

Notice of intention to impose a financial penalty pursuant to section 27A(3) of the Electricity Act 1989 and section 30A(3) of the Gas Act 1986

Proposal of the Gas and Electricity Markets Authority to impose a financial penalty, following an investigation into Scottish Power Energy Retail Ltd's compliance with standard condition 25 of its electricity and gas supply licences

22 October 2013

1. Summary

- 1.1 The Gas and Electricity Markets Authority ("the Authority") proposes to impose a financial penalty on Scottish Power Energy Retail Limited ("SP") following an investigation into SP's compliance with standard condition ("SLC") 25 of its electricity and gas supply licences.¹
- 1.2 The Authority considers it is appropriate to impose a penalty on SP. However, SP has agreed to make contributions amounting to £8.5m in the form of compensation and payments to vulnerable customers. The Authority considers that the payments offered by SP to aid consumers will be of greater benefit to energy customers than if a substantial penalty was imposed. Accordingly, the Authority considers that a nominal penalty of £1 should be imposed. Furthermore, the level of the penalty contributions has been reduced to reflect the steps taken by SP to take corrective measures and the agreed settlement of this investigation.
- 1.3 The breaches are in relation to SLC 25, which regulates how energy suppliers should undertake Marketing and Telesales Activities and which obliges suppliers to ensure that all information provided during the course of those Activities is complete, accurate, easily understood and appropriate. SLC 25 also requires that during Marketing Activities (which are face-to-face sales, including doorstep sales) companies provide important information about the charges that will result if the customer switches and further that the company has appropriate training and management arrangements in place.
- 1.4 These provisions are extremely important as they are safeguards for consumers who enter into contracts with energy suppliers. By requiring the supplier to ensure that the information provided is complete, accurate and not misleading they ensure that customers are not misled during the course of a sale. In the case of Marketing Activities they specifically require the supplier to provide information to the customer so an informed choice can be made. If these provisions are not complied with then estimates provided as to how much the energy contract is likely to cost could be unreliable and misleading. Similarly, estimated savings as compared to the customer's existing supplier risk being unreliable and misleading. When these provisions are breached, consumers can suffer financial detriment if they do not benefit from savings that they are led to expect, they may switch to a more expensive deal and competition suffers as consumers lose faith with the market and the value of switching energy supplier.

¹ SLC 25 has identical wording in the gas and electricity supply licences and are interpreted by the Authority in an entirely consistent manner. In this document, a reference to an SLC by number refers to the identical condition in both licences. The term "customer" in this notice refers to "Domestic Customers" as defined in SLC 25. Similarly, "telesales", "charges", "representatives" and "Marketing Activities" carry the same meaning as those defined terms in SLC 25.

All terms used in this notice are deemed to have the same definitions as those in the electricity and gas supply licences unless indicated otherwise.

- 1.5 The investigation concerned SP's compliance with these provisions during various periods from October 2009 onwards. SP took action to restore compliance in relation to doorstep sales breaches by ceasing all paper-based doorstep sales in June 2011, all electronic 'Toughbook' based doorstep sales in November 2011 and in relation to Telesales breaches by improving their scripts throughout the period leading up to January 2012.
- 1.6 The Authority finds that for varying periods from when the relevant licence conditions came into force until January 2012 (the "Relevant Period"), SP failed -
- to ensure through its management arrangements the provision of accurate estimates of the annual charges that customers would pay and comparisons with their current supplier if they switched to SP;
 - to calculate actual consumption or to provide a 'best estimate' of customers' annual consumption resulting in unreliable information being provided to customers;
 - to adequately monitor the sales activities of external and in-house sales agents; and
 - to have in place appropriate management arrangements: issues with controls and training resulted in misleading claims being made during face to face and telesales marketing activities.
- 1.7 The Authority noted that SP took action to address each of the concerns raised by Ofgem during the course of the investigation.
- 1.8 Detailed descriptions of the nature of these contraventions and the measures that SP has and will be taking to ensure compliance with the relevant licence condition are provided below.
- 1.9 In deciding the level of penalty, the Authority has taken into account the action taken by SP to secure or facilitate compliance and to put in place new systems that are better designed for compliance with the relevant licence condition. The Authority has decided not to make an enforcement order in this case.
- 1.10 In the circumstances and in recognition of the payments to be made to the benefit of consumers, the Authority hereby gives notice under section 27A(3) of the Electricity Act 1986 ("the Electricity Act") and section 30A(3) of the Gas Act 1986 ("the Gas Act") of its proposal to impose a penalty of £1 on SP in respect of its failure to comply with SLC 25 of its gas and electricity supply licences during the Relevant Period.
- 1.11 Any written representations on the proposed penalty must be received by Angela Pascoe at Ofgem (angela.pascoe@ofgem.gov.uk) by 5.00pm on 19 November 2013.
- 1.12 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.

