

**THE GAS AND ELECTRICITY MARKETS AUTHORITY'S  
STATEMENT OF POLICY WITH RESPECT TO  
FINANCIAL PENALTIES AND CONSUMER REDRESS  
UNDER THE GAS ACT 1986 AND THE ELECTRICITY ACT 1989<sup>1</sup>**

**1. Introduction**

- 1.1 The Gas and Electricity Markets Authority (the Authority) regulates the gas and electricity markets in England, Scotland and Wales. Ofgem is the Office of Gas and Electricity Markets. It carries out the day-to-day work of the Authority and investigates matters on the Authority's behalf.
- 1.2 Following a finding of breach, the Authority may impose a financial penalty<sup>2</sup> on a regulated person.<sup>3</sup> It may do this if it is satisfied that the regulated person has contravened or is contravening any relevant condition or requirement, or has failed to achieve any standard of performance set in accordance with specified provisions of the Acts.
- 1.3 If it is satisfied that there has been or is a contravention of any relevant condition or requirement, the Authority may also make a consumer redress order.<sup>4</sup> It may do this where one or more consumers have suffered loss, damage or inconvenience as a result of the contravention. The Authority can require the regulated person to do anything necessary to remedy the consequences of the contravention or to prevent a contravention of the same or a similar kind from being repeated.
- 1.4 The Authority may impose a financial penalty, a consumer redress order or both for contraventions.<sup>5</sup> This statement sets out the factors that the Authority will normally consider when:
- deciding whether or not to impose a financial penalty and/or a consumer redress order
  - determining the amount of any financial penalty
  - determining the requirements of any consumer redress order.
- 1.5 The Acts provide that the amount of any financial penalty must be reasonable in all the circumstances of the case. When determining a reasonable penalty, regard will be had to the level of any redress ordered and/or any redress which is being or has been provided.

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<sup>1</sup> The Authority will have regard to separate REMIT penalty guidance when imposing penalties under its REMIT powers and will have regard to the Competition and Markets Authority's penalty guidance when imposing penalties under the Competition Act 1998. See

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284393/oft423.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284393/oft423.pdf).

<sup>2</sup> Section 30A(1) of the Gas Act 1986 (Gas Act) and section 27A(1) of the Electricity Act 1989 (Electricity Act). We refer to the Gas Act and the Electricity Act collectively as "the Acts" throughout this statement.

<sup>3</sup> The term 'regulated person' includes licence holders, storage facility owners and supply exemption holders (see section 28(8) of the Gas Act and section 25(8) of the Electricity Act).

<sup>4</sup> Section 30G of the Gas Act and section 27G of the Electricity Act as inserted by section 144 of, and Schedule 14 to, the Energy Act 2013. However, it remains the responsibility of the Ombudsman to consider whether redress should be made to individual consumers that make a complaint about a distribution or supply licence holder.

<sup>5</sup> For failures to achieve standards of performance, the Authority may only apply a penalty.

1.6 Where the Authority:

- imposes a financial penalty
- makes a consumer redress order which requires the regulated person to pay compensation, or
- imposes a financial penalty and makes a consumer redress order which requires payment of compensation in relation to the same contravention,

the amount or combined amount must not exceed 10 per cent of the turnover of the regulated person.<sup>6</sup>

1.7 Consistent with the Authority's vision that businesses should put energy consumers first and act in line with their obligations, the Authority expects regulated persons will not seek to recover the costs of financial penalties or consumer redress from their customers. Evidence that regulated persons are recovering these costs from their customers may be seen as an indication that the market is insufficiently competitive.

1.8 The Authority must not impose a financial penalty under the Acts on a regulated person, or make a consumer redress order, where it is satisfied that it would be more appropriate to proceed under the Competition Act 1998.<sup>7</sup> Ofgem will take this into account when considering whether or not to open an investigation under the Acts. The Authority may impose a financial penalty or make a consumer redress order even if it has already made a provisional or final order under the Acts.<sup>8</sup>

## **2. Objectives and duties in relation to financial penalties and redress**

2.1 The Authority's principal objective is to protect the interests of existing and future gas and electricity consumers.<sup>9</sup> The Authority is required to carry out all of its functions under the Acts, including taking any decisions in relation to financial penalties and consumer redress, in the manner that it considers is best calculated to further its principal objective.

