

NOTICE OF INTENTION TO IMPOSE A FINANCIAL PENALTY PURSUANT TO SECTION 27A(3) OF THE ELECTRICITY ACT 1989

Date: 4 May 2022

Proposal of the Gas and Electricity Markets Authority to impose a financial penalty, following an investigation into Western Power Distribution (East Midlands) plc, Western Power Distribution (South Wales) plc, Western Power Distribution (South West) plc and Western Power Distribution (West Midlands) plc (collectively referred to as “WPD”) and its compliance with its obligations under the electricity distribution licence (Standard Licence Conditions 9, 10 and 30).

1. Summary

1.1. The Gas and Electricity Markets Authority (‘the Authority’) proposes to impose a financial penalty on Western Power Distribution (East Midlands) plc, Western Power Distribution (South Wales) plc, Western Power Distribution (South West) plc and Western Power Distribution (West Midlands) plc (collectively referred to as ‘**WPD**’¹) following an investigation by the Authority into WPD’s compliance, in the context of its electricity distribution business, with a number of relevant conditions and requirements set out in the Standard Licence Conditions (‘SLCs’) of the electricity distribution licence. The SLCs set out the rules on how Licensees must operate within the terms of their electricity distribution licences.

1.2. The Authority finds that WPD breached the following licence conditions²:

¹ The four licensees are part of the wider WPD plc group

² “Relevant condition” has the meaning set out in and in section 25(8) of and in Schedule 6A to the Electricity Act 1989.

- SLC 10.5(a): this SLC obligates licensees to provide Priority Services Register ('PSR') Customers with information on what precautions to take and what to do in the event of an interruption in their electricity supply when their details are first added to the PSR. The Authority finds that this SLC was breached between March 2015 and February 2021.
- SLC 10.5(c): this SLC requires licensees during unplanned interruptions of supply to ensure, that so far as is reasonably practicable, they promptly notify PSR Customers and keep them informed of the estimated time of restoration ('ETR') and of any help that may be available. The Authority finds that this SLC was breached between March 2015 and July 2021.
- SLC 9.2(d): this SLC requires a licensee to take all reasonable steps to ensure that Representatives who visit and enter Customers' premises are fit and proper persons to do so. The Authority finds that this SLC was breached between January 2016³ and June 2021.
- SLC 30.1: this SLC requires licensees to have sufficient resources in place to meet its regulatory obligations. As WPD did not allocate sufficient resources to meet its SLC 9 and 10 obligations, it follows that this SLC was breached. The Authority finds that this SLC was breached between January 2016⁴ and July 2021.

1.3. WPD has admitted that it breached the licence conditions as set out above. WPD made improvements to its policies, procedures and practices during the course of the investigation and rectified the breaches.

³ The investigation was initially opened into WPD's compliance with SLC 10. It was subsequently widened to include SLCs 9 and 30. Under section 27A of the Electricity Act 1989 the Authority may not impose a penalty in respect of a breach later than 5 years from the date of the breach unless an Information Request ("IR") issued under s.28(2) EA 1989 served on the regulated person. The first SLC 10 IR was issued on 13 March 2020 and the first SLC 9 and 30 IR was issued on 11 January 2021.

⁴ Whilst the SLC 10 breach period started in March 2015 the first IR on SLC 30 matters was issued in January 2021.

- 1.4. The Authority has taken into account WPD's willingness to settle the investigation and make a voluntary redress payment into a fund approved by the Authority. The Authority also notes the progress WPD has made during the course of the investigation to achieve regulatory compliance. Had WPD not taken such steps the penalty in this investigation would have been significantly higher.
- 1.5. The Authority considers that a voluntary redress payment will be of more benefit to consumers than the imposition of a financial penalty. Accordingly, the Authority has considered it appropriate to impose a financial penalty of £4⁵ provided WPD pays the sum of **£14,909,660** (less £4) in voluntary redress. If WPD had not agreed to make these payments the Authority would have considered it appropriate to impose a higher penalty in view of the particularly serious nature of the contraventions.
- 1.6. The Authority takes the breaches set out above very seriously. It is evident from the investigation that WPD failed to fully deliver some of the services that it is funded to provide and did not appreciate that its policies risked the health and well-being of some of its Customers, particularly its PSR Customers. Additionally, it took WPD a significant period of time to bring itself into compliance. This extended the period for which some of WPD's PSR Customers in particular were placed at unnecessary risk of harm. The Authority finds this approach to regulatory compliance unacceptable.
- 1.7. Applying the criteria in section 3 of this Notice, the Authority considers it appropriate to issue a penalty for the contraventions. The penalty takes into account all the breaches and their respective breach periods as set out above. In determining the amount of the penalty the Authority has taken into consideration the factors set out in section 4. The Authority considers the penalty to be reasonable in the circumstances of this case.
- 1.8. In these circumstances the Authority hereby gives notice under s27A(3) of the Electricity Act 1989 ('EA 1989') of its intent to impose a penalty of £4 on WPD in respect of the contraventions set out above. This is subject to WPD paying **£14,909,660** (less £4) into
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⁵ This is comprised of a £1 penalty on each of the four licensees

the Voluntary Redress Fund⁶. These payments are to be made within 42 days of the publication of the final Notice.

1.9. Any written representations or objections to this notice must be received by Emma Lynch, Senior Enforcement Investigator (emma.lynch@ofgem.gov.uk) or Ofgem, Commonwealth House, 3rd floor, 32 Albion Street, Glasgow G1 1LH by **5pm on Thursday 26 May 2022**.

1.10. The Authority may publish any representations that are not marked as confidential. Should you wish your response or part of your response to remain confidential, please indicate this clearly. The Authority will consider whether to comply with any such requests on a case by case basis.

2. The Authority's Decision on the Contraventions

2.1. The Authority considered the evidence gathered during the course of the investigation in coming to its decision. The Authority is satisfied that WPD committed the following breaches:

- Breach 1 relates to the provision of information when PSR Customers details are first added to the PSR. WPD failed to provide this information to certain PSR Customers when it was required to do so (SLC 10.5(a)).
- Breach 2 relates to promptly notifying and keeping PSR Customers informed during unplanned outages. Licensees are obligated, as far as reasonably practicable, to promptly notify PSR Customers of the ETR and details of help that may be available. WPD failed to provide PSR Customers with the requisite

⁶ The Authority's Voluntary Redress Fund was established on 24 August 2017. The Voluntary Redress Fund ingathers and distributes funding in the consumer interest. Further details are available at <https://www.ofgem.gov.uk/publications-and-updates/ofgem-appoints-energy-saving-trust-distribute-payments-rule-breaking-energy-companies-charities>

information nor (when such information was provided) did it provide that information promptly (SLC 10.5(c))

- Breach 3 relates to taking all reasonable steps to ensure that its Representatives are fit to visit and enter Customers' premises. WPD did not carry out sufficient checks to ensure its Representatives were fit and proper persons. (SLC 9.2(d)).
- Breach 4 stems from breaches 1 to 3. It relates to the allocation of resources to meet regulatory obligations. WPD did not allocate the resources required to achieve SLC 9 and 10 compliance (SLC 30.1)

Background on the role of DNOs and the Priority Services Register

2.2. Electricity Distribution Network Operators ('DNOs') are responsible for the infrastructure that carries electricity to homes and businesses. That infrastructure includes underground and overground cabling and substations. In broad terms, DNOs are responsible for the maintenance and repair of this infrastructure. There are 14 electricity distribution regions in Great Britain covered by six DNOs⁷; WPD's area of responsibility covers the South West, part of Wales and the Midlands. WPD's area covers a population of approximately 7.9m people and it has approximately 6,500 employees⁸.

