales.

- 5.27 Despite E.ON's board being aware of the issues and taking steps to improve performance, those steps were not sufficient to ensure compliance at a sufficiently early point in time. This resulted in Ofgem again raising serious concerns with E.ON about their sales processes, ultimately resulting in E.ON ceasing outsourced Telesales in December 2013. E.ON's decision to cease outsourced Telesales meant that a provisional order was not requisite.
- 5.28 The Authority also considers that planning and resourcing for licence compliance and the implementation of appropriate systems and processes to ensure compliance were the responsibility of senior managers at E.ON. The Authority expected that senior management would put in place systems that secure and incentivise compliance. The Authority considers that although E.ON had systems in place during the relevant periods, they were not adequate, and further considers that E.ON's senior management did not react in a timely or appropriate manner to audit results and other material that suggested an ongoing problem over a considerable period of time.
- 5.29 Accordingly, the Authority considers that the lack of oversight and insufficient action taken by E.ON's senior management in the breaches was a serious aggravating factor in setting the level of the penalty.

Absence of any evidence of internal mechanisms or procedure intended to prevent contravention or failure

- 5.30 The Authority has seen evidence which demonstrates the absence of adequate internal mechanisms or procedures intended to prevent contravention or failure in relation to some of E.ON's sales activities.
- 5.31 E.ON did not put in place any independent monitoring procedures in its in-house call centre before November 2012 and no recording facility was in place allowing the auditing of the sales in this call centre before February 2013.
- 5.32 In addition, while some systems and procedures were in place in order to prevent contravention or failure, the Authority has found and E.ON has admitted that these systems and processes were not adequate.

Extent of any attempt to conceal the contravention or failure from Ofgem

- 5.33 The Authority found no evidence that there was any attempt to conceal the contraventions.

Factors tending to decrease the level of financial penalty

The extent to which the licensee had taken steps to secure compliance either specifically or by maintaining an appropriate compliance policy, with suitable management supervision and action taken by the licensee in recognition of the contravention or failure

- 5.34 The Authority acknowledges that E.ON has taken steps both before and during the investigation to attempt to secure compliance with the licence obligations.
- 5.35 E.ON has made improvements to its processes and the Authority has taken this into account. These improvements have included:
- To stop all doorstep sales in September 2012 and venue and events sales from December 2013

- The introduction of its Sales Improvement Plan in October 2012, including increasing audits and improving processes and working with an outside consultancy on improvements in its compliance procedures
- To stop all outbound outsourced Telesales activities in December 2013
- To implement a call recording facility in its in-house call centre in Dearne Valley from February 2013

5.36 The Authority however considers that most of these improvements were implemented after the investigation started and after that discussions took place between E.ON and Ofgem regarding the issuing of provisional orders.

Appropriate action by licensee to remedy the contravention or failure:

5.37 The Authority notes steps taken by E.ON to remedy failures in its sales practices. These remedies include:

- The introduction of live auditing to assess Marketing Activities for their compliance with SLC 25
- Live Audit bypass – any agents bypassing too many audits were disciplined by E.ON
- The Sales Improvement Plan, which included increased auditing of Telesales
- Working with an outside consultancy on improvements in its compliance procedures
- The introduction of call recording for monitoring and auditing internal Telesales Activities.

5.38 However, these steps did not go far enough to stop the breaches of SLC 25 continuing.

Evidence that the contravention or failure was genuinely accidental or inadvertent

5.39 There is no evidence that the contraventions were deliberate or wilful. However, the contraventions cannot be regarded as accidental or inadvertent as it was within E.ON's control to allocate resources effectively and manage appropriate systems and processes to ensure compliance with its licence obligations.

Reporting the contravention or failure to Ofgem

5.40 E.ON did not report the contravention or failure to Ofgem.

Co-operation with Ofgem's investigation

5.41 The Authority notes E.ON's willingness to admit these breaches through settlement and the efforts it has made to put in place measures to remedy these breaches. E.ON has settled at the earliest opportunity and in so doing has shortened the length of the investigation and limited the period of the breaches.

5.42 The Authority also notes E.ON's willingness to agree to make payments which benefit consumers. The Authority also notes E.ON's willingness to pay compensation to all affected consumers.

5.43 Overall, the Authority considers that E.ON has co-operated with Ofgem's investigation.

6. The Authority's proposed decision on penalty

- 6.1. The Authority considers that the seriousness of the contraventions, the degree of harm experienced by consumers, the duration of the contravention and the financial gain made by E.ON warrant a significant penalty.
- 6.2. However, the Authority places particular emphasis on E.ON's admission of the breaches. It also places emphasis on the commitment by E.ON to improve its processes and the steps taken to secure compliance through the course of the investigation.
- 6.3. The Authority has also had particular regard to E.ON's agreement to offer a fuel poverty package amounting to £12m which will directly benefit vulnerable consumers. These consumers have been identified through E.ON's Warm Home Discount Scheme and consumers using the Warm Assist tariff, not in receipt of Warm Home Discount payments. E.ON will make a payment of at least £35 to each of its customers who received the 2013/2014 Warm Home Discount payment. Current customers will receive a credit on their account or payment to top up a prepayment meter account.
- 6.4. Any money which is not paid out from the £12m fund, whether due to un-cashed Warm Home Discount cheques or any other reasons, will be paid into the E.ON and Age UK Social Programme. This helps fuel poor consumers with benefit checks and energy efficiency installations.
- 6.5. In addition, E.ON has agreed to write to consumers who may have been affected by poor sales processes. Certain vulnerable customers and customers identified as having received a poor sale by E.ON's own auditing will automatically receive a cheque for at least £64. E.ON will also write to other customers inviting contact to see if they may be due compensation.
- 6.6. The Authority considers that the scale of these payments and measures will have a significant impact on E.ON's future compliance and a deterrent effect against future breaches.
- 6.7. Taking all these factors into account, in particular the payments and measures listed above for the benefit of consumers, and also mindful of its principal objective to protect the interests of existing and future consumers, the Authority proposes to impose a nominal financial penalty of £1 which it considers reasonable in all the circumstances of the case.
- 6.8. The penalty would have been significantly higher if E.ON:
 - a) had not agreed a settlement
 - b) had not admitted the breaches
 - c) had not offered a fuel poverty package of £12m
 - d) had not proposed to contact former customers who were affected by poor sales practices to see if they may be due compensation
 - e) had not made changes to systems and processes to comply with the relevant licence conditions.
- 6.9. Any written representations on the proposed penalty must be received by Adam Crockett, Ofgem (adam.crockett@ofgem.gov.uk) by 5:00pm on **13 June 2014**.

- 6.10. Any representations received that are not marked as confidential may be published on the Ofgem website. Should you wish for your response or part of your response to remain confidential, please indicate this clearly.

Gas and Electricity Market Authority

16 May 2014