

NOTICE OF PROPOSAL TO IMPOSE A FINANCIAL PENALTY PURSUANT TO SECTION 30A(3) OF THE GAS ACT 1986 AND SECTION 27A(3) OF THE ELECTRICITY ACT 1989

Date: 16 March 2023

Proposal of the Gas and Electricity Markets Authority ('the Authority') to impose a financial penalty, following an investigation into United Gas & Power Limited ('UGP') and its compliance with its obligations under Standard Licence Conditions ('SLCs') 0A, 7A.1, 7A.8, 7B and 21B.1 of its gas and electricity supply licences.¹

1. Summary

- 1.1. This case concerns acts or omissions which, in the opinion of the Authority, constitute contraventions of the above SLCs committed by UGP in relation to its Non-Domestic Customers supplied under its gas and electricity supply licences.
- 1.2. The Authority considers that UGP has committed a number of breaches; breaches in relation to billing, handling of credit balances, identification of Micro Business Consumers (MBCs) and provision of information to MBCs at the time of contract renewal.
- 1.3. In respect of breach 1 (see numbered list of breaches below at paragraph 2.1; and also set out at Table 2 below), UGP took some extraordinary and wholly unjustifiable actions, in clear breach of its licence conditions, in order to gain at the expense of its customers. These actions caused significant harm to a number of its customers. UGP's senior management, having identified a shortfall in its budget caused by issues with a third-party, and not in any way by the customers affected, sought to remedy that shortfall by billing those customers on the basis of inflated consumption estimates, ignoring actual consumption data received from customers' Half-Hourly (HH) meters.² UGP's senior management was reckless as to the possible and likely negative impacts

¹ The SLCs considered within this Notice of Proposal have similar wording in the Gas and Electricity Supply Licences and are interpreted by the Authority in a consistent manner. In this document, a reference to an SLC by number refers to the identical condition in both licences. All terms used in this Notice of Proposal are deemed to have the same definitions as those in the Electricity and Gas Supply Licences, unless indicated otherwise.

² Half-Hourly meters: these meters automatically send readings every half an hour to a data collector, who submits them to the relevant energy supplier.

this unjustifiable overcharging would have on those customers affected. UGP has admitted that it did not treat the customers affected fairly or in accordance with its obligations under the relevant SLCs and has stated that it regrets its decision and would not take similar action in future. UGP did return the amounts overcharged via subsequent bills and has made additional goodwill gesture payments to those affected. UGP has admitted the breach and accepts the exceptionally serious nature of this non-compliance. The Authority considers that the other breaches in this case are also serious, including a failure to communicate credit balances on closed accounts clearly to customers and amassing significant sums in credit as a consequence. There were also failures to communicate important information to customers at the time of contract renewal, meaning that customers were not given information that would enable them to make informed choices in relation to their energy supply.

1.4. UGP has admitted all the breaches in the case and has taken appropriate remedial actions to improve performance.

1.5. The Authority proposes to impose a financial penalty on UGP following an investigation by the Authority into UGP's compliance as set out above and specifies in this notice the acts or omissions which, in its opinion, constitute the relevant contraventions and the other facts which, in its opinion, justify the imposition of a penalty and the amount of the penalty proposed.

1.6. Subject to consideration of any representations or objections duly made in response to this notice, the Authority considers that UGP breached the following relevant licence conditions:³

- SLC 21B.1: this SLC requires licensees to take all reasonable steps to reflect meter readings received in bills sent to customers. The Authority finds that UGP failed to bill customers based on meter readings and instead senior management took the decision to deliberately overcharge some customers by using inflated consumption estimates. The Authority considers that this SLC was breached in February 2020.
- SLC 0A.2: this SLC requires licensees to achieve the Standards of Conduct⁴ in a

³ "Relevant condition" has the meanings set out in section 28(8) of and in Schedule 4B to the Gas Act 1986, and in section 25(8) of and in Schedule 6A to the Electricity Act 1989.

⁴ The Standards of Conduct are as set out in SLC0A.3.

manner consistent with the Customer Objective.⁵ The Standard of Conduct which is relevant to this breach is set out in SLC 0A.3(a) and is that the licensee 'behaves and carries out any actions in a Fair, honest, transparent, appropriate and professional manner.' The Authority considers that UGP failed to achieve this Standard of Conduct by failing to communicate appropriately with customers, having made billing errors and which consequently gave rise to a likelihood of detriment (and actual detriment) to those MBCs, including significant catch-up bills, which was not reasonable in all the relevant circumstances. The Authority considers that SLC 0A.2 was breached between 6 February 2020 and 29 April 2020.

- SLC 7A.1 (a) and (b): this SLC requires licensees to take all reasonable steps to identify whether a Non-Domestic Customer is a MBC in the circumstances specified in the licence condition. The Authority considers that UGP failed to properly identify customers that met the criteria of a MBC, during the onboarding and contract renewal processes. The Authority considers that this SLC was breached between 1 April 2016 and 1 January 2022.
- SLC 0A.2: this SLC requires licensees to achieve the Standards of Conduct in a manner consistent with the Customer Objective. The Standards of Conduct which are relevant to this breach are set out in SLCs 0A.3(b)(i) and (ii). SLC 0A.3 b (i) requires the licensee provides information (whether in Writing or orally) to each MBC, which is complete, accurate and not misleading (in terms of the information provided or omitted). SLC 0A.3 b (ii) requires that the information provided, is communicated (and, if provided in Writing, drafted) in plain and intelligible language with more important information being given appropriate prominence. The Authority considers that UGP failed to achieve these Standards of Conduct by failing to provide information clearly, or at all, in relation to credit balances on closed accounts, either on final bills issued, or in any other communication. The Authority finds that SLC 0A.2 was breached between 10 October 2017 and 12 January 2022.
- SLC 7B.5: SLC 7B was the previous version of SLC 0A (both conditions known as

⁵ The "Customer Objective" is set out in SLC 0A.1 and is for the licensee to ensure that each MBC is treated Fairly. Under SLC 0A, "Fair" and cognate expressions have the following meaning: "The licensee would not be regarded as treating a [MBC] Fairly if their actions or omissions give rise to a likelihood of detriment to the [MBC], unless the detriment would be reasonable in all the relevant circumstances."

the, Non-Domestic Standards of Conduct). SLC 7B was superseded by SLC 0A on 10 October 2017. This SLC required licensees to take all reasonable steps to achieve the Standards of Conduct in a manner consistent with the “Customer Objective”.⁶ The Standards of Conduct which are relevant to this breach are set out in SLC 7B.4 (b) (i) and SLC 7B.4 (b) (iv). The actions taken were the same as those described under the previous breach. The Authority finds that SLC 7B.5 was breached by UGP between 1 February 2017 and 9 October 2017.

- SLC 0A.2: this SLC requires licensees to achieve the Standards of Conduct in a manner consistent with the “Customer Objective”. The Standards of Conduct which are relevant to this breach are set out in SLC 0A.3(b)(i) and (b)(ii) and require licensees to provide information to each MBC which is complete, accurate and not misleading (in terms of the information provided or omitted) and is communicated in plain and intelligible language with more important information given appropriate prominence. The Authority finds that UGP failed to issue Statement of Renewal Terms to MBCs that gave important information appropriate prominence. The Authority finds that SLC 0A.2 was breached between 10 October 2017 and 19 October 2020.
- SLC 7B.5: SLC 7B was the previous version of SLC 0A (both conditions known as the, Non-Domestic Standards of Conduct). SLC 7B was superseded by SLC 0A on 10 October 2017. This SLC required licensees to achieve the Standards of Conduct in a manner consistent with the “Customer Objective”. The Standards of Conduct which are relevant to this breach are set out in SLC 7B.4 (b) (i) and SLC 7B.4 (b) (iv) The actions taken were the same as those described under the previous breach. The Authority considers that SLC 7B.5 was breached between 1 February 2017 and 9 October 2017.
- SLC 7A.8 (e) and (f): this SLC requires licensees to provide MBCs with information during the contract renewal process in relation to current charges and consumption. The Authority considers that UGP failed to provide the required information. The Authority considers that this SLC was breached between 1 February 2017 to 19 October 2020.

