

**Decision of the Gas and Electricity Markets Authority  
following an investigation into compliance by London Electricity plc with its  
obligations under standard licence condition 48 of its gas and electricity supply  
licences.**

**14 November 2002**

- 1 This document constitutes a notice, published in accordance with section 27A (5) of the Electricity Act 1989 and section 30A (5) of the Gas Act 1986.

**Background**

- 2 The Gas and Electricity Markets Authority (the Authority) has a principal objective to exercise its functions to protect the interests of gas and electricity consumers. The Authority also has general duties which apply to the performance of its functions, including a duty to have regard to the interests of:
- (a) individuals who are disabled or who are chronically sick;
  - (b) individuals of pensionable age;
  - (c) individuals with low incomes; and
  - (d) individuals living in rural areas.
- 3 It has a duty to keep under review activities in the areas to which gas and electricity licences apply. It also has a duty to issue an enforcement order where it is satisfied that a licence obligation is being, or is likely to be, contravened and may impose a financial penalty in respect of a past or continuing contravention.
- 4 Ofgem has investigated London Electricity plc's compliance with standard licence condition 48 of its gas and electricity supply licences. At its meeting on 8 October 2002, the Authority was satisfied that London Electricity had contravened standard licence condition 48 of its gas and electricity supply licences.
- 5 Sections 30A (1) of the Gas Acts 1986 and section 27A (1) of the Electricity Act 1989 state that where the Authority is satisfied that a licence holder has contravened or is contravening any relevant condition or requirement, the Authority may impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.
- 6 On 9 October 2002, in accordance with section 30A (3) of the Gas Act 1986 and section 27A (3) of the Electricity Act 1989, the Authority gave notice that it proposed to impose a penalty of £2,000,000 on London Electricity plc. A full copy of that notice is attached at **annex A**.

**Representations**

- 7 The Authority has considered the four written representations it received, one of which was confidential. A list of respondents is attached at **annex B**.
- 8 All four representations welcomed the Authority's decision to impose a penalty of £2,000,000.

- 9 There was no suggestion that the proposed penalty should be varied.
- 10 energywatch commented that it was satisfied with the outcome of the investigation and expressed an expectation that the penalty and any costs incurred as a result of securing compliance would not be passed on to consumers.
- 11 The London Borough of Enfield said that it was their experience that the breaches of the licence condition identified by Ofgem were of a most serious nature.
- 12 Mrs L S Munday said that, as a customer who believed that her signature had been forged, she was delighted by the Authority's proposal.

### **Authority decision**

- 13 After considering all the responses, the Authority must now confirm, vary or withdraw the proposed penalty.
- 14 If the Authority decides to confirm the proposed penalty it is required by section 27A (5) of the Electricity Act 1989 and section 30A (5) of the Gas Act 1986 to issue a notice:
  - (a) stating the imposition of the penalty and its amount;
  - (b) setting out the relevant condition or requirement or the standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and the amount; and
  - (d) specifying a date, no earlier than the end of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid.
- 15 For the purpose of paragraph 14 (a) and after considering all the representations received, the Authority hereby confirms the decision of the 9<sup>th</sup> October 2002 to impose a financial penalty of £2,000,000 on London Electricity plc.
- 16 For the purpose of paragraph 14 (b), the relevant licence condition or requirement or the standard of performance in question is standard licence condition 48 of London Electricity plc's gas and electricity supply licences.
- 17 For the purpose of paragraph 14 (c) the acts or omissions which, in the opinion of the Authority constitute the contravention or failure in question and the other facts, which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed are set out in sections D, G and F of the Authority's decision of 9 October, which is attached at **annex A**
- 18 For the purpose of paragraph 14 (d) the penalty must be paid to the Authority no later than 3 January 2003.

- 19 In accordance with section 27A (6) of the Electricity Act 1989 and section 30A (6) of the Gas Act 1986 London Electricity plc may, within 21 days of the date of service on him of a copy of this notice, make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid.
- 20 If the whole or any part of the penalty is not paid by the date it is required to be paid, then in accordance with section 27D (1) of the Electricity Act 1989 and section 30D (1) of the Gas Act 1986, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgements Act 1838.
- 21 In accordance with section 27F of the Electricity Act 1989 and section 30F of the Gas Act 1986, where a penalty imposed, or any portion of it, has not been paid by the date on which it is required to be paid, the Authority may recover from London Electricity plc, as a civil debt due to it, any of the penalty and any interest which has not been paid.

*Callum McCarthy*

**CALLUM McCARTHY**  
**Chairman, Gas and Electricity Markets Authority**  
**Chief Executive, Office of Gas and Electricity Markets**  
**For and on behalf of the Gas and Electricity Markets Authority**

## Annex A

### Decision of the Gas and Electricity Markets Authority following an investigation into compliance by London Electricity plc with its obligations under standard licence condition 48 of its gas and electricity supply licences.

9<sup>th</sup> October 2002.

