

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

**Proposal of the Gas and Electricity Markets Authority to impose a financial penalty, following an investigation into compliance by ScottishPower Energy Retail Limited with Standard Licence Conditions 25C, 27.17 and 27.18 of the Gas and Electricity Supply Licence and the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008**

**26 April 2016**

**1. Summary**

- 1.1. The Gas and Electricity Markets Authority (“the Authority”) proposes to impose a financial penalty on ScottishPower following an investigation by the Authority into its failure to comply with Standard Licence Conditions (SLCs) 25C – Standards of Conduct (SOC) and 27.17 of the Gas and Electricity Supply Licence and the relevant requirements under regulations 3, 4, 5 and 7 of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (“the CHRs”). The Authority finds that ScottishPower did not breach SLC 27.18.
- 1.2. ScottishPower has admitted that it breached the relevant SLCs and CHRs set out above. It has acknowledged that its practices fell far short of requirements in relation to its billing issues and complaints handling. It has made significant improvements to its billing performance and its customer service since the investigation was opened.
- 1.3. The Authority has taken into account that ScottishPower has offered to settle this investigation and also to undertake to make consumer redress payments set out in paragraph 1.6 to directly affected customers and to charity(ies)/third sector organisation(s) for the benefit of domestic energy consumers (“consumer redress”).
- 1.4. Having considered all the circumstances of the case, the Authority considers the consumer redress payments will be of greater benefit to consumers than if a significant financial penalty were to be imposed.
- 1.5. Accordingly the Authority considers it appropriate in the circumstances of this investigation to impose a reduced financial penalty of £1 on ScottishPower provided that ScottishPower pays the sum of £18 million (less £1) in consumer redress.
- 1.6. The consumer redress<sup>1</sup> of £18 million (less £1) shall be used in the following manner:
  - (a) To make compensation payments totaling up to £15million to ScottishPower’s affected Priority Services Register (PSR) and Warm Homes Discount (WHD) customers<sup>2</sup>, who either were due a bill that became more

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<sup>1</sup> Consumer redress for the purposes of this Notice, refers to redress to customers who are domestic customers as defined in SLC1 Standard Condition of Gas and Electricity Supply Licences

<sup>2</sup> For the purposes of this investigation, the term “relevant customers” refers to customers or ex-customers with a live account at any time between 1 April 2014 and 31 March 2016 and whose name appeared on the

than 6 weeks overdue between the dates of 1 April 2014 and 31 March 2016 or made a complaint to ScottishPower about an issue arising out of ScottishPower's migration to a new IT system between 1 April 2014 and 31 March 2016;

- (b) the remaining sum of not less than £3million (less £1) (the exact amount being £18m less both the £1 financial penalty and the payment at (a) above) shall be paid direct to a cause(s) within two months of the Final Penalty Notice, with a charity(ies) to be nominated by ScottishPower and approved by Ofgem or a cause to be nominated by the Authority and agreed by ScottishPower.

1.7. In the event that ScottishPower and the Authority do not agree on a nominated cause(s) in respect of the destination or apportionment of the sum specified at clause 1.6(b) to be paid out within two months of publication of the Final Penalty Notice, ScottishPower will pay such sums as a penalty to the Treasury via the Consolidated Fund.

1.8. The Authority finds that ScottishPower contravened:

- SLC 25C (Standards of Conduct) between August 2013 and March 2015;
- SLC 27.17 (provision of final bills) between August 2013 and March 2015;
- CHR 3(2) (compliance with supplier's own complaints handling procedure) between October 2012 and November 2015;
- CHR 4(1) (recording complaints upon receipt) between October 2012 and November 2015;
- CHR 5(1) and CHR 5(2)(a) and (b) (recording handling of consumer complaints) between October 2012 and October 2015;
- CHR 7(1)(a) (receive, handle and process consumer complaints in a timely and efficient manner) between June 2013 and February 2016; and
- CHR 7(1)(b) (allocate and maintain sufficient resources for timely and efficient complaint handling) between December 2012 and December 2014).

1.9. The Authority takes these provisions very seriously. The SOC (SLC 25C) is a principles-based condition that covers behaviours and actions of suppliers when dealing with domestic customers, the provision of information to domestic customers and the effectiveness of customer service arrangements. Specifically, the SOC require suppliers (amongst other things) to take all reasonable steps to achieve the following:

- (a) behave in a fair, honest, transparent, appropriate and professional manner (SLC 25C.4(a));

