

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

Date: 29 November 2023

Proposal of the Gas and Electricity Markets Authority ('the Authority') to impose a financial penalty on Shell Energy UK Limited (SEUK), following an investigation into that company relating to matters while under its previous name of Hudson Energy Supply UK Limited ('HES')¹ and its compliance with its obligations under Standard Licence Conditions ('SLCs') 0A, 7A.1, 7A.8, 7B and 21B.1 of its electricity supply licence.

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 HES in relation to Non-Domestic Customers supplied under its electricity supply licence.
- 1.2. From 2015 to July 2020, HES had an arrangement ("the arrangement") with a third-party ("the third-party"), whereby the third-party acquired customers for HES and then conducted customer facing activities with those customers (including those activities subject of breach in this case).
- 1.3. Whilst the third-party carried out some of the actions that are the subject of the breaches set out in this document, HES, as licensee, is responsible for the actions of the third-party and the resultant poor treatment of its customers. On this basis HES itself is found in breach of the above SLCs.

¹ Hudson Energy Supply UK Ltd (HES) is the company to whom the relevant licence was granted. HES was the licensee name throughout the relevant periods of breach alleged in this case (latest breach end date is July 2020). Although Shell Energy Retail Ltd (Shell) acquired HES in November 2019, HES was not renamed Shell Energy UK Ltd (7489042) (SEUK) until November 2020. Having noted the facts and chronology, in this Notice of Proposal we refer to HES as the company subject of the investigation and that has committed the breaches; we refer to Shell as the company that acquired HES and as the parent company to the licensee; and we refer to SEUK, as the company and current licensee with whom the settlement has been agreed.

1.4. HES has admitted all the breaches in the case.

1.5. The Authority proposes to impose a financial penalty on SEUK following an investigation by the Authority, 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 HES breached the following relevant licence conditions:²

- 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 HES failed to bill customers based on meter readings. The third-party deliberately overcharged customers, using inflated consumption estimates. HES, as the licensee, is responsible for the breach. It should have had appropriate arrangements in place throughout the duration of the arrangement with the third-party to ensure compliance with its licence obligations. That notwithstanding, the Authority recognises that the decision of the third-party to deliberately overcharge customers was extraordinary and could not have been reasonably foreseen by HES. The Authority considers that this SLC was breached in February 2020.
- SLC 0A.2: this SLC requires licensees to achieve the Standards of Conduct³ in a manner consistent with the Customer Objective.⁴ 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 HES failed to achieve this

² "Relevant condition" has the meanings set out in section 25(8) of the Electricity Act 1989 (EA 89).

³ The Standards of Conduct are as set out in SLC 0A.3.

⁴ 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."

Standard of Conduct by failing to communicate appropriately with customers, having made billing which consequently gave rise to a likelihood of detriment (and actual detriment) to those Micro Business Consumers (MBCs), including significant catch-up bills, which was not reasonable in all the relevant circumstances. HES is responsible for the breach, as licensee, even though the Authority notes that it was the third-party that made the billing errors and made the decisions around communications in the wake of those errors. The Authority considers that this SLC was breached between 12 February 2020 and 21 May 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. The Authority considers that HES 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 6 August 2015 and 28 July 2020.
- 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 finds that HES, 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. The Authority considers that this SLC was breached between 10 October 2017 and 28 July 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 take all reasonable steps to achieve the Standards of Conduct in a manner consistent with the "Customer

Objective”.⁵ 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 this SLC (7B) was breached between 6 August 2015 and 9 October 2017.

- SLC 7A.8 (a): this SLC requires licensees to, on or about 60 days before end of a MBC contract (unless a new MBC contract with the customer has already been agreed), provide the MBC with the Statement of Renewal Terms (SoRT). The Authority finds that HES failed to issue SoRTs to MBCs at all. The Authority considers that this SLC was breached between 6 August 2015 and 31 March 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 considers that HES failed to issue SoRTs to MBCs that gave important information appropriate prominence. The Authority considers that this SLC was breached between 10 October 2017 and 28 July 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

⁵ 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.

breach. The Authority considers that this SLC was breached between 1 April 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 HES failed to provide the required information. The Authority considers that this SLC was breached between 6 August 2015 and 28 July 2020.
- 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 HES failed to provide the required information. The Authority considers that this SLC was breached between 6 August 2015 and 28 July 2020.

1.7. HES has admitted that it breached the relevant licence conditions as set out above. The arrangement with the third-party ended in July 2020 and no further breaches were committed by HES as a consequence of the relationship with the third-party after that date.

1.8. By way of context to the case, HES has made significant admissions in terms of its management of the relationship with the third-party and its failure to monitor the third-party and its dealings with HES customers. HES has accepted that it has acted naively in this respect. HES has also made significant admissions in relation to its poor recordkeeping, impacting its ability to answer formal Information Requests issued by Ofgem; these problems were exacerbated by turnover of staff, a change in ownership and issues with IT systems. The Authority has considered this evidence in terms of aggravating factors in the determination of the appropriate penalty.