⁶ The “Customer Objective” is set out at SLC 7B2: The objective of this condition is for the licensee to ensure that each Micro Business Consumer is treated fairly (“the Customer Objective”). SLC 7B.3 further provided that: For the purposes of this condition, the licensee would not be regarded as treating a Micro Business Consumer fairly if their actions or omissions: (a) significantly favour the interests of the licensee; and (b) give rise to a likelihood of detriment to the Micro Business Consumer.

- SLC 7A.8 (b) (i) and (ii) and (d): this SLC requires licensees to provide MBCs with information relating to the Principal Terms of a contract during the contract renewal process. The Authority considers that UGP failed to provide the required information. The Authority considers that this SLC was breached between 1 February 2017 and 31 August 2021.

1.7. UGP has admitted that it breached the relevant licence conditions as set out above. UGP took appropriate remedial actions and made improvements to its practices during the course of the investigation.

1.8. The Authority has taken into account UGP's willingness to settle the investigation and make a voluntary redress payment into Ofgem's Voluntary Redress Fund (currently managed by the Energy Saving Trust).⁷ The Authority also notes the progress UGP has made during the course of the investigation (in respect of breaches 1, 4 and 5) to identify customers who have suffered detriment and to provide refunds (and in the case of breach 1 only, compensation), as appropriate. Had UGP not taken such steps the proposed penalty in this investigation would have been significantly higher.

1.9. The Authority considers that a voluntary redress payment will be of greater benefit to energy consumers than if a significant financial penalty were to be imposed. Accordingly, the Authority considers it reasonable to propose to impose a financial penalty of £1, provided UGP pays the sum of £2,111,798.00 (less £1) in voluntary redress. If UGP had not agreed to make this payment, the Authority would have considered it appropriate to propose a higher financial penalty in view of the seriousness of the contraventions.

1.10. The Authority takes the breaches set out above very seriously. It is evident from the investigation that UGP failed to take its regulatory obligations seriously. The evidence in respect of breach 1 shows that this was a deliberate act and a decision taken by the most senior people at UGP, and as such the Authority views this as extremely serious. The actions were entirely inappropriate and, whilst the scale in terms of numbers affected was not huge, the harm was potentially very significant for those affected. It should go without saying that companies, no matter how difficult their own circumstances, should not treat customers' money as their own and for their own benefit. UGP's wholly unjustifiable actions in this case were to the detriment of its customers and UGP was reckless as to the potential negative outcomes for those customers. These actions might have gone

⁷ [Authority guidance on the allocation of redress funds | Ofgem](#)

undetected, had Ofgem not received intelligence from an external source. The Authority finds UGP's historic approach to regulatory compliance unacceptable. Liability has been accepted by UGP. UGP has taken appropriate remedial steps to improve performance.

- 1.11. Applying the criteria in section 3 of this Notice, the Authority considers that the imposition of a penalty for the contraventions is justified. The proposed penalty takes into account all the breaches and their respective breach periods as set out Table 2. In determining the amount of the proposed penalty the Authority has taken into consideration the factors set out in section 4 of this Notice. The Authority considers the proposed penalty to be reasonable in all the circumstances of this case.
- 1.12. In these circumstances and mindful of its principal objective to protect the interests of existing and future consumers the Authority hereby gives notice under s30A(3) of the Gas Act 1986 ('GA 86') and s27A(3) of the Electricity Act 1989 ('EA 89') of its intention to impose a penalty of £1 on UGP in respect of the contraventions set out above. This is subject to UGP paying £2,111,798.00 (less £1) into Ofgem's Voluntary Redress Fund.⁸ It is proposed that the payment of the penalty is made within 42 days of the date of service of the notice of decision to impose a financial penalty.
- 1.13. Any written representations or objections to this notice must be received by penaltyreps@ofgem.gov.uk, or, Penalty Representations, Ofgem, Enforcement, 4th Floor, 10 South Colonnade, Canary Wharf, London E14 4PU by **4pm on Thursday 6 April 2023**. Any representations received by this date will be considered by the Authority before it makes a final decision to impose a penalty.
- 1.14. The Authority may publish any representations or objections 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 to propose to impose a penalty and the amount of that penalty. The Authority is satisfied that UGP committed the following breaches, in contravention of

⁸ 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: [Authority guidance on the allocation of redress funds | Ofgem](#)

the following relevant conditions:

- Breach 1 relates to the use of meter readings (actual consumption data). UGP chose to ignore meter readings and to bill on deliberately inflated estimates of consumption instead (SLC 21B.1).
- Breach 2 relates to the failure to communicate appropriately with customers, having made billing errors. UGP made billing errors over the three-month period which led to significant catch-up bills being issued to customers. No explanation or apology was made prior to issuing these bills and insufficient thought was given to lessening the potential impacts (SLC 0A.2).
- Breach 3 relates to the identification of customers meeting the criteria of a MBC, during the onboarding and contract renewal processes. UGP failed to properly identify MBCs, meaning that those affected were not afforded the relevant protections (SLC 7A.1 (a) and (b)).
- Breach 4 relates to the clear communication on final bills issued to customers of credit balances and how to claim them. UGP failed to communicate these details clearly and large sums were not returned to customers in a timely fashion, or at all (SLC 0A.2).
- Breach 5 relates to the same conduct as breach 4 (SLC 7B.5). SLC 7B was the previous version of SLC 0A; SLC 7B was superseded by SLC 0A on 10 October 2017 SLC.
- Breach 6 relates to the provision of information to MBCs at the time of contract renewal. UGP failed to issue Statements of Renewal to MBCs that gave important information appropriate prominence (SLC 0A.2).
- Breach 7 relates to the same conduct as breach 6 (SLC 7B.5). SLC 7B was the previous version of SLC 0A; SLC 7B was superseded by SLC 0A on 10 October 2017 SLC.
- Breach 8 relates to information required to be given to MBCs during the contract renewal process. UGP failed to provide information to MBCs relating to charges and consumption data (SLC 7A.8 (e) and (f)).

- Breach 9 relates to information required to be given to MBCs during the contract renewal process. UGP failed to provide information to MBCs relating to principal terms (7A.8 (b) (i) and (ii) and (d)).

Breach 1 – SLC 21B.1 - Failure to bill customers based on meter readings

- 2.2. Under SLC 21B.1 a licensee is required, where it receives a meter reading, or reads a meter, to take all reasonable steps to reflect the meter reading in the next bill or statement of account sent to the customer.
- 2.3. On examination of the evidence the Authority considers that in February 2020 UGP did not comply with the requirements of SLC 21B.1. This breach affected both MBCs and Industrial and Commercial (I&C) customers.
- 2.4. The evidence revealed that, following a meeting of and a decision taken by senior management, UGP ignored meter readings of actual consumption (available through HH meters) and instead billed some HH meter customers based on deliberately inflated estimates of consumption. UGP owed a significant sum to a third-party and required additional revenue to meet that liability. These bills were issued in February 2020. The fact that UGP took direct debits within 5 days of issuing a bill meant that customers had little time to check their bills and query why they were higher than usual.
- 2.5. The Authority did not find that UGP did not intend to reconcile the affected accounts (effectively return the money to customers via future billing), but clearly the relevant monies should not have been taken in the first instance, and then should have been returned to customers more quickly (monies were returned over a period of one to seven months).
- 2.6. The conduct in question affected 65% of UGP electricity customers with HH meters (244/523 meters – 47% of HH meters; 183 individual customers).
- 2.7. UGP, anticipating that customers affected would make contact to query their inflated bills, created a query tracker to monitor these customer contacts. During the course of the investigation Ofgem obtained a copy of an email where customer service staff were instructed to tell HH meter customers who had been billed on an inflated estimate of consumption: *We will need to look into this for you, do you have a copy of your Half Hourly data you could send to us so we can investigate this further for you?* The Authority considers that this communication was, at best, disingenuous. The evidence the Authority

has seen indicates that UGP knew exactly what had occurred as it was a consequence of a deliberate act by senior management to ignore actual consumption data received from the HH meter and to bill based on an inflated estimate instead.

2.8. UGP has admitted that it did not treat the customers affected fairly, or in accordance with its obligations. UGP has said that it regrets its decision to issue inflated bills to some of its customers in February 2020 and has acknowledged that its actions would have led to customers affected receiving significantly inflated bills. The total amount overcharged was £382,188, divided by 183 customers, which means bills were £2,088 higher on average per customer. For context, the highest single overbill amount for an affected MBC customer was over £4,500. For an I&C customer affected by the issue, the highest single overcharge was over £22,600. The levels of overcharging were significant and the harm to those affected would in many cases have been serious.

