

Notice Under section 30A of the Gas Act 1986 and 27A of the Electricity Act 1989

Proposal of the Gas and Electricity Markets Authority to impose a financial penalty following an investigation into compliance by RWE Npower plc (“npower”) with the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (“the CHSR”).

Date 31 October 2011

1. Summary

- 1.1 The Gas and Electricity Markets Authority (“the Authority”) proposes to impose a financial penalty on npower following an investigation into its compliance with the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (“the CHSR”).
- 1.2 The CHSR came into force on 1 October 2008 and introduced a fundamental package of reforms including the requirement for suppliers to establish and operate systems, processes and procedures to record all complaints from customers.
- 1.3 Ofgem’s investigation was prompted by consumer research initiated by Ofgem and published in June 2010 which showed that consumers were dissatisfied with the level of detail recorded by suppliers about their complaints and with decisions about whether their complaints had been resolved.
- 1.4 The Authority finds that:
 - Between 1 October 2008 and 4 July 2011, npower failed to record all the required details of complaints. Specifically there were some domestic complaints where npower did not record in adequate detail a summary of the complaint, a summary of the advice given or action taken, or the basis on which the complaint has been resolved. This is a breach of Regulation 4 of the CHSR.
 - Between February 2009 and April 2010, npower’s domestic deadlock letter did not include details of the types of redress the Ombudsman could award. Between October 2008 and April 2011, npower’s domestic 8 week letter did not contain all the details required under the CHSR. Between October 2008 and March 2011 npower’s micro business deadlock and 8 week letters did not contain all the details required under the CHSR. These are breaches of Regulation 6 of the CHSR.
 - As a result of these breaches, and as a result of its failures in some respects to put in place adequate policies and processes for dealing with complaints in an efficient and timely manner, npower has not received, handled and processed complaints in an efficient and timely manner, in breach of Regulation 7(1)(a) of the CHSR.

- 1.5 The Authority considers it appropriate to impose a penalty on npower for these contraventions.
- 1.6 Ofgem has reviewed the changes npower has made to its documents, policies, training materials and training programmes. It appears to the Authority that npower has taken and is taking the appropriate steps to secure or facilitate compliance with the CHSR. npower has also set out its plans to monitor its complaint handling arrangements to ensure that there is ongoing compliance with the CHSR. For these reasons the Authority will not be making an Enforcement Order.
- 1.7 In the circumstances, the Authority hereby gives notice under section 30A of the Gas Act 1986 and section 27A of the Electricity Act 1989 of its proposal to impose a penalty of £2 million on npower in respect of contraventions of the CHSR. All representations received from npower in writing and orally have been taken into account when making the decision to find breach and impose a penalty. The proposed level of penalty would have been higher had npower not admitted the breaches of the CHSR, co-operated with Ofgem's investigation and put things right.
- 1.8 Any written representations on this notice must be sent to Louisa Allen (louisa.allen@ofgem.gov.uk) by 22 November 2011
- 1.9 The Authority would prefer it if, as far as possible, responses were provided in a form that can be placed on the Ofgem website. Should you wish your response or part of your response to remain confidential please indicate this clearly.

2. Background

- 2.1. The CHSR came into force on 1 October 2008 as part of the new arrangements for consumer representations. These arrangements introduced a fundamental package of reforms including the requirement for suppliers to establish in-house systems, processes and procedures to receive and record all complaints from customers.
- 2.2. From before the introduction of the CHSR to the months and years after its introduction, suppliers were given ample opportunity to make arrangements to ensure their complaint handling arrangements complied with all aspects of the CHSR. The opportunities to comply included consultations, working groups, independent audit reports and letters from Ofgem's Chief Executive to the Chief Executives of suppliers informing them of the importance of compliance with the CHSR.
- 2.3. Ofgem's investigation was prompted by the results of the Harris Interactive Survey in 2010 which found that consumers perceived that many suppliers did not keep a full and accurate record of a customer complaint and. In addition, a large proportion of domestic and micro business customers indicated they were very dissatisfied with the overall handling of their complaint.
- 2.4. On 3 August 2010 and 17 August 2010 Ofgem sent to npower formal information requests under section 28 of the Electricity Act 1989 and section 38 of the Gas

Act 1986. The first request required details of npower's policies and procedures on recording complaints; its training materials for staff handling complaints; a copy of its complaint handling procedures as provided to customers; and a copy of its policies and procedures and letters to signpost the Energy Ombudsman redress scheme to customers both where a complaint is deadlocked and where it remains unresolved at eight weeks. It also requested a list of all consumer complaints received on 31 March 2010. The second request required copies of all details recorded about certain of the complaints made on that day.

2.5. On 27 May 2011, Ofgem issued its Statement of Case alleging breach by npower of Regulations 4, 6 and 7 of the CHSR. npower responded to that Statement of Case on 27 June 2011. On 4 August 2011, Ofgem issued a Supplementary Statement of Case to which npower responded on 14 September 2011. npower and Ofgem have also exchanged further communications and been in discussions about the issues raised in this investigation and npower has accepted that it has contravened the CHSR.