2.3. Customers are not billed directly by DNOs for providing electricity to their homes. Costs are indirectly recovered via electricity bills. WPD's most recent accounts indicate its services cost approximately £93 per annum per electricity customer.

2.4. A DNO may plan power outages to conduct necessary maintenance and repairs on its network. However on occasion there may be unplanned power outages due to issues such as storms or damage/defects to the infrastructure. When there are unplanned

⁷ For further information on DNOs is available at <https://www.energynetworks.org/operating-the-networks/whos-my-network-operator>

⁸ Taken from WPD's accounts for year ending 31 March 2021.

outages DNOs are responsible for repairing the network and restoring electricity supplies to customers' homes and businesses.

2.5. DNOs are also responsible for providing priority services to certain groups of Customers who have made a request to join its Priority Services Register⁹. Such requests can be made directly to a DNO or indirectly via a Gas Transporter (if applicable¹⁰) or via a supplier¹¹ who then share the information with the respective DNO. There are various elements to the PSR services that DNOs are obligated to provide. The services include (but are not limited to¹²) providing advice about how to prepare for and what to do during outages (planned and unplanned), notification of planned outages, provision of information during unplanned outages, providing information to PSR Customers with specific communication needs and the arrangement of password services.

2.6. WPD's PSR has grown over the Relevant Period and now stands at approximately 1.7m PSR Customers. At present approximately 170,000 (10%) of WPD's PSR Customers are classed as medically dependent¹³ on electricity.

Breach 1 – SLC 10.5(a) - Failure to provide PSR information and advice
Breach period: March 2015 to February 2021

2.7. Under SLC 10.5(a) a licensee is required to provide its PSR Customers with information about how to prepare for and what to do in the event of an unplanned power outage. This information is to be provided at the point a PSR Customer's details are first added to

⁹ SLC 10 defines the eligibility criteria for the Priority Services Register. In addition, a Customer who does not meet the criteria can request to join

¹⁰ Only applies where a customer has a gas supply

¹¹ Gas and electricity suppliers and gas transporters also have Priority Services Registers but are not obligated to provide the same services as an electricity DNO.

¹² Details of the services that DNOs are obligated to provide are set out in SLC 10 of the Electricity Distribution Licence

¹³ Customers who have conditions that require the use of ventilators, dialysis machines and oxygen concentrators for example. WPD's SN01 and 02 PSR Customers are deemed medically dependent – this classification system is explained in later sections of this Notice

the PSR. On examination of evidence provided by WPD the Authority found that WPD did not comply with the requirements of SLC 10.5(a) between March 2015 and February 2021.

2.8. The evidence provided revealed that WPD had an internal classification system that mapped industry PSR 'needs codes'¹⁴ to four broader 'SN' codes¹⁵. WPD classified PSR Customers into the following groups:

- SN01 – PSR Customers who were deemed to be medically dependent on electricity. This covered PSR Customers on dialysis machines and heart and lung ventilators for example.
- SN02 – PSR Customers with a reliance on oxygen equipment such as oxygen concentrators.
- SN03 – PSR Customers with specific communications needs such as deaf or blind PSR Customers.
- SN04 – all other PSR Customers. This was a wide group and included PSR Customers who relied on stairlifts, had dementia or mental illness, were of pensionable age or families with young children among others¹⁶. The overwhelming majority of WPD's PSR Customers fall into this category.

2.9. PSR Customers can be added to a DNO's PSR in a number of ways. A Customer (or a person acting on their behalf) can contact their DNO directly and ask to be added or it could also happen during the course of another routine conversation with their DNO. Additionally PSR Customers are frequently added to DNOs' PSRs via their supplier when data is shared using industry data flows. Customers can also be signposted to the benefits of the PSR by referral networks.

2.10. Examination of the information provided by WPD indicated that it would send a welcome letter and leaflet to all PSR Customers that were signed up directly and to all

¹⁴ A means of identifying a vulnerability or specific need via an industry wide coding system.

¹⁵ These are an internal coding system that WPD uses and are not industry standard codes

¹⁶ In January 2017 modifications were introduced to SLC 10 which widened the definition of PSR Customers

PSR Customers in its internal SN01, SN02 and SN03 categories that it received from suppliers. However WPD did not send any welcome letters to SN04 PSR Customers signed up to the PSR via their supplier. Notably, the welcome letter contained WPD's contact details (including both a dedicated PSR telephone number and the standard '105' number)¹⁷ and a leaflet explaining how to prepare for and what to do in a power outage.

2.11. WPD stated that it did not consider that SN04 PSR Customers required this welcome information as it deemed them to be 'low risk' and that suppliers would have provided this information already and it was therefore duplication. WPD also stated that PSR Customers would have received this information from another DNO before moving into WPD's area. When asked to confirm the Customer volumes, WPD stated that it received around 5,000 notifications of SN04 PSR Customers from suppliers every week.

2.12. WPD also asserted that prior to January 2017 it added PSR Customers to its PSR that did not meet the specific criteria to be classed as PSR Customers ¹⁸. As such it was not obligated to provide these PSR Customers the welcome letter. However the Authority notes that WPD did not have any policies or procedures to determine if Customers seeking to be added to the PSR were by definition PSR Customers. WPD's policy was to add all Customers that were assigned a needs code regardless of that that needs code was and what internal SN01-04 category that code was aligned to. The Authority notes WPD took no steps to inform these Customers that they were not eligible for priority services nor did it advise what services these Customers could expect. The Authority notes that SN04 PSR Customers WPD signed up directly received a welcome letter and those signed up via suppliers did not receive this until later. The Authority also notes that WPD's policies and procedures were not reviewed and updated when the SLC wording was altered in January 2017 and the definition of PSR Customer became wider.

¹⁷ This is the standard telephone number that can be called to put a Customer in touch with their DNO, regardless of who that DNO is

¹⁸ Prior to January 2017 the criteria for PSR Customers was different and set out in SLC 10.3. That criteria was that PSR Customers were of pensionable age, disabled or chronically sick and had either a medical dependency on electricity or special communication need. WPD stated that its SN04 PSR Customers were not PSR Customers as per the definition of the SLC.