2.2 The Authority's vision for its enforcement work is to achieve a culture where businesses put energy consumers first and act in line with their obligations. The Authority's strategic objectives for enforcement are to:

- deliver credible deterrence across the range of its functions
- ensure visible and meaningful consequences for businesses who fail consumers and who do not comply
- achieve the greatest positive impact by targeting enforcement resources and powers.

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<sup>6</sup> Section 300(4) of the Gas Act and section 270(1-4) of the Electricity Act. Relevant turnover is defined in the Electricity and Gas (Determination of Turnover for Penalties) Order 2002 (as amended).

<sup>7</sup> Section 30(A)(2A) of the Gas Act and section 27A(2A) of the Electricity Act.

<sup>8</sup> Section 25 of the Electricity Act and section 28 of the Gas Act provide for final and provisional orders where a regulated person is contravening or is likely to contravene a relevant condition or requirement.

<sup>9</sup> Section 4AA of the Gas Act and section 3A of the Electricity Act.

- 2.3 Consistent with this, the central objectives of imposing financial penalties and making consumer redress orders, and of determining their amount and type, are to:
- obtain fair outcomes for consumers when they have been adversely affected by a regulated person's actions (or inactions)
  - deter future non-compliance not only by the regulated person concerned but also by any other regulated person.
- 2.4 The Authority is clear that regulated persons should not benefit financially from any contravention or failure. Indeed, the Authority considers that non-compliance should normally cost significantly more than compliance and that financial penalties should act as a significant deterrent to future non-compliance. The Authority will, therefore, normally seek to ensure that any financial penalty, and compensation or other payment under a consumer redress order, or any combination of them, significantly exceeds:
- the gain to the regulated person, where this can reasonably be calculated or estimated, and
  - the detriment caused to consumers, whether individually or as a group, affected by the contravention or failure.
- 2.5 When determining the amount of a financial penalty and/or consumer redress payment, the Authority will consider any remedial measures that have been taken by a regulated person. However, the Authority may impose a financial penalty significantly in excess of the gain or detriment even where the gain or detriment has been mitigated in full. The Authority considers that this may be necessary in order to deter non-compliance and provide appropriate encouragement for all regulated persons to comply with their obligations.
- 2.6 The Authority is also required to take into account its other statutory duties when considering the use of its penalty and redress powers. In particular, the Authority will have regard to the principles of best regulatory practice in each case.

### **3. Imposing a financial penalty and/or a consumer redress order**

- 3.1 In deciding whether it would be appropriate to impose a financial penalty and/or make a consumer redress order, the Authority will take account of the relevant facts and circumstances of the contravention or failure under consideration.
- 3.2 If the Authority is satisfied that a contravention or failure has occurred or is occurring, it will consider whether it is appropriate to impose a financial penalty. The Authority will also consider whether it is appropriate to make a consumer redress order. In this context, the Authority must determine whether one or more consumers have suffered loss or damage or been caused inconvenience as a result of the contravention.
- 3.3 If the Authority considers it appropriate to impose a financial penalty, it must determine what level of penalty is reasonable in all the circumstances of the case. In considering whether it is appropriate to make a consumer redress order, the Authority must determine what is necessary to remedy the consequences of the contravention or prevent future contraventions and may make an order to that effect.

3.4 The Authority will consider any representations or objections that are duly made and are not withdrawn in line with statutory requirements.<sup>10</sup> The Authority will follow the procedural requirements set out in the Acts in imposing any financial penalty or consumer redress order.<sup>11</sup>

3.5 The following paragraphs set out the various criteria and factors which the Authority may consider in deciding to impose a penalty or make a consumer redress order. These criteria and factors are not exhaustive.

#### **4. General criteria in relation to imposing a financial penalty and/or making a consumer redress order**

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

- the contravention or failure damaged, or could have damaged, the interests of consumers and/or other market participants
- the contravention or failure damaged, or could have damaged, the confidence that consumers and/or other market participants have in the market
- a penalty and/or a consumer redress order is necessary to deter future contraventions or failures and to encourage compliance
- the contravention or failure was deliberate or reckless
- the circumstances from which the contravention or failure arose were or should have been within the control of the regulated person under investigation
- the contravention or failure (or possibility of it) would have been apparent to a regulated person acting diligently
- a lack of effective remedial action after the contravention or failure becomes apparent to the regulated person
- the regulated person has a record of previous contraventions or failures, similar or otherwise.