2.9. The Authority has noted that UGP has admitted its unacceptable behaviour, has shown contrition, and has taken steps to remedy the harm. Monies have been mostly repaid (all but c.£14,500⁹ has been returned, albeit not always as swiftly as might be hoped and expected) and additional goodwill gesture payments of £200 per customer have been made, wherever possible (goodwill gesture payments made so far amount to £31,000). UGP has also taken steps to improve its regulation and compliance function and has assured the Authority that it will never repeat this contravention, or anything akin to it.

2.10. This amounts to some of the worst wrongdoing seen by Ofgem in its enforcement cases pursued over many years. UGP found itself in financial difficulty for various reasons, but there can be no justification for the course of action it took to get itself out of that difficulty.

2.11. The Authority notes that, had concerns not been raised with Ofgem by various other sources, this breach might not have been detected. The Authority therefore views this breach as extremely serious.

2.12. The Authority considers that UGP was in breach of SLC 21.B.1 in February 2020.

⁹ 12 customers had left UGP's supply before the monies owed could be returned. 5 of those customers were MBCs and the remaining outstanding sum totals £4,537. The remaining 7 were Industrial and Commercial (I&C) customers and the remaining outstanding sum totals £9,995. In terms of Gain and Detriment calculations (as set out at section 4 paragraph 4.5 of this document), the £4,537 is accounted for under breach 4 and has not been double counted. The £9,995 is accounted for under breach 1.

Breach 2 – SLC 0A.2 – failure to communicate appropriately with MBCs, having made billing errors and having consequently issued catch-up bills to customers

- 2.13. Under SLC 0A.2, the licensee “must ensure it achieves the Standards of Conduct in a manner consistent with the Customer Objective.” The Standard of Conduct which is relevant to this breach is set out in SLC 0A.3(a) and is that the licensee ‘behaves and carries out any actions in a Fair, honest, transparent, appropriate and professional manner.’
- 2.14. The Authority found evidence that UGP discovered that between October and December 2019, its billing team had not billed some UGP customers with Non Half-Hourly (NHH) meters¹⁰ correctly (specifically that it had failed to apply its own internal mechanism to adjust estimates of consumption and resultant bills for seasonality). As a result UGP issued inaccurate bills (likely to represent undercharges) to customers from October 2019 to December 2019.
- 2.15. As a consequence, in February 2020, UGP issued higher bills to those customers affected, predominantly in February, March and April 2020. These bills were “catch-up bills”, correcting the earlier errors; they did not constitute overcharging of customers.
- 2.16. UGP did not write to the customers affected or contact them in any way and thus did not inform them of the error made. No apologies were given and no explanations were provided to customers to explain why they had suddenly received these higher catch-up bills.
- 2.17. The Authority found that UGP failed to carry out appropriate assessments to establish the impact that these unexpectedly higher bills might and would likely have on customers. Insufficient consideration was given to how any detrimental effects on customers might have been lessened. The Authority noted that in some instances multiple catch-up bills were issued to customers and so this spread the overall increased catch-up charges over a number of bills and would have lessened the impact for those customers, however, the Authority did not consider that this action alone was sufficient.
- 2.18. Where a customer proactively contacted UGP to query their bill, UGP failed to admit to

¹⁰ Non half-hourly meters: these meters are read manually by the customer or a data collector and bills are based on these reads; or, in the absence of any such reads, an estimate of consumption.

their error and apologise for any inconvenience caused, but did take appropriate action (asked for actual meter readings) to ensure that the customer's account was billed accurately from then on. Where an actual read was provided, UGP did rebill the account based on that reading.

2.19. The Authority considers that UGP should have been proactive in its communications; that it should have owned the error and apologised for it; that it should have requested that the customer provide a meter reading; and that it should have then rebilled all those affected without delay. UGP's communications lacked transparency. Rather than deal with the matter in an open and transparent manner, that assured billing accuracy and put the customer first, UGP issued catch-up bills in haste, putting itself first.

2.20. It is right to say that the numbers of customers affected is not large, but the potential harm for those customers was potentially significant. In total 155 UGP electricity MBCs received at least one catch up bill because of the billing errors made in respect of bills issued between October and December 2019. UGP recouped approximately £27,000 from these customers on top of their regular bill amounts. This represents an average bill increase of around £170 per customer, although the position is more nuanced than that as in some case multiple catch-up bills were issued. The highest remedial bill issued to a single customer was over £1,500, with over £1,300 of that amount accumulating due to UGP's underestimation issue.

2.21. Some customers affected received more than one catch-up bill and so for those customers the position in terms of averages is a little more nuanced:

- in relation to the first catch-up bills issued, UGP recouped c.£21,600 from 155 customers on top of their regular bill amounts. This represents an average bill increase of around £140 per customer;
- in relation to the second catch-up bills issued, UGP recouped c.£3,800 from 38 customers on top of their regular bill amounts. This represents an average bill increase of around £100 per customer;
- in relation to third catch-up bills issued, UGP recouped c.£1,600 from 10 customers on top of their regular bill amounts. This represents an average bill increase of around £156 per customer.

2.22. 217 gas customer MBCs also received at least one catch-up bill due to the same issue.

UGP recouped approximately £88,200 through these catch-up bills, an average bill increase of over £400 per customer. The highest remedial bill issued to a single customer was approximately £3,050. £2,950 of that bill was a consequence of UGP's billing error (underestimation issue).

2.23. Some customers affected received more than one catch-up bill and so for those customers the position in terms of averages is a little more nuanced:

- in relation to the first catch-up bills issued, UGP recouped c.£52,200 from 217 customers on top of their regular bill amounts. This represents an average bill increase of around £241 per customer;
- in relation to the second catch-up bills issued, UGP recouped c.£29,100 from 137 customers on top of their regular bill amounts. This represents an average bill increase of around £212 per customer;
- in relation to third catch-up bills issued, UGP recouped c.£6,900 from 48 customers on top of their regular bill amounts. This represents an average bill increase of around £143 per customer.

2.24. The investigation found that the billing errors made did not appear to be a systemic issue in the billing system. The errors made did show, however, that UGP did not have in place a proper monitoring process to detect billing errors and inaccuracies in a timely fashion.

2.25. UGP has advised that it has now invested a very significant sum in new software that has improved and automated its billing processes and that this provides assurance that the sort of error seen in this breach is unlikely to reoccur.

2.26. The Authority considers that UGP was in breach of SLC 0A.2, by failing to achieve the Standards of Conduct set out at SLC 0A.3 (a) in a manner consistent with the Customer Objective, from 6 February 2020 to 29 April 2020.

Breach 3 – SLC 7A.1 (a) and (b) – failure to identify customers as MBCs

2.27. SLC 7A.1 (a) and (b) requires licensees to take all reasonable steps to identify whether a

Non-Domestic Customer is a MBC¹¹ where the licensee (in summary) intends to enter into a new contract or extend the duration of a contract. The Authority considers that UGP failed to properly identify customers that met the criteria of a MBC, during the onboarding and contract renewal processes.

2.28. The Authority found clear evidence that UGP did not take sufficient steps to ensure that its staff were properly trained and informed, were considering this issue on each and every acquisition or renewal, and were identifying MBCs accurately and consistently.

2.29. During the investigation, and prompted by Ofgem, UGP began an exercise to analyse its present and past portfolio to identify any customers that should have been identified and treated as a MBC. The results show that out of 1,007 historic electricity customers, UGP failed to identify 724 (72%) as a MBC. Similarly, out of 835 historic gas customers, UGP failed to identify 705 (84%) as an MBC.

2.30. This breach is serious in terms of its potential consequences. It means that customers who should have been identified as MBCs were not, and so were not afforded the additional protections to which they are entitled.¹²

2.31. The Authority has found that UGP took a number of actions to achieve compliance in this area in June 2021 and in January 2022 (training and guidance was delivered in June 2021; and a regular monitoring and auditing process was rolled out in January 2022). A January 2022 audit showed that proper identification of MBCs is being achieved consistently. The Authority therefore considers that the breach ended in January 2022.