2.6. The breaches are as follows:

a) Regulation 4 (1)(e), 4 (1)(f) and 4 (1)(g)

The regulations provide that a regulated provider must record in a written electronic format a summary of the complaint, a summary of the advice given or action taken or agreed, and the basis upon which it considers that the complaint is a resolved complaint.

npower has accepted that, for some of the domestic complaints that it received, it did not record such information in adequate detail.

b) Regulations 6 (2)(b),(c), (d) and (e)

These provisions require a regulated provider to inform customers, in the eight week and deadlock communications to customers whose complaints have not been resolved, of the Energy Ombudsman's right of referral/redress scheme and of the following details:

- 6 (2) (b) that the scheme is independent of the regulated provider;
- 6(2)(c) that the scheme is free of charge;
- 6(2)(d) of the types of redress that may be available under the scheme; and
- 6(2)(e) that any outcome of the scheme is binding upon the regulated provider but not upon the customer.

npower has accepted that:

- its domestic deadlock letter between February 2009 and April 2011 did not include the type of redress available (although all other information was included);

- its domestic 8 week letter did not contain the information required as set out above;
- its micro business deadlock letter between October 2008 and May 2010 did not state that the outcome was not binding on the customer. Between May 2010 and March 2011 it did not advise the customer that the Ombudsman service was free, that the decision was binding on the supplier but not the customer, and the types of redress;
- its micro business 8 week letter between October 2008 and September 2010 did not state that the outcome is binding on the supplier but not the customer. Between September 2010 and March 2011 it also did not state that the service was free and independent and the types of redress available.

c) Regulation 7(1)(a)

Regulation 7(1)(a) of the CHSR requires the regulated provider to receive, handle and process consumer complaints in an efficient and timely manner.

In view of the breaches set out above, and in view of the fact that it had in place policies and procedures which were inadequate (in particular as regards a narrow definition of 'complaint'), npower has accepted that it has not discharged this obligation.

3. The Authority's Decision on Whether to Impose a Financial Penalty

General background to the Authority's decision to impose a financial penalty

- 3.1. The Authority has considered whether a financial penalty is appropriate in accordance with the requirements of the Gas Act 1986 and the Electricity Act 1989 and with its published Statement of Policy ("**Policy**") with respect to Financial Penalties (October 2003).
- 3.2. The Authority is required to carry out all its functions, including the taking of any decision as to penalty, in the manner which it considers is best calculated to further its principal objective, having regard to its other duties. The Authority is not, under its own Policy, limited to consideration of matters specifically mentioned in the Policy, but will consider all the circumstances. The matters detailed in this Policy are considered below.

Factors tending to make the imposition of a financial penalty more likely than not

Whether the contravention or the failure has damaged the interests of consumers or other market participants

- 3.3. The Authority finds that the general interests of consumers were damaged by the contraventions.
- 3.4. During the relevant period of breach for each regulation npower failed to:
 - record all the required details of complaints received and the basis on which the complaint has been resolved;

- send the complainant a Notice which included the required details of the redress scheme; and
 - receive, handle and process complaints in an efficient and timely manner.
- 3.5. The Authority considers that as result of the above contraventions, consumers suffered harm because npower did not hold details of their complaints with the likely consequence that consumers will have suffered delay and cost through repeating that information.
- 3.6. The Authority also considers that consumers suffered harm because npower did not provide consumers with important information about the redress scheme.
- 3.7. Compliance with the CHSR serves several purposes. Firstly, as a key indicator both for Ofgem and also its current and prospective customers, of how a supplier treats its customers. Secondly, it gives an adequate record of complaints allowing for appropriate management of customers and their complaints. Thirdly, correct information about the Energy Ombudsman and the timing of the letter signposting the scheme is essential so that consumers know about this free service and remedies available to them. Finally, a CHSR compliant complaints system assists the supplier to make necessary improvements to its customer service arrangements.

Whether imposing a financial penalty is likely to create an incentive to compliance and deter future breaches

- 3.8. The Authority considers that imposing a financial penalty on npower is likely to incentivise compliance and help deter future breaches.

Factors tending to make the imposition of a financial penalty less likely than not

If the contravention is trivial in nature

- 3.9. The Authority considers that the infringements are not trivial. The contraventions of the CHSR have a number of knock-on effects including the fact that management of complaints could be less effective without the recording of all required details, that such details could assist the supplier to improve its management of customer service, and some customers could have suffered inconvenience through having to repeat their complaint and if they had not understood the nature of the Energy Ombudsman service.

That the principal objective and duties of the Authority preclude the imposition of a penalty

- 3.10. There is nothing in the Authority's principal objective and duties to preclude the imposition of a penalty in this case.

That the breach or possibility of a breach would not have been apparent to a diligent regulated provider

- 3.11. The Authority considers that a diligent regulated provider should have put appropriate procedures in place in order to avoid contravention at least since the CHSR came into force on 1 October 2008.