#### Summary

- 1 The Gas and Electricity Markets Authority (the Authority) has a principal objective to exercise its functions to protect the interests of gas and electricity consumers. The Authority also has general duties which apply to the performance of its functions, including a duty to have regard to the interests of:
  - (e) individuals who are disabled or who are chronically sick;
  - (f) individuals of pensionable age;
  - (g) individuals with low incomes; and
  - (h) individuals living in rural areas.
- 2 The Authority grants licences for the supply of gas and electricity. It has a duty to keep under review activities in the areas to which gas and electricity licences apply. It also has a duty to take enforcement action where it is satisfied that a licence obligation is being, or is likely to be, contravened and may impose a financial penalty in respect of a past or continuing contravention.
- 3 Ofgem has investigated London Electricity plc's compliance with standard licence condition 48 of its gas and electricity supply licences, attached at **annex 1**. This document contains the Authority's decision following the investigation and the reasons for that decision.
- 4 Standard licence condition 48 deals with the marketing of electricity and gas to domestic customers. The condition has a number of paragraphs which deal with such matters as the selection and training of staff, dealings with domestic customers, the follow up contact with a domestic customer to ensure that the customer understands that he has entered a domestic supply contract, is content to have entered into that contract, and is content with the way in which the marketing activities of the licensee were conducted.
- 5 The Authority has considered the actions of the representatives of London Electricity plc for the period 1 January – 31 August 2002.
- 6 The Authority has decided that London Electricity plc has breached the requirements of standard licence condition 48 in its gas and electricity supply licences, in particular paragraph 2 (a), (b), (c)(i), (c)(ii), (d), 4 (b), (c), and 11. Section 28 of the

Gas Act 1986 and sections 25 of the Electricity Act 1989 require the Authority to make an enforcement order where it is satisfied that a licensee is contravening or is likely to contravene a licence condition. Section 30A of the Gas Act and section 27A of the Electricity Act also permit the Authority to impose a penalty on a licensee where it is satisfied the licensee has contravened or is contravening a licence condition.

- 7 London Electricity plc has co-operated fully with the investigation and has advised the Authority that it has significantly altered its internal working practices including the ending of its relationships with 10 sales agencies. It has now put in place a 100% verification audit call process for contracts before they are actioned. The Authority is not satisfied that London Electricity plc is now contravening or is likely to contravene SLC 48, and so has decided not to make a final order or make or confirm a provisional order under section 28 of the Gas Act 1986 or section 25 of the Electricity Act 1989
- 8 The Authority has considered the imposition of a financial penalty under section 30A of the Gas Act 1986 and section 27A of the Electricity Act 1989. Having regard to the extent of the breaches of the licence, the steps taken by London Electricity plc to assist in the investigation and comply with their obligations under their Gas and Electricity supply licences, the Authority proposes to impose a financial penalty of £2,000,000.
- 9 The Authority is now asking for the comments of London Electricity plc, energywatch, and all other interested parties on the proposed penalty. Such comments should be made, preferably in writing, to the Authority by no later than 30 October 2002.
- 10 The Authority regards the extent of the misselling activities in the gas and electricity supply sectors as wholly unacceptable. In imposing this penalty on London Electricity plc the Authority is showing that it will not accept breaches of licence obligations and will penalise such breaches where they impact adversely on customers and the efficient operation of the market. Other than for the fact that London Electricity plc has co-operated fully with this investigation and taken extensive remedial action, including on-going 100% verification of all proposed contracts, the amount of the financial penalty would have been significantly higher.

**Notice of intention to impose a financial penalty by the Gas and Electricity Markets Authority, following an investigation into compliance by London Electricity plc with its obligations under standard licence condition 48 of its gas and electricity supply licences.**

**9<sup>th</sup> October 2002.**

1. This document constitutes a notice, published in accordance with section 27A of the Electricity Act 1989 and section 30A of the Gas Act 1986 stating that the Authority is satisfied that London Electricity plc has contravened standard licence condition 48 in its electricity and gas supply licences.
2. The Authority has considered making a final order or making or confirming a provisional order under section 28 of the Gas Act 1986 and section 25 of the Electricity Act 1989. Under section 28 (1) of the Gas Act 1986 and section 25(1) of the Electricity Act 1989, subject to subsections (2), (5) and (5A) of section 28 of the Gas Act 1986 and of section 25 of the Electricity Act 1989, where the Authority is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, the Authority shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement. Section 28 (2) of the Gas Act 1986 and section 25(2) of the Electricity Act 1989 provide, subject to subsections (5) and (5A) of section 28 of the Gas Act 1986 and of section 25 of the Electricity Act 1989, for the making of a provisional order where it appears to the Authority that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, and it is requisite for such a provisional order to be made. In this matter at this time the Authority is not satisfied that London Electricity plc is contravening, or is likely to contravene, standard licence condition 48 of its gas and electricity supply licences.
3. On the matter of financial penalties section 30A (3) of the Gas Act 1986 and section 27A (3) of the Electricity Act 1989 require the Authority before imposing a penalty on a licence holder to give notice:
  - (a) stating that it is proposing to impose a penalty and the amount of the penalty proposed to be imposed;
  - (b) setting out the relevant conditions or requirement or standard of performance in question;
  - (c) specifying the acts or submissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed;
  - (d) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made.
4. For the purpose of paragraph 3(a), the Authority proposes to impose a financial penalty of £2,000,000.