- (b) provide information that is complete and accurate and not misleading and which is otherwise fair both in terms of content and in terms of how it is presented (SLC 25C.4(b)(i) and (iv)); and
  - (c) be easy to contact, act promptly and courteously to put things right when suppliers make a mistake and otherwise ensure that customer service arrangements and processes are complete, thorough, fit for purpose and transparent (SLC 25C.4 (c)(i)-(iii)).
- 1.10. SLC 27.17 requires a licensee to take all reasonable steps to issue a final bill or statement of account within six weeks of supply transfer or termination of a Domestic Supply Contract. Not receiving a final bill can have detrimental impacts on consumers, as it contains important information for a consumer to determine consumption, their level of charges and whether there is a debit or credit on their account.
- 1.11. The CHRs are designed to ensure Regulated Providers have appropriate complaints handling systems in place to deal with consumer complaints in a timely and efficient manner. They also require licensees to record sufficient details of complaints and to provide consumers with timely and accurate information about complaint handling procedures. Effective complaints handling allows consumers to voice their dissatisfaction and to gain effective redress when licensees do something wrong.
- 1.12. The breaches of the SOC and SLC 27.17 were a result of issues in ScottishPower's implementation of a new billing system. This led to significant numbers of late bills and in some cases inaccurate bills. This caused a large increase in the number of customer complaints to ScottishPower. However, customers had to wait an unreasonable length of time on the phone, and in a number of cases gave up and abandoned their calls. When they did get through, ScottishPower did not always record their complaints and in many cases they were not processed in a timely and efficient manner and in line with its obligations under the CHRs.
- 1.13. The Authority acknowledges that complex business projects of this nature are challenging. However, the Authority considers that ScottishPower did not do enough to identify and then fully mitigate the risks of disruption before they occurred. When significant issues did occur with ScottishPower's customer service, it did not respond quickly enough and take sufficient action to resolve these issues. Ultimately, many of ScottishPower's customers were detrimentally affected and suffered poor customer service for an unacceptable length of time.
- 1.14. The Authority considers it appropriate to impose a penalty for the contraventions. The proposed penalty takes into account the fact that the Authority finds that ScottishPower breached SLCs 25C and 27.17 and the CHRs during various periods set out in paragraph 1.8.
- 1.15. The Authority considers the level of the penalty to be reasonable in all the circumstances of the case. ScottishPower has admitted to the breaches set out in this notice and agreed to settle the investigation on the terms set out in paragraphs 6.2-6.4 below.

- 1.16. In the circumstances, and in recognition of the consumer redress payments to be made for the benefit of energy consumers, the Authority hereby gives notice under section 27(A)(3) of the Electricity Act and section 30A(3) of the Gas Act of its proposal to impose a penalty of £1 on ScottishPower in respect of the contraventions set out above provided that ScottishPower complies with the provisions of paragraph 1.6 above.
- 1.17. Any written representations on the proposed penalty must be received by Adam Crockett ([adam.crockett@ofgem.gov.uk](mailto:adam.crockett@ofgem.gov.uk)) at Ofgem, 9 Millbank, London, SW1P 3GE by **5 pm on 25 May 2016**.
- 1.18. The Authority may publish on its website any representations that are not marked as confidential. Please indicate clearly if you wish your response or part of your response to remain confidential. The Authority will consider any such requests on a case by case basis.

## **2. Background**

- 2.1. In December 2012, ScottishPower started to migrate its customers to one fully integrated IT system from a large number of legacy systems. These legacy systems covered a range of customer service interactions such as billing and customer relationship management. This process took until June 2014 to complete and in total over 5 million customer accounts were migrated. The migration resulted in a number of customer service problems, including long call waiting times, a large number of late bills and ultimately a large volume of outstanding Ombudsman remedies.
- 2.2. As a result, the Authority announced an investigation on 14 November 2014. Alongside the investigation, the Authority agreed a series of targets with ScottishPower, aimed at improving customer service outcomes. The commitments were to reduce the number of late bills, reduce the Average Speed of Answer (ASA) and remove all Ombudsman remedies outstanding over 28 days.
- 2.3. Both parties agreed if any of the published targets were not achieved then ScottishPower would accept a ban on proactive sales. In February 2015, based on evidence seen by the case team and the Ombudsman, Ofgem assessed that ScottishPower had missed its Ombudsman target. As a result, in March 2015, ScottishPower agreed to cease proactive sales to domestic customers for twelve days.
- 2.4. During the investigation, the Authority became aware of issues with ScottishPower's complaints handling procedures, obligations to record consumer complaints on receipt and obligations to record the handling of complaints. Consequently, on 25 September 2015 the Authority widened the scope of the investigation to include CHRs 3, 4 and 5.

## **3. The Authority's decision on contraventions**

- 3.1. The Authority considered the evidence gathered during the course of the investigation in the making of this decision. The Authority is satisfied that

ScottishPower has breached SLCs 25C and 27.17 and regulations 3, 4, 5 and 7 of the CHRs. Details of the contraventions and their duration are set out below, grouped together as follows:

- Breach 1 relates to the Standards of Conduct (SLC 25C);
- Breach 2 relates to the provision of final bills (SLC 27.17); and
- Breaches 3 – 7 relate to complaints handling under the CHRs.