2. Background to the licence conditions

Previous investigations and the requirements of SLC 25

- 2.1 Suppliers breaching their obligations in relation to the marketing of energy has been an area of concern for the Authority since the retail market was opened up to competition in 2000. In addition to this investigation and the concurrent

investigations into SLC 25, the Authority has repeatedly taken enforcement action: in 2000, 2002 and in 2009 in relation to other suppliers.

2.2 This is, however, the first time that SP has had enforcement action taken against it in relation to these licence conditions.

2.3 Following a formal statutory consultation in August 2009, the Authority strengthened a number of supply licence obligations, including SLC 25, as follows:

1) The new proactive Objective of SLC 25, which took effect on 21 October 2009, requires suppliers to take all reasonable steps to ensure that all information which they provide to customers in the course of their Marketing or Telesales Activities:

- is complete and accurate;
- is capable of being easily understood by customers;
- does not relate to products which are inappropriate for that particular customer;
- does not mislead that particular customer; and
- is otherwise fair both in terms of its content and in terms of how it is presented.

Further, it requires suppliers to ensure that in their Marketing or Telesales Activities all contact with and the behaviour of suppliers towards customers during the course of those Activities is conducted in a fair, transparent, appropriate and professional manner.

2) More detailed requirements setting out minimum steps when conducting Marketing Activities took effect on 18 January 2010. These included the requirement to provide to the customer, before entering into a Domestic Supply Contract:

- an estimate of total annual Charges for the supply of energy; and
- a comparison of the offered Charges with the customer's currently payable Charges where that customer is being supplied through a prepayment meter ('PPM') or where the sales agent claims that the offered Charges will be lower than the customer's current Charges.

2.4 The detailed requirements also set out obligations for the selection and training of Representatives; obligations at the time of contract and after the contract; and require suppliers to take all reasonable steps to establish management arrangements that facilitate the licensee's compliance with its obligations under SLC 25.

2.5 In August 2009, the Authority made clear that the changes to supply licence conditions, including SLC 25, and the introduction of a set of overarching Standards of Conduct, were to meet aims which included:

- improving consumers' ability to make well-informed decisions in response to direct sales approaches from suppliers;
- improving the quality of consumer switching activity and thereby increasing competitive pressure on suppliers;
- improving the regulatory framework in order to allow more effective enforcement of the rules governing sales and marketing activity; and
- helping build consumer confidence in the competitive market, given that for many consumers doorstep selling was their only engagement in the market.

The Authority's Investigation

- 2.6 The Authority opened the investigation into SP's compliance with SLC 25 on 2 September 2010, along with investigations in relation to the same licence condition into EDF Energy, RWE npower and SSE.
- 2.7 At the same time, Ofgem instructed Consumer Direct to run a hotline for 6 weeks that customers could contact if they had concerns/complaints about how suppliers undertook sales activity. The information from this exercise was considered as part of the investigation.
- 2.8 In addition, the Authority requested copies of all relevant policies and procedures from SP in relation to their Marketing and Telesales Activities. SP was also required to provide samples of the information provided to customers in the course of Marketing Activities and call recordings from Telesales Activities. This evidence has all been considered in the making of this decision.