2.32. The Authority considers that UGP was in breach of SLC 7A.1 (a) and (b) from 1 April 2016 to 1 January 2022.

¹¹ SLC 7A Electricity supply: Micro Business Consumer" means a Non-Domestic Customer:

(a) which is a "relevant consumer" (in respect of premises other than domestic premises) for the purposes in article 2(1) of [The Gas and Electricity Regulated Providers \(Redress Scheme\) Order 2008 \(S.I. 2008/2268\)](#) [link added for ease of reference];

or

(b) which has an annual consumption of not more than 100,000 kWh.

SLC 7A Gas Supply: Micro Business Consumer" means a Non-Domestic Customer:

(a) which is a "relevant consumer" (in respect of premises other than domestic premises) for the purposes of article 2(1) of [The Gas and Electricity Regulated Providers \(Redress Scheme\) Order 2008 \(S.I. 2008/2268\)](#); or

(b) which has an annual consumption of gas of not more than 293,000 kWh.

¹² Protections that include those set out in various SLCs, e.g. SLC 0A, 7, 7A, and the right to pursue a complaint and go to the Ombudsman if unresolved.

Breach 4 – SLC 0A.2 – failure to provide information to MBCs clearly or at all in relation to credit balances on closed accounts, either on final bills issued, or in any other communication

2.33. Under SLC 0A.2, the licensee “must ensure it achieves the Standards of Conduct in a manner consistent with the Customer Objective”.

2.34. SLC 0A.3 b (i) requires that the licensee, provides information (whether in Writing or orally) to each Micro Business Consumer which is complete, accurate and not misleading (in terms of the information provided or omitted).

2.35. SLC 0A.3 b (ii) requires that the information provided, is communicated (and, if provided in Writing, drafted) in plain and intelligible language with more important information being given appropriate prominence.

2.36. The Authority has found UGP has failed to communicate details of credit balances owed to the customer on closed accounts clearly, on final bills or in any other communication, and this has led to significant sums not being returned to customers and instead being held by UGP.

2.37. UGP behaved in the same way in respect of all customers. However, this SLC only applies in respect of MBCs so the Authority can only make a finding of breach under this SLC in respect of MBCs and not all of UGP’s affected customers. We note though that UGP has attempted to refund monies to all customers affected and not just to MBCs.

2.38. The table below shows the total credit balance that was built up in relation to UGP customers who did not have their closed account credit balance returned to them, in a timely fashion or at all. It also shows how much of this sum has been returned and how much remains to be returned. (Note that this table reflects the position post the exercise carried out to properly identify all those customers as MBCs or not.)

Table 1

Credit still owed to UGP MBCs as at 31 May 2022 (covering the period 2016 to 2021 and following the exercise to properly identify MBCs)

Supplier					
UGP	£248,262	£125,759	£122,503	£109,590	£12,913

*Split to apportion the sums applicable to the 0A SoC breach

**Split to apportion the sums applicable to the 7B SoC breach

2.39. The Authority notes that in this case closed account credit balances were not refunded automatically; customers had to request that the money be returned. The Authority notes that there is no licence condition nor other relevant requirement that dictates that licensees must issue credit refunds automatically to customers.

2.40. In the absence of a process whereby the credit owed on a closed account is automatically refunded, the Authority considers that it is incumbent upon the licensee to provide information to the customer that is transparent, complete, accurate and not misleading (in terms of the information provided or omitted). It is a requirement that information provided is communicated (and, if provided in writing, drafted) in plain and intelligible language with more important information being given appropriate prominence.

2.41. The Authority has found that information relating to credit balances has not been communicated clearly to UGP customers:

- it was not made sufficiently clear that the document issued was a final bill;
- where there was a credit, it was not made sufficiently clear that there was a credit owing;
- it was not made sufficiently clear that any such credit was not automatically refunded and that a request for the refund must be made;
- it was not made sufficiently clear how any such credit should be claimed – who to contact and what information was required.

2.42. The Authority notes that UGP has taken appropriate steps to achieve compliance.

Suitable amendments have been made to final bills to communicate the information around any credit owing and how to obtain it. These improvements were introduced on 13 January 2022. Since then, in July 2022, UGP has rolled out a new billing system and refunds and say that the new system will make refunds on closed accounts automatically and the customer will no longer be required to request a refund.

2.43. The Authority considers that UGP was in breach of SLC 0A.2, by failing to achieve the Standards of Conduct set out at SLC 0A.3 (b)(i) and (ii) in a manner consistent with the Customer Objective, from 10 October 2017 to 12 January 2022.

Breach 5 – SLC 7B.5 – failure to provide information clearly, or at all, to Micro Business Consumers in relation to credit balances on closed accounts, either on final bills issued or in any other communication

2.44. Under SLC 7B.5, “The licensee must take all reasonable steps to achieve the Standards of Conduct and ensure that it interprets and applies the Standards of Conduct in a manner consistent with the Customer Objective ”.¹³

2.45. SLC 7B.4 (b) (i) requires that, *the licensee provides information (whether in Writing or orally) to each Micro Business Consumer which is complete, accurate and not misleading (in terms of the information provided or omitted).*

2.46. SLC 7B.4 (b) (iv) requires that, *the information provided by the licensee is otherwise Fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence).*

2.47. The conduct is identical to that set out above in respect of breach 4 and the Authority’s view in terms of the deficiencies of the information supplied to customers are also the same. This is a separate breach simply because the Non-Domestic standards of conduct were originally introduced in 2013 as SLC 7B. On 10 October 2017 SLC 7B was superseded by SLC 0A.

2.48. The Authority notes, however, that under the old Standards of Conduct (SLC 7B), there is a three-stage test that must be applied.

2.49. The “objective” is set out at SLC 7B.2:

7B.2 The objective of this condition is for the licensee to ensure that each Micro Business Consumer is treated fairly (‘the Customer Objective’).

2.50. The first two parts of the three-stage test are set out at 7B.3:

7B.3 For the purposes of this condition, the licensee would not be regarded as treating a Micro Business Consumer fairly if their actions or omissions:

¹³ The “customer objective” is set out at SLC 7B2:

7B.2 The objective of this condition is for the licensee to ensure that each Micro Business Consumer is treated fairly (“the Customer Objective”).

7B.3 For the purposes of this condition, the licensee would not be regarded as treating a Micro Business Consumer fairly if their actions or omissions: (a) significantly favour the interests of the licensee; and (b) give rise to a likelihood of detriment to the Micro Business Consumer.

(a) significantly favour the interests of the licensee; and

(b) give rise to a likelihood of detriment to the Micro Business Consumer.

2.51. The actions required are set out at 7B.4 and the relevant limbs are reflected above.

2.52. The final part of the three-stage test is set out at 7B.5:

7B.5 The licensee must take all reasonable steps to achieve the Standards of Conduct and ensure that it interprets and applies the Standards of Conduct in a manner consistent with the Customer Objective.

2.53. The Authority considers that the evidence shows that customers have not been treated fairly and the three-stage test is satisfied:

- the failure to communicate important information in relation to credit balances owing (in final bills or in any other calculation) and how to claim that credit refund has significantly favoured the licensee;
- credits owing to customers have not been returned in a timely fashion or at all and so it is plain that there has been not just a likelihood of detriment, but tangible detriment suffered;
- UGP has failed to take all reasonable steps to achieve the Standards of Conduct.

2.54. The sums applicable to each period of SoC breach (the old and the new) are shown in Table 1 above.

2.55. The Authority considers that UGP was in breach of SLC 7B.5, by failing to take all reasonable steps to achieve the Standards of Conduct set out at SLC 7B.4 (b) (i) and (iv) and ensure that it interpreted and applied the Standards of Conduct in a manner consistent with the Customer Objective, from 1 February 2017 to 9 October 2017.

Breach 6 – SLC 0A.2 – failure to issue Statements of Renewal to MBCs that gave important information appropriate prominence

2.56. Under SLC 0A.2, the licensee “must ensure it achieves the Standards of Conduct in a manner consistent with the Customer Objective”.

2.57. SLC 0A.3 (b) (i) & (ii) require that:

b) provides information (whether in Writing or orally) to each Micro Business Consumer

which:

- i) is complete, accurate and not misleading (in terms of the information provided or omitted)
- ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language with more important information being given appropriate prominence

2.58. The Authority considers that UGP, for a protracted period, failed to issue Statement of Renewal Terms (SoRTs) to its MBC customers that were complete and accurate and not misleading in terms of information provided or omitted; and that important information was not given appropriate prominence and could have been mistaken for marketing material.