### **Breach 1: SLC 25C - Standards of Conduct (August 2013 – March 2015)**

- 3.2. Under SLC 25C.5, a licensee is required to take all reasonable steps to achieve the SOC and ensure that it interprets and applies the SOC in a manner consistent with the Customer Objective to ensure that each domestic customer is treated fairly. The Authority finds that ScottishPower failed to comply with SLC 25C and breached this requirement from August 2013 until March 2015.
- 3.3. SLC 25C was introduced in August 2013. This licence condition is a principles based approach to regulation, which differs from the prescriptive approach adopted under most other SLCs. The Authority has adopted a bespoke approach to the enforcement of SLC 25C when assessing the supplier's actions and omissions and the seriousness of any breach. Given the fact-sensitive nature of any such enforcement action, the approach adopted to the assessment of ScottishPower's actions and omissions in this case should not be taken as a precedent for the Authority's approach to the assessment of any potential breach in future cases.
- 3.4. The Authority considered three factors within SLC 25C in assessing whether ScottishPower breached this provision. These factors were as follows:
- (1) relevant behaviours (actions or omissions) that infringe the SOC set out in SLC 25C.4 and that are identified on the evidence as being engaged;
  - (2) consideration of whether those identified behaviours were "fair" within the meaning of SLC 25C.3; and
  - (3) in relation to any identified actions and omissions which were not "fair" within that meaning, whether ScottishPower supplier took "all reasonable steps" to achieve the SOC and that in doing so had interpreted and applied the SOC in a manner consistent with ensuring that each domestic customer was treated fairly.
- 3.5. The Authority finds that ScottishPower did not comply with the SLC 25C.5 because of failings in billing and customer service. Each of these failings is dealt with under the headings below.

#### 1: ScottishPower's behaviours and omissions infringed the SOC, particularised in SLC 25C.4(a) – (c)

- 3.6. The Authority finds that six parts of SLC 25C.4 (a)-(c) are engaged.
- 3.7. SLC 25C.4 (a) - by failing to carry out actions in a fair, appropriate or professional manner. This includes:
- Late billing: the number of accounts affected by billing issues rose substantially from the start of the migrations in 2012. ScottishPower sent a large number of late regular and final bills. For example, over 340,000 late final bills were sent after its migration to the new billing system.
  - Poor customer service: the billing issues were compounded by poor customer service. Call waiting times increased markedly between December 2012 and November 2013, as did the number of abandoned calls. When customers made complaints, ScottishPower did not always handle these properly and in line with its CHR obligations.
  - Lack of proactive communication: ScottishPower did not make its customers sufficiently aware of its billing problems. It wrote to them directly for the first time in October 2014, almost a year after problems related to its migration to a new billing and customer service platform had escalated.
- 3.8. SLC 25C.4 (b)(i) - by failing to provide information that was complete, accurate and not misleading. Bills were not always accurate and at the peak of problems in January 2014, more than half of the bills ScottishPower issued did not contain accurate information. ScottishPower was not always able to account for information from customers (such as meter readings).
- 3.9. SLC 25C.4 (c)(i) - by not making it easy for customers to contact the supplier. The evidence shows that some customers had to wait significant periods of time to speak to a customer service operative, in some instances up to 50 minutes. This led to a significant number of customers abandoning their call.
- 3.10. SLC 25C.4 (c)(ii) - by not acting promptly to put things right when ScottishPower made a mistake. The complaints data shows it took ScottishPower a long period of time to resolve some complaints. This is further supported by the number of Ombudsman cases that took over 28 days to resolve following a decision by Ombudsman Services. The Authority views the failure to implement remedies agreed or determined through the independent Ombudsman scheme as a serious matter.
- 3.11. SLC 25C.4(c)(iii) - by failing to otherwise ensure that customer service arrangements and processes were complete, thorough and fit for purpose. A core part of an energy supplier's customer service is to bill customers. The evidence shows that ScottishPower was not able to bill on time or accurately during the breach period. ScottishPower could not always account for information provided by customers. ScottishPower was not correctly identifying and closing complaints and was not properly implementing Ombudsman remedies. Some of ScottishPower's customer service arrangements and processes did not sufficiently respond to the challenges of the IT system implementation. These arrangements and processes were found to be not complete, thorough, or fit for purpose.

## 2: Fairness of ScottishPower's actions or omissions

- 3.12. SLC25C.5 requires the licensee to interpret and apply the SOC in a manner consistent with the Customer Objective. Under SLC 25C.2 the Customer Objective is for the Licensee to ensure that each Domestic Customer is treated fairly. SLC 25C.3 provides that a Licensee would not be regarded as treating its customers fairly if its actions or omissions (a) significantly favour the interests of the Licensee and (b) give rise to a likelihood of detriment to the Domestic Customer.

### *ScottishPower's actions and omissions significantly favoured its interests - 25C.3(a)*

- 3.13. The Authority finds that owing to the actions and omissions referred to above, ScottishPower's interests were significantly favoured. These actions include:
- Late invoicing - ScottishPower built credit balances because some customers did not receive information showing their account was in credit, which could have prompted a refund request. Furthermore, ScottishPower may have retained customers as they did not receive a bill that could have prompted a decision to switch tariff or supplier.
  - Not processing some complaints - ScottishPower avoided costs associated with processing some complaints and implementing Ombudsman remedies in a timely manner.
  - Lack of proactive communication - ScottishPower avoided additional reputational damage by not communicating the scale of the billing issues to its customers sooner.

### *ScottishPower's actions and omissions gave rise to a likelihood of detriment to its customers 25C.3 (b)*

- 3.14. The Authority considers that ScottishPower's actions and omissions set out above gave rise not only to a likelihood of detriment, but to actual significant detriment to some of its customers and meant those customers could not participate fully in the energy market. Poor outcomes for those customers included:
- not receiving information from ScottishPower that might have prompted them to request a refund of a credit balance;
  - not receiving information from ScottishPower that could have helped them make an informed switching decision thereby limiting their exposure to suppliers that could have provided a better service or a more competitive tariff;
  - bill shock from an overly late bill thereby causing concern about how to pay an unexpected bill. This would be particularly acute for vulnerable customers or those on low incomes;
  - experiencing distress and frustration due to the extended time taken to resolve complaints; and

- having to contact ScottishPower repeatedly and for long periods of time to have their complaint recorded and resolved, resulting in lost time that these customers could have spent in other ways.