SP's sales activities

- 2.9 SP undertook doorstep sales using two mechanisms during different times in the Relevant Period. From the coming into force of the provisions until June 2011 some SP agents undertook doorstep sales using paper materials only ("paper-based sales"), whilst until November 2011 others undertook doorstep sales with the assistance of a handheld computer called a "Toughbook". The Toughbook was phased in over time to replace paper-based sales, which were discontinued by June 2011, and all doorstep sales were stopped entirely by November 2011. Sales activity in the energy industry takes place on a very large scale: running into hundreds of thousands, if not over a million approaches per month, per supplier. For example, SP made several million Marketing Activities and several million Telesales Activities in 2010.

3. The Authority's decision on breaches

- 3.1 After considering the relevant information in the case, the Authority finds that SP was in breach of SLC 25 during the Relevant Period. These breaches have been admitted by SP.
- 3.2 All suppliers who undertake Marketing Activities (in this case face-to-face sales on the doorstep) are required to provide estimates of the annual charges that potential customers will pay with that supplier before they enter into a contract.
- 3.3 If the supplier in a face-to-face sale makes a savings claim or if they are selling to a prepayment customer, it must provide a comparison between the charges which would be payable to that supplier if the Customer were to switch and the charges the Customer was paying to their current supplier. This information is crucial if the Customer is to make an informed decision as to whether to switch.

Marketing Activities

- 3.4 SP contravened SLC 25² in its paper-based doorstep sales during the Relevant Period until June 2011. The estimates and comparisons provided to customers in these sales did not consistently meet the requirements of the Licence, which includes that information provided must be complete, accurate, capable of being easily understood, fair and not misleading. In relation to the customer contracts studied by Ofgem:

² SLC 25.2, 25.5, 25.6, 25.7, 25.8 and 25.16

- SP had not accurately calculated the customer's actual or estimated annual consumption (in kWh) or taken into account the customer's tariff with their existing supplier before providing an estimate of SP's Charges. Calculation of consumption is essential in every case to ensure that the estimate relates directly to each individual customer's circumstances. SP did not ensure that its Representatives relied on the customer's recent bills and annual statements wherever possible. SP's Representatives also did not provide the customer with a clear explanation of the way in which it calculated the customer's estimated annual consumption.
- In the majority of cases the customer was informed that the charges with SP would be the same as their charges with their current supplier. This information was misleading as SP's charges for gas and electricity were not exactly the same as their competitors.
- In relation to dual-fuel customers, many contracts showed that the estimates of charges for gas and electricity as individual fuels were the same as each other. These figures were inaccurate as they were not calculated taking the customer's different consumption levels for the different fuels into account. The resulting estimates and comparisons were misleading in that they did not clarify whether or not it was competitive for a customer to switch both fuel types or just one.
- SP's Representatives used "Competitor Comparison Sheets" as the basis for the estimate of SP charges and the comparison with their competitors' charges. Competitor Comparison Sheets were materials given to sales Representatives for the purposes of providing estimates and comparisons. However, they did not provide comparisons tailored for an individual customer as required by the licence condition, but instead provided comparisons using average figures and compared SP products against their competitors' standard tariffs. Competitor Comparison Sheets were also used to make savings claims to show that SP's offered charges were said to be lower than the customer's existing charges. The use of these sheets could have particularly affected prepayment customers, who are required to be given a comparison of charges specific to their circumstances in every case.
- SP did not put in place adequate management arrangements, monitoring and training to ensure that their Representatives provided estimates and comparisons which were consistently compliant with SLC 25. SP's monitoring arrangements did not indicate that its Representatives were not calculating consumption data in kWh nor obtaining existing tariff information for the purposes of calculating estimates and comparisons. Representations were being made to customers that the estimated annual charges with SP would be the same as the charges under the customer's existing contract. SP did not record sufficient information to enable SP to assure itself or its customers that figures provided for estimates and comparisons were accurate.