5. For the purpose of paragraph 3(b), the relevant condition or requirement or the standard of performance in question is standard licence condition 48 of London Electricity plc's gas and electricity supply licences (full text at **annex 1** to this notice).
6. For the purpose of paragraph 3(c), the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed are set out in sections D, F and G.
7. The Authority will consider any representations or objections with respect to this proposed financial penalty. All such comments should be sent by 5pm on 30 October 2002 to:

Annette Lovell  
Ofgem  
9 Millbank  
London  
SW1P 3GE

Or by e-mail to [annette.lovell@ofgem.gov.uk](mailto:annette.lovell@ofgem.gov.uk)

Where paper copies of a response are sent, it would be helpful if responses could also be sent electronically. It is open to respondents to mark all or part of their responses as confidential. However, the Authority would prefer it if, as far as possible, responses were provided in a form that can be placed in the Ofgem library and on the Ofgem website.

8. If the Authority proposes to vary the amount of the financial penalty the Authority will give notice as required under section 27A (4) of the Electricity Act 1989 and section 30A (4) of the Gas Act 1986 in which it shall state the proposed variation and the reasons for it and stating the period within which representations or objections to the proposed variation can be made.

## **A Background**

- 1 London Electricity plc is part of the LE Group, which is a wholly owned subsidiary of Electricité de France. LE Group operates three main supply brands, London Electricity (LE), SWEB and SEEBOARD Energy.
- 2 This investigation relates to compliance only with London Electricity plc's gas and electricity supply licences, since London Electricity plc is the licensee involved in the sales activity in question.
- 3 LE Group also owns 75% of Virgin HomeEnergy Ltd, which acts as an agent for the supply of electricity and gas under the London Electricity plc's licences. Originally launched in July 2000 as an on-line joint venture, LE Group's initial stake was 25%. Virgin HomeEnergy Ltd is not a licensed supplier of gas or electricity.

- 4 In 1999, following a number of complaints about alleged misselling activity Ofgem arranged a series of meetings with London Electricity plc which concluded in London Electricity plc providing voluntary undertakings that it would:
  - provide written monthly reports on marketing activities,
  - improve the way in which sales agents were recruited and trained,
  - make certain that potential customers fully understood the wording in its energy contracts, and
  - for audit purposes, ensure that at least 30% of customers who agreed to enter into a contract were subsequently contacted by telephone.
  
- 5 By December 2000 London Electricity plc's performance had improved sufficiently to allow the undertakings to lapse.

## **B Information provided to Ofgem**

- 1 In December 2001 and January 2002, the highest number of complaints to energywatch about misselling, as a proportion of transfers, was attributable to London Electricity plc.
- 2 Between April 2002 and August 2002, in excess of 340 complaints about London Electricity plc and Virgin were referred from a variety of sources, including MPs, local Trading Standards departments and the National Association of Citizens Advice Bureaux.
- 3 In August energywatch provided complaint figures for April-June 2002 which indicated a significant increase in the number of London Electricity direct selling complaints. Although these may reflect changes in energywatch processes, the London Electricity plc figures are still proportionately higher than the figures for other suppliers. London Electricity plc complaints were 4.62 complaints to energywatch per 1000 transfers, against an industry average of 1.92.

## **C Current investigation**

- 1 Between April and September 2002 Ofgem made enquiries of London Electricity plc, exchanged correspondence and held meetings with a view to preparing a report to the Authority.
- 2 The Authority has noted that in a meeting between Ofgem and London Electricity plc Ofgem was told that 100% of Virgin sales would be audited and that no contract would be processed unless a customer had confirmed that they wished to proceed.
- 3 At the same time Ofgem made other enquiries. On 23 May 2002 Ofgem made a formal information request to energywatch asking for copies of complaints about London Electricity plc and Virgin to be referred for investigation. In addition Ofgem contacted a sample of the customers who made complaints to Ofgem, either directly or indirectly.



- 4 London Electricity plc has reviewed the facts gathered for the report presented to the Authority. London Electricity plc has made representations to the Authority regarding its recent actions to prevent misselling, and the costs it has incurred as a result of misselling. Their representations were reviewed by the Authority.