### 3: ScottishPower failed to take all reasonable steps to achieve the SOC – 25C.5

3.15. The Authority finds that in relation to identified actions and omissions which were not fair within the meaning of SLC 25C.3, ScottishPower did not take all reasonable steps to achieve the SOC or ensure that it interpreted and applied the SOC in a manner consistent with the Customer Objective. The poor and sustained customer outcomes indicate that ScottishPower did not take sufficient action and did not take actions quickly enough to resolve its issues. It is not the Authority's role or wish to prescribe the actions, but in this case some steps ScottishPower could have taken to in order to achieve the SOC included:

- identifying risks much more effectively and earlier in the migration process to identify customer impacts related to the billing migration in order to mitigate any detrimental effects on ScottishPower's customers;
- more effective use of reporting, monitoring feedback loops to improve compliance levels and to better understand customer outcomes;
- allocating sufficient external expertise/resource to ensure that ScottishPower could answer customer contacts and deal with customer complaints in a timely and efficient manner; and
- updating customers on the billing issues proactively and much earlier in the migration process.

3.16. In conclusion, the Authority finds that ScottishPower breached SLC 25C between August 2013 and March 2015.

### **Breach 2: Provision of final bill or statement of account SLC 27.17 (August 2013 to March 2015)**

3.17. SLC 27.17 requires licensees to take all reasonable steps to provide a final bill or statement of account within 6 weeks (42 calendar days) of a supplier transfer or termination of the supply contract.

3.18. The Authority, having considered the evidence, finds that the breach of SLC 27.17 started not later than in August 2013 and ended in March 2015. During this period, ScottishPower issued a significant number of final bills after six weeks. This included several spikes, such as 23% of Change of Supplier final bills issued after 6 weeks in July 2014 and 24% in January 2015. This is far above ScottishPower's pre-migration average of less than 1%.



3.19. The Authority finds that ScottishPower did not take all reasonable steps to ensure compliance with SLC 27.17. Much of the evidence of billing failures under the SOC also applies here.<sup>3</sup> Additional steps ScottishPower could have taken include:

- ensuring that Key Performance Indicator (KPI) monitoring effectively reported the true extent of final bills that were issued after six weeks. This would have given ScottishPower information to identify problems with issuing final bills at an earlier date and enabled it to mitigate customer impacts; and

implementing the Change of Supply tracking tool earlier than March 2015 to enhance ScottishPower's ability to track the status of individual overdue bills and take appropriate steps.

3.20. The Authority finds that this breach began in August 2013 and ended in March 2015.

### **Breaches 3 – 7: Complaints handling**

**Breach 3:** CHR 3(2) – compliance with its own complaint handling procedure (October 2012 – November 2015)

3.21. CHR 3(2) requires that each regulated provider must comply with its complaint handling procedure in relation to each consumer complaint it receives.

3.22. The Authority finds that from October 2012 until November 2015, ScottishPower did not always comply with its own complaints handling policy. The policy stated that "we define a complaint as any expression of dissatisfaction by a customer in relation to our products or services" and "we define a complaint as resolved when we mutually agree we have resolved all your issues". The two main failings were that:

1) ScottishPower did not always identify complaints correctly (see paragraphs 3.24 - 3.29 on CHR 4(1)(a)); and

2) it did not always resolve a complaint to the satisfaction of (or by agreement with) the customer and closed complaints too early (see paragraphs 3.24 - 3.29 on CHR 4(1)(g)).

3.23. The Authority finds that this breach began in October 2012 and ended in November 2015.

**Breach 4:** CHR 4(1) – recording complaints upon receipt (October 2012 – November 2015)

3.24. CHR 4(1) requires that upon receipt of a consumer complaint, suppliers must record details of the complaint.

3.25. In particular, ScottishPower breached CHR 4(1)(g), which requires that a regulated person records "whether the consumer complaint has become a

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<sup>3</sup> Please see paragraphs 3.7, 3.8 and 3.11.

resolved complaint and, if so, the basis upon which the regulated provider considers that the consumer complaint is a resolved complaint.” In addition, ScottishPower breached CHR 4(1)(a) which requires that “upon receipt of a consumer complaint a regulated provider must record in a written electronic format...the date that the consumer complaint was received.”

- 3.26. The Authority finds that ScottishPower did not correctly record an expression of dissatisfaction in over half of cases analysed by the Authority. Further, whilst ScottishPower did usually record the basis for closing a customer complaint, it did not always gain the customer’s consent to do so. Therefore there was not always an evident basis for the complaint being closed, as the customer had not agreed to it as is required by ScottishPower’s own complaint handling procedure.
- 3.27. As a consequence of ScottishPower not recording expressions of dissatisfaction as complaints, customers experienced delays in having complaints processed and resolved. Some customers made a number of expressions of dissatisfaction over a period of months before a complaint was recorded and therefore before a resolution process could begin. The Authority considers some customers could have disengaged from the complaints process altogether due to a lack of recognition from ScottishPower.
- 3.28. By not gaining the consent from all customers to close complaints, ScottishPower failed to give those customers the opportunity to confirm that they were satisfied (or indicate that they were not satisfied) with a complaint resolution. This sometimes led to some customers making further complaints to ScottishPower in order to have a complaint resolved to their full satisfaction. This caused further loss of time to customers in making repeated complaints and inefficiency in the resolution of those complaints (see Breach 6).
- 3.29. The Authority finds this breach began in October 2012 and ended in November 2015.