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

- the contravention or failure is of a very minor nature
- the contravention or failure (or possibility of it) would not have been apparent to a regulated person acting diligently.

4.3 The Authority cannot impose a financial penalty or consumer redress order where its principal objective and duties preclude it.

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<sup>10</sup> Sections 30A(3) and 30I(3) of the Gas Act and sections 27A(3) and 27I(3) of the Electricity Act.

<sup>11</sup> Sections 30A to F and 30I of the Gas Act and sections 27A to F and 27I of the Electricity Act.

## **5. Process for determining the amount of a financial penalty and/or amounts payable under a consumer redress order**

### ***Introduction***

- 5.1 This section sets out the process for determining the regulated person's overall financial liability as a result of the contravention or failure. The amount of any financial penalty must be reasonable in all the circumstances of the case. Any consumer redress order may require the regulated person to do anything necessary to remedy the consequences of the contravention or prevent a contravention of the same or similar kind from being repeated.
- 5.2 The Authority will seek to impose a financial penalty and/or make a consumer redress order that:
- reflects the seriousness of the contravention or failure
  - ensures that the regulated person does not benefit financially from the contravention or failure, and
  - deters future misconduct by the regulated person under investigation and other industry participants.
- 5.3. The total amount payable by a regulated person will normally be made up of two elements:
- (i) removal of the detriment suffered by consumers and any gain made by the regulated person as a result of the contravention or failure (where these can reasonably be calculated or estimated) and
  - (ii) an amount that reflects the seriousness of the contravention or failure and the need for deterrence (the 'penal element').
- 5.4 These elements are addressed in the following process:
1. Calculate the detriment to consumers and calculate the gain to the regulated person. Consider whether a consumer redress order is appropriate to remedy the consequences of the contravention identified or to prevent a contravention of the same or a similar kind from being repeated.
  2. Consider the seriousness of the contravention or failure to determine the appropriate penal element.
  3. Consider any aggravating and mitigating factors that may increase or decrease the penal element.
  4. Consider the need for a deterrence uplift to the penal element, having regard to the principle that non-compliance should be more costly than compliance and that enforcement should deliver strong deterrence against future non-compliance.
  5. Where a case is settled, apply a discount to the penal element.
  6. The total amount to be paid by the regulated person will be the sum of the figures determined at step 1 and step 4 (or step 5 if the case is settled), subject to any further adjustments to ensure that the total financial liability

arising from a financial penalty and/or redress payments is reasonable and does not exceed 10 per cent of the turnover of the regulated person.

- 5.5 The Authority will then make a consumer redress order and/or impose a financial penalty. Annex 1 contains a flow chart of this process.

### ***Step 1 - Calculate the detriment and gain***

- 5.6 The Authority will normally aim to ensure, where consumers have suffered loss, damage, inconvenience or other adverse consequences, that consumers receive appropriate redress. The Authority will therefore seek to calculate the detriment to consumers resulting from the contravention or failure.
- 5.7 The Authority will seek to deprive a regulated person of all the financial benefit derived from the contravention or failure where it is practicable to quantify it. To that end, the Authority will seek to calculate the gain to the regulated person as accurately as it can. Gain may come in the form of additional profits, avoided costs or some other undue advantage to the regulated person. There may be overlap between the gain and the detriment but in most cases the gain to the regulated person will not equal the detriment suffered by the consumer.
- 5.8 Where the regulated person has not made any gain or the Authority is unable to calculate any gain or consumer detriment, the Authority may still consider whether to impose a financial penalty. The latter may also still be appropriate when there is no consumer detriment. In such cases, the Authority will normally consider first the seriousness of the contravention or failure, in accordance with the steps set out below.
- 5.9 Where the Authority is satisfied that adequate redress has been or is being provided, the final penalty and/or final redress ordered to be paid by the regulated person will take this into consideration. In this context, the Authority will consider the interests of consumers, and accordingly will:
- consider the efforts that have been made by the regulated person to direct the redress to the affected consumers and whether the redress fully reflects the loss, damage or inconvenience caused
  - take into account any payments to the affected consumers that may already have been made, for example under statutory standards of performance, other regulatory obligations or as a result of action taken by the Energy Ombudsman.