## **D Findings**

The Authority has concluded that between 1 January 2002 and 31 August 2002, London Electricity contravened standard licence condition 48 of its gas and electricity supply licences for the following reasons:

1. That London Electricity plc did not take all reasonable steps to ensure that its agents and sub-contractors had set up appropriate procedures for the selection of staff employed or engaged in roles, the principal duties of which involved oral communication with domestic consumers for the purposes of the marketing activity of London Electricity plc (SLC 48 2(a) and (d)). For example, London Electricity plc failed to establish the extent to which its agents and sub-contractors had set up and were implementing procedures for the selection of such staff, for example through a rigorous and documented compliance audit plan and process; that it failed to take adequate and systematic remedial action when it did identify or was made aware of instances of non-compliance; and that it continued to employ agents or sub-contractors for the purposes of direct selling when it was aware that the appointment of these agents did not comply with their procedures.
2. That although London Electricity plc set up procedures for the selection of staff, principally involved in face-to-face or telesales, it did not take all reasonable steps to ensure its agents and sub-contractors set up equivalent procedures (SLC 48 2 (b) and (d)). The Authority concluded that London Electricity plc had produced satisfactory training material for use by its agents and sub-contractors, but that this alone did not amount to 'all reasonable steps'. It failed to take additional steps adequately to monitor or audit the extent to which the training process had been implemented and to what effect, despite clear evidence that this was needed.
3. That London Electricity plc had failed to take all reasonable steps to ensure that a domestic customer may readily identify the licensee when he is contacted by a representative of the licensee, its agents or sub-contractors (SLC 48 2(c) (i) and (d)). Specifically the Authority concludes that it would not have been possible for a domestic customer readily to identify the licensee when contacted by an agent selling under the Virgin HomeEnergy brand.
4. That London Electricity plc had failed to take all reasonable steps to ensure that a domestic customer would readily understand that they had entered into a domestic supply contract (SLC 48 2(c) (ii) and (d)). The Authority concluded that although London Electricity plc had taken steps to identify documents as contracts, it did not conclude that this amounted to 'all reasonable steps'. An analysis of complaints indicated that a primary cause of customer confusion was the statements made by sales agents. The Authority considered that London Electricity plc must have been aware of this from complaints it received and was required to take steps to deal with it adequately, for example through a documented compliance audit plan and process. The Authority also concluded that London Electricity plc failed to take adequate remedial action when it did identify or was made aware of agents who misled consumers.

5. That London Electricity plc failed to take all reasonable steps to ensure that new domestic supply contracts were terminated, when notified by consumers following receipt of for example a welcome call or letter (SLC 48 4 (b)).
6. That London Electricity plc failed to take all reasonable steps to remedy weaknesses in the methods, systems or personnel employed by the licensee, identified as a result of its sales audit processes (SLC 48 4(c)). Specifically it failed adequately to record weaknesses identified by consumers and this failure led to an inability to address weaknesses.
7. That London Electricity failed to establish management arrangements that facilitated the licensee meeting a range of its obligations under paragraphs 2-9 of the licence condition and to ensure that that agents and sub-contractors took steps equivalent to those arrangements (SLC 48 (11)). The Authority concludes that the weight of evidence of misselling is such that the Authority can properly be satisfied that the licensee had not taken all reasonable steps as required by that paragraph.

## **E Enforcement**

1. If the Authority is satisfied that a licence holder is contravening, or likely to contravene any relevant condition requirement, section 28 (1) of the Gas Act 1986 and section 25 (1) of the Electricity Act 1989 require the Authority, subject to subsections (2), (5) and (5A) of section 28 of the Gas Act 1986 and of section 25 of the Electricity Act 1989, by final order, to make such provision as is requisite for the purpose of securing compliance with that condition or requirement.
2. Section 28 (2) of the Gas Act 1986 and section 25 (2) of the Electricity Act 1989 state that, subject to subsections (5) and (5A) of section 28 of the Gas Act 1986 and of section 25 of the Electricity Act 1989, where it appears to the Authority that a licence holder is contravening or is likely to contravene any relevant condition or requirement and that it is requisite that a provisional order be made the Authority shall (instead of taking steps towards the making of a final order) by a provisional order make such provisions as appears to the Authority requisite for the purpose of securing compliance with that condition or requirement.
3. Section 28 (5A) of the Gas Act 1986 and section 25 (5A) of the Electricity Act 1989 state that the Authority is not required to make a final order or make or confirm a provisional order if it is satisfied:
  - a) that the licence holder has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the Licence Holder to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
  - b) that the contraventions were or the apprehended contraventions are of a trivial nature.
4. In meetings and correspondence with the Authority London Electricity plc has confirmed that it has, amongst other steps, terminated its relationships with a number of its sales agencies, imposed a 100% telephone call back audit procedure to verify all proposed contracts before they are implemented, and reviewed its training procedures and manuals. London Electricity plc has now at its highest level

taken this matter seriously and undertaken restructuring of its direct sales operations and methods in order to avoid any reoccurrence.

5. In the light of these actions the Authority is unable to make a final order or make or confirm a provisional order as it is not satisfied that London Electricity plc is contravening, or is likely to contravene, standard licence condition of 48 of either licence. The Authority will continue to monitor London Electricity's compliance with SLC 48.