3.5 SP took a number of measures to rectify the breaches identified by the Authority in regard to paper-based sales. Principally a Sales Improvement Project was launched in January 2011 comprising senior staff from other parts of its business to analyse current practices and make recommendations for improvements. These included:

- Introducing a method to monitor and report on agents' behaviour in respect of:
 - (a) comparison claims being made to customers;
 - (b) incidences of same charges for SP and the current supplier; and
 - (c) the accuracy of estimated charges quoted for SP products.

- Amending and improving refresher training for its sales agents to deal with incorrect activities in order to meet the various requirements on SP and its agents under SLC 25.
- Televerification of sales made, to check agent behaviours and the level of satisfaction of customers with the agent.

3.6 SP contravened SLC 25³ in its Toughbook doorstep sales during the Relevant Period until November 2011 when SP completely discontinued doorstep sales. In relation to Toughbook doorstep sales, the estimates and comparisons provided to customers did not consistently meet the requirements of SLC 25. In particular:

- SP's management arrangements were inadequate in that SP did not:
 - (a) devise and implement systems/methodologies that would have enabled the calculation of estimates of annual charges under the customer's current contract and the contract offered by SP which complied with SLC 25;
 - (b) devise and implement appropriate software which inter-linked the two software systems used by its Representatives to generate contracts;
 - (c) have in place appropriate monitoring arrangements to detect that its Representatives were not calculating consumption in kWh and were not obtaining existing tariff information for the purposes of calculating estimates and comparisons, and that representations were being made to customers that the estimated annual charges with SP would be the same as charges under the customer's existing contract; and
 - (d) record sufficient information to enable SP to assure itself or its customers that figures provided for estimates and comparisons were accurate.
- prior to September 2011, SP did not devise and implement appropriate training for its Representatives which
 - (a) would have enabled them to calculate estimates and/or undertake comparisons which were compliant with SLC 25; and
 - (b) instructed Representatives in the proper use of software and required Representatives to use that system in all cases for the provision of estimates and comparisons to customers.
- As in paper-based sales, until September 2011, SP's Representatives did not consistently take all reasonable steps to obtain information such as annual bills to ascertain the customer's annual consumption in kWh and/or current tariff details for the purpose of providing estimates to customers. Nor did they routinely provide a clear explanation of the basis of the calculation of the customer's estimated annual consumption or of the information used in this calculation.
- In many of those cases where a comparison was required (i.e. in the case of all pre-payment customers and when a savings claim was made), SP did not undertake such comparisons in compliance with the requirements of SLC 25. Instead provided figures for the comparative charges payable under the customer's current contract and that offered by SP which were the same (and therefore inaccurate).
- Prior to September 2011, in many cases separate gas and electricity estimates were not provided to dual-fuel customers. The resulting estimates did not therefore clarify whether or not it was competitive for a customer to switch both fuel types, or just one.

³ SLC 25.2, 25.5, 25.6, 25.7, 25.8 and 25.16

3.7 The measures introduced for paper-based sales were also made for Toughbook sales where relevant. In addition SP:

- brought in interim improvements to the operation of the Toughbooks to improve the quality of the comparisons and quotations being provided to customers; and
- introduced an end to end pricing and contracting process for use in Toughbooks.

Telesales Activities

3.8 SP contravened SLC 25⁴ in relation to Telesales activities from when the licence requirements came into force until January 2012, by failing to ensure that information provided to customers must be complete, accurate, capable of being easily understood, fair and not misleading. In particular:

- The methods used to calculate estimates and savings did not meet the requirements of SLC 25.2 in the following ways:
 - (a) they were not routinely based upon the customer's consumption in kWh and consumption was not always split between gas and electricity for dual-fuel customers. Ofgem observed that the telesales Representative did not always calculate the customer's consumption level in kWh and apply that when calculating the estimate of SP's charges. In many of the customer contracts studied by Ofgem for dual-fuel customers, the telesales Representative did not ascertain how much the customer spent or consumed on gas or electricity. The resulting estimates or comparisons were misleading in that they did not therefore clarify whether or not it was competitive for a customer to switch both fuel types, or just one.
 - (b) Estimates and comparisons were not always based upon the most accurate information that was available, that is they were often not based on the customer's specific tariff. In many of the sample calls listened to by Ofgem, the customer was not asked which tariff they were on with their current supplier.
 - (c) SP did not require its Representatives to explain the limitations of any estimate and/or comparison where calculations are based on an assumption that the customer was on a standard tariff. In many of the sample calls listened to by Ofgem, the Telesales agent has assumed that the customer was on standard tariff and has made a comparison on that basis which may not have been applicable to that individual customer.
- SP did not adequately monitor its telesales calls to ensure that its telesales systems and procedures were being followed by Representatives.

3.9 Over the course of this investigation SP has taken various steps to improve compliance in its telesales activities in response to Ofgem's concerns. In particular:

- It has reviewed telesales scripts on a number of occasions to provide guidance to Representatives on what not to say, to make it clear when prices are quoted exclusive of VAT and to establish information from the customer's current bill or annual statement.
- Compliance instructions were also re-issued on a number of occasions which informed Representatives how to calculate consumption from the customer's current monthly spend and greater emphasis was put on accuracy.

⁴ SLC 25.2.

- 3.10 Some of the samples reviewed in the investigation showed that SP Representatives did not always take into account whether the customer was repaying a debt with their current supplier. This risked the estimate provided being misleading and the customer's direct debit amount being set at the wrong level. The Authority notes that SP instructed their Representatives to ask for details of the customer's debt or credit in training in June 2011. Whilst the Authority has not found a breach in relation to this area in this case, it notes that asking about levels of debt is considered a reasonable step for the purposes of SLC 25.

Management Arrangements

- 3.11 SP contravened SLC 25.2 in relation to the requirements to take all reasonable steps to appropriately, train, monitor and manage the behaviour of its Representatives during the sales process. In particular:
- SP failed to establish adequate training and monitoring arrangements to prevent and detect non-compliant conduct;
 - SP failed to adequately record where individual Representatives were undertaking their sales activity. So when a customer complained about SP's sales activities, it was not possible for SP to identify which representative was involved and this risked customers being subjected to repeated sales approaches; and
 - SP failed to accurately classify complaints related to mis-selling. The way that SP classified its complaints meant that not all behaviours that could amount to a breach of the licence condition were sufficiently investigated or acted upon during the Relevant Period.

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

- 4.1 Under section 27A(1) of the Electricity Act 1989 and section 30A(1) of the Gas Act 1986, where the Authority is satisfied that a licence holder has contravened or is contravening any relevant condition or requirement, then it may impose a penalty of such an amount as is "reasonable in all the circumstances of the case".
- 4.2 The maximum level of penalty which the Authority may impose is 10% of the turnover of the legal entity holding the relevant licence.⁵
- 4.3 In considering whether it would be appropriate to impose a penalty and, if so, what level of penalty, the Authority must have regard⁶ to the Statement of Policy with respect to financial penalties⁷ ("the Penalties Statement").
- 4.4 The Authority is required to carry out all of its functions, including the taking of any decision as to financial penalty, in the manner which it considers is best calculated to further its principal objective and having regard to its other duties. The principal objective is to protect the interests of existing and future customers in relation to electricity conveyed by distribution or transmission systems and in relation to gas conveyed by pipes.