### ***Step 2 - Assess seriousness***

- 5.10 The Authority will assess the seriousness<sup>12</sup> of the contravention or failure. This is a key factor in calculating the penal element of the final liability, irrespective of whether the Authority has identified and calculated detriment and/or gain. In assessing seriousness, the Authority will take into account various factors, which will usually relate to the nature and impact of the contravention or failure and whether it was deliberate and/or reckless.
- 5.11 Factors relating to the nature of a contravention or failure may include:

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<sup>12</sup> The seriousness of a contravention or failure includes its potential seriousness.

- the nature of the condition, requirement, or performance standard that has not been complied with (including whether a regulated person has received funding via a price control to fulfil certain obligations)
- the frequency and duration of the contravention or failure
- whether the regulated person has failed to comply with statutory deadlines or other requirements set out in legislation
- whether the contravention or failure revealed serious or systemic weaknesses in the regulated person's management or compliance procedures
- whether senior management was aware or should have been aware of the contravention or failure.

5.12 Factors relating to the impact of a contravention or failure may include:

- the financial harm or risk of financial harm caused to consumers or other market participants (individually and/or collectively)
- the extent of any other harm, damage or inconvenience caused to consumers
- the extent of any effects on consumers in vulnerable situations
- the level of benefit gained or loss avoided, or potentially gained or avoided, either directly or indirectly
- adverse effects on markets and the seriousness of those effects, including whether market confidence was put at risk
- the extent of any detrimental effect on the ability of Ofgem or the Authority to fulfil statutory duties.

5.13 Factors indicating that a contravention or failure was deliberate may include:

- the contravention or failure was intentional, in that it was intended or foreseen that the action or inaction would cause or be likely to cause a contravention or failure
- it was known that the action or inaction was not in accordance with the regulated person's internal procedures
- the contravention or failure was committed in such a way as to avoid or reduce the likelihood of detection
- those responsible were influenced to commit the contravention or failure because they thought that it might not be detected.

5.14 Factors indicating that the contravention or failure was reckless may include the regulated person's senior management or a responsible individual:

- failing to give sufficient consideration to the possibility that their action or inaction might result in a contravention or failure

- appreciating that their action or inaction might result in a contravention or failure and failing adequately to mitigate that risk, check if they were acting in accordance with internal procedures or ensure that their internal procedures were adequate
- failing to provide adequate oversight of and/or procedures for colleagues whose actions resulted in a contravention or failure.

**Step 3 - Consider aggravating or mitigating factors**

5.15 The next step will be to consider aggravating and mitigating factors and adjust the penal element accordingly. Any reductions to the penal element will not affect the amount of any monies identified as detriment and/or gain.

5.16 Factors tending to increase the penal element may include:

- repeated contravention or failure, including failure to comply with previous non-statutory undertakings or agreed action
- continuation of the contravention or failure after becoming aware of it
- continuation of the contravention or failure after becoming aware of the start of Ofgem’s investigation
- the involvement of senior management in any contravention or failure
- a lack of sufficient senior management involvement to prevent the contravention or failure
- the absence of any evidence of internal mechanisms or procedures intended to prevent contravention or failure
- the absence of any evidence that such internal mechanisms and procedures as exist within the regulated person have been properly applied and kept under appropriate review by senior management
- any attempt to conceal all or part of a contravention or failure from Ofgem
- failure to cooperate fully with reasonable requests from Ofgem’s investigation team (for example, any failure to comply, without proper justification, with information requests)
- withholding relevant evidence and/or submitting it in a manner that hinders the investigation (whether, for example, it is late, incomplete and/or inaccurate).

5.17 Factors tending to decrease the penal element may include:

- the extent to which the regulated person had taken steps to secure compliance either specifically or by maintaining an appropriate compliance policy, with effective management supervision
- evidence that the contravention or failure was genuinely accidental or inadvertent
- promptly, accurately and comprehensively reporting the contravention or failure to Ofgem

- appropriate action by the regulated person to remedy the contravention or failure
- evidence that the regulated person has taken steps to review its compliance activities and change them as appropriate in the light of the events that led to the investigation at hand
- providing co-operation with Ofgem’s investigation that is well beyond what would be expected of any regulated person facing enforcement action, and goes well beyond merely meeting prescribed timescales for responding to information requests or a Statement of Case.