2.59. Despite the SoRT having the title "Renewal Statement of Terms" the Authority considers that the marketing material which featured heavily on the first page is likely to have misled, distracted from the proper purpose of the document and confused customers. The importance of the document was obscured and customers may not have realised what the document was. Whilst some renewal information was provided on the second page of the document, the Authority considers that this information should have been front and centre. The licence condition is clear that important information should be given appropriate prominence. The purpose of the SoRT is to notify the customer that their current contract is ending and explain the options available to them. UGP has failed to give this important information sufficient prominence.

2.60. The Authority has found that 198 UGP gas customers received a deficient SoRT, on at least one occasion, in the period 10 October 2017 to 19 October 2020. Similarly, 218 UGP electricity customers received a deficient SoRT from 1 May 2019 to 19 October 2020. The Authority notes that the numbers affected by this breach are lower than they would otherwise have been, had UGP properly identified customers as MBCs.

2.61. The Authority considers it highly probable that customers will have mistaken their SoRT as marketing material. Ofgem's own consumer research shows that 88% of MBCs do look at their SoRT. The SoRT is an important document that allows consumers to make an informed choice about their next energy supply contract.

2.62. The harm here is that customers may have missed an opportunity to secure a better deal; and customers may have defaulted on to a more expensive tariff. The benefit to the supplier is that it retains the customer on supply past the initial contract end date, while in some cases charging the customer at a more expensive rate.

2.63. UGP introduced a new version of the SoRT on 20 October 2020. The renewal information provided is clearer in this document and all reference to the referral offer has been removed. The document is one page and clearly displays the customer's current contract rates and the new contract on offer.

2.64. The Authority finds that UGP was in breach of SLC 0A.2, by failing to achieve the Standards of Conduct set out at SLC 0A.3 (b) (i) & (ii) in a manner consistent with the Customer Objective, from 10 October 2017 to 19 October 2020.

Breach 7 – SLC 7B.5 – failure to issue Statements of Renewal to Micro Business Consumers that gave important information appropriate prominence

2.65. Under SLC 7B.5, "The licensee must take all reasonable steps to achieve the Standards of Conduct and ensure that it interprets and applies the Standards of Conduct in a manner consistent with the Customer Objective".

2.66. SLC 7B.4 (b) (i) requires that, the licensee provides information (whether in Writing or orally) to each Micro Business Consumer which is complete, accurate and not misleading (in terms of the information provided or omitted).

2.67. SLC 7B.4 (b) (iv) requires that, the information provided by the licensee is otherwise Fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence).

2.68. The conduct is identical to that set out above in respect of breach 6 and the Authority's view in terms of the deficiencies of the information supplied to customers are also the same. This is a separate breach simply because the Non-Domestic standards of conduct were originally introduced in 2013 as SLC 7B. On 10 October 2017 SLC 7B was superseded by SLC 0A.

2.69. The Authority notes again that under the old Standards of Conduct (SLC 7B), there is a three-stage test that must be applied (the Authority does not rehearse the same explanation here - see paragraphs 2.49 to 2.54 above).

2.70. The Authority considers that the evidence shows that customers have not been treated fairly and the three-stage test is satisfied:

- the failure to communicate important information in relation to the SoRT has significantly favoured the licensee;
- customers may not have properly considered their options and may have

remained with UGP, in a number of cases on a more expensive tariff than they might otherwise have been, and so there has been a likelihood of some detriment;

- UGP has failed to take all reasonable steps to achieve the Standards of Conduct (SLC7B).

2.71. The Authority has found that 82 UGP electricity customers and 12 UGP gas customers received a SoRT which did not give important information sufficient prominence as described in breach 6, on at least one occasion, between 1 February 2017 and 9 October 2017. The numbers affected by this breach are lower than they would otherwise have been, had UGP properly identified customers as MBCs.

2.72. The Authority considers that UGP was in breach of SLC 7B.5, by failing to take all reasonable steps to achieve the Standards of Conduct set out at SLC 7B.4 (i) and (iv)) and ensure that it interpreted and applied the Standards of Conduct in a manner consistent with the Customer Objective, from 1 February 2017 to 9 October 2017.

Breach 8 – SLC 7A.8 (e) and (f) – failure to provide the required information to MBCs during the contract renewal process

2.73. SLC 7A.8 (e) & (f) require that: On or about 30 days before the Relevant Date, unless the licensee has already agreed a new Micro Business Consumer Contract with the MBC, the licensee must provide the MBC with: (e) a statement displaying the Charges for the Supply of Electricity [or Gas] which apply to the Customer as at the date on which such statement is provided; and (f) the Customer's Annual Consumption Details.

2.74. The Authority has found that UGP, for a protracted period, failed to issue the information required by SLC 7A.8 (e) and (f) relating to current charges and annual consumption details.

2.75. On or around 60 days before the end of a fixed term supply contract (30 days before the "Relevant Date"), unless a new contract has already been agreed, licensees are required to send a statement to their MBCs displaying: the customer's current Charges for Electricity and Gas and the customer's Annual Consumption details.

2.76. The evidence shows that the SoRT documents provided by UGP to its customers did not contain the information required by SLC7A.8 (e) or (f); and that the information was not provided via any other document.

2.77. 198 UGP gas customers did not receive this information, on at least one occasion, from 1

February 2017 to 19 October 2020. Similarly, 217 UGP electricity customers did not receive this information from 1 May 2019 to 19 October 2020. By not providing this information to its MBCs with the renewal information supplied at the relevant time, it would have been difficult for those customers to assess their current energy contract against the new offer from their current supplier and any other cheaper offerings in the market.

2.78. The Authority considers that UGP was in breach of SLC 7A.8 (e) and (f) from 1 February 2017 to 19 October 2020.

Breach 9 – SLC 7A.8 (b) (i) & (ii) & (d) – failure to provide Principal Terms to MBCs

2.79. SLC 7A.8 (b) and (d) require that:

On or about 30 days before the Relevant Date, unless the licensee has already agreed a new Micro Business Consumer Contract with the Micro Business Consumer, the licensee must provide the Micro Business Consumer with:

(b) if paragraph 7A.13 applies and subject to paragraph 7A.8(d):

(i) a copy of the relevant Principal Terms which might apply to the Micro Business Consumer after the current fixed-term period of the Micro Business Consumer Contract ends, including in the event that the Customer does nothing and the licensee extends the duration of the Contract in accordance with paragraph 7A.13A; and

(ii) a copy of the Principal Terms which would apply after the current fixed-term period of the Micro Business Consumer Contract ends, in the event that the Customer sends (or has already sent) a notice in Writing before the Relevant Date to prevent renewal of the Micro Business Consumer Contract but does not appoint another supplier;

(d) if paragraph 7A.13 applies but the licensee has already prevented the Micro Business Consumer from extending the duration of the Micro Business Consumer Contract for a further fixed-term period, the requirements in paragraph 7A.8(b) shall be replaced with a requirement to provide the Micro Business Consumer with a copy of the Principal Terms which would apply after the current fixed-term period of the Micro Business Consumer Contract ends if the Customer continues to be supplied by the licensee.

- 2.80. The Authority has found that UGP, for a protracted period, failed to issue the Principal Terms information required by SLC 7A.8 (b) and (d).
- 2.81. The definition of Principal Terms is set out in SLC 1. They must include the terms that relate to charges, requirements for a security deposit and the customer's rights to terminate the contract.
- 2.82. UGP, has explained that its intention was to detail the Principal Terms within the SoRT, however, UGP has admitted that the information contained within the SoRT, did not meet the definition of Principal Terms, as set out in the SLC.
- 2.83. As at 31 August 2021, 225 gas customers and 308 electricity customers have been affected by this issue. A failure to provide all the applicable Principal Terms information, as required by SLC, means that customers are unable to make properly informed decisions at the time they are considering their energy provision, and possibly switching to a different supplier. Failure to provide this important information may lead to customers not being clear as to their position and best option or options.
- 2.84. The Authority considers that UGP was in breach of SLC 7A.8 (b) (i) & (ii) & (d) from 1 February 2017 31 August 2021.