**Breach 5:** CHR 5(1) and 5(2)(a) and (b) – recording handling of complaints (October 2012 – October 2015)

- 3.30. CHR 5(1) requires the supplier to record certain information where a consumer complaint has not been resolved by the end of the working day after the day on which the consumer complaint was first received.
- 3.31. CHR 5(2)(a) requires the supplier to record the steps it has taken to resolve any consumer complaint in relation to 5(1).
- 3.32. CHR 5(2)(b) requires the supplier to record the date upon which a consumer complaint in relation to 5(1) became a resolved complaint.
- 3.33. The Authority finds ScottishPower did not comply with these provisions as it did not always gain the customer’s agreement that it had resolved the complaint to the customer’s satisfaction, or indeed correctly record the complaint at all (see Breach 4). Therefore the information (if any) recorded in relation to 5(1) and 5(2)(a) and (b) would have been inaccurate.

3.34. The Authority finds that this breach began in October 2012 and ended in October 2015.

**Breach 6:** CHR 7(1)(a) - efficient and timely receipt, handling and processing of complaints (June 2013 – February 2016)

3.35. CHR 7(1)(a) - requires a supplier to receive, handle and process complaints in an efficient and timely manner.

3.36. There were a number of failings identified throughout the investigation which breached the regulation, including:

- failing to receive a high number of customer complaint calls in a reasonable time during the migration to a new system (June 2013 – January 2015);
- long call waiting times and the resulting high numbers of complaint calls that were abandoned, and therefore not received or handled at all (June 2013 – December 2014);
- not recording and dealing with some complaints properly, leading customers to contact ScottishPower several times, thereby not receiving, handling and processing complaints (June 2013 – November 2015);
- significant increases in the length of time taken to resolve complaints, not processing a significant proportion of complaints within a reasonable timeframe, resulting in many complaints not being resolved in a timely manner (throughout 2014); and
- not resolving a high number of Ombudsman cases in a timely manner which has led to a large number of Ombudsman complaints where remedies were not implemented in a timely manner (June 2013 – February 2016).

3.37. ScottishPower customers experienced a variety of poor outcomes in relation to this breach:

- some customers spent significantly more time in reporting complaints and seeking updates on open complaints due to long call waiting times;
- some many customers abandoned calls and potentially did not pursue a complaint as a consequence when normally they would have;
- some customers had to wait significantly longer for complaints to be resolved; and
- some customers had to wait unacceptably long periods of time for ScottishPower to implement a complaint resolution despite the Ombudsman ruling in the customer's favour.

3.38. The Authority finds this breach began in June 2013 and ended in February 2016.

**Breach 7:** CHR 7(1)(b) – allocation and maintenance of resources reasonably required (December 2012 – December 2014)

- 3.39. CHR 7(1)(b) – requires a supplier to allocate and maintain the resources reasonably required to process complaints in a timely manner, and in accordance with the CHRs.
- 3.40. The main reason for this failing was that ScottishPower did not add additional numbers of people as could reasonably be required to its customer contact teams to deal with the customer service issues that emerged in 2013 and which peaked in 2014. ScottishPower also did not adequately assess the full impact of the risks of the migration to its customer service delivery, which meant it was not fully prepared to identify and deal with problems when they occurred.
- 3.41. The lack of suitable resourcing contributed directly to the poor outcomes associated with Breach 6.
- 3.42. The Authority finds this breach began in December 2012 and ended in December 2014.

#### **Investigation into SLC 27.18 – reissuing of final bills**

- 3.43. SLC 27.18 requires where subsequent information becomes available to correct an error in the final Bill, the licensee shall send a corrected Bill or statement of account as soon as reasonably practicable after the subsequent information becomes available.
- 3.44. The Authority finds that, based upon the evidence provided, ScottishPower did not breach SLC 27.18.

#### **4. The Authority’s decision on whether to impose a financial penalty**

##### ***General background to the Authority’s decision to impose a financial penalty***

- 4.1. In deciding whether to impose a penalty, and in determining the amount of any penalty, the Authority is to have regard to its statement of policy most recently published at the time when the contravention or failure occurred. The 2003 Penalty Statement was introduced in October 2003 (“the 2003 Penalty Statement”). In November 2014, the Authority introduced a new policy (“the 2014 Penalty Statement”) which the Authority must have regard to when deciding whether to impose a financial penalty, and determining the amount of any such penalty, in respect of any contravention which occurred on or after 6 November 2014. In such cases, the 2014 Penalty Statement applies instead of the 2003 Penalty Statement.
- 4.2. In this case the contraventions occurred during the time periods set out in Table 4.1.