5.18 The Authority considers that senior management has a vital role to play in ensuring that regulated persons comply with all their legal obligations. In particular, the Authority looks to senior management to ensure that robust compliance systems are established and properly maintained and that, if a contravention or failure does occur, the matter is reported promptly to Ofgem and effective remedial action is taken promptly.

5.19 When considering factors that may mitigate the level of a penalty, the Authority attaches significant value to the self-reporting of breaches. However, regulated persons should expect to receive less credit where self-reporting has not occurred promptly on first discovering that a breach has occurred. The Authority expects regulated persons to be prompt in reporting when a potential breach is first uncovered and to be prompt, accurate and comprehensive in reporting any further information that comes to light.

5.20 The Authority will also consider, in the context of aggravating factors, the general compliance history of the regulated person. This may include any previous action taken against it by the Authority or by other domestic or international regulatory authorities that the Authority considers relevant.

***Step 4 - Consider an adjustment for deterrence***

5.21 The Authority will then consider whether a further adjustment to the penal element needs to be made in order to ensure that it will have a sufficient deterrent effect. The Authority may make such an adjustment if it considers that the penal element would otherwise be insufficient to deter the regulated person, or others, from committing further or similar contraventions or failures.

5.22 The Authority may for example do this where:

- it considers that the penal element would otherwise be too small in relation to the contravention or failure to meet its objective of credible deterrence
- previous action in respect of similar contraventions or failures by any regulated person has failed to improve industry standards
- the Authority considers it likely that similar contraventions or failures will be committed by the regulated person or others in the future in the absence of such an increase to the penal element
- the Authority considers that the likelihood of detection in the case is low or in future similar cases would be low. This applies only to cases which were not first brought to Ofgem’s attention through self-reporting.

### ***Step 5 - Apply a discount in settled cases***

- 5.23 The Authority may offer the regulated person the opportunity to settle the case. Early settlement has many potential advantages. It can, for example, result in
- consumers obtaining compensation earlier than would otherwise be the case
  - the saving of Authority resources and those of the regulated person
  - messages getting out to the energy market sooner and
  - timely and effective action that improves consumer confidence.
- 5.24 The Authority therefore considers that in many cases it is likely to be in the interests of consumers for a regulated person to be offered the chance to resolve matters through settlement. In recognition of the benefits of such agreements, the Authority will reduce the penal element of the overall financial liability to be imposed on the regulated person. Such discounts will not apply to any gain and/or detriment that has been identified by the Authority.
- 5.25 The settlement process, including the beginning and the end of the three settlement periods, is set out in section 5 of Ofgem's Enforcement Guidelines.
- 5.26 The size of the discount will reflect the stage of the process at which the agreement is reached. The discounts are as follows:
- 30 per cent in the early settlement window
  - 20 per cent in the middle settlement window
  - 10 per cent in the late settlement window.

### ***Step 6 - Establish the total financial liability***

- 5.27 The Authority will determine the total financial liability of the regulated person by adding the final penal element (step 4 or 5) to any gain and/or detriment that the Authority has identified as resulting from the contravention or failure (step 1).
- 5.28 The Authority may adjust the total financial liability to ensure that any financial penalty and/or redress payments are reasonable in all the circumstances of the case.
- 5.29 The Authority may at this stage consider the effect of a proposed penalty and/or redress payment on the financial viability of a regulated person and may make adjustments accordingly in light of its principal objective.<sup>13</sup>
- 5.30 Having considered all of the circumstances of the case, the Authority will determine an appropriate amount for any financial penalty and/or payments required under a consumer redress order (see section 6).

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<sup>13</sup> This includes cases where adjustments have been made for settlement.

## **6. Interaction between financial penalties and compensation and/or other redress payments**

6.1 In this section we consider the interaction between financial penalties and compensation and/or other redress payments. Where the Authority requires payments under a consumer redress order, it will take that into account when determining the appropriate amount of any penalty it imposes.