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

- 3.1. In summary, our evidence shows that UGP has breached all the SLCs as set out in the table below.

Table 2 – List of breaches

Breach		
1	Failed to bill customers based on meter readings and instead deliberately overcharged some customers by using inflated consumption estimates, contrary to SLC 21B.1	February 2020 to February 2020
2	Failed to communicate appropriately with customers, having made billing errors and which consequently led to significant catch-up bills, contrary to SLC 0A.2	6 February 2020 to 29 April 2020

3	Failed to properly identify customers that met the criteria of a Micro Business Consumer, during the onboarding and contract renewal processes, contrary to SLC 7A.1 (a) and (b)	April 2016 January 2022
4	Failed to provide information clearly, or at all, in relation to credit balances on closed accounts, either on final bills issued or in any other communication, contrary to SLC 0A.2	10 October 2017 12 January 2022
5	Failed to provide information clearly, or at all, in relation to credit balances on closed accounts, either on final bills issued or in any other communication, contrary to SLC 7B.5	1 February 2017 to 9 October 2017
6	Failed to issue Statements of Renewal to Micro Business Consumers that gave important information appropriate prominence, contrary to SLC 0A.2	10 October 2017 to 19 October 2020
7	Failed to issue Statements of Renewal to Micro Business Consumers that gave important information appropriate prominence, contrary to SLC 7B.5	1 February 2017 to 9 October 2017
8	Failed to provide the required information to Micro Business Consumers during the contract renewal process, contrary to SLC 7A.8 (e) and (f)	1 February 2017 to 19 October 2020
9	Failed to provide Principal Terms to Micro Business Consumers as defined in the standard licence conditions, contrary to 7A.8 (b) (i) and (ii) and (d)	1 February 2017 31 August 2021

3.2. In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure, the Authority is required to have regard to its statement of policy most recently published at the time when the contravention or failure occurred.¹⁴ The Authority has therefore assessed the appropriate penalty in respect of UGP's contraventions with reference to the Authority's Statement of Policy with respect to Financial Penalties and Consumer Redress¹⁵ (the 2014 Penalty Policy), published on 6 November 2014 and all of the breaches in this case fall under that policy.

3.3. The Authority is required to carry out its functions under Parts 1 of the EA 89 and GA 86, 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 set out in section 3A EA 89 and section 4AA GA 86, having regard to its other duties. In formulating its preliminary

¹⁴ Section 27B(2) EA 89 and section 30B GA 86

¹⁵ <https://www.ofgem.gov.uk/sites/default/files/2022-03/Statement%20of%20Policy%20with%20respect%20to%20Financial%20Penalties%20and%20Consumer%20Redress%206%20November%202014.pdf>

view whether it is appropriate to impose a financial penalty, the Authority has considered all the circumstances of the case presently known to it including, but not limited to, UGP's representations and the specific matters set out in the 2014 Penalty Policy. The Authority does not consider that its principal objective or general duties preclude the imposition of a financial penalty in this case.

3.4. These matters are examined in detail below.

2014 Penalty Policy - General Criteria in relation to imposing a financial penalty and/or consumer redress order

3.5. The Authority has taken into consideration all of the relevant facts and circumstances of the contraventions under consideration. The Authority considers the criteria and factors below apply in this particular case.

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

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

3.6. The Authority considers that the breaches had a significant detrimental impact on a number of UGP's customers. Most notably arising from breach 1, whereby, UGP, having identified a shortfall in its budget, caused by issues with a third-party and not in any way by the customers affected, sought to remedy that shortfall by billing those customers on the basis of inflated consumption estimates, ignoring actual consumption data received from customers' HH meters. UGP has acknowledged that its actions would have led to customers affected receiving significantly inflated bills. Most breaches in this case affected MBCs only (breaches 2 to 9) and all these breaches have been compounded by breach 3, whereby UGP failed to properly identify customers as MBCs and so afford them the various relevant, applicable protections.

3.7. The Authority considers that the interests of the wider market have been damaged by the contraventions. Customers expect to be billed accurately for their energy consumption, especially where actual consumption data is available; that their MBC status is applied correctly, so they are afforded all the relevant and applicable protections; that their suppliers provide clear information on final bills (or in any other communication) in

relation to credit owing to them and; that, if they are MBCs, at the time of contract renewal, they are provided with all the required information to enable them to make informed decisions about their energy provision. It is vital to the health of the retail energy market that consumers are able to trust their supplier.

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

3.8. In respect of breach 1, it is undoubtedly the case that the actions taken by UGP, deliberately and knowingly overcharging customers in order to fill a hole in its own budget, are likely to damage the confidence that consumers have in the market. Whilst consumers might accept that billing mistakes occur from time to time, no consumer would accept or expect their supplier to deliberately and without any justification or explanation remove money from their bank account.

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

3.9. It was evident to the Authority from this investigation that UGP lacked effective regulatory compliance mechanisms and showed a generally poor attitude to compliance. In respect of the extremely serious and deliberate contravention in breach 1, it is plain that a penalty is required to deter future contraventions by UGP and other market participants.

3.10. Regulatory compliance appears to have been largely disregarded, prior to Ofgem's intervention; it certainly does not appear to have been treated as a priority. All licensees must take their regulatory obligations seriously and make suitable arrangements to achieve and maintain compliance. 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 or failure was deliberate or reckless

3.11. In respect of breach 1, in particular, UGP's senior management made decisions and took actions which were wrong, and which they must have known were wrong and amounted to an extremely serious contravention, when they took them. UGP's actions were deliberate and UGP was reckless as to the negative impacts these significant and unjustifiably inflated bills could have had on customers receiving them. Whilst the

contravention in breach 2 was not as serious – in that there was no overcharging and any harm caused was considerably less than that caused in breach 1 – following errors that UGP made in billing, senior management decided to issue catch-up bills to customers with no pro-active communications and insufficient consideration to the potential impacts on those customers. UGP's haste in issuing these bills came at a time when it was trying to raise revenue quickly to fill a hole in its budget. Again, the decisions around catch-up bills were deliberate and UGP was reckless in terms of the potential impacts on its customers.

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

3.12. The Authority considers that in respect of breach 4 (and 5) that UGP could have made its final bills clearer, specifically in respect of any credit owing and how it must be claimed. UGP amassed very large sums in closed account customer credit and this should have prompted UGP to investigate the reasons for this. In respect of breach 3, it should have been apparent to UGP that it was not properly identifying customers as MBCs and was thereby failing to afford those customers the appropriate treatment and protections. Processes should have been in place from the outset to properly identify MBCs. A cursory audit of customer energy consumption, at any time but notably at the time of contract renewal, would have highlighted the failings to UGP. The scale of the failure to identify MBCs shows that the contravention should have been apparent to a regulated person acting diligently.

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

3.13. The Authority notes that UGP has ultimately taken effective remedial actions to end the contraventions. The Authority considers that UGP's actions, having become aware of the contraventions, should have been taken much more quickly. A number of the breaches have endured for protracted periods and have endured for long periods after UGP became aware of the problems. In respect of breach 3, UGP conducted its own internal reviews in 2018, but did not remedy the situation. Subsequent Ofgem's intervention, in June 2021, UGP engaged a third party to review its processes and practices. It was not until January 2022 that UGP took the necessary actions to achieve compliance. In respect of breach 4, UGP had been advised of the steps it needed to take to improve clarity on its final bills in respect of credits owing, but it did not take these steps until January 2022.

3.14. The Authority finds that UGP did not have in place appropriate checks and balances through governance procedures. The Authority considers that greater involvement of senior management in compliance matters might have prevented breaches 3 to 9, or at least reduced the risk of their occurring. UGP only appointed a senior member of staff to deal with regulation and compliance subsequent to Ofgem opening the investigation.

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

3.15. The Authority does not consider the contraventions to be minor or trivial. Breach 1 was extremely serious, was entirely unjustified and UGP's conduct was clearly unacceptable. The other breaches are all serious. Many of the contraventions impacted customers over significant periods of time. Some led to significant financial detriment, and others to significant potential harms.

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

3.16. As explained above at paragraph 3.13, contraventions in this case would have been apparent to UGP, had it been acting diligently. UGP was aware of some of the issues but took a long time to take the actions required to rectify those issues. In respect of breach 1, this was a deliberate action and UGP must have known that it amounted to a serious contravention at the time it took that action.