- 2.13. The Authority was concerned at WPD's approach for a number of reasons. WPD decided to internally sub-categorise PSR Customers based on a perceived level of risk. The SLC applies to all PSR Customers irrespective of assigned PSR needs code or level of risk. It also does not differentiate between how PSR Customers were signed up or any pre-existing knowledge they may or may not have. Additionally suppliers are not obligated to inform PSR Customers about how to prepare for and what to do in a power outage. Suppliers are also likely to have PSR Customers from various DNO areas and PSR arrangements between DNOs differ, including their contact details. Furthermore even if suppliers were providing this information WPD is still obliged to provide it in accordance with its SLC 10.5(a) obligation.
- 2.14. The Authority was also concerned with WPD's assertion that the information would have been provided by another DNO already. If a PSR Customer moved into WPD's area and had previously been provided the information WPD was still obligated to provide it when adding their details to its PSR. Contact details and assistance offered by DNOs varies and it is important that PSR Customers have accurate information. WPD's assertion also assumed that SN04 PSR Customers were Customers moving into WPD's area. That assertion did not consider the changes in circumstances a Customer could have without moving from one DNO area to another.
- 2.15. The Authority also rejects WPD's assertion that it was not obligated to provide welcome information to non-PSR Customers it had on its PSR prior to January 2017. The PSR is a register of Customers who have requested specific priority services. Adding these Customers to the PSR created a legitimate expectation that they would receive the priority services that were available by being members of the PSR. Additionally WPD was unable to justify what the purpose was in having these Customers on its PSR if it wasn't to provide priority services. Nor could WPD explain why it sent welcome letters explaining priority services to SN04 PSR Customers it signed up directly and did not send anything to SN04 PSR Customers added via suppliers.
- 2.16. The Authority estimates that during the breach period approximately 1.5 million SN04 PSR Customers did not receive the PSR welcome letter when their details were first

added to the PSR¹⁹. WPD's failure to send this information means that these PSR Customers were not provided with information that would enable them to prepare for and keep themselves safe and comfortable during a power outage. Additionally these PSR Customers would not have been provided with specific contact details for WPD or advised of the standard 105 number at the point their details were first added to the PSR²⁰. Furthermore, the PSR welcome letter provides confirmation that a PSR Customers' details have been successfully passed from supplier to DNO, provides details of who their DNO is, what it is responsible for and what PSR services it offers. The Authority views such information as vital to determine how a PSR Customer should prepare for and what they should do in the event of a power outage.

2.17. It is the Authority's view that the failure to provide this information to SN04 PSR Customers potentially increased the risk to their health and well-being. The Authority also considers that the failure to provide this information likely decreased the number of inbound contacts during unplanned outages, resulting in a cost saving to WPD. WPD also avoided the cost of sending this information via letter to these particular PSR Customers.

2.18. The Authority noted that WPD started sending PSR welcome letters to all PSR Customers in February 2021 effectively ending the breach.

Breach 2 – SLC 10.5(c) – Failure to provide information and advice during unplanned outages

Breach period: March 2015 to July 2021

2.19. SLC 10.5(a) requires licensees to provide (as far as reasonably practicable) PSR Customers with information on the ETR and details of any available help during unplanned outages. The SLC also obliges licensees to provide updates, for example when an ETR changes. The Authority had concerns with certain aspects of WPD's policies and procedures and how it had interpreted SLC 10.5(c) in this regard.

¹⁹ This was calculated by the weekly volume x the period of breach.

²⁰ It is possible that PSR Customers may have been aware of the standard 105 number

Contact hours

- 2.20. In October 2019 the Authority had been informed by the Health and Safety Executive that a (SN02) PSR Customer (referred to as PSR Customer X) had died during an unplanned outage in August 2019. Thereafter the Authority engaged with WPD and sought information on its PSR policies and procedures. The Authority learned that WPD's policy was not to contact PSR Customers between the hours of 8pm and 9am and that PSR Customer X had died during these hours. WPD stated at that time that it was in the process of offering overnight contact on an 'opt-in' basis to all medically dependent PSR Customers (WPD categories SN01 and SN02). WPD did not offer or plan to offer a 24/7 proactive contact service to all PSR Customers. It was these initial concerns the Authority had about overnight contact policies that led to the opening of the investigation in February 2020.
- 2.21. Following the opening of the investigation a detailed examination of WPD's PSR policies and procedures was undertaken. Those policies and procedures indicated that there were further periods where WPD's standard operating hours were reduced²¹.
- 2.22. The Authority's enquiries revealed that WPD had only started offering overnight contact to SN01 and SN02 PSR Customers in July 2019 and that it had estimated that it would take 2 years to offer this as an optional service to all PSR Customers in this cohort. WPD also stated that it had no plans to offer this service to its remaining PSR Customers (the SN03 and SN04 sub groupings). Following the opening of the investigation WPD had completed its programme of offering this service to SN01 and SN02 PSR Customers (approximately 170,000) however uptake of the service was very low²².
- 2.23. Analysis of the call scripts used to offer these services revealed that it was pitched negatively and portrayed contact outwith WPD's standard operating hours as an
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²¹ This included weekends and Sunday lunch periods

²² WPD completed the offering of opt-in overnight contact to its SN01 and SN02 PSR Customers by April 2020

inconvenient disturbance in the middle of the night. It did not highlight that WPD's overnight hours extended from 8pm to 9am, or that it was obliged to provide this information to help a PSR Customer to keep themselves safe and comfortable during the rare occasions that there may be an unplanned outage. At PSR Customer X's inquest WPD confirmed to the Coroner and the Authority that PSR Customer X had not been contacted during the unplanned outage in August 2019 and had not been offered the option of overnight contact. PSR Customer X was due to receive the offer of overnight contact during a routine record update call in May 2020. The Coroner expressed some concerns about the wording of the contact scripts. WPD confirmed to the Coroner that it would alter its scripts and recontact medically dependent PSR Customers to offer the overnight contact service again. The power outage was one element of the inquest and other matters were also considered. The Coroner delivered a narrative verdict and made no adverse findings against WPD.

2.24. Following the inquest of PSR Customer X WPD altered its scripts and recontacted all SN01 and SN02 PSR Customers to offer them the opportunity to opt-in to 24hour notifications. Whilst this addressed the Coroner's concerns the Authority's view was that it was being offered on an optional basis and to only certain categories of PSR Customers; therefore WPD was still non-compliant with SLC 10.5(c). In January 2021 the Authority informed WPD that it viewed opt-in/out overnight contact services to any or all PSR Customers as being potentially non-compliant and invited WPD to reconsider its arrangements in light of that advice²³.