1.9. Separate to Ofgem's investigation but prompted by it, SEUK, for a period, voluntarily ceased active acquisitions of new customers for its non-domestic supply business, whilst it conducted a review of all its contracts with third-parties and its compliance with relevant rules and regulations via those third-party arrangements. SEUK also took appropriate steps to improve its governance and monitoring of its non-domestic supply business conducted via third parties.

- 1.10. The Authority has taken into account SEUK'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).⁶
- 1.11. 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 SEUK pays the sum of £1,668,426 (less £1) in voluntary redress. If SEUK had not agreed to make this payment, the Authority would have considered it appropriate to propose a higher penalty in view of the seriousness of the contraventions.
- 1.12. 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 the circumstances of this case.
- 1.13. In these circumstances and mindful of its principal objective to protect the interests of existing and future consumers, the Authority hereby gives notice under s27A(3) EA 89 of its intent to impose a penalty of £1 on SEUK in respect of the contraventions set out above. This is subject to SEUK paying £1,668,426 (less £1) into Ofgem's Voluntary Redress Fund.⁷ These payments are proposed to be made within 42 days of the date of service of the notice of decision to impose a financial penalty.
- 1.14. 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 **5pm on 20 December 2023**. Any representations received by this date will be considered by the Authority before it makes a final decision to impose a penalty.

⁶ [Authority guidance on the allocation of redress funds | Ofgem](#)

⁷ The Authority's Voluntary Redress Fund was established on 24 August 2017. The Voluntary Redress Fund gathers and distributes funding in the consumer interest. Further details are available at: [Authority guidance on the allocation of redress funds | Ofgem](#)

1.15. 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 HES committed the following breaches, in contravention of the following relevant conditions:

- Breach 1 relates to the use of meter readings. HES, failed to bill its customers based on available meter readings and instead used inflated estimates of consumption to overcharge its customers.(SLC 21B.1). HES, as licensee, is responsible for the breach, however, the Authority recognises that it was the third-party that issued the bills, deliberately using inflated estimates of consumption, rather than the meter reads data in its possession.
- Breach 2 relates to the failure to communicate appropriately with customers. The third-party made billing errors over a three-month period which led to significant catch-up bills being issued to HES 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). Whilst we hold HES responsible, as licensee, for this breach the Authority recognises that it was the third-party that made the billing errors and the decisions around communications in the wake of those errors.
- Breach 3 relates to the identification of customers meeting the criteria of a MBC, during the onboarding and contract renewal processes. HES 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. HES 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 (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. HES failed to issue Statements of Renewal (setting out important information) to MBCs (SLC 7A.8 (a))
- Breach 7 relates to the provision of information to MBCs at the time of contract renewal. HES failed to issue Statements of Renewal to MBCs that gave important information appropriate prominence (SLC 0A.2).
- Breach 8 relates to the same conduct as breach 7 (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 9 relates to information required to be given to MBCs during the contract renewal process. HES failed to provide information to MBCs relating to charges and consumption data (SLC 7A.8 (e) and (f)).
- Breach 10 relates to information required to be given to MBCs during the contract renewal process. HES 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 found that in February 2020, HES, did not comply with the requirements of SLC 21B.1. This breach affected both MBCs and Industrial and Commercial (I&C) customers.

- 2.4. A review of the evidence revealed that HES, via the third-party, ignored meter reads data available (available through Half Hourly meters (HH meters)⁸) and instead billed some HH meter customers based on inflated estimates of consumption. These bills were issued in February 2020. The fact that direct debits were taken 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 found that the third-party did intend to reconcile the affected accounts (effectively return the money to customers via future billing) but clearly the money should not have been taken in the first instance, and then should have been returned to customers more quickly.
- 2.6. The conduct in question affected 82% of HES electricity customers with HH meters (94 contracts; 89 individual customers). The total sum overcharged was £162,073.
- 2.7. The levels of overcharging were significant and the harm to those affected would in many cases have been serious.
- 2.8. The third-party, 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 the third-party knew exactly what had occurred, as it was a consequence of its deliberate act to ignore meter reads data in its possession, and to bill based on inflated estimates instead.
- 2.9. The total amount overcharged was £162,073, divided by 89 customers, which means bills were £1,821 higher on average per customer. For context, the highest single overbill

⁸ Half-Hourly meters: these meters automatically send readings every half an hour to a data collector, who submits them to the relevant energy supplier.

amount for an affected MBC customer was over £6,000. For an I&C customer affected by the issue, the highest single overcharge was over £22,500.