4. Criteria relevant to the level of financial penalty

4.1. In accordance with section 270 of the EA 89 and section 300 of the GA 86, the Authority may impose a financial penalty of up to ten per cent of the turnover of the relevant regulated person.¹⁶ The Authority is satisfied that the proposed penalty does not exceed ten per cent of UGP's turnover.

¹⁶ Turnover is defined in an Order made by the Secretary of State. [The Electricity and Gas \(Determination of Turnover for Penalties\) Order 2002](#).

2014 Penalty Policy

4.2. The Authority had regard to the 2014 Penalty Policy, which sets out a six-step process 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 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 noncompliance.
5. Where a case is settled, apply a discount to the penal element.
6. Establish the total financial liability.

Step 1 - Calculate the gain and detriment

UGP gain

4.3. The Authority considers that UGP gained in the following ways:

- Raising sums in revenue from customers being overcharged (breach 1)
- Retaining customer credit balances and raising working capital sums on these amounts (breaches 4 and 5)

Raising sums in revenue from customers being overcharged

- 4.4. The Authority considers that, by billing some HH meter customers based on inflated consumption estimates, rather than on actual consumption data available (breach 1), UGP has benefited by raising a capital sum from these customers, without incurring any of the associated costs.
- 4.5. The evidence shows that this was a deliberate act whereby, UGP senior management, having identified a shortfall in its budget caused by issues with a third-party, and not in any way by the customers affected, sought to remedy that shortfall by billing those customers on the basis of inflated consumption estimates and ignoring actual consumption data available. UGP was entirely reckless as to the negative impacts these overcharges might have had on those customers affected. UGP has admitted that it did not treat these customers fairly or in accordance with its obligations and has stated that it regrets its decision and would not take similar action in future. UGP indicated that this issue affected 65% of its electricity customers with HH meters in February 2020, or 183 individual customers. The overcharge amount was £382,188 (over £2,000 on average per customer). It took UGP up to seven months to rebill all affected customers and issue refunds where requested. 12 customers had left UGP's supply before the monies owed could be returned. 5 of those customers were MBCs and the sums owed to them are dealt with by breach 4 (£4,537). The remaining 7 were Industrial and Commercial (I&C) customers and total left unreturned is £9,995. Therefore the net gain is estimated at £9,995.

Retaining customer credit balances and raising working capital sums on these amounts

- 4.6. The Authority considers that UGP failed to communicate details in relation to credit balances owing to customers on closed accounts clearly, on final bills or any other communication (breaches 4 and 5). This has led to significant sums not being returned to customers and instead being retained by UGP.
- 4.7. The evidence shows that the total sum in credit amassed between 2016 and 2021 was c.£248,000. The evidence further shows that the total sum that remained unreturned as of 31 May 2022 is **£122,503** (or £109,590 in relation to breach 4 and £12,913 in relation to breach 5). UGP would have gained by retaining this money for a period of time spanning more than four years.

4.8. The Authority also calculated a distinct gain to UGP in relation to the cost of capital on sums obtained from customers and retained - credit amassed from MBCs from 2016 to June 2021 amounted to c.£248,000.00 (breaches 4 and 5). The Authority considers that UGP has gained approximately **£76,000** (or c.£58,000 in relation to breach 4 and c.£18,000 in relation to breach 5) by not paying interest on the free capital sum; and the interest on this would continue to accrue.

4.9. The Authority estimates UGP's gain as follows:

- sums from customers being overcharged (breach 1)- **£9,995**

(The Authority notes that the total amount overcharged (the initial gain) was £382,188, however, step 1 requires that we look at efforts made in terms of redress, including sums already returned, and the £9,995 is the residual gain. The scale of the initial overcharging is factored in under Step 2 – seriousness.);

- credit balances retained - **£122,503** (£109,590 in relation to breach 4 and £12,913 in relation to breach 5), and;

(The Authority notes that the total amount accumulated in terms of closed account credit balances (the initial gain) was £248,262, however, step 1 requires that we look at efforts made in terms of redress, including sums already returned, and the £122,503 is the residual gain. The scale of the initial sum in credit accumulated is factored in under Step 2 – seriousness.);

- capital raised on credit balances retained - **£76,000** (or c.£58,000 in relation to breach 4 and c.£18,000 in relation to breach 5).

4.10. The Authority considers that there was likely gain and detriment relating to the other breaches too, but that the relevant sums could not sensibly be calculated. This is relation to customers experiencing bill shock and other potential resulting financial harms due to the lack of communication around a three-month billing error and the catch-up bills that were issued subsequently (breach 2); customers not being properly identified as MBCs and so not being afforded relevant protections (breach 3); and customers not being provided the required information appropriately or at all at the time of contract renewal, to enable them to make informed switching decisions and potentially take advantage of better deals (breaches 6 to 9).

4.11. In summation, the total gain and detriment is assessed to be **c£208,498.00**.

Step 2 - Assess seriousness

- 4.12. In assessing seriousness,¹⁷ the Authority took into account various factors relating to the nature and impact of the contraventions and whether or not they were deliberate and/or reckless. The Authority has concluded that the contraventions are particularly serious, especially in relation to breach 1, where UGP took the deliberate decision to ignore actual consumption data and significantly overcharge some of its HH meter customers to fill a hole in its budget. Affected customers are likely to have suffered bill shock and may have experienced cashflow issues of their own as a consequence of the overcharging.
- 4.13. Additionally, whilst some customers were re-billed in the first two months following issuance of the inflated bills, about 40% of those affected waited for up to 7 months to be re-billed, after having been deprived of their monies with no justification. Unless the customers asked for a refund, UGP would simply re-bill the account and apply any remaining credit resulting from the overcharge. This means that it is not clear how long it took UGP to offset overcharged amounts against subsequent bills. The Authority is of the view that these sums overcharged should have been returned more promptly and should really have been issued as complete refunds, as opposed to being reflected as credits against subsequent bills over time.
- 4.14. UGP failed to communicate appropriately with its MBC NHH customers about issuing catch-up bills correcting an earlier error (resulting in underpayment), UGP may well have caused financial distress to those customers affected (breach 2). It is right to say that the number of customers affected is not large (155 electricity and 217 gas customers respectively), but the potential harm for those affected was not insignificant. The Authority considers that UGP gave some consideration to the impact this would have on customers: larger catch-up amounts were spread across multiple bills, thereby lessening the potential bill shock in those cases. However, UGP treated those affected differently, depending on whether the customer made contact with them or not. Those who made contact were asked to provide a meter reading and were billed on that basis, rather than on the basis of UGP estimates.
- 4.15. The Authority believes that UGP failed to be transparent about the error made with its customers - UGP did not own the error; failed to apologise; and failed to give sufficient consideration to appropriate actions to lessen potential consumer harm. UGP should have contacted the customers affected proactively, explained the error, apologised, and asked

¹⁷ Outlined in paragraphs 5.10 to 5.14 in the 2014 Penalty Policy.

the customers for a meter reading, so they could bill the account accurately.

4.16. UGP failed to take all reasonable steps to correctly identify relevant customers as MBCs (breach 3). This is a breach that spanned the entire period of the investigation (since April 2016), and it took UGP a very long time to address the issue, even when we shared our concerns with them and formally extended the scope of the investigation to encompass SLC 7A.1 (March 2021). The Authority considers that there are several areas of potential harm arising from a failure to identify a customer as a MBC and treat them accordingly. Customers who were not properly identified would have not received contract renewal information (breaches 6 to 9 refer), that would have helped them better navigate the market and take informed switching decisions. They would have also not been considered as subject of the Standards of Conduct SLCs, the objective of which is for the licensee to ensure that each MBC is treated Fairly. Customers who have not been correctly identified as a MBC would have also been denied their right to take any unresolved complaint to the Ombudsman.

4.17. UGP has amassed significant sums of credit balances over a very long period of time. UGP's actions would have caused significant financial harm to customers who were either unaware of their credit balance, or unaware as to how they must request it, at the time they left UGP's supply, and they were deprived of their monies for potentially long periods of time, and in some cases, to date. It is only after Ofgem opened its investigation into UGP (December 2020), that UGP started writing letters to affected customers to inform them of the credit owing. As this contravention spans a very long period of time some of those businesses affected may have ceased to trade or have changed address, so it has not been possible for UGP to refund the money to them. The Authority notes that the Standards of Conduct (SLC 0A and SLC 7B) apply only to MBCs. We note, however, that those Industrial & Commercial customers affected are equally entitled to receive the refund owing to them.