⁵ Electricity Act 1989, section 27A(8); Gas Act 1986, section 30A(8)

⁶ Electricity Act 1989, section 27B(2); Gas Act 1986, section 30B(2)

⁷ Available at <http://www.ofgem.gov.uk/About%20us/Documents1/Utilities%20Act%20-%20Statement%20of%20policy%20with%20respect%20to%20financial%20penalties.pdf>

- 4.5 In concluding the imposition and appropriate level of penalty in this notice, the Authority has taken full account of the particular facts and circumstances of the contraventions under consideration.
- 4.6 SP was responsible for ensuring that it had in place systems and processes to ensure that both SP and its Representatives complied with the relevant licence obligations.
- 4.7 The extent to which SP was able to provide support and fund those systems and processes was entirely within its control. The Authority considers this to be the case in relation to contracted agency staff as well as in relation to SP's own staff. SP did not always provide systems and processes to the required standard in the Relevant Period.
- 4.8 The Authority considers that the scale of SP's marketing activities and the manner in which they were carried out will have contributed to the interests of consumers being damaged resulting in two main impacts–
- a. customers' ability to make fully informed decisions about energy offers in response to telephone and face-to-face sales may have been impeded;
 - b. customers may have been placed on a more expensive tariff or missed out on the full extent of expected savings.
- 4.9 The Authority considers that a penalty is necessary in order to create an incentive to ensure compliance and to deter future breaches, whether by SP or by other licensees.
- 4.10 There is nothing in the Authority's principle objective and duties that precludes the imposition of a penalty in this case.
- 4.11 The Authority considers that the breaches should have been apparent to SP and were not of a trivial nature. The Authority found in its investigations that SP did not have systems or processes that would have made these breaches apparent or to prevent them occurring.
- 4.12 All licensees would have been fully aware and familiar with the licence obligations, due to both previous investigations and licensee input to proposed amendments to the marketing licence condition when these were consulted on as part of the Probe in 2009.
- 4.13 After consideration of the above, the Authority concludes that it is appropriate to impose a financial penalty in this case.

5. Criteria relevant to the level of financial penalty

- 5.1 In accordance with section 28A(8) of the Electricity Act 1989 and section 30A(8) of the Gas Act 1986, the Authority may impose a financial penalty of up to 10 per cent of the annual turnover of the relevant licence holder. Annual turnover is defined in an Order issued by the Secretary of State⁸ as the applicable turnover for the business year preceding the date of this notice.
- 5.2 In proposing the level of financial penalty, the Authority has considered all the circumstances of the case, including the following specific matters set out in the Penalties Statement.

⁸ The Electricity and Gas (Determination of Turnover for Penalties) Order 2002.

The seriousness of the contravention and failure

- 5.3 The Authority considers that the contraventions by SP of SLC 25 were of a serious nature and has taken this into account in deciding on the level of penalty to impose. Findings of breach have been made in relation to both Marketing and Telesales Activities. Given the scale of SP's sales activities and the number of contracts entered into, the potential impact of the breaches which occurred was significant.
- 5.4 Training, monitoring and auditing of sales activities is a matter of particular concern to the Authority. A number of the findings made by the Authority involved issues with management arrangements to ensure compliance with the requirements of the licence condition. SP's training, monitoring and auditing procedures were not always adequate, and this may have allowed instances of mis-selling, particularly in relation to the provision of information about estimates and comparisons.

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

- 5.5 The Authority considers that customers and other market participants may have been harmed by the breaches.
- 5.6 A non-exhaustive list of harms that may have been suffered by customers is set out at paragraph 4.8.
- 5.7 Estimating consumer detriment is inherently a customer-specific exercise. The individual financial detriment will vary depending on the extent of the promised savings, tariffs in question and any corrective actions taken by the affected customers. Due to the information provided at the point of sale not being retained, it has not been possible for SP or Ofgem to determine the exact number or the amount by which customers were affected by the breaches. It is the Authority's opinion that large numbers of customers will have suffered financial detriment in relation to the contraventions by SP.
- 5.8 The Authority has also considered harm in relation to the gas and electricity markets. Potential distrust and reluctance to engage in these markets in the future could conceivably mean that customers will miss out on potential available savings.
- 5.9 With regards to other market participants, the breaches may have led to a reduction in the intensity of competition and may have acted as a barrier to entry or created an uneven playing field for competitors who were willing to comply with marketing obligations.