2.10. The decision to deliberately ignore meter reads data in its possession and bill customers based on inflated estimates was taken by the third-party. This was an extraordinary decision which could not have been reasonably foreseen by HES, however, HES as the licensee is responsible for the breach.

2.11. The Authority considers that HES was in breach of SLC 21.B.1 in February 2020.

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

2.12. 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.’

2.13. The Authority found evidence that the third-party discovered that between October and December 2019, some HES customers, with Non Half Hourly meters (NHH meters)⁹, were not billed 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, HES, via its third-party, issued inaccurate bills (likely to represent undercharges) to HES customers from October 2019 to December 2019.

2.14. As a consequence, in February 2020, HES, via its third-party, issued higher bills to those customers affected, predominantly in February and March 2020. These bills were “catch-up bills”, correcting the earlier errors; they did not constitute overcharging of customers.

⁹ 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.

- 2.15. Customers affected were not informed of these errors made. No apologies were given and no explanations were provided to customers to explain why they had suddenly received these higher catch-up bills.
- 2.16. The Authority found that, having issued the bills, the third-party, failed to carry out appropriate assessments to establish the impact that these unexpected high 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.
- 2.17. Where a HES customer proactively contacted the third-party to query their bill, the third-party failed to admit to 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, the third-party did rebill the account based on that reading.
- 2.18. The Authority considers that HES, via its third-party, 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. The third-party'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, HES via its third-party issued catch-up bills in haste, putting itself first.
- 2.19. It is right to say that the number of customers affected is not large, but the potential harm for those customers was significant. In total 43 HES 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. Approximately £22,300 was recouped from these customers on top of their regular bill amounts. This represents an average bill increase of around £518 per customer, although the position is more nuanced than that as in some case

multiple catch-up bills were issued.¹⁰ The highest remedial bill issued to a single customer was over £2,400, with over £1,400 of that amount accumulating due to the underestimation issue.

2.20. 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:

- 43 customers received only one catch-up bill and the average increase of their usual bill was £230.99 (total value of bills £9,932.39);
- 15 customers received two catch-up bills and the average increase of their usual bill was £228.15 (total value of bills £3,427.62);
- 10 customers received three catch-up bills and the average increase of their usual bill was £891.99 (total value of bills £8,919.91).

2.21. 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 there was not a proper monitoring process in place to detect billing errors and inaccuracies in a timely fashion.

2.22. The Authority considers that HES 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 12 February 2020 to 21 May 2020.

¹⁰ 43 customers received one catch-up bill and the average increase of their usual bill was £230.99 (total value of bills £9,932.39); 15 customers received two catch-up bills and the average increase of their usual bill was £228.15 (total value of bills £3,427.62); 10 customers received three catch-up bills and the average increase of their usual bill was £891.99 (total value of bills £8,919.91).

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

- 2.23. SLC 7A.1 (a) and (b) requires licensees to take all reasonable steps to identify whether a Non-Domestic Customer is a MBC in line with specific criteria.¹¹ The Authority considers that HES failed to properly identify customers that met the criteria of a MBC, during the onboarding and contract renewal processes.
- 2.24. The Authority found clear evidence that HES did not take sufficient steps to ensure that the personnel it entrusted with this task were properly trained and informed, were considering this issue on each and every acquisition or renewal and were identifying MBCs accurately and consistently.
- 2.25. During the investigation and prompted by Ofgem, the third-party began an exercise to analyse HES' present and past portfolio to identify any customers that should have been identified and treated as a MBC. The results show that out of 1,964 historic HES electricity customers, HES failed to identify 1,522 (77%) as a MBC.
- 2.26. 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
- 2.27. This breach is considered to have ended in July 2020 when the arrangement between HES and the third-party ended and no further customers were supplied by HES through the arrangement with the third-party.
- 2.28. The Authority considers that HES was in breach of SLC 7A.1 (a) and (b) from 6 August 2015 to July 2020.

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.

¹² Protections that include various Standard Licence Condition attached to supply licences, 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

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

2.30. The Standards of Conduct which are relevant to this breach are set out at:

- SLC 0A.3 b (i) - 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).
- SLC 0A.3 b (ii) - 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.

2.31. The Authority has found that HES 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.

2.32. All HES’ customers were treated in the same way, 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 HES’s affected customers. We note though that the third-party has attempted to refund monies to all customers affected and not just to MBCs.

2.33. The table below shows the total credit balance that was built up in relation to HES 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.)

Credit still owed to HES MBCs as of 31 May 2022 (covering the period 2016 to 2020 and following the exercise to properly identify MBCs)

Supplier	Total Credit Balance Owed (2016-2020)	Credit Balance Returned at 31 May 2022	Credit Balance Outstanding at 31 May 2022	Credit Balance Outstanding (10 October 2017 to 31 May 2022)*	Credit Balance Outstanding (February to October 2017)**
HES	£364,793	£119, 454	£245,339	£109,026	£136,313

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

**Split to apportion the sums applicable to the 7B SoC breach (see next breach section below)

2.34. 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.