## **F Financial Penalties**

1. Section 30A (1) of the Gas Act 1986 and section 27A (1) of the Electricity Act 1989 state that where the Authority is satisfied that a licence holder has contravened or is contravening any relevant condition or requirement, the Authority may impose on the licence holder a penalty of such amount as is reasonable as in all the circumstances of the case.
2. Section 27A (2) of the Electricity Act 1989 and section 30A (2) of the Gas Act 1986 states that the Authority shall not impose a penalty on a licence holder where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998. The Authority considered that as there was clear evidence of contraventions of standard licence condition 48 and insufficient evidence to suggest a breach of the Competition Act, it was not satisfied that the most appropriate way of proceeding is under the Competition Act 1998.
3. In accordance with section 30B of the Gas Act 1986 and section 27B of the Electricity Act 1989 the Authority has prepared and published in April 2001 a statement of policy with respect to the imposition of penalties and the determination of the amount.
4. Section 30A (3) of the Gas Act 1986 and section 27A (3) of the Electricity Act 1989 require the Authority before imposing a penalty on a licence holder to give notice:
  - a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
  - b) setting out the relevant condition or requirement or the standard of performance in question;
  - c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and
  - d) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made.
5. Under section 30A (8) of the Gas Act 1986 and section 27A (8) of the Electricity Act 1989 no penalty imposed by the Authority under this section may exceed 10% of the turnover of the licence holder as ascertained in accordance with The Electricity and Gas (Determination of Turnover for Penalties) Order 2002 (SI 2002/1111). The turnover of London Electricity plc for the financial year ending 31 December 2001 was £465M.

6. The Authority issued in April 2001 a statement of policy in respect of the imposition of penalties and the determination of their amounts.
7. In its initial calculation of the level of a financial penalty the Authority considered the following factors:
  - seriousness of the breach;
  - the degree of harm or increased cost incurred by consumers of other market players;
  - duration of the licence breach; and
  - any gain (financial or other) by London Electricity plc
8. The Authority considers that misselling is a serious breach of a customer's trust and that such activities damage a customer's willingness to engage with the market. In addition the wide spread activities of London Electricity plc and its agent, Virgin Energy, have adversely affected the lives of a significant number of its customers across the country.
9. The Authority has considered the degree of harm or cost incurred by customers and other market participants. It is concerned that the actions of London Electricity plc and its agent Virgin Energy have undermined customers' willingness to engage in the market. This damages the interests of customers. Other market players have incurred significant costs in the processing of account transfers where they had not been validly obtained from customers. Customers have incurred cost and distress in dealing with cancelling unwanted contracts and making complaints.
10. In considering the duration of the licence breach the Authority has found that the breaches did occur during the period of the investigation. The Authority has been advised that any financial penalty can only be imposed for a breach of the licence after 12 April 2002 when the necessary secondary legislation was introduced by the Government. The Authority has therefore determined its financial penalty amount with respect to the breaches occurring in the period following that date.
11. The Authority has considered the question as to whether any gain was made by London Electricity plc from their actions of misselling. The increased number of account holders has brought a financial benefit to London Electricity plc. The Authority has weighed this against the damage that London Electricity plc has done to its brand and that of Virgin Energy and the costs incurred in dealing with customers its has subjected to misselling.
12. In its published guidance the Authority stated that it would look at factors that could lead to an increase in the level of the penalty. These include, but are not limited to:
  - repeated contravention or failure;
  - continuation of contravention or failure after becoming aware of the contravention or failure, or becoming aware of the start of Ofgem's investigation;
  - the involvement of senior management in any contravention or failure;
  - the absence of any evidence of internal mechanisms or procedures intended to prevent contravention or failure; and
  - the extent of any attempt to conceal the contravention or failure from Ofgem.

13. The failures identified by the Authority were repeated over the relevant period, and had continued through the period of investigation, though once London Electricity plc became aware of the Ofgem investigation it moved quickly to improve its management of direct sales. Senior management failed to control the direct sales process effectively when complaint levels should have alerted them to problems. However, the Authority saw no evidence of senior management seeking to provoke misselling. London Electricity plc lacked adequate internal mechanisms to prevent the failures. However, the Authority has had full co-operation from London Electricity plc in this investigation and does not believe that any attempt has been made to conceal the matter from Ofgem.
14. Under the Authority's published guidance it will consider a number of factors that could tend to decrease the level of any penalty. These factors may include, but are not limited to;
- the extent to which the licensee has been taking steps to secure compliance, either specifically or by maintaining an appropriate compliance policy, with suitable management supervision;
  - appropriate action by the licensee to remedy the contravention or failure;
  - evidence that the contravention or failure was generally accidental or inadvertent ;
  - reporting the failure to Ofgem; and
  - co-operation with Ofgem investigations.
15. The Authority believes the licensee did not take appropriate steps to ensure compliance or take timely action to remedy the failure. However, it has noted the steps London Electricity plc has advised it has taken to comply with its licence conditions in recent months. Given the geographical spread of the complaints and the significant time period over which they occurred, the Authority does not believe that the contravention was in any way accidental or inadvertent. Ofgem received complaints from consumers, MPs, consumer representative organisations, trading standards and energywatch. The failure was not reported by London Electricity plc. However, as noted above London Electricity plc has co-operated fully with the investigation.