**Table 4.1: periods of breach for relevant requirements**

<b>Relevant requirement</b>	<b>Breach period</b>
Breach 1 - SLC 25C - Standards of Conduct	Aug 13 - Mar 15
Breach 2 - SLC 27.17 - provision of final bill	Aug 13 - Mar 15
Breach 3 - CHR 3(2) - complaints handling policy	Oct 12 - Nov 15
Breach 4 - CHR 4(1) - recording complaints upon receipt	Oct 12 - Nov 15
Breach 5 - CHR 5(1) and CHR 5(2)(a) and (b) - recording handling of complaints	Oct 12 - Oct 15
Breach 6 - CHR 7(1)(a) - timely & efficient complaints handling	Jun 13 - Feb 16
Breach 7 - CHR 7(1)(b) - allocation of resources	Dec 12 - Dec 14

- 4.3. Each of those breaches commenced within the timescale to which the 2003 Penalty Statement applies. The Authority recognises that instances of the breaches will also have occurred after November 2014 and may therefore fall within the scope of the 2014 Penalty Statement. However, the Authority considers that the overall the breaches and particularly the most serious failures, largely took place during the period that the 2003 Penalty Statement applied to and has therefore decided to determine the penalty by reference to the 2003 Penalty Statement. In relation to the breaches of the CHRs 3, 4, and 5, the behaviour in question came to the attention of the Authority after 1 June 2014. The Authority takes the position set out in the Chairman's Letter<sup>4</sup> that, in respect of those breaches, the level of any penalty must reflect the importance it places on deterring future breaches.
- 4.4. The Authority is required to carry out all its functions, including the taking of any decision as to the imposition of a penalty, in the manner which it considers is best calculated to further its principal objective,<sup>5</sup> having regard to its other duties.
- 4.5. In deciding whether it is appropriate to impose a financial penalty, the Authority has considered all the circumstances of the case including, but not limited to, the specific matters set out in the 2003 Penalty Statement and representations made by ScottishPower. These matters are examined in detail below.

### ***General Criteria for the imposition of a penalty***

*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

- 4.6. The Authority finds that ScottishPower's failings led to detriment to its customers. The migration to the new billing and customer service system led to thousands of

<sup>4</sup> Chairman's letter on future financial penalties 2014 - <https://www.ofgem.gov.uk/ofgem-publications/86815/theauthorityspositiononfuturefinancialpenaltiesletter27march2014.pdf>

<sup>5</sup>The Electricity Act 1989 (section 3A) and the Gas Act 1986 (section 4AA) set out the Authority's principal objective for energy regulation, thereby defining the purpose of Ofgem's activities as to protect the interests of existing and future consumers, wherever appropriate by promoting competition. The Energy Act 2010 amended the principal objective to clarify that the interests of consumers should be taken as a whole.

late and inaccurate bills. As a result, some customers received a bill that was very late and for an amount they may not have planned for.

- 4.7. When customers called to complain, ScottishPower did not have sufficient resources in place to deal with all complaints in a timely and efficient manner. As a result, many customers were left on hold for an unacceptable length of time. The delays were such that a significant number of customers gave up and abandoned their call. When customers did complain, in many cases ScottishPower did not record or handle the complaint correctly, and closed the complaints without securing the customer's agreement. This led to some customers having to call back about issues that should have been resolved more quickly.
- 4.8. ScottishPower was poor at fully implementing Energy Ombudsman remedies. In many instances, ScottishPower's customers did not receive their remedy within the required 28 day period. Some customers waited over a year for ScottishPower to fully implement their remedy. There were also occasions where ScottishPower did not open complaints when they should have. Consequently, these customers may have been inhibited in seeking redress through the Energy Ombudsman.
- 4.9. The overall impact is that some customers wasted time that they could have spent doing other things, and were frustrated, distressed and/or inconvenienced at the poor customer service they had received.
- 4.10. The Authority therefore considers that the breaches caused significant damage to the interests of some of ScottishPower's customers. It also considers the breaches would have affected consumer perceptions of the energy market and therefore damaged the interests of other market participants.

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

- 4.11. The Authority considers compliance with SLCs and CHRs to be very important and therefore imposing a financial penalty is likely to create an incentive for compliance and deter future breaches generally. Imposing a penalty in this case would create the right incentives around the need for regulated parties to comply with their obligations and treat customers fairly.

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

If the contravention is trivial in nature

- 4.12. The Authority considers that ScottishPower's breaches of the SOC and the CHRs are not trivial.

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

- 4.13. The Authority considers that its principal objective and duties, as set out in section 3A of the Electricity Act and section 4A of the Gas Act, do not preclude the imposition of a financial penalty in this case.

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

## Licensee

- 4.14. The Authority considers that the breaches would have been apparent to a diligent licensee. Large scale, complex, IT projects of this nature can cause considerable impacts on customers. When ScottishPower's problems occurred, it took insufficient actions to remedy them, and reacted too late to mitigate impacts on affected customers.

## **5. Criteria relevant to the level of financial penalty**

- 5.1. In accordance with section 270 of the Electricity Act, the Authority may impose a financial penalty of up to ten per cent of the turnover of the relevant licence holder. Turnover is defined in an Order made by the Secretary of State.<sup>6</sup> The relevant figure is the turnover shown in published or prepared accounts for the business year preceding the date of this notice. For the financial year ending 31 December 2014, ScottishPower's total turnover was £3,956,000,000.
- 5.2. In deciding the appropriate level of financial penalty, the Authority has considered all the circumstances of the case, including the following specific matters set out in the 2003 Penalty Statement. The Authority has also considered The Chairman's Letter in relation to breaches of CHRs 3, 4 and 5.