2.35. 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.

2.36. The Authority has found that information relating to credit balances has not been communicated clearly to HES 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.

- 2.37. This breach is considered to have ended in July 2020 when the arrangement between HES and the third-party came to an end and after which date no customers were supplied by HES through the arrangement with the third-party.
- 2.38. The Authority considers that HES 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 July 2020.

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

- 2.39. 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
- 2.40. The Standards of Conduct which are relevant to this breach are set out at:
- SLC 7B.4 (b) (i) - 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).
 - SLC 7B.4 (b) (iv) - 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).

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.

2.41. 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.

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

2.43. 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').

2.44. 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:

- (a) significantly favour the interests of the licensee; and
- (b) give rise to a likelihood of detriment to the Micro Business Consumer.

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

2.46. 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.

2.47. 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;
- HES failed to take all reasonable steps to achieve the Standards of Conduct.

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

2.49. The Authority considers that HES 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 6 August 2015 to 9 October 2017.

Breach 6 – SLC 7A.8 (a) – failure to issue Statements of Renewal to MBCs at all

2.50. SLC 7A.8 (a) requires 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: (f) the Statement of Renewal Terms.

2.51. The Authority considers that HES failed to issue SoRTs to its MBC customers at all for a protracted period, as required by SLC 7A.8 (a).

2.52. The third-party has admitted that, in respect of HES customers, it failed to issue any SoRTs, when due, between August 2015 and March 2017.

2.53. The Authority has found evidence that this breach affected 350 HES customers between 6 August 2015 and 31 March 2017. The failure to provide this important information will inevitably have meant that at least some HES customers did not consider their energy provision when their contract was nearing its end and so may not have taken action to take advantage of better deals available elsewhere; and would instead have remained with their present supplier on a more expensive tariff.

2.54. The Authority considers that HES was in breach of SLC 7A.8 (a) from 6 August 2015 to 31 March 2017.

Breach 7 – SLC 0A.2 – failure to issue Statements of Renewal Terms to MBCs that gave important information appropriate prominence

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

2.56. Under SLC 0A.3 (b) (i) & (ii), the relevant Standards of Conduct are that the licensee:

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

2.57. The Authority considers that HES, for a protracted period, failed to issue SoRTs to HES 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 easily have been mistaken for marketing material.

2.58. Despite the SoRT having the title “Renewal Statement of Terms”, the Authority considers that the marketing material which features heavily on the first page is likely to mislead, distract from the proper purpose of the document and confuse customers. The importance of the document is 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. HES has failed to give this important information sufficient prominence.

2.59. The Authority has found that 250 HES MBC customers received the same, deficient SoRT between 10 October 2017 and July 2020. The Authority notes that the numbers affected by this breach are lower than they would otherwise have been, had HES properly identified customers as MBCs.

- 2.60. The Authority considers it distinctly 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.
- 2.61. 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 charging the customer at a more expensive rate.
- 2.62. This breach is considered to have ended when the arrangement between HES and the third-party ended in July 2020 and no customers were supplied by HES through the arrangement with the third-party.
- 2.63. The Authority considers that HES 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 July 2020.

Breach 8 – SLC 7B.5 – failure to issue Statements of Renewal Terms to MBCs that gave important information appropriate prominence

- 2.64. 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".
- 2.65. The relevant Standards of Conduct for the breach are:
- SLC 7B.4 (b) (i) - 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).
 - SLC 7B.4 (b) (iv) - 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).
- 2.66. The conduct is identical to that set out above in respect of breach 7 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.

2.67. 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 2.42 to 2.46 above).

2.68. 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 will inevitably not have properly considered their options and will have remained with HES, in a number of cases having defaulted on to more expensive tariffs, and so it is apparent that there has been a likelihood of detriment;
- HES has failed to take all reasonable steps to achieve the Standards of Conduct (SLC7B).

2.69. The Authority has found that 24 HES customers received a SoRT which did not give important information enough prominence as described in breach 7, on at least one occasion, between 1 April 2017 and 9 October 2017. The numbers affected by this breach are lower than they would otherwise have been, had HES properly identified customers as MBCs.

2.70. The Authority considers that HES 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 April 2017 to 9 October 2017.

Breach 9 – SLC 7A.8 (e) and (f) – failure to provide the required information to MBCs during the contract renewal process

- 2.71. 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 Micro Business Consumer, the licensee must provide the Micro Business Consumer 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.
- 2.72. The Authority has found that HES, 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.
- 2.73. 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 the customer's Annual Consumption details.
- 2.74. The evidence shows that the SoRT documents provided to HES customers did not contain the information required by SLC7A.8 (e) or (f); and that the information was not provided via any other document.
- 2.75. 251 HES customers did not receive this information, on at least one occasion, between July 2015 and July 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.
- 2.76. The Authority considers that HES was in breach of SLC 7A.8 (e) and (f) from 6 August 2015 to July 2020.