## **G Conclusion**

- 1 The Authority has considered all of these factors and is proposing to impose a financial penalty in the amount of £2,000,000. In reaching this figure the Authority had regard to section 3A (2) (b) of the Electricity Act 1989 and section 4AA (2) (b) of the Gas Act 1986. The amount would have been significantly higher had not London Electricity plc co-operated fully with Ofgem in the investigation. The imposition of a penalty is to be seen as a warning to the company and the entire gas and electricity supply market that the Authority will not countenance misselling or breaches of standard licence condition 48 that jeopardise customer confidence.
- 2 The Authority will consider any representations or objections with respect to this proposed financial penalty. All such comments should be sent by 5pm on 30 October 2002 to:

Annette Lovell  
Ofgem  
9 Millbank  
London  
SW1P 3GE

Or by e-mail to [annette.lovell@ofgem.gov.uk](mailto:annette.lovell@ofgem.gov.uk)

Where paper copies of a response are sent, it would be helpful if responses could also be sent electronically. It is open to respondents to mark all or part of their responses as confidential. However, the Authority would prefer it if, as far as possible, responses were provided in a form that can be placed in the Ofgem library and on the Ofgem website.

- 3 In accordance with the Authority's stated policy on the implementation of financial penalties London Electricity plc will be offered the opportunity to request an oral hearing to be held after 30 October 2002.
- 4 After any oral hearing and considering all responses, the Authority will confirm, vary or withdraw the proposed penalty. If the Authority proposes to vary the amount of the financial penalty it will give notice as required under section 27A (4) of the Electricity Act 1989 and section 30A (4) of the Gas Act 1986 in which it will state the proposed variation and the reasons for it and state the period within which representations or objections to the proposed variation can be made. If the Authority decides to confirm the proposed penalty it will in accordance with section 27A (5) of the Electricity Act 1989 and section 30A (5) of the Gas Act 1986 issue a notice stating the imposition of the penalty, the relevant condition or requirement to which it applies, the acts or omissions which constitute the contravention of failure in question, and specifying a date by which the penalty is required to be paid.

CALLUM McCARTHY  
Chairman, Gas and Electricity Markets Authority  
Chief Executive, Office of Gas and Electricity Markets  
For and on behalf of the Gas and Electricity Markets Authority

Annex 1

**Condition 48. Marketing of Electricity to Domestic Customers**

1. This condition applies to the marketing activities of the licensee in respect of the supply or the proposed supply of electricity to domestic premises.
  
2. The licensee shall:
  - (a) set up appropriate procedures for the selection of staff employed or engaged in roles the principal duties of which involve oral communication with domestic customers for the purposes of the marketing activities of the licensee;
  
  - (b) take all reasonable steps to ensure that each such person is trained so as to have a sufficient understanding of:
    - (i) the arrangements for competition in electricity supply in Great Britain; and
  
    - (ii) the principal terms of domestic supply contracts made available by the licensee;such that any relevant advice given by him to domestic customers is not misleading;
  
  - (c) take all reasonable steps to ensure that:
    - (i) a domestic customer may readily identify the licensee whenever he is contacted by a representative of the licensee;
  
    - (ii) a domestic customer will readily understand that he has entered into a domestic supply contract; and
  
    - (iii) any unsolicited contact made on behalf of the licensee with any domestic customer takes place at a reasonable time; and
  
  - (d) take all reasonable steps to ensure that any agents and sub-contractors of the licensee set up equivalent procedures and take equivalent steps to those set out at sub-paragraphs (a), (b) and (c).
  
3. Paragraph 4 shall apply where a domestic supply contract has been entered into by a domestic customer in the course of –

- (a) a visit to that customer's premises by a representative of the licensee;
  - (b) a conversation in a place to which the public have access between a representative of the licensee and a domestic customer; or
- (c) **a telephone conversation between a domestic customer and a representative of the licensee.**
4. Where this paragraph applies, the licensee shall, through a representative who is not engaged in activities leading to the entering into domestic supply contracts between the licensee and domestic customers, and not less than 24 hours nor more than 14 days after the date of the domestic supply contract in question:
- (a) use its reasonable endeavours to contact the domestic customer by telephone or by letter seeking his confirmation that:
    - (i) he understands that he has entered into a domestic supply contract;
    - (ii) he is content to have entered into that domestic supply contract; and
    - (iii) he is content with the way in which the marketing activities of the licensee were conducted;
  - (b) if in the course of such telephone contact, or within a reasonable period of sending such a letter, the domestic customer indicates that he is not content to have entered into the domestic supply contract and wishes to terminate it, take all reasonable steps to ensure that the domestic supply contract is terminated and, where reasonably practicable, that the licensee does not commence a supply to the customer; and
  - (c) if the response of the domestic customer, alone or when considered with the responses of other customers, suggests weaknesses in the methods, systems or personnel employed or engaged by the licensee or its agents or sub-contractors for the purpose of its marketing activities, ensure that all reasonable steps to remedy the matter are taken.
5. Where, by virtue of any domestic supply contract, electricity is not to be supplied to premises before the expiry of 60 days after the date of the domestic supply contract, the licensee shall take reasonable steps during the period after that date and prior to the commencement of supply to keep the domestic customer informed that he has entered into a domestic supply contract with the licensee.