The duration of the contravention or failure

- 5.10 The proposed penalty relates to breaches which occurred from the coming into force of the relevant aspects of SLC 25 in October 2009 and January 2010. The breaches in relation to doorstep sales ceased on the suspension of paper-based sales in June 2011 and in relation to Toughbook sales in November 2011, and in the case of Telesales they ceased in January 2012.
- 5.11 In February 2011 SP began a process of significant improvement in its Marketing and Telesales activities in response to this investigation. As this significant improvement process progressed through 2011 and early 2012, many of the areas that are addressed by the breaches above were remedied voluntarily by SP.

The gain (financial or otherwise) made by the licensee

- 5.12 Energy suppliers engage in marketing activities in order to maintain their existing customer base and to win new customers from their competitors. The breaches identified above mean that SP may have won customers from its competitors on the basis of sales tactics in breach of SLC 25. The revenue stream earned from the Customers who were acquired in such manner would have been the financial gain made by SP.
- 5.13 In addition, SP also gained financially by not devoting sufficient company resources to compliance procedures, for example:
- a) providing or procuring sufficient training for sales agents; and
 - b) providing or procuring adequate monitoring and auditing procedures to ensure compliance.

Mitigating and aggravating factors

- 5.14 The Authority has also considered whether there are any aggravating or mitigating factors on the basis of which it should adjust the quantum of penalty which it would award based on the considerations above, as set out in the Penalties Statement at paragraphs 5.3 and 5.4.

Factors tending to increase the level of financial penalty

Repeated contravention or failure or continuation of a contravention or failure after either becoming aware of the contravention or failure or becoming aware of the start of Ofgem's investigation

- 5.15 There has been no previous enforcement action against SP in relation to this licence condition.
- 5.16 The extent to which SP have failed to monitor compliance with SLC 25 has been described above. While it is the Authority's belief that SP failed to reach the standards required by the licence condition to ensure compliance and assure itself of compliance by its Representatives, the Authority also notes SP's commitment to improving compliance during the duration of the investigation.
- 5.17 SP's open engagement with Ofgem in relation to compliance directly resulted in the breaches being concluded during the course of the investigation.

The involvement of senior management in any contravention or failure

- 5.18 The Authority has seen no evidence that senior management at SP were involved in any deliberate actions in relation to the breaches described above.
- 5.19 The Authority finds that there was insufficient oversight by senior management, including the Board of the licensee, in relation to compliance with the requirements of this provision.
- 5.20 The Authority considers that planning and resourcing for licence compliance and the implementation of appropriate systems and processes to ensure compliance are the responsibility of senior managers at SP. Furthermore, the Authority expects that senior management will put in place systems that secure and incentivise compliance.

5.21 The Authority has found that such systems were not in place during the breach period. However, the Authority notes the steps that managers have taken, including new proactive systems and processes with the aim of improving and ultimately securing compliance.

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

5.22 While some systems and procedures were in place in order to prevent contravention or failure, the Authority has found and SP has admitted that these systems and processes were not adequate.

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

5.23 The Authority found no evidence that there was any attempt to conceal the contraventions. Indeed SP's admission of the breaches is a significant factor in its favour.

Factors tending to decrease the level of financial penalty

The extent to which the licensee had taken steps to secure compliance either specifically or by maintaining an appropriate compliance policy, with suitable management supervision and action taken by the licensee in recognition of the contravention or failure

5.24 The Authority acknowledges that SP has taken steps during the investigation to secure compliance with the licence obligations.