Breach 10 – 7A.8 (b) (i) & (ii) & (d) – failure to provide Principal Terms to MBCs as defined in the standard licence conditions

2.77. 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.

2.78. The Authority has found that HES, for a protracted period, failed to issue the Principal Terms information required by SLC 7A.8 (b) and (d).

2.79. The definition of Principal Terms is set out within the licence conditions for supply. They must include the terms that relate to charges, requirements for a security deposit and the customers' rights to terminate the contract.

2.80. The Authority has found that the information contained within the SoRT, did not meet the definition of Principal Terms, as set out in the SLC. 285 HES electricity customers have been affected by this issue. A failure to provide all the principal terms information, as required by the 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.

2.81. The Authority considers that HES was in breach of SLC 7A.8 (b) (i) & (ii) & (d) from 6 August 2015 to July 2020.

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 Information Request issued under s.28(2) EA 1989 is served on the regulated person. The Authority sent a statutory Information Request under s.28(2) EA 89 to HES on 5 August 2020.

3.2. In summary, our evidence shows that HES has breached the SLCs as set out in the table below.

Table 2 – List of breaches

Breach	SLC	Breach period
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
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	12 February 2020 to 21 May 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)	6 August 2015 to July 2020
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 to July 2020
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	6 August 2015 to 9 October 2017
6	Failed to issue Statements of Renewal to Micro Business Consumers at all, contrary to SLC 7A.8 (a)	6 August 2015 to 31 March 2017
7	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 July 2020
8	Failed to issue Statements of Renewal to Micro Business Consumers that gave important information appropriate prominence, contrary to SLC 7B.5	1 April 2017 to 9 October 2017
9	Failed to provide the required information to Micro Business Consumers during the contract renewal process, contrary to SLC 7A.8 (e) and (f)	6 August 2015 to July 2020
10	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)	6 August 2015 to July 2020

- 3.3. 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 HES' contraventions with reference to the Authority's Statement of Policy with respect to Financial Penalties and Consumer Redress (the 2014 Penalty Policy), published on 6 November 2014 and all of the breaches in this case fall under that policy.¹⁵
- 3.4. The Authority is required to carry out its functions under Parts 1 of the EA 89, 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 of the EA 89 having regard to its other duties. In formulating its preliminary 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, HES' 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.
- 3.5. These matters are examined in detail below.

[2014 Penalty Policy - General Criteria in relation to imposing a financial penalty and/or consumer redress order](#)

- 3.6. 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.

¹⁴ Section 27B(2) EA 89

¹⁵ [Statement of Policy with respect to Financial Penalties and Consumer Redress | Ofgem](#)

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

- 3.7. The Authority considers that the breaches had a significant detrimental impact on a number of HES' customers. Most notably arising from breach 1, whereby HES via its third-party issued bills to customers on the basis of inflated consumption estimates, rather than meter reads data in its possession. This led to customers affected receiving significantly inflated bills. Most breaches in this case affected MBCs only (breaches 2 to 10) and all these breaches have been compounded by breach 3, whereby HES failed to properly identify customers as MBCs and so afford them the various relevant, applicable protections.
- 3.8. 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 meter reads are 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

- 3.9. In respect of breach 1, it is undoubtedly the case that the actions taken by the third-party, deliberately and knowingly billing customers based on inflated consumption estimates and not on the basis of meter reads data in its possession is 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 ignore available consumption data and to bill them on an inflated estimate without any justification or explanation.

3.10. Arrangements with third-parties are not uncommon in the retail energy sector. It is important that consumers who are subject to such arrangements can have confidence that the entity ultimately responsible – the licensee – has taken all the appropriate actions to ensure that it meets its regulatory obligations and compliance is maintained throughout any such arrangement with a third-party and that customers are treated fairly. Failures such as those seen in this case can only damage confidence in such arrangements and the energy market.

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

3.11. It was evident to the Authority from this investigation that HES failed to put in place appropriate steps to ensure regulatory compliance was maintained throughout the duration of the relationship with the third-party and demonstrated a generally poor attitude to compliance. In respect of the extremely serious and deliberate nature of the contravention in breach 1, it is plain that a penalty is required to deter future contraventions by market participants and to send a clear message that licensees cannot abrogate responsibility for regulatory compliance by passing customer facing activities to third-parties to handle on their behalf. In the event that licensees fail to put in place appropriate arrangements to ensure regulatory compliance as part of any arrangement with a third-party that failure will be penalised.