6. The complaint handling procedures to be established by the licensee in accordance with standard condition 39 (Complaint Handling Procedure) shall provide in appropriate cases for the payment of compensation to domestic customers adversely affected by the failure of the licensee to perform its obligations under this condition.
7. The licensee shall keep a record of its compliance with its obligations under this condition, including:
  - (a) the contacting of domestic customers in pursuance of sub-paragraph 4(a) and the response of customers to such contact;
  - (b) the termination of contracts in pursuance of sub-paragraph 4(b); and
  - (c) compensation paid in pursuance of paragraph 6.
8. Except as the Authority may determine for the purposes of this condition generally, as soon as reasonably practicable after the end of each period of three months ending on 31 March, 30 June, 30 September and 31 December in every year, the licensee shall submit to the Authority and to the Consumer Council a report dealing with the matters specified in paragraph 7 in that period and shall:
  - (a) publish the report so submitted in such manner as will in the opinion of the licensee secure adequate publicity for it; and
  - (b) send a copy of it free of charge to any person requesting one,except that, in performing its obligations under sub-paragraphs (a) and (b), the licensee shall exclude from the report such information as appears to it to be necessary or expedient to ensure that, save where they consent, individual customers referred to therein cannot readily be identified.
9. Reports in pursuance of paragraph 8 shall be presented by the licensee, in so far as is reasonably practicable, in a standard format submitted to and approved by the Authority for the purposes of this condition.
10. Except as the Authority may approve-
  - (a) for the purpose of protecting the interests of any domestic customer who, prior to 21 July 1998, may have made a payment in advance with a view to arranging a supply of electricity; or

- (b) where any payment in advance is wholly or mainly for services other than arranging the supply of energy,

the licensee shall not enter into any commercial relations connected with the supply of electricity to domestic premises with any person who has sought, after 21 July 1998, payment in advance (other than one governed by standard condition 45 (Security Deposits)) from any domestic customer with a view to arranging a supply of electricity, and the licensee shall not enter into a domestic supply contract for the supply of electricity to any such customer made through the agency (either for the licensee or for any customer) of such a person.

- 11. The licensee shall take all reasonable steps:
  - (a) to establish management arrangements that facilitate the licensee in meeting its obligations under paragraphs 2 to 9 of this condition; and
  - (b) to ensure that any agents and sub-contractors of the licensee take steps equivalent to those arrangements.

- 12. This condition shall cease to have effect on a date (the "termination date") which shall be 31 March 2002, provided that:

if the Authority, after consultation with the licensee and all other licensed electricity suppliers in whose supply licence the standard conditions in Section C have effect, the Consumer Council and such other persons or bodies as in the opinion of the Authority are representative of those likely to be affected, gives notice for the purposes of this condition generally:

by publishing the notice in such a manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

by sending a copy of the notice to all such licensed suppliers, to the Secretary of State and to the Consumer Council,

that the Authority considers that the development of competition in electricity supply is such as to require the continuation of any part of this condition until such date - not later than two years from the termination date - as may be specified in the notice (the "new termination date"), then such part of this condition as may be specified in the notice shall continue to apply as if for the termination date there were substituted the new termination date; and

- (b) notice under sub-paragraph (a) may be given on more than one occasion.

- 13. In this condition:

“marketing activities”

means any activities of the licensee directed at or incidental to the identification of and communication with domestic customers supplied or to be supplied with electricity by the licensee, and includes entering into domestic supply contracts with such customers.

“representative”

in relation to the licensee, means any person directly or indirectly authorised to represent the licensee in its dealings with customers.

#### Condition 48. Marketing of Gas to Domestic Customers

1. This condition applies to the marketing activities of the licensee in respect of the supply or the proposed supply of gas conveyed through pipes to the premises of domestic customers.
  
2. The licensee shall—
  - (a) set up appropriate procedures for the selection of staff employed or engaged in roles the principal duties of which involve oral communication with domestic customers for the purposes of the marketing activities of the licensee;
  - (b) take all reasonable steps to ensure that each and every such person is trained so as to have a sufficient understanding of—
    - (i) the arrangements for competition in domestic gas supply in Great Britain; and
    - (ii) the prices charged by, and the other terms of supply of, the licensee, in particular methods of payment, duration of contracts and termination fees;such that any relevant advice given by them to domestic customers is not misleading;
  - (c) take all reasonable steps to ensure that—
    - (i) a domestic customer may readily identify the licensee whenever a representative of the licensee contacts the customer;
    - (ii) a domestic customer will readily understand that he or she has entered into a domestic supply contract;
    - (iii) any unsolicited contact made on behalf of the licensee with any customer takes place at a reasonable time; and
  - (d) take all reasonable steps to ensure that any agents and sub-contractors of the licensee set up equivalent procedures and take equivalent steps to those set out in sub-paragraphs (a), (b) and (c).
  
3. Paragraph 4 shall apply where a domestic supply contract has been signed or otherwise entered into by a domestic customer in the course of -
  - (a) a visit by a representative of the licensee to the premises of a domestic customer;
  - (b) a conversation in a place to which the public have access between a representative of the licensee and domestic customer; or
  - (c) a telephone conversation between a representative of the licensee and a domestic customer.
  