### *Factors which are first considered when determining the level of penalty*

#### The seriousness of the contravention and failure and continuation of contravention

- 5.3. The Authority considers that ScottishPower's failure to comply with SLCs 25C and 27.17 as well as the CHRs is very serious and has taken this into account in deciding the level of penalty. This is particularly the case because of the large number of customers affected by the issues.

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

- 5.4. The Authority considers that affected customers were significantly harmed by the contraventions. Other market participants may have also been harmed.
- 5.5. The Authority notes that ScottishPower made a commitment that no customer would be financially disadvantaged due to the IT migration. ScottishPower has already paid significant sums directly to consumers as redress (either on its own initiative or when directed by the Ombudsman), and has provided some customers with free energy where it could not implement their Ombudsman remedy in a timely manner. The Authority has taken this into account.

#### The duration of the contravention or failure

- 5.6. The Authority considers the duration of the contraventions to be significant.
- 5.7. Breaches of CHRs 3, 4 and 5 lasted over three years beginning in October 2012 and ending in November 2015. The breach of CHR 7(1)(a) lasted over 2.5 years

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<sup>6</sup> The Electricity and Gas (Determination of Turnover for Penalties) Order 2002.

and only ended in February 2016. CHR 7(1)(b) lasted two years between December 2012 and December 2014. The breach of SLC 25C and SLC 27.17 lasted over 1.5 years.

#### The gain (financial or otherwise) made by the licensee

5.8. The Authority considers that ScottishPower made a gain in the following ways:

- Insufficient resourcing – ScottishPower avoided the costs of adequately resourcing its customer contact centres under the breach of CHR 7(1)(b). Given the severity of the breach and length of time that it occurred, the Authority considers this gain is significant.
- Not processing complaints – ScottishPower avoided the costs of handling complaints and potential Ombudsman fees by not correctly opening complaints under the breach of CHR 4.
- Late invoicing – ScottishPower gained by holding on to credit balances when it failed to issue bills. Customers, who did not receive a bill in a timely fashion, may not have known there was credit on their account that could be refunded. Furthermore, ScottishPower may have retained customers as they did not receive a bill that could have prompted a decision to switch tariff or supplier.
- Lack of proactive communication – by not issuing a public statement sooner, ScottishPower avoided additional reputational damage and was able to retain customers or secure new customers, who may not have chosen a supplier with known customer service issues.

5.9. However, the Authority acknowledges that ScottishPower expended significant costs to resolve the issues both in terms of additional staffing and in providing direct compensation to affected customers. If it had not expended these costs, the Authority would have considered a higher penalty.

#### *Factors tending to increase the level of penalty*

##### Repeated contravention or failure

5.10. This is the first time that the Authority has found that ScottishPower has breached SLCs 25C, 27.17 and CHRs 3, 4, 5 and 7. This factor does not apply.

##### Continuation of failure after being aware of the contravention or failure or becoming aware of the start of the Authority's investigation

5.11. ScottishPower continued to contravene the SLCs and the CHRs after the Authority announced its investigation in November 2014. The Authority considers that ScottishPower took until February 2016 to end all breaches.<sup>7</sup> The Authority also notes that ScottishPower missed an agreed target at the end of November 2014 and as a result agreed to cease proactive sales to domestic customers for twelve days in March 2015.

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<sup>7</sup> Please refer to Table 4: periods of breach for relevant requirements.



5.12. This factor therefore applies to a significant extent.

The involvement of senior management in any contravention or failure

5.13. The Authority considers that ScottishPower's senior management were aware of its customer service issues. Weekly reports to senior management and monthly board meetings highlighted the range of customer service issues ScottishPower was experiencing.

5.14. As a result of these reports, senior management took action to try and solve the issues. The Authority does not consider ScottishPower's senior management sought to breach the relevant requirements. However, the actions taken were not effective enough to prevent non-compliance occurring. Subsequent actions taken by senior management to resolve non-compliance were not implemented as quickly as they could have been. The Authority therefore considers that this factor applies.

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

5.15. The Authority notes that the mechanisms and procedures in place were inadequate to prevent the failures. ScottishPower did not effectively identify risks to customers or sufficiently mitigate the impacts. The inadequacy of ScottishPower's response to the problems identified has been taken into account by the Authority in establishing the breach of relevant SLCs occurred and the severity. However, the Authority notes that the issues are around the inadequacy of ScottishPower's mechanisms or procedures rather than the absence of them. Therefore this factor does not apply.

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

5.16. The Authority has not seen any evidence that suggests that ScottishPower attempted to conceal the contravention or failure.

*Factors tending to decrease the level of 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.

5.17. ScottishPower did take some steps to achieve compliance, for example limiting the volume of inaccurate bills sent to customers and manually checking large bills to verify accuracy. However, the Authority considers that these steps were not sufficient. ScottishPower failed to maintain full compliance procedures in respect of the CHRs and failed to take all reasonable steps to comply with SLC 25C and 27.17. Therefore this factor applies to a very limited extent.