2.25. The Authority would emphasise that even where licensees are fully compliant with their regulatory obligations the risk of death or serious harm to PSR Customers during power

²³ Two PSR Customers sadly died during the Relevant Period. The inquests into both deaths have been heard and the Coroners have delivered their findings on the circumstances surrounding those deaths. The Authority was represented and gave evidence about SLC 10 at both inquests. WPD was not the subject of a Prevention of Future Deaths ('PFD') Report nor did the Coroners apportion any blame to WPD for the deaths at either inquest. For clarity, the Authority does not make findings on causation of either death and that does not feature in this Penalty Notice; our regulatory remit extends only to examining compliance with the relevant SLCs. At the time of the deaths, however, WPD was non-compliant with its obligations under SLC 10.5(c) of its Electricity Distribution Licences.

outages still exists. DNOs are not obligated to guarantee a continuous supply of electricity.

2.26. In explaining the rationale for its overnight contact policy WPD stated that PSR Customers would not want to be disturbed during the night and that there was an increased risk of injury if PSR Customers were contacted when it was dark. WPD stated that a PSR Customer could request overnight contact if they wanted it. However on examination of the evidence provided the availability of such a service was not widely publicised in any literature, save for a trial leaflet where there was an optional 'tick box'. WPD explained that this leaflet had been discontinued as a number of PSR Customers had not understood what they were signing up for.

2.27. WPD also asserted that medically dependent PSR Customers had back up arrangements in place should there be an unplanned power outage. WPD also made assertions on the interpretation of the SLC term 'as far as reasonably practicable' stating it is a balance between the time, effort and cost of performing such actions. WPD also stated that Ofgem had not issued any guidance on compliance with SLC 10.

SN04 PSR Customers

2.28. The Authority also found evidence that WPD did not contact any SN04 PSR Customers at all during any unplanned outage unless it was prolonged²⁴ and that contact was only routinely made between 9am and 8pm. However during prolonged outages WPD would attempt to contact all its Customers, not just PSR Customers. WPD stated that SN04 PSR Customers were low risk and would be able to contact WPD by telephone or would be able to check for updates on social media or its website. However the Authority does not accept this. Notably SN04 PSR Customers represented 77% of WPD's total PSR Customer base.

²⁴ Information submitted by WPD stated that it may contact all Customers if an outage was 6 hours or more

2.29. During unplanned outages that occurred between 9am and 8pm WPD's policy was to manually contact SN01-03 PSR Customers, starting with SN01 PSR Customers first. WPD claimed that it's average speed of contacting PSR Customers during unplanned outages was 48 minutes. However that claim was not adjusted for the fact that WPD did not contact any SN04 PSR Customers at all during unplanned outages (unless prolonged) nor did it take into account that there was no overnight contact at all between 8pm and 9am.

2.30. During the course of the investigation WPD revised its policies regarding overnight contact and initially introduced an 'opt-in' service in July 2019. The policy was then updated using a modified script following PSR Customer X's inquest. In February 2021 following engagement with the Authority WPD introduced automated systems that allowed volume contact with PSR Customers. However that wasn't offered to all PSR Customers and, for a short period, WPD offered its 170,000 medically dependent PSR Customers the opportunity to 'opt-out' of overnight contact. By March 2021 1,600 PSR Customers had accepted this opt-out option. Following further engagement with WPD its policies and procedures were thereafter altered. In April 2021 all SN01 to SN04 PSR Customers were opted-in for 24/7 contact. In July 2021 the 1,600 previously opted-out PSR Customers were opted-in for overnight contact. Thereafter WPD's policies were that it was not possible for any PSR Customers to opt-out of overnight contact.

The Authority's conclusions on WPD's compliance with SLC 10.5(c)

2.31. The Authority does not accept WPD's arguments as to why it failed to contact PSR Customers overnight. The term 'as far as reasonably practicable' does not allow WPD to exclude certain PSR Customers from being contacted at all, nor does it permit the carving out of particular times of the day/night or days of the week or offering contact on an opt in or out basis. WPD made its assessment of 'as far as reasonably practicable' before being faced with any unplanned outage situation. In doing so WPD failed to carry out any assessment of whether or not it was reasonable or practicable to contact PSR Customers as and when unplanned outages arose.

2.32. The Authority notes WPD's argument that 'as far as reasonably practicable' is a balance between the time, effort and resource to perform a specific action against not performing it. In this instance the balance is between the time, effort and resource of contacting a

PSR Customer (by phonecall or text for example) and the risks that may occur should that contact not take place. There were potentially serious risks to health and well-being of some of WPD's PSR Customers during unplanned outages and, as will be explained later in this Notice, the costs, time and effort of contacting PSR Customers were not significant. Additionally, in February 2021 WPD introduced a system that enabled automated volume contact with PSR Customers illustrating that it is both reasonable and practicable to promptly notify them and keep them informed.

2.33. The Authority does not accept WPD's assertion that medically dependent PSR Customers have sufficient backup arrangements during power outages as a reasonable excuse for not contacting them overnight. The backup systems are the same whether it is the day or night and notably WPD had no issues with contacting some PSR Customers during the day²⁵. It is the Authority's view that the existence of backup arrangements does not absolve WPD of its responsibility to promptly notify and keep PSR Customers informed during unplanned outages. Whilst there may be back up arrangements available they may not operate for the duration of the outage and PSR Customers may have to take mitigating action based on the individual circumstances of each outage, hence why it is important to promptly notify and keep PSR Customers updated on the ETR.

2.34. The Authority does not accept WPD's assertion that contacting PSR Customers overnight placed them at risk of injury or harm. As was explained in breach 1, WPD is obliged to provide information to its PSR Customers that enables them to prepare for power outages and that includes the possibility of overnight contact. The Authority also notes seasonal variations which meant that there were hours of darkness between WPD's standard operating hours of 9am and 8pm. However there was nothing in WPD's policies and procedures that stated it would not contact PSR Customers when it was dark.

²⁵ WPD proactively contacted PSR Customers in categories SN01 to SN03 during its normal midweek and weekend operating hours

2.35. Additionally, WPD made a decision to internally classify PSR Customers based on their PSR needs code. WPD decided that SN04 PSR Customers were 'low risk' and it was not going to contact them at all during any unplanned interruption²⁶. The Authority saw no evidence that WPD's decision was based on any cogent reasoning, for example medical advice or a risk assessment²⁷. WPD's internal categorisation excluded SN04 PSR Customers (77% of its PSR Customer base) from any contact at all on the basis of that internal categorisation system alone. Notifications during unplanned outages apply to all PSR Customers irrespective of any assigned PSR needs code or internal classification system, and those notifications are to be made promptly.

2.36. WPD has argued that PSR Customers could call WPD for information during unplanned outages. The Authority does not accept that argument. Providing a means of inbound contact does not satisfy the requirements of SLC 10.5(c) – the SLC requires the licensee to promptly notify and keep PSR Customers informed during unplanned outages. Additionally, as outlined in breach 1, SN04 PSR Customers signed up via their supplier were not provided the welcome letter. As such these PSR Customers may not have known how to prepare for an unplanned power outage, how to contact their DNO, who their DNO was and what it was responsible for.