### ***Consumer detriment***

6.2 The Authority starts from the principle that redress should be provided to the consumers who have suffered detriment. This may take the form of a voluntary redress package put in place following discussions between Ofgem and the regulated person. Voluntary action can potentially bring benefits in terms of a swifter resolution for the affected consumers.

6.3 Indeed, the Authority expects a regulated person proactively to take adequate steps to remedy the consequences of a contravention by identifying the consumers that have been affected (for example by contacting customers it knows have been affected or by writing to consumers asking them to get in touch if they think they have been affected) and compensating them. Only if the Authority is satisfied that it is not possible or practicable to do this would the Authority expect the regulated person to direct payments elsewhere in line with paragraph 7.5.

6.4 The Authority may, however, make a redress order where it has identified and calculated consumer detriment. Such an order will normally require compensation to be paid to those consumers who have been directly affected as a result of non-compliance. As with voluntary redress, the Authority will only consider requiring payments to be directed elsewhere if it is not possible or practicable to compensate the consumers who were directly affected (for example, because the administration costs would be disproportionate to the benefits of the redress). Any such requirements will be in line with paragraph 7.5.

6.5 Where the immediate customer is a regulated person that has already passed on the costs of a contravention or failure to the end consumer, the Authority may require payment direct to the end consumer. This situation might arise where a network or generation business has contravened an obligation and its immediate customer is a supply business. However, if there is difficulty in establishing the identity of these end consumers, the Authority may in respect of this detriment impose a financial penalty or make a consumer redress order requiring a payment to be made in line with paragraph 7.5.

6.6 The Authority may conclude that the extent to which specific consumers are affected by some or all of the detriment from a contravention or failure is difficult to determine. If so, the Authority may require a redress payment to be made to other consumers or to a consumer fund:

- where it is necessary to remedy the consequences of the contravention , or
- where it is necessary for the purpose of preventing a contravention of the same or similar kind from being repeated.

6.7 For example, this may be appropriate where the total size of the detriment can be estimated but not the individual loss to each consumer. This could arise where the total detriment has been estimated via statistical sampling, or where the detriment has arisen as a result of harm to the market in general.

### ***Gain***

- 6.8 The regulated person may derive a gain from the contravention or failure. This gain may come in the form of additional profits, avoided costs or some other undue advantage. Where the Authority has identified and calculated such a gain, the Authority may make a consumer redress order or impose a financial penalty in respect of this amount.
- 6.9 In making this decision, the Authority will consider whether adequate redress will be achieved by returning to consumers any amount that it has calculated as detriment (see paragraphs 6.2 to 6.7). Where the Authority is satisfied that returning the amount calculated as detriment to consumers would provide adequate redress for the consumers, the Authority will normally remove any additional gain by imposing a financial penalty.

### ***Penal element***

- 6.10 Normally, the Authority will also impose a penal element to be paid as a financial penalty.

## **7. Scope of the remedies available under consumer redress orders**

- 7.1 The Authority may make a consumer redress order which requires the regulated person to do anything necessary for the purpose of remedying the contravention or preventing a similar contravention in future.
- 7.2 The Authority will seek to ensure that, where consumers have suffered loss, damage or inconvenience, every effort is made to compensate the affected consumers directly. Where it is not possible or practicable to compensate individuals who have been affected by the contravention, the Authority will seek to ensure that any such loss, damage or inconvenience is acknowledged and put right in other ways.
- 7.3 The Acts provide that consumer redress orders may require the regulated person to do anything necessary to remedy the consequences of the contravention or to prevent a contravention of the same or similar kind from being repeated.
- 7.4 A consumer redress order may in particular require the regulated person to:
- pay compensation to each affected consumer for the loss, damage or inconvenience it has caused (either directly, or by setting up a scheme to which affected consumers can apply)
  - prepare and distribute a written statement to each affected consumer explaining the contravention and its consequences
  - terminate or vary contracts it has with affected consumers.
- 7.5 The Authority may also require the regulated person to make payments to consumers including those not directly affected by the contravention. Such payments may be directed to:
- a specified category of consumers (such as consumers in vulnerable situations or, in appropriate cases, all those consumers served by a particular company)

- an appropriate charity, trust or organisation.