3.12. Regulatory compliance appears to have been largely disregarded by HES; 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 was deliberate or reckless

- 3.13. In respect of breaches 1 and 2, the Authority considers that even if HES had put in place appropriate arrangements to ensure compliance with its licence conditions throughout the duration of the arrangement with the third-party, those arrangements may not have been sufficient to prevent the third-party from taking the actions it did. Had such arrangements been in place, the Authority considers that HES would have become aware of those actions more quickly and would have been able to take appropriate remedial actions.
- 3.14. In respect of breaches 3 to 10 the Authority considers that HES should have had in place appropriate arrangements to ensure compliance with its licence conditions throughout the duration of the arrangement with the third-party. In respect of breach 3, the failure to properly identify customers as MBCs was major; in respect of breaches 4 and 5 the deficiencies in final bills in respect of credit balances are clear; in respect of breach 6 there was a total failure to send SoRTs at all for a protracted period; in respect of breaches 7 to 10, again, the deficiencies in the documentation being sent were plain.
- 3.15. HES' failure to put in place appropriate steps to ensure that it met its regulatory obligations and compliance was maintained throughout the duration of the arrangement with the third-party was reckless.

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

- 3.16. The Authority considers that had HES been monitoring the third-party appropriately, both at the time processes were set up and documentation for the customer was drafted and then subsequently on an ongoing basis, to be reassured that compliance was being maintained, then the contraventions would have been apparent to a regulated person acting diligently.
- 3.17. The Authority considers that in respect of breach 4 (and 5) that final bills should have been clearer, specifically in respect of any credit owing and how it must be claimed.

Significant sums in closed account customer credit balances were amassed which, had HES had in place appropriate monitoring arrangements to ensure regulatory compliance should have prompted an investigation into the reasons for this; and subsequently prompted refunds to be made without further delay. In respect of breach 3, it should have been apparent to HES that customers were not being properly identified as MBCs and HES 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 HES. The scale of the failure to identify MBCs shows that the contravention should have been apparent to a regulated person acting diligently.

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

3.18. The Authority does not consider the contraventions to be minor or trivial. Breach 1 was extremely serious, entirely unjustified and clearly unacceptable (noting that HES did not itself take the extraordinary actions). 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. As noted previously, HES' regulatory failures have been compounded by its total failure to set up the arrangement with the third-party with appropriate care, and then manage it with due diligence throughout the duration of the arrangement.

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

3.19. As explained above at paragraphs 3.16 to 3.17, contraventions in this case would have been apparent to HES, had it been acting diligently. The Authority does not consider that HES acted diligently, as noted at paragraph 3.18 and elsewhere in this document.

4. Criteria relevant to the level of financial penalty

4.1. In accordance with section 27O EA89, the Authority may impose a financial penalty of up to ten per cent of the turnover of the relevant regulated person. Turnover is defined in an Order made by the Secretary of State.¹⁶ The Authority is satisfied that the proposed penalty does not exceed ten per cent of SEUK's turnover.

2014 Penalty Policy

4.2. The Authority has 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.

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

6. Establish the total financial liability.

Step 1: Calculate the gain and detriment

Gain

4.3. The Authority considers that gains were made in the following ways:

- Sums were raised in revenue from customers being overcharged (breach 1)
- Credit balances were retained and working capital sums were raised on these amounts (breaches 4 and 5)

Raising sums in revenue from customers being overcharged

4.4. The Authority considers that a benefit has accrued as a result of billing some HH meter customers based on inflated consumption estimates, rather than on consumption data available (breach 1). That enabled capital sums to be raised from those customers, without incurring any of the associated costs.

4.5. This issue affected 82% of HES electricity customers with HH meters in February 2020, or 89 individual customers. The overcharge amount was £162,073 (over £1,800 on average per customer). It took seven months to rebill all affected customers and issue refunds where requested. 12 customers had left HES' 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. The remaining 7 were Industrial and Commercial (I&C) customers and total left unreturned is £31,587. Therefore the net gain is estimated at **£31,587**.

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

4.6. The Authority considers that HES 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.

4.7. The evidence shows that the total sum that remained unreturned as of 31 May 2022 is £245,339 (£109,026 in relation to breach 4 and £136,313 in relation to breach 5). Sums

would have been gained by the retention of this money for a period of time spanning more than four years.