2.37. WPD's arguments that PSR Customers were able to find out information about unplanned outages via social media and website updates are also not accepted. The requirement of the SLC is for WPD to 'promptly notify and keep informed'. Whilst the Authority recognises that such updates may be useful for some Customers they may not be accessible to PSR Customers affected by unplanned power outages due to a lack of awareness, the loss of power and a lack of internet access/capability. In short, this particular type of update is insufficient to fulfil SLC 10.5(c) obligations.

²⁶ Unless prolonged, in which case WPD may attempt to contact all impacted Customers, not just PSR Customers

²⁷ That is not to be taken as indicating that failure to contact PSR customers, or a sub-set of them, would be rendered permissible by such an assessment; rather it illustrates the lack of cogent reasoning for WPD's decision.

2.38. The Authority's position is that WPD's actions placed some of its PSR Customers at risk of harm to their health and well-being. We accept that WPD is not an emergency service and even with fully compliant PSR policies and procedures it would still be possible for PSR Customers to suffer harm during unplanned interruptions. However, WPD's policy and practice was not to contact any PSR Customers overnight²⁸, even those it had recognised as being medically dependent. WPD also had a blanket policy to exclude the majority of its PSR Customers²⁹ from receiving any notifications at all during unplanned outages and has failed to justify that policy. The Authority finds WPD's approach to SLC 10.5(c) compliance overall to be unacceptable.

2.39. The Authority's view is that the breach ended when WPD introduced a system of contacting all PSR Customers during all unplanned outages (as far as reasonably practicable) with no opt-out facility. This was in July 2021 when WPD reinstated the 1,600 previously opted-out PSR Customers for proactive contact at all times.

Breach 3 – SLC 9.2(d) – Fitness and propriety of Representatives

Breach period: January 2016 to July 2021

2.40. SLC 9.2(d) requires licensees to take all reasonable steps to ensure that its Representatives are fit and proper persons to visit and enter Customers' premises. Unlike SLC 10 this obligation applies to all Customers and not just PSR Customers.

2.41. During the course of the investigation evidence was gathered that raised concerns about WPD's arrangements to check the fitness and propriety of its Representatives. WPD stated that it conducted various checks on its Representatives to ensure they were fit and proper. Pre-employment checks included checking references, criminal conviction self declarations, checks on skills and qualifications, medicals and drugs and alcohol screening. After appointment WPD's Representatives were bound by certain codes of conduct which included a requirement to declare any subsequent criminal convictions.

²⁸ Unless the outage was prolonged

²⁹ Approx 77% of WPD's PSR Customer base was in the SN04 Category

However only a self-declaration was required and WPD did not independently verify any criminal conviction information. WPD did carry out criminal record checks on Representatives who may come into contact with children, including their own apprentices.

2.42. When the Authority questioned WPD on its arrangements, using criminal record checks as an example of a step to ascertain fitness and propriety³⁰, WPD asserted that the criminal record declarations it required its staff to make were the equivalent of a criminal record check. WPD also stated that its Representatives didn't go into Customers' homes very often and as such there was no requirement to subject these Representatives to criminal record checks. WPD also stated that its Representatives weren't eligible for Standard or Enhanced Disclosure and Barring Service ('DBS') checks³¹.

2.43. The Authority was concerned that WPD's reliance on a self-declaration of criminal convictions was open to exploitation by dishonest individuals. Those declarations were not independently verified by any form of additional check. As such the Authority's view is that WPD was not taking all reasonable steps to ascertain the fitness and propriety of its Representatives. That therefore exposed Customers to the potential for harm when unchecked Representatives were present at their premises. The Authority was also concerned that WPD believed that the extent of checking fitness and propriety was in some way linked to the frequency of visiting Customer homes. The SLCs define 'premises' and the definition is significantly wider than WPD's interpretation of it being a customer's home. Additionally there is nothing in the SLC indicating that frequency of visits is a factor to be considered – it applies to all Representatives visiting and entering Customer premises.

2.44. The Authority also refutes WPD's assertion that its Representatives do not visit and enter customers' premises frequently. The evidence gathered during the investigation

³⁰ The Authority also referred WPD to the Penalty Notice for the EGEL SLC 25 and 13 investigation

³¹ The lowest level of check is a basic check and was available to all WPD's Representatives for the entire breach period

highlighted that routine activities that WPD carried out ranged from the provision and installation of generators, new connections and fault finding – all of which could require visiting and entering customers' premises. The presence of a Representative at Customer premises, regardless of how infrequent or short, could expose a Customer to risk of harm. Such Representatives enjoy a high degree of customer trust. As such, WPD was obliged to take all reasonable steps to ensure its Representatives performing such (and similar) tasks were fit and proper persons to do so.

2.45. Whilst a criminal record check is not a foolproof means of detecting unfit individuals, it is a step that is widely used in many sectors (including the energy sector) when staff have to interact with the public. Sufficient independent checking and verification of information is also likely to act as a deterrent for some unfit and dishonest individuals attempting to gain employment and thereafter access to Customers at/in their premises.

2.46. The Authority notes WPD has now introduced a rolling programme of criminal record checks³² for its Representatives and potential Representatives and that the checks are repeated at regular intervals. However there was nothing to prevent WPD introducing that programme sooner. We therefore view it as a reasonable step that WPD could have and should have taken. WPD gained financially by not subjecting its Representatives to criminal record checks during the breach period. Whilst the detriment to Customers was likely to be non-financial, they did face the potential risk associated with having unfit Representatives at their premises.

2.47. The Authority considers that the breach ended in June 2021 when WPD introduced this rolling programme of checks (in addition to its existing steps) for current and prospective Representatives.

Breach 4 – SLC 30.1 – allocation of sufficient resources

Breach period: January 2016 to July 2021

³² Basic DBS checks

2.48. SLC 30.1 requires licensees to have sufficient resources in place to meet its regulatory obligations. Examples of those resources can range from IT systems, management, compliance and administrative arrangements.

2.49. During the course of evidence gathering for breaches 1 to 3 it became apparent that WPD had avoided certain costs associated with complying with its SLC 9 and 10 obligations. In terms of SLC 10.5(a) the avoided cost was that of producing the welcome letter and sending it to SN04 PSR Customers signed up to WPD's PSR via their supplier. In the case of SLC 10.5(c) the avoided cost was that of having systems in place to contact all PSR Customers during unplanned outages regardless of when they occurred. For SLC 9.2(d) there was a resource shortfall in having adequate systems in place to ensure the fitness of WPD's Representatives.

2.50. This breach is based on the same factual matrix as breaches 1 to 3 and the resource shortfall has been quantified and included in the gain and detriment calculations which are produced at a later stage of this Notice. As such this breach does not add to the seriousness or quantum of penalty imposed by the Authority.

3. The Authority's Decision on whether to impose a financial penalty

3.1. Under section 27A of the Electricity Act 1989 the Authority may not impose a penalty in respect of a breach later than 5 years from the date of the breach unless an IR³³ issued under s.28(2) EA 1989 is served on the regulated person. The case team sent a statutory IR under s.28(2) EA 1989 in respect of the SLC 10 breaches at issue on 13 March 2020. In the case of the SLC 9 and 30 breaches the first IR was sent on 11 January 2021. In summary, our evidence shows that WPD has breached all the SLCs cited in the table below.