7.6 The Authority may, for example, require this where it is satisfied that:

- it is not possible to quantify the loss, damage or inconvenience suffered by consumers on an individual basis
- it is not possible or practicable to identify or trace the individual consumers that have been harmed
- payment to each affected consumer would be in such small amounts that requiring it would create a disproportionate administrative burden.

7.7 The Authority may require the regulated person to publish an apology for the contravention or write to consumers with accurate information about their rights.

7.8 The list above is not exhaustive. The Authority will consider the particular circumstances of each case in determining which things would be most effective in remedying the consequences of the contravention or in preventing a contravention of the same or a similar kind from being repeated (see section 8 for further detail).

## **8. Determining the requirements of a consumer redress order**

8.1 In determining the types of redress that are reasonable for the purposes of remedying the consequences of the contravention or preventing a contravention of the same or a similar kind from being repeated, the Authority will have regard to a range of factors including:

- the characteristics of the affected consumers or group and whether some or all of them can be identified
- the type(s) of loss, damage and/or inconvenience suffered
- whether such loss, damage and/or inconvenience can be quantified and, if so, the amount of that loss, damage and/or inconvenience
- details of the wider effects of the contravention, for example on other market participants or confidence in the energy market
- the nature and extent of any remedial action already taken by the regulated person in respect of the contravention (including the payment of compensation or other redress payments and to whom, any public statements, any contract variations, any improvements or changes to company policies or procedures, any charitable payments)
- details of any specific issues in the case where remedial action would be necessary to bring the company into compliance, such as improvements to company procedures
- the need to take account of the interests of different categories of consumers including domestic consumers, consumers in vulnerable situations and small businesses
- the need to ensure that wherever possible the process of providing redress is handled by those best equipped to administer it.

- 8.2 The Authority will take into account any compensation already paid by the regulated person in determining any compensation to be paid under a consumer redress order. The Authority does not intend to require regulated persons to compensate individual consumers twice in relation to the same contravention. However, where the Authority is not satisfied that a regulated person has already provided or is taking steps to provide full compensation to consumers, the Authority will expect to require further compensation payments to be made.
- 8.3 The Authority will not normally require regulated persons to pay compensation for stress or anxiety caused to one or more consumers as a result of a contravention.
- 8.4 The Authority will normally include a provision in each consumer redress order that requires the regulated person to demonstrate or confirm compliance with the order. The Authority may, in the consumer redress order, require the regulated person to engage a third party to provide independent verification that the regulated person has complied with the order<sup>14</sup>.
- 8.5 The Authority considers that the costs associated with administering the requirements set out in a consumer redress order should be borne by the regulated person. The Authority will, in determining the requirements of a consumer redress order, have regard to better regulation principles, including considering whether the likely administration costs are disproportionate to the benefits of the redress that is required.

## **9. Application, adoption and revision of the statement of policy**

- 9.1 The Authority, having undertaken such consultation as it considers appropriate, has prepared and published this statement of policy.<sup>15</sup> The Authority will have regard to this statement:
- (a) in respect of any contravention which occurred on or after 6 November 2014
    - (i) in deciding whether to impose a financial penalty
    - (ii) in determining the amount of any financial penalty
  - (b) in respect of any contravention that occurred on or after 18 February 2014
    - (i) in deciding whether to make a consumer redress order
    - (ii) in determining the requirements to be imposed by any such order.
- 9.2 This statement has been adopted by the Authority. The Authority has not delegated to the Enforcement Decision Panel, or to any member or employee of the Authority, the power to vary this statement. The Authority may, from time to time, revise this statement, in accordance with the Acts.<sup>16</sup> Any revised statement will be issued for consultation and published.

**Gas and Electricity Markets Authority**

**6 November 2014**

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<sup>14</sup> The Authority can enforce a final order, provisional order or consumer redress order by civil proceedings. See sections 30(8) and 30L of the Gas Act and sections 27(7) and 27L of the Electricity Act.

<sup>15</sup> Section 30B and 30J of the Gas Act and sections 27B and 27J of the Electricity Act.

<sup>16</sup> Section 30B(3) and 27J(3) of the Gas Act and sections 27B(3) and 27J(3) of the Electricity Act.

**Annex 1: Process for calculating the total financial liability of the regulated person in breach**