4. Where this paragraph applies, the licensee shall, through a person other than a representative engaged in activities leading to the entering into domestic

supply contracts between the licensee and any domestic customer, and not less than 24 hours nor more than 14 days after the making of the domestic supply contract in question –

use its reasonable endeavours to contact the domestic customer by telephone or by letter seeking his confirmation-

- (i) that he understands that he has entered into a domestic supply contract;
    - (ii) that he is content to have entered into that contract; and
    - (iii) that he is content with the way in which the sale was conducted;
  - (b) if in the course of such telephone contact, or within a reasonable period of sending such a letter, the customer indicates that he is not content to have entered into the domestic supply contract and wishes to terminate it, take all reasonable steps to ensure that the domestic supply contract is terminated and, where reasonably practicable, that any proposed supplier transfer in relation to the domestic supply contract is not put into effect; and
  - (c) if the response of the domestic customer, alone or when considered with the responses of other domestic customers, suggests weaknesses in the methods, systems or personnel employed or engaged by the licensee or its sub-contractors for the purpose of its marketing activities, ensure that all reasonable steps to remedy the matter are taken.
5. Where gas is not to be supplied before the expiry of 60 days from the date on which the domestic supply contract was signed or otherwise entered into by the domestic customer, the licensee shall take reasonable steps during the period from that date until commencement of supply, to keep the domestic customer informed that he has entered into a domestic supply contract with the licensee.
6. The procedures to be established by the licensee for dealing with complaints by domestic customers under standard condition 39 (Complaint Handling Procedure) shall provide in appropriate cases for the payment of compensation to domestic customers adversely affected by the failure of the licensee to perform its obligations under this condition.
7. The licensee shall keep a record of its compliance with its obligations under this condition including-
  - (a) the contacting of domestic customers in pursuance of sub-paragraph 4(a) and the response of customers to such contact;

- (b) the termination of domestic supply contracts in pursuance of sub-paragraph 4(b); and
  - (c) compensation paid in relation to failures under this condition under procedures mentioned in paragraph 6.
8. Except as the Authority may determine for the purposes of this condition generally, the licensee shall, as soon as reasonably practicable after the end of each period of three months ending on 31 March, 30 June, 30 September and 31 December in every year, submit to the Authority and to the Consumer Council a report dealing with the matters mentioned in paragraph 7 in that period, and shall:
- (a) publish the report so submitted in such manner as will in the reasonable opinion of the licensee secure adequate publicity for it; and
  - (b) send a copy of it free of charge to any person requesting one,
- except that, in performing its obligations under sub-paragraphs (a) and (b), the licensee shall exclude from the report such information as appears to it to be necessary or expedient to ensure that, save where they consent, individual customers referred to therein cannot readily be identified.
9. Reports in pursuance of paragraph 8 shall be presented, in so far as is reasonably practicable, in a standard format designated by the Authority for the purposes of this condition generally.
10. Except as the Authority may approve-
- (a) for the purpose of protecting the interests of any domestic customer who, prior to 27 January 1998, may have made a payment in advance with a view to arranging a supply of gas; or
  - (b) where any payment in advance is wholly or mainly for services other than arranging the supply of energy,
- the licensee shall not enter into any commercial relations connected with supply of gas to any domestic customer with any person who has sought, after 27 January 1998, payment in advance (other than one governed by standard condition 45 (Security Deposits)) from any such domestic customer with a view to arranging a supply of gas and shall not enter into any contract for the supply of gas to any such domestic customer made through the agency (either for the licensee or for any domestic customer) of such a person.
11. The licensee shall take all reasonable steps:
- (a) to establish management arrangements that facilitate the licensee in meeting its obligations under paragraphs 2 to 9 of this condition; and
  - (b) to ensure that any agents and sub-contractors of the licensee take steps equivalent to those arrangements.

12. This condition shall cease to have effect on a date (“the termination date”) which shall be 31st March 2002 provided that:

- (a) if the Authority, after consultation with all gas suppliers whose licences have this condition in effect and the Consumer Council, gives notice for the purposes of this condition generally:
  - (i) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it, and
  - (ii) by sending a copy of the notice to every such gas supplier, to the Secretary of State and to the Consumer Council,

that it considers that the development of competition is such as to require the continuation of any part of this condition until such date not later than two years from the termination date as may be specified in the notice (the “new termination date”), then such part of this condition as may be specified in the notice shall continue to apply as if for the termination date there were substituted the new termination date; and

- (b) notice under sub-paragraph (a) may be given on more than one occasion.

13. In this condition, except where the context otherwise requires:

“marketing activities”

means any activity of the licensee directed at or incidental to the identification of and communication with domestic customers supplied or to be supplied with gas by the licensee and includes entering into domestic supply contracts with domestic customers;

“representative”

in relation to the licensee means any person directly or indirectly authorised to represent the licensee in its dealings with domestic customers.

## **Annex B**

Representation were received from:

energywatch

The London Borough of Enfield

Mrs L S Munday

One confidential response was received.