³³ Information request

SLC	Breach area	Duration
SLC 9.2(d)	Fitness of Representatives	Jan 2016 – Jun 2021
SLC 10.5(a)	Failure to provide information to PSR Customers when they were first added to the PSR	Mar 2015 – Feb 2021
SLC 10.5(c)	Failure to provide information to PSR Customers during unplanned outages	Mar 2015 – Jul 2021
SLC 30.1	Failure to allocate sufficient resources to meet SLC 9 and 10 obligations	Jan 2016 – Jul 2021

3.2. The 2014 Ofgem Penalty Policy came into force on 6 November 2014, replacing the previous 2003 Penalty Policy. The breaches listed above all fall under the 2014 policy.

3.3. The Authority is required to carry out all its functions, including the taking of any decision as to the imposition of a penalty, in the manner which it considers is best calculated to further its principal objective, having regard to its other duties.

3.4. In deciding whether it is appropriate to impose a financial penalty, the Authority has considered all the circumstances of the case including, but not limited to, the specific matters set out in the 2014 Penalty Statement, the evidence gathered during the course of the investigation and representations made by WPD. These matters are examined in detail below.

General Criteria for the Imposition of a Penalty

3.5. The Authority is required to take into consideration all of the particular facts and circumstances of the contravention or failure, and has done so. We set out the criteria below that apply in this particular case.

Factors tending to make the imposition of a financial penalty more likely

The contravention or failure damaged, or could have damaged, the interests of consumers and/or other market participants. The contravention or failure damaged, or could have damaged, the confidence that consumers and/or other market participants have in the market

3.6. The Authority considers that the breaches could have had a significant detrimental impact on consumers. There was an increased risk to the health and well-being of some of WPD's PSR Customers during unplanned outages, particularly during overnight outages where WPD did not contact any PSR Customers at all, including those that were medically dependent on electricity. WPD asserted that PSR Customers could contact WPD during unplanned outages. While WPD contacted all Customers annually with details about how to contact WPD and what to do during unplanned outages, the Authority's view is that this was not sufficiently prompt in some cases. Therefore some PSR Customers may have experienced an unplanned outage before receiving this information.

3.7. The Authority considers that the interests of the wider market have been damaged by the contraventions. WPD's business is funded by GB electricity customers and it did not provide some of the services it was funded to provide. Some of WPD's PSR Customers would have expected to receive information and advice during unplanned outages. WPD's Customers may have assumed and expected that WPD was taking adequate steps to ensure the fitness and propriety of its Representatives who may be present at their premises. It is essential that WPD (and DNOs in general) provide what it is funded and obligated to do. That is vital to maintain trust and confidence in the energy sector, particularly in a sector that is a natural monopoly.

A penalty and/or a consumer redress order is necessary to deter future contraventions or failures and to encourage compliance

3.8. Throughout this investigation WPD was given ample advice, time and direction from the Authority on where its areas of non-compliance were. Whilst WPD did rectify the breaches, it took significant engagement with the Authority to achieve that compliance.

On occasion some of the Authority's advice took time to be enacted or insufficient steps were taken towards addressing concerns. WPD's approach resulted in an unacceptably long delay to breach rectification. The PSR exists to offer some of the most vulnerable consumers specific services that are designed to assist them in difficult and potentially distressing situations. The interests of vulnerable consumers is a key priority area for the Authority. Licensees must take their obligations to PSR Customers and regulatory obligations in general seriously. The Authority considers that both general and specific deterrence are important factors in this case.

The circumstances from which the contravention or failure arose were or should have been within the control of the regulated person under investigation / the contravention was deliberate or reckless

3.9. The arrangements and resources to secure compliance with the SLCs were entirely within WPD's control and it has been able to make the necessary adjustments to end the breaches. Those adjustments included systems for volume contact, changes to recruitment policies and employment terms and changes to the volume of welcome letters sent. However we note that there was extensive engagement with WPD both before and during this investigation and it was advised at several points that it's policies were non-compliant. The changes to secure compliance were within WPD's control but it took too long to make those changes resulting in an extended breach period.

The contravention or failure (or possibility of it) would have been apparent to a regulated person acting diligently

The PSR is not a new concept and has evolved over time, following consultation³⁴. Changes to SLCs, incidents involving PSR Customers during unplanned outages and Ofgem's initial engagement are examples of events that should have alerted WPD to review its internal policies and procedures to ensure they were compliant with regulatory obligations. The Authority considers that it should have been apparent to WPD that if it

³⁴ SLC 10 was last updated in January 2017 with the definition of 'PSR Customer' widening

did not provide the requisite priority services to all of its PSR Customers at the required time then there was a heightened risk of non-compliance.

A lack of effective remedial action after the contravention or failure becomes apparent to the regulated person

3.10. The Authority was concerned with WPD's lack of urgency to fully rectify issues as and when highlighted by the Authority. The Authority engaged with WPD initially in October 2019 on its overnight contact policies. The Authority opened an investigation in February 2020 after its concerns were not addressed. Further areas of concern were identified during the course of the investigation in addition to those regarding overnight contact arrangements. The concerns regarding overnight contact were finally rectified in July 2021. WPD has criticised the Authority for a lack of guidance however it should have been apparent as far back as October 2019 what the Authority's concerns were and what action WPD needed to take to address those concerns. The lines of questioning during the course of the investigation and the engagement the Authority had with WPD whilst the investigation was ongoing made it clear to WPD what the contraventions were.

Factors tending to make (a) the imposition of a financial penalty and/or (b) the making of a consumer redress order less likely include:

The contravention or failure is of a very minor nature

3.11. The Authority does not consider the contraventions to be minor or trivial. The contraventions had the potential to impact many PSR Customers and Customers to varying degrees over a long period of time. The potential harm to some PSR Customers was significant and the steps required to rectify the issues were neither financially prohibitive, difficult or time-consuming to implement.

The contravention or failure (or possibility of it) would not have been apparent to a regulated person acting diligently.

3.12. WPD should have been aware that it was risking breaches of SLCs by not providing the mandated priority services to all its PSR Customers. Additionally, WPD should also have been aware that a reliance on self-verification of fitness was not in keeping with the 'all

reasonable steps' obligation in SLC 9. Notably this is an area where the Authority has already taken enforcement action for a similar breach³⁵. WPD should have been aware of the Authority's views and expectations in this area, reviewed its own arrangements and made the necessary adjustments.

4. Criteria relevant to the level of financial penalty

4.1. In accordance with section 27O of the EA 1989 the Authority may impose a financial penalty of up to ten per cent of the turnover of the relevant licence holder. Turnover is defined in an Order made by the Secretary of State. The Authority is satisfied that the proposed penalty does not exceed ten per cent of WPD's turnover³⁶.