4.18. Finally, in relation to breaches 6 to 9, there has been detriment to those MBCs affected. UGP has failed to provide the appropriate information, either clearly, or at all, and so customers have not had all the information required to enable them to make informed switching decisions. Some affected customers are likely to have missed opportunities to switch to better deals, either in terms of price, or customer service, or both.

Step - 3 Consider aggravating or mitigating factors

4.19. The Authority considers that there are six aggravating factors, plus one which applies only partially; and two mitigating factors, both of which apply partially. These are explained below.

Factors tending to increase the penal element¹⁸

The involvement of senior management in any contravention or failure

4.20. UGP senior management was directly responsible for taking the extraordinary decision to fill a hole in the company budget by overcharging a number of its own customers, without any justification or explanation. In that regard UGP's actions were deliberate and reckless (breach 1). Senior management also took the decisions in respect of breach 2. UGP failed to implement an appropriate communication plan and nor did they give sufficient consideration to how they might lessen any negative impacts on customers. Therefore, this factor applies, and the Authority views it as extremely serious in the circumstances.

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

4.21. The Authority found a lack of evidence of appropriate checks and balances through governance procedures. The Authority considered that greater involvement of senior management in compliance matters might have prevented breaches 3 to 9, or at least reduced the risk of them occurring. UGP appointed a senior member of staff in charge of regulation and compliance subsequent to Ofgem opening the investigation. Therefore, this factor applies.

The absence of any evidence of internal mechanisms or procedures intended to prevent contravention or failure

4.22. The Authority has found a lack of evidence of appropriate checks and balances through governance procedures. The evidence shows that for a protracted period UGP did not identify that it was not taking the appropriate actions to properly identify MBCs (breach 3). It is also concerning that UGP did not identify or take action with regards to its

¹⁸ Paragraphs 5.15-5.20 2014 Penalty Policy.

amassing large sums in credit on closed accounts, thereby failing to return significant sums to its former customers (breach 4 and 5). The Authority considers therefore that this factor applies.

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 management

4.23. The Authority has found a lack of evidence of appropriate checks and balances through governance procedures. In respect of breach 2, UGP has admitted that its regular billing checks did not identify the seasonal weighting application failures that caused the error and precipitated the need for catch-up bills to be issued. In respect of breach 3, it is apparent that internal reviews of MBC identification did not properly expose the failings; and it is only since Ofgem opened the investigation and raised the issue that UGP has conducted a proper review. The Authority considers therefore that this factor applies.

Continuation of the contravention or failure after becoming aware of it

4.24. In respect of breach 3, we consider that UGP was aware of the failing and, despite conducting its own reviews, the contravention continued for a protracted period thereafter. The Authority considers therefore that this factor applies.

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

4.25. In respect of breach 3, subsequent to its internal reviews and the opening of Ofgem's investigation, UGP received advice from an external consultant as to the actions required to achieve compliance. UGP was slow to implement these improvements and compliance was not achieved until some 7 months after the external consultant had advised.

4.26. In respect of breach 4, the case team advised UGP of steps it should take to achieve compliance. UGP was slow to respond to this advice and the necessary actions to achieve compliance were not taken until January 2022.

4.27. Similarly, in respect of breach 9, UGP admitted to its failings and received external advice as to the actions required to achieve compliance. It took UGP some months to implement the necessary actions to achieve compliance.

4.28. In short, breaches 3, 4 and 9 appear to have persisted for significant periods subsequent to the opening of Ofgem's investigation.

Mitigating Factors

Appropriate action by the regulated person to remedy the contravention or failure

4.29. The Authority has found that, in respect of breach 1, UGP did return monies (albeit not as quickly as one might hope and expect) and did make significant goodwill gesture payments to customers affected (these payments were made to 155 customers and totalled £31,000). However, the Authority has also found that, prior to the opening of the investigation, UGP had little regard for compliance; the number of alleged breaches and the manner of the failings evidence this amply. Following the opening of the investigation, UGP has taken steps, including appointing a Head of Regulation and Compliance. UGP has also engaged an external consultant to assess compliance and to suggest improvements in order to achieve compliance. The Authority, however, considers that the pace of action has been slow, or, at the very least has not been communicated clearly or in a timely fashion. For the reasons set out, the Authority has applied this mitigating factor but only partially.

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

4.30. The comments recorded above are equally relevant here and so the Authority considers that this mitigating factor should also apply, partially only.

Conclusion on aggravating and mitigating factors

4.31. In conclusion, considering that there are six aggravating factors, plus one which applies partially, and two mitigating factors, both of which apply partially, the Authority considers it would be appropriate to adjust the initial penal element upwards.

Step 4 - Consider an adjustment for deterrence¹⁹

4.32. The Authority considers that an upward adjustment to the penal element for

¹⁹ Paragraphs 5.21-5.22 2014 Penalty Policy.

deterrence is appropriate in this case. The Authority considered the levels of penalties imposed in other similar investigations and considered an adjustment reasonable to deter the regulated person or others in the future. The Authority determines that, after the upward adjustment had been applied, £2,719,000.00 would be an appropriate overall penal element under the 2014 Penalty Policy.

Step 5 - Apply a discount in settled case²⁰

4.33. The Authority notes that UGP has agreed to settle the investigation, thus attracting a 30% reduction on the penal element of this penalty. With this discount applied the penal element would be reduced to £1,903,300.00.

Step 6 - Establish the total financial liability²¹

4.34. Having considered all of the above matters, the Authority is minded to impose a penalty of £2,111,798.00, comprising the total of the final penal element of £1,903,300.00 and the gain and detriment of £208,498.00.

4.35. The Authority proposes to impose a financial penalty of £1 on the condition that UGP pays the balance of the £2,111,798.00 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 considers that UGP breached the SLCs as cited in the table at paragraph 3.2 of this Notice. Having considered all of the relevant facts and circumstances in its possession and having regard to the 2014 Penalty Policy, the Authority hereby proposes to impose a penalty of £1 on UGP which it considers to be an amount which is reasonable in all the circumstances of the case.

²⁰ Paragraphs 5.23-5.26 2014 Penalty Policy.

²¹ Paragraphs 5.27-5.30 2014 Penalty Policy.

5.2. The proposed penalty takes into account that UGP will pay £2,111,798.00, less £1 penalty, into the Voluntary Redress Fund. The payment of the penalty will be made within 42 days of the date of service of the notice of decision to impose a financial penalty.

5.3. In reaching its decision, the Authority took the relevant factors under the 2014 Penalty Policy into account, including:

- The extremely serious nature of the breaches, particularly (but not solely) breach 1, where the wholly unjustified actions taken were deliberate and decided by senior management. The conduct in this instance was most egregious and a severe penalty and deterrent effect is called for as a consequence
- The financial harm suffered by customers as a result of the contraventions
- The six aggravating (plus one which applies partially) and two mitigating factors (both of which apply partially) applicable in this case

5.4. The Authority hereby gives notice under section 27A(3) of the EA 89 and section 30A(3) of the GA 86 of its proposal to impose a penalty of £1 on UGP in respect of the contraventions set out above, subject to consideration of any representations or objections as set out below.

5.5. UGP has agreed to settle the investigation on the basis of paying a financial penalty of £1 and to pay the sum of £2,111,798.00 (less £1) by way of voluntary redress.

5.6. Any written representations or objections to this notice must be received by Consuelo Pacchioli Boppe (penaltyreps@ofgem.gov.uk) or Ofgem, 10 South Colonnade, 4th floor, Canary Wharf, London E14 4PU by **4pm on Thursday 6 April 2023**.

5.7. Any representations or objections received by this date will be considered by the Authority before it makes a final decision to impose a penalty. If as a result of representations or objections the Authority proposes to vary the penalty per section 27A(3)(a) EA 89 and section 30A(3)(a) GA 86, it will consult again in accordance with section 27A(4) EA 89 and section 30A(4) GA 86.

5.8. Any representations or objections 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 whether to comply with any such requests on a case by case basis

Penalty notice

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Making a positive difference
for energy consumers

Gas and Electricity Markets Authority

Date: 16 March 2023