3.12. In light of the above, the Authority considers it appropriate to impose a financial penalty in this case.

4. Criteria Relevant to the Level of Financial Penalty

4.1 Under Electricity Act 1989 and the Gas Act 1986 the Authority may impose a financial penalty up to 10 per cent of the annual turnover of the relevant license holder. Annual turnover is defined in the Regulations issued by the Secretary of State.¹

4.2 In arriving at the quantum of the penalty in this case, the Authority has considered the following factors in accordance with its Policy.

Factors which are first considered when determining the level of penalty

The seriousness of the contravention and failure

4.3 Compliance with the CHSR is a legal requirement upon regulated providers, contravention of which the Authority takes seriously. Ofgem has set out above the detriment caused to customers and considers that because of this detriment, the contraventions are serious contraventions.

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

4.4 Harm was caused to the interests of domestic and micro-business consumers for the period in which npower did not have compliant complaint-handling arrangements.

The duration of the contravention or failure

4.5 The breach has occurred over a period of two and a half years. In respect of regulation 4, the breaches continued until July 2011. In respect of regulation 6, the breaches continued until April 2011. In respect of regulation 7, the breaches continued until July 2011.

Any gain (financial or otherwise) made by the regulated provider

4.6 The Authority considers that npower could have gained a financial benefit from delaying expenditure on their complaint handling arrangements to make it compliant with the CHSR principally relating to expenditure associated with additional training and maintenance costs associated with recording complaints in greater detail.

4.7 The Authority also considers that npower may have gained from having fewer customers refer their complaint to the Energy Ombudsman in the period in which npower was in breach of regulation 6.

Factors tending to increase the level of any penalty

Repeated contravention or failure

¹ The Electricity and Gas (Determination of Turnover for Penalties) Order 2002.

- 4.8 This is the first time that npower has contravened the CHSR. Although, npower has not been the subject of a prior enforcement action in relation to the CHSR, it should have been aware of the action Ofgem took in relation to EDFE in July 2010 when it concluded that EDFE had breached regulation 4(1) in failing to record all complaints received. All suppliers would therefore have been on notice to ensure that they were recording all complaints in accordance with the CHSR.

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

- 4.9 Following the opening of this investigation in June 2010, Ofgem informed npower of its findings in relation to this investigation. Subsequently npower has provided Ofgem with details of how it planned to devote resources to cease to be in breach of regulations 4 and 7 of the CHSR.

The involvement of senior management in any contravention or failure

- 4.10 npower's senior management were responsible for ensuring the company would be compliant with the CHSR when they took effect in October 2008. Ofgem has received a number of responses from npower's senior management demonstrating the commitment npower has towards meeting the requirements of the CHSR. They were, and are to date, aware of the need to implement proper complaint handling procedures.

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

- 4.11 The Authority notes that npower had in place a number of policies for dealing with customer complaints and training of staff. That said, the Authority is of view that the planning, implementation and monitoring of the training was not as effective as could have reasonably been expected in the circumstances and in light of the legal requirements under the CHSR.

The extent of any attempt to conceal the contraventions or failure from Ofgem

- 4.12 The Authority acknowledges that npower reported under the CHSR and the Consumer and Estate Agents Redress Act 2007 as required and that it has complied with Ofgem's requests for information.

Factors tending to decrease the level of any penalty

The extent to which the regulated provider had taken steps to secure compliance either specifically or by maintaining an appropriate compliance policy, with suitable management supervision

- 4.13 The Authority notes that npower has put in place an action plan for dealing with the breach of regulation 4 by 4th July 2011. Before that it had already amended the noncompliant template letters about the Energy Ombudsman service to comply with regulation 6. npower has assured Ofgem that its complaint handling system will be fully compliant in the future.

Appropriate action taken by the regulated provider to remedy the contravention or failure

- 4.14 npower has provided Ofgem with an action plan to implement and remedy the breaches identified in its domestic and micro-businesses complaint handling arrangements.

Evidence that the contravention or failure was genuinely accidental or inadvertent

- 4.15 There is no evidence to suggest that the contravention was wilful or deliberate.

Reporting the contravention or failure to Ofgem

- 4.16 npower did not report its contraventions to Ofgem.

Co-operation with Ofgem's investigation

- 4.17 npower has decided not to contest Ofgem's findings. The Authority gives weight to npower's willingness (and agreement) to settle this investigation on the basis of this decision.

5. The Authority's Proposed Decision

- 5.1 As a result of the matters set out above, the Authority intends to impose a financial penalty on npower of £2 million which it considers is reasonable in all the circumstances of the case.
- 5.2 Any representations or objections with respect to the Authority's proposal must be made before 22 November 2011. The Authority would prefer it if, as far as possible, responses were provided in a form that can be placed on the Ofgem website. Should you wish your response or part of your response to remain confidential please indicate this clearly.

Gas and Electricity Markets Authority

31 October 2011