4.2. Under section 27A of the Electricity Act 1989 ('EA 1989') the Authority may not impose a penalty in respect of a breach later than 5 years from the date of the breach unless an IR issued under s.28(2) EA 1989 is served on the regulated person. The Authority sent a statutory IR under s.28(2) EA 1989 in respect of the SLC 10 breaches at issue on 13 March 2020. In regards to SLC 9 and 30, the Authority issued the first IR after the case was widened on 11 January 2021.

2014 Penalty Statement

4.3. The 2014 Penalty Statement requires that a six step process is followed in order to determine the level of financial penalty:

1. Calculate the detriment to consumers and calculate the gain to the regulated person. Consider whether a consumer redress order is appropriate to remedy the consequences of

³⁵ The Authority imposed a penalty on E (Gas and Electricity) Ltd in 2018 for a breach of SLC 13 of its Gas and Electricity supply licences. See <https://www.ofgem.gov.uk/publications/notice-decision-impose-financial-penalty-e-gas-and-electricity-limited-following-our-investigation-its-compliance-under-gas-and-electricity-supply-licences-standard-licence-conditions-25-and-13>

³⁶ This is the combined turnover of the four individual licensees

the contravention identified or to prevent a contravention of the same or a similar kind from being repeated.

2. Consider the seriousness of the contravention or failure to determine the appropriate penal element.
3. Consider any aggravating and mitigating factors that may increase or decrease the penal element.
4. Consider the need for a deterrence uplift to the penal element, having regard to the principle that non-compliance should be more costly than compliance and that enforcement should deliver strong deterrence against future non-compliance.
5. Where a case is settled, apply a discount to the penal element.
6. Establish the total financial liability.

1 Calculate the gain and detriment

- 4.4. The Authority notes the progress WPD has made in addressing the breaches and the investment in new policies, procedures and systems. The Authority recognises that in some areas it is not possible to retrospectively address gain, detriment and avoided cost. The Authority also recognises that it would be difficult for WPD to identify Customers impacted by some breach areas. For example it would be difficult to ascertain the detriment to an SN04 PSR Customer who did not receive the PSR welcome information at the time it should have been provided or a PSR Customer who was not proactively contacted by WPD during an unplanned outage. The Authority also recognises that such detriment to WPD's Customers would be difficult to quantify in financial terms.

Gain to WPD / Avoided Costs

- 4.5. The Authority considers that WPD gained / avoided costs in the following areas:

- Saving costs attributed to sending welcome information to SN04 PSR Customers signed up via suppliers – Breach 1

- Savings associated with not providing PSR Customers with notifications during unplanned outages – Breach 2
- Savings associated by not conducting criminal record checks on Representatives – Breach 3

Breach 1 - Sending SN04 PSR Customers Welcome information – SLC 10.5(a)

4.6. Information provided by WPD indicates that it received approximately 5,000 notifications of SN04 PSR Customers from suppliers each week. The period for which the Authority can impose a penalty started in March 2015 and ended in February 2021. There was a change to this SLC in January 2017 which widened the definition of PSR Customer. Prior to that date WPD added some Customers to its PSR on a discretionary basis who are likely to have been classed as SN04 but did not meet the definition of PSR Customer. However for reasons explained in this Notice we consider that these Customers should have been treated as PSR Customers and were eligible for the full range of priority services offered by WPD. Therefore for the period March 2015 to February 2021 the estimated avoided cost (gain to WPD) is **£539,000**

Breach 2 - Contacting PSR Customers during unplanned outages – SLC 10.5(c)

4.7. This figure has been estimated by comparing the costs WPD would have incurred when it offered shorter operating hours and proactive contact to a smaller cohort of PSR Customer numbers compared against the costs WPD would have incurred if it had contacted all PSR Customers, 24/7, 365 days a year during unplanned outages. The estimated gain to WPD associated with not contacting all PSR Customers during unplanned outages is **£170,560**.

Breach 3 – Fitness and Propriety checks

4.8. These costs have been estimated by calculating the cost of a Basic DBS check for each of WPD's Representatives who may have visited or entered Customer premises during the Relevant Period and adjusting for a renewal of that check. The resultant avoided cost is estimated as **£200,100**.

4.9. It has not been possible to estimate the detriment to any PSR Customers who may have experienced difficulty, distress or inconvenience as a result of not receiving a proactive notification from WPD. Similarly it has not been possible to calculate the detriment suffered by SN04 PSR Customers who were not provided with information when their details were first added to WPD's PSR. Nor can it be ascertained what the uplift in inbound contact to WPD may have been had these PSR Customers been provided with this information. The Authority therefore makes no estimate in this regard.

4.10. Therefore the total gain and detriment is assessed to be **£909,660**.

2 Assess seriousness

4.11. In assessing seriousness³⁷, the Authority considered the nature, impact and whether or not the breaches were deliberate or reckless. The Authority has concluded that the contraventions are serious and the SLC 10.5(c) breach is particularly serious. WPD's PSR policies had potentially serious implications for some of its PSR Customers. PSR Customers did not receive overnight notifications during unplanned outages meaning that they were not notified of situations that may have required them to take mitigating action to prevent potentially serious consequences. WPD's policies resulted in some of its more vulnerable PSR Customers getting no notifications during unplanned outages for long periods of time, placing them at an increased risk of harm. The overwhelming majority of WPD's PSR Customers got no notifications at all during any unplanned outages³⁸. For some of those affected SN04 PSR Customers the lack of updates may have had minimal impact. Other SN04 PSR Customers may have been inconvenienced or may even become confused and distressed by the lack of information. This may have been compounded by the fact that some of these PSR Customers did not receive a welcome letter and may have been unaware of who to contact and how to get help and advice. Regardless of perceived level of risk, or any internal categorisation system, WPD has an obligation to provide all its PSR Customers with appropriate information when

³⁷ Outlined in paragraphs 5.10 to 5.14 in the 2014 Penalty Policy

³⁸ There may have been contact if the outage was over 6 hours

signed up to the PSR. WPD is also obliged to update all its PSR Customers during unplanned interruptions, regardless of when that outage occurs. In short, WPD was not providing some of the priority services it was funded and obliged to provide to all PSR Customers. We regard this as a serious failing on WPD's part.

4.12. The Authority also notes the incomplete and slow action on WPD's part to address the breaches, even after advice from the Authority that its practices were non-compliant. Initial engagement regarding WPD's overnight contact policy started in October 2019 and WPD did not address our concerns leading to the opening of this investigation. WPD has only recently fully addressed those concerns and it has taken considerable engagement to achieve that. WPD's continued non-compliance even after the opening of the investigation placed some of its PSR Customers at continued and unnecessary risk and is indicative of a poor attitude to regulatory compliance. WPD's failure to adequately address known concerns when highlighted could have resulted in serious repercussions for some of its most vulnerable PSR Customers.