4.8. The Authority also calculated a distinct gain in relation to the cost of capital on sums obtained from customers and retained - credit amassed from MBCs from 2016 to September 2020 amounted to approximately £365,000 (breaches 4 and 5). The Authority considers that there has been a gain made of approximately £184,000 (c.£62,000 in relation to breach 4 and c.£122,000 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. Based on the principle that any gain by the third-party is a gain by the principal, the Authority estimates HES gained as follows:

- sums from customers being overcharged (breach 1)- **£31,587**;

(The Authority notes that the total amount overcharged (the initial gain) was £356,435, however, step 1 requires that we look at efforts made in terms of redress, including sums already returned, and the £31,587 is the residual gain. The scale of the initial overcharging is factored in under Step 2 – seriousness);

- credit balances retained - **£245,339** (£109,026 in relation to breach 4 and £136,313 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 £364,793, however, step 1 requires that we look at efforts made in terms of redress, including sums already returned, and the £245,339 is the residual gain. The scale of the initial sum in credit accumulated is factored in under Step 2 – seriousness);

- working capital raised on credit balances retained – c.**£184,000** (c.£62,000 in relation to breach 4 and c.£122,000 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 10).

4.11. In summation, the total gain and detriment is assessed to be **c.£460,926.00**.

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 HES has been guilty of a total lack of care and supervision in meeting its licence obligations to its customers due to its failure to put in place appropriate steps to ensure regulatory compliance was achieved and maintained throughout the duration of the arrangement with the third-party. This reckless attitude to compliance applies to all the contraventions in this case.

4.13. The Authority has concluded that the contraventions are particularly serious especially in relation to breach 1, where the third-party engaged by HES took a deliberate decision to issue bills that were not based on the consumption data available but were instead based on inflated consumption estimates, which resulted in some of HES' HH meter customers being overcharged. Affected customers are likely to have suffered bill shock and may have experienced cashflow issues of their own as a consequence of the overcharging. HES did not take the specific actions and in fact were completely unsighted on the actions taken (until this investigation was opened). However, HES failed to take appropriate steps to ensure its licence obligations and duties in respect of consumers were met and compliance maintained throughout the duration of the arrangement with the third-party.

4.14. Additionally, whilst some customers were re-billed in the first two months following issuance of the inflated bills, about 54% of those affected waited for up to 7 months to

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

be re-billed, after having been deprived of their monies with no justification. Unless the customers asked for a refund, the account was re-billed and any remaining credit resulting from the overcharge applied to it. This means that it is not clear how long it took 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.

4.15. The failure to communicate appropriately with its MBC NHH customers about the issuing of significant catch-up bills correcting an earlier error (resulting in underpayment) would have caused those affected customers financial distress (breach 2). The Authority considers that the third-party gave some consideration to the impact this would have on customers affected (43 in total): larger catch-up amounts were spread across multiple bills, thereby lessening the potential bill shock in those cases. However, those affected were treated differently, depending on whether the customer made contact 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 estimates.

4.16. The Authority believes that HES, via the third-party, failed to be transparent about the error made with its customers. It did not acknowledge the cause of the billing error; failed to apologise for it; and failed to give sufficient consideration to appropriate actions to lessen potential consumer harm. Customers should have been contacted proactively, the error explained to them, an apology given, and they should have been asked for a meter reading, so the account could be billed accurately.

4.17. HES failed to take all reasonable steps to correctly identify relevant customers as MBCs, both on initial acquisition and on renewal (breach 3). This is a breach that spanned the maximum 5 years that the rules allow us to deal with. Furthermore, with the exception of breach 1, all other breaches in this investigation pertain to MBCs only and so this failure permeates the whole case. HES' reckless attitude to compliance meant that, for a long period of time, customers not identified as MBCs, were not afforded the proper treatment in line with the SLCs (and other regulations) and were disadvantaged as a result.

- 4.18. The Authority considers that there will have been gain for the licensee in avoided costs in relation to Ombudsman fees. There will have been detriment to any customer affected who made a complaint and who did not have their complaint handled in accordance with the Gas and Electricity Consumer Complaints Handling Standards Regulations 2008 (CHSR 2008) and was not signposted to the Ombudsman. It is distinctly likely that customers missed out on remedies (financial and otherwise) that they otherwise might have received.
- 4.19. Significant sums in credit balances were amassed from former customers over a very long period of time. The breach is serious due to its impact. Significant financial harm could have been caused to customers who were either unaware of their credit balance or were unaware as to how they must request its return at the time they left HES' supply. 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 HES, that the third-party started writing letters to affected customers to inform them of the credit owing (December 2020). 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 to refund the money to them. The non-financial harm arises from inconvenience suffered and potential consequential lack of trust in a supplier and potentially the wider market. Customers have a right to expect suppliers to provide clear information on final bills (or in any other communication) in relation to credit owing to them. The Authority notes that the Standards of Conduct (SLC 0A and SLC 7B) apply only to MBCs. However, the Authority notes that Industrial & Commercial customers affected are entitled to receive refunds owing to them (and there are unreturned monies).
- 4.20. Finally, in relation to breaches 6 to 10, there has been detriment to those MBCs affected. HES 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

4.21. The Authority considers that there are three aggravating factors and one mitigating factor. These are explained below.