Appropriate action by the licensee to remedy the contravention or failure

5.18. The Authority considers that ScottishPower has improved its customer service significantly since the investigation opened in November 2014. Further, ScottishPower proactively began to write off bills for customers that had not

received an Ombudsman remedy in a timely manner. This factor therefore applies.

#### Evidence that the contravention or failure was genuinely accidental or inadvertent

5.19. The Authority considered that ScottishPower did not seek to breach the SLCs and CHRs. However, it was the implementation of a new billing system that ultimately led to the problems experienced by ScottishPower's customers. It was ScottishPower's failure to anticipate risks to customers adequately from the implementation of the new systems and mitigate adverse impacts on customers that led to the contraventions. Therefore, the Authority considers that this factor does not apply.

#### Reporting the contravention or failure to the Authority

5.20. ScottishPower did not report its customer service and billing problems to the Authority. The Authority only became aware of these problems due to a high volume of customer complaints. Therefore, this factor does not apply.

#### Co-operation with the Authority's investigation

5.21. The Authority notes that ScottishPower has been co-operative throughout the investigation. It has met deadlines for information requests, provided responses that were prompt and of the required standard, and senior management have engaged throughout. Although ScottishPower has provided a good example of the behaviour that the Authority would expect from a regulated party under investigation, the Authority considers that at present no behaviours have been identified that go beyond what would be expected of any regulated party involved in enforcement action.

5.22. The Authority also notes ScottishPower's willingness to settle the investigation early, which reduced the resources the Authority would have used if the case continued and to this extent this factor applies and a discount has been given.

## **6. The Authority's decision**

6.1. Taking account of all these factors and also mindful of its principal objective to protect the interests of existing and future energy consumers, ScottishPower has agreed to pay £18 million (less £1) in lieu of a higher penalty. The Authority hereby proposes to impose a financial penalty of £1 on ScottishPower in respect of the breaches it finds of SLCs 25C and 27.17 and regulations 3, 4, 5 and 7 of the CHRs. It considers the penalty to be reasonable in all the circumstances of the case. In reaching its decision the Authority has taken the following factors into account:

- ScottishPower's failure to treat customers fairly and deal with all complaints in accordance with the CHRs were very serious contraventions;
- there was significant and widespread harm to a significant proportion of ScottishPower's customers (please see paragraphs 4.6 to 4.9 for details of

the harms, including unquantifiable harms, caused to some of ScottishPower's customers);

- the sums ScottishPower directly paid to consumers as redress;
  - the actions that ScottishPower took to resolve its customer service issues;
  - there are two factors tending to increase the level of any penalty (see paragraphs 5.10 - 5.16); and
  - there are three factors tending to decrease the level of any penalty (see paragraphs 5.17 - 5.22).
- 6.2. ScottishPower has agreed to settle the investigation on the basis of paying a financial penalty of £1 within 42 days of the date of any Final Penalty Notice issued by the Authority and pay the sum of £18 million (less £1) by way of consumer redress on the dates and in the manner set out below.
- 6.3. The consumer redress of £18 million (less £1) shall be used in the following manner:
- (a) To make compensation payments to ScottishPower's affected Priority Services Register (PSR) and Warm Homes Discount (WHD) customers, who either were due a bill that became more than 6 weeks overdue between the dates of 1 April 2014 and 31 March 2016 or made a complaint to ScottishPower about an issue arising out of ScottishPower's migration to a new IT system between 1 April 2014 and 31 March 2016;
  - (b) the remaining sum of not less than £3million (less £1) (the exact amount being £18m less both the £1 financial penalty and the payment at (a) above) shall be paid direct to a cause(s) within 2 months of the Final Penalty Notice, with a charity(ies) to be nominated by ScottishPower and approved by Ofgem or a cause to be nominated by the Authority and agreed by ScottishPower
- 6.4. In the event that ScottishPower and the Authority do not agree on a nominated cause(s) in respect of the destination or apportionment of the sum specified at clause 6.3(b) to be paid out within two months of publication of the Final Penalty Notice, ScottishPower will pay such sums as a penalty to the Treasury via the Consolidated Fund.
- 6.5. The Authority considers the level of the penalty to be reasonable in all the circumstances of the case. ScottishPower has admitted to the breaches set out in this notice and agreed to settle the investigation on the terms set out in paragraphs 6.2-6.4 above.
- 6.6. In the circumstances, and in recognition of the consumer redress payments to be made for the benefit of certain consumers, the Authority hereby gives notice under section 27(A)(3) of the Electricity Act and section 30A(3) of the Gas Act of its proposal to impose a penalty of £1 on ScottishPower in respect of the contraventions set out above provided that ScottishPower complies with the provisions of paragraph 6.3 above.

- 6.7. Any written representations on the proposed penalty must be received by Adam Crockett ([adam.crockett@ofgem.gov.uk](mailto:adam.crockett@ofgem.gov.uk)) at Ofgem, 9 Millbank, London, SW1P 3GE by **5 pm on 25 May 2016**.
- 6.8. The Authority may publish on its website any representations that are not marked as confidential. Please indicate clearly if you wish your response or part of your response to remain confidential. The Authority will consider any such requests on a case by case basis.

**Gas and Electricity Markets Authority  
26 April 2016**