5.25 SP has made and implemented commitments to improve its processes and the Authority has taken this into account. These improvements have included:

- Introducing a method to monitor and report on agents' behaviour in respect of:
 - (a) comparison claims being made to customers;
 - (b) incidences of same charges for SP and the current supplier; and
 - (c) the accuracy of estimated charges quoted for SP products.
- Amending and improving refresher training for its sales agents to deal with incorrect activities in order to meet the various requirements on SP and its agents under SLC 25.
- Televerification of sales made, to check agent behaviours and the level of satisfaction of customers with the agent.
- Bringing in interim improvements to the operation of the Toughbooks to improve the quality of the comparisons and quotations being provided to customers.
- Introducing an end to end pricing and contracting process for use in Toughbooks.
- Reviewing telesales scripts on a number of occasions to provide guidance to Representatives on what not to say, to make it clear when prices are quoted exclusive of VAT and to establish information from the customer's current bill or annual statement.
- Re-issuing compliance instructions on a number of occasions which informed Representatives how to calculate consumption from the customer's current monthly spend with greater emphasis put on accuracy.

Evidence that the contravention or failure was genuinely accidental or inadvertent

- 5.26 While there is no evidence that the contraventions were deliberate or wilful, the contravention cannot be regarded as accidental or inadvertent as it was within SP's control to allocate resources effectively and manage appropriate systems and processes to ensure compliance with its licence obligations.

Reporting the contravention or failure to Ofgem

- 5.27 SP did not report the contravention or failure to Ofgem.

Co-operation with Ofgem's investigation

- 5.28 The Authority notes SP's willingness to admit these breaches through settlement and the efforts it has made put in place measures to remedy these breaches through the course of the investigation. During the investigation there were some problems with the provision of information which caused delay. However, the agreement to settle and the remedies put in place have shortened the length of the investigation and limited the period of the breaches. The Authority also notes SP's willingness to agree to make payments which benefit consumers. On balance, the Authority considers that SP have co-operated with Ofgem's investigation.

6. The Authority's proposed decision on penalty

- 6.1 The Authority considers that the seriousness of the contraventions, the degree of harm experienced by consumers, the duration of the contravention and the financial gain made by SP warrant a significant penalty.
- 6.2 However, the Authority places particular emphasis on the agreement by SP to settle this investigation. It also places emphasis on the commitment by SP to improve its processes and the steps taken to secure compliance throughout the period of the investigation.
- 6.3 The Authority has had particular regard to SP's agreement to pay £8.5m to consumers.
- 6.4 £7.5m of this package will be paid directly to vulnerable consumers. These consumers have been identified through SP's Warm Homes Discount Scheme. SP will make a payment of at least £50.00 to each of its 2012 Warm Home Discount payment recipients. Current customers will receive a credit on their account and those who have left SP will be sent a cheque.
- 6.5 A further £1m will be set aside as a fund to pay compensation to consumers affected by SP's mis-selling. SP has agreed to write to consumers who may have suffered financial detriment as a result of the breaches. SP will invite details from the customer of their previous tariff and supplier. That information will enable SP to assess whether or not the customer was given inaccurate information and to compensate them for any losses. This scheme is in addition to SP's continuing consideration of any complaints which are made to it through its normal complaint process.
- 6.6 Any money which is not paid out from the £8.5m fund, whether due to un-cashed Warm Home Discount cheques or funds not used from the compensation scheme, will be paid into the ScottishPower Energy People Trust. The trust is independent of SP and sponsors charitable organisations that support people affected by fuel poverty whether or not they are SP customers.

- 6.7 The Authority considers that the scale of these payments and measures will have a significant impact on SP's future compliance and a deterrent effect against future breaches.
- 6.8 Taking all of these factors into account, in particular the £8.5m payment to be made by SP for the benefit of consumers, and also mindful of its principle objective to protect the interests of existing and future consumers, the Authority proposes to impose a financial penalty on SP of £1 which it considers is reasonable in all the circumstances of the case.
- 6.9 The penalty would have been higher if SP:
- had not agreed a settlement and admitted the breaches;
 - had not agreed to make payments of £8.5 million to benefit consumers;
 - had not taken steps to improve its systems and processes and to introduce new checks and procedures to improve compliance.
- 6.10 Any written representations on the proposed penalty must be received by Angela Pascoe at Ofgem (angela.pascoe@ofgem.gov.uk) by 5.00pm on 19 November 2013.
- 6.11 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.

Gas and Electricity Markets Authority

22 October 2013