Factors tending to increase the penal element¹⁸

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

4.22. Due to issues already noted in relation to recordkeeping and difficulties in obtaining relevant documentation from HES, the investigation was not able to find clear evidence of the precise actions and inaction of senior management at the material times. However, the fact that there were no contracts or agreements in place with the third-party that was acquiring customers and delivering customer facing activity on behalf of HES indicates that there was no proper, senior level oversight of how HES was ensuring that it met its regulatory obligations and compliance was maintained throughout the duration of the arrangement with the third-party. Therefore, this factor applies, and the Authority views it as serious in the circumstances.

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

4.23. The evidence shows that HES had no contract or agreement in place with the third-party; there was no service level agreement, or anything akin to it; there was no proper instruction or guidance provided by HES to the third-party. There were no checks and balances put in place at all – no monitoring, no reporting and no audit. There was no supervision of billing to the customer, of communications sent to the customer, of customer service delivered, including complaints handling. It is apparent that HES failed throughout the duration of the arrangement with the third-party to have in place appropriate processes and procedures to ensure and maintain compliance with its licence

¹⁸ Paragraphs 5.15-5.20 2014 Penalty Policy

obligations . HES has admitted that it was naïve in so doing. Therefore, this factor applies, and in the Authority’s view, it is the main aggravating factor and applies in this case to a very significant degree.

Withholding relevant evidence and/or submitting it in a manner that hinders the investigation (whether, for example, it is late, incomplete and/or inaccurate).

4.24. HES appears to have been as cooperative as possible, based on the information available to it now. However, it has admitted repeatedly in answer to numerous questions that it has been unable to locate relevant records and documentation to enable it to answer those questions thoroughly, or at all. There has been a change in ownership and in IT systems. These issues have hampered HES’ ability to cooperate and this is unfortunate and to a degree beyond its control. It is not suggested at all that HES has deliberately withheld evidence or has intended in any way to hinder the investigation. Nonetheless, the lack of information has hindered the investigation and the Authority considers it right to apply the aggravating factor but gives it no great weight in the circumstances.

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

4.25. SEUK, did, subsequent to Ofgem’s intervention, voluntarily halt customer acquisition and carried out a review of all its contracts and relationships with third-party intermediaries. SEUK appointed a new head of compliance and reviewed all its policies and procedures on this area. This did not directly relate to the breaches in this case, in the sense that the relationship subject of the investigation ended in July 2020, but the Authority considers that the mitigating factor should be applied nonetheless.

Conclusion on aggravating and mitigating factors

4.26. In conclusion, considering that there are three aggravating factors and one mitigating factor, the Authority considers it appropriate to adjust the initial penal element upwards.

Step 4 Consider an adjustment for deterrence¹⁹

4.27. The Authority considers that an upward adjustment for deterrence to the penal element 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, £1,725,000 would be an appropriate overall penal element under the 2014 Penalty Policy.

Step 5 Apply a discount in settled cases²⁰

4.28. The Authority notes that SEUK 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 is reduced to £1,207,500.

Step 6 Establish the total financial liability²¹

4.29. Having considered all of the above matters, the Authority is minded to impose a penalty of £1,668,426, comprising the total of the final penal element of £1,207,500 and the gain and detriment of £460,926.

¹⁹ Paragraphs 5.21-5.22 2014 Penalty Policy

²⁰ Paragraphs 5.23-5.26 2014 Penalty Policy

²¹ Paragraphs 5.27-5.30 2014 Penalty Policy

4.30. The Authority proposes to impose a financial penalty of £1 on the condition that SEUK pays the balance of the £1,668,426 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 HES 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 SEUK, which it considers to be an amount that is reasonable in all the circumstances of the case.

5.2. The proposed penalty takes into account that SEUK will pay £1,668,426 less £1 into the Voluntary Redress Fund and such payment 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:

- HES was guilty of a total lack of care and supervision in ensuring that it complied with its licence obligations. This negligence had led to some very poor outcomes for its customers
- The serious nature of the breaches
- The financial harm suffered by customers as a result of the contraventions
- The three aggravating and one mitigating factor applicable in this case.

5.4. The Authority hereby gives notice under section 27A(3) EA 89 of its proposal to impose a penalty of £1 on SEUK in respect of the contraventions set out above.

5.5. SEUK has agreed to settle the investigation on the basis of paying a financial penalty of £1 and to pay the sum of £1,668,426 (less £1) by way of voluntary redress.

- 5.6. Any written representations or objections to this notice must be received by Pat Ogan (penaltyreps@ofgem.gov.uk) or Ofgem, 10 South Colonnade, 4th floor, Canary Wharf, London E14 4PU by **5pm on 20 December 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), it will consult again in accordance with section 27A(4) Electricity Act 1989.
- 5.8. 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 whether to comply with any such requests on a case by case basis.

Gas and Electricity Markets Authority

Date: 29 November 2023