3 Consider aggravating or mitigating factors

4.13. The Authority considers that there are five aggravating factors and one partial mitigating factor. These are explained below.

Factors tending to increase the penal element

Continuation of the contravention or failure after becoming aware of it/ continuation of the contravention or failure after becoming aware of the start of Ofgem's investigation³⁹

4.14. As highlighted, WPD was aware of the Authority's concerns but took too long to address them. WPD was aware of the contravention before the investigation was even opened. The Authority notes the length of time it took for WPD to fully address the Authority's concerns, in particular for it to provide proactive overnight contact to all its

³⁹ These factors are two separate aggravating factors but have been explained together

PSR Customers with no facility to opt-in/ out. Therefore these factors apply and the Authority views it as particularly serious in the circumstances.

The involvement of senior management in any contravention or failure

4.15. The Authority considers that WPD's senior management had sufficient oversight of its PSR policies and procedures and also (in the case of SLC 9) its recruitment policies. When concerns were raised about regulatory compliance WPD's senior management cited various reasons for its approach and overall was slow to address concerns. That delayed the resolution of the issues and prolonged the breach period. In prolonging that period WPD also prolonged the length of time its Customers were at risk from WPD's non-compliance. This approach is entirely unacceptable. Therefore this factor applies, and in the Authority's view, is particularly serious in this instance.

A lack of sufficient senior management involvement to prevent the contravention or failure

4.16. As outlined, we believe there was sufficient management oversight of WPD's PSR policies, procedures and practices. That management were sufficiently involved but made incorrect decisions regarding what WPD needed to do to be compliant with its obligations. Therefore this factor applies.

The absence of any evidence of internal mechanisms or procedures intended to prevent contravention or failure / the absence of any evidence that such internal mechanisms and procedures as exist within the regulated person have been properly applied and kept under appropriate review by senior management⁴⁰

4.17. WPD stated that its interpretation of SLC 10.5(c) compliance was that of an informed opt-out of overnight contact for its PSR Customers. However that was never WPD's applied procedure at any point during the Relevant Period. An initial change was made to

⁴⁰ These factors overlap and have been considered collectively as one full aggravating factor

WPD's overnight contact policy in July 2019 but it was offered on an optional opt-in basis to certain PSR Customers. That programme of offering overnight contact to certain PSR Customers was completed following the opening of this investigation. However the changes still did not deliver compliant arrangements. Some additional changes were made following one inquest in December 2020 but WPD's arrangements were again still non-compliant with SLC 10.5(c). WPD did not implement a system of proactive overnight contact for all PSR Customers until April 2021, well after both inquests and after ongoing engagement with the Authority. Even then some medically dependent PSR Customers had been opted-out of proactive overnight contact. Therefore our view is that there were at the very least certain trigger events that would have alerted WPD's senior management and its compliance team that there may be issues with its PSR arrangements and that those triggers should have prompted reviews. It is the Authority's view that WPD's senior management should have also been aware that its adopted policies and procedures did not at any point deliver services matching its interpretation of its SLC 10.5(c) obligations. Therefore this factor applies.

Mitigating Factors

Evidence that the regulated person has taken steps to review its compliance activities and change them as appropriate in the light of the events that led to the investigation at hand

4.18. We note improvements in this area and that WPD is now compliant. However progress was slow and WPD required repeated engagement with the Authority. Therefore, this factor applies to a limited extent.

4.19. In conclusion, considering that there are five aggravating factors (including some which the Authority considers particularly serious in this instance) and one partial mitigating factor the Authority considers it appropriate to adjust the initial penal element upwards.

4 Consider an adjustment for deterrence

4.20. The Authority considers that an upward adjustment for deterrence to the penal element was appropriate in this case. The Authority has considered the levels of penalties imposed in other similar investigations. The Authority also considered the 2014 Penalty Policy which indicates that the Authority will place a greater emphasis on deterrence

when imposing subsequent financial penalties. The Authority considers that, after the upward adjustment had been applied, £20m is an appropriate overall penal element under the 2014 Penalty Policy.

5 Apply a discount in settled cases

4.21. The Authority notes that WPD has agreed to settle in the early settlement window thus attracting a 30% reduction on the penal element of this penalty. With this discount applied the penal element is reduced to £14m.

6 Establish the total financial liability

4.22. The Authority has established the total financial liability of WPD under the 2014 Penalty Statement by adding the final penal element of £14m to the gain and detriment of £909,560 resulting in a total financial liability of **£14,909,660**.

4.23. The Authority proposes to impose a financial penalty of £4⁴¹ on the condition that WPD pays the balance of the **£14,909,660** to the Authority's Voluntary Redress Fund. The Authority considers the proposed penalty to be reasonable in all the circumstances of the case.

5. The Authority's Decision

5.1. The Authority finds that WPD breached the SLCs as cited in the table at para 3.1 of this Notice. The Authority hereby proposes to impose a penalty of £4 on WPD which it considers to be reasonable in the circumstances of the case.

⁴¹ A penalty of £1 is imposed on each of the four individual licensees

5.2. The proposed penalty takes into account that WPD will pay **£14,909,660** less £4 into the Voluntary Redress Fund and the payment will be made within 42 days of the final decision to impose this penalty.

5.3. The Authority has taken the following relevant factors under the 2014 Penalty Policy into particular consideration when imposing this penalty:

- The risk of harm to WPD's Customers, in particular its PSR Customers (some of whom are extremely vulnerable) as a result of the non-compliance
- WPD's attitude to regulatory compliance and the resultant delay in rectifying the breaches. This delay continued the risk of harm to its Customers, in particular its most vulnerable PSR Customers
- The fact that WPD is a natural monopoly and its activities are funded by all electricity Customers. WPD was not allocating the resources required to attain regulatory compliance and failed to deliver in line with its obligations
- The fact that Customers have little choice or influence when it comes to their DNOs, therefore the Authority must act to protect their interests
- The serious nature of the breaches
- The five aggravating and one partial mitigating factor, including in particular the involvement of senior management and the delay in rectifying the contraventions.

5.4. The Authority hereby gives notice under section 27A(3) of the Electricity Act 1989 of its proposal to impose a penalty of £4 on WPD in respect of the contraventions set out above .

5.5. WPD has agreed to settle the investigation on the basis of paying a financial penalty of £4 and to pay the sum of **£14,909,660** (less £4) by way of voluntary redress.

5.6. Any written representations or objections to this notice must be received by Emma Lynch, Senior Enforcement Investigator (emma.lynch@ofgem.gov.uk) or Ofgem,

Penalty notice



Commonwealth House, 3rd floor, 32 Albion Street, Glasgow G1 1LH by **5pm on Thursday 26 May 2022.**

5.7. Any representations received that are not marked as confidential may be published on the Ofgem website. Should you wish your response or part of your response to remain confidential, please indicate this clearly. The Authority will consider such requests on a case-by-case basis.

Gas and Electricity Markets Authority
Date 4 May 2022