

## **Notice under section 30A of the Gas Act 1986 and 27A of the Electricity Act 1989**

### **Decision of the Gas and Electricity Markets Authority to impose a financial penalty, following an investigation into compliance with the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 by British Gas Trading Limited.**

**10 January 2012**

#### **1. Summary**

- 1.1. This is a decision of the Gas and Electricity Markets Authority ("the Authority") following an investigation into British Gas Trading Limited ("British Gas") and its compliance with Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 ("the CHSR").
- 1.2. Ofgem's investigation was prompted by the results of consumer research initiated by Ofgem and published in June 2010. The research showed that consumers were dissatisfied with the level of detail recorded by suppliers about their complaints and with decisions as to whether their complaint had been resolved.
- 1.3. Ofgem's investigation focussed on British Gas' compliance with the CHSR which came into force on 1 October 2008. The Authority found that British Gas had breached regulations 4, 6 and 7 of the CHSR. Regulation 4 sets out the obligations of a regulated provider to record a complaint upon its receipt and record details of subsequent contact about the complaints. Regulation 6 provides that a regulated provider must signpost consumers to the redress scheme, and provide them with specific information about the redress scheme, if complaints cannot be resolved within a specific timeframe. Regulation 7 requires that a regulated provider must allocate and maintain adequate resources in order to receive, handle and process complaints in an efficient and timely manner.
- 1.4. The Authority found that-
  - From 1 October 2008, in relation to domestic and micro-business customers, British Gas was in breach of regulation 4 in that it would not reopen a closed complaint after a period of 28 days. British Gas had provided Ofgem with details of the steps it intended to take to remedy the breach including the retraining of staff, system changes and the hiring of additional staff. Ofgem considered that these steps were appropriate in the circumstances in order to secure compliance. British Gas had informed Ofgem that the changes would not be completed until the end of July 2011. Therefore British Gas continued to be in breach of regulation 4(6)(a) and (d) until this date.
  - Between 1 October 2008 and 5 April 2011 in relation to domestic and micro-business customers, British Gas failed to provide all the required information about the Energy Ombudsman redress scheme in its 8 week letter to both its domestic and micro-business customers and its micro-business deadlock letter. This was a breach of regulation 6(2)(d) and (e).
  - Between 1 October 2008 and 9 February 2011 in relation to micro-business customers, British Gas failed to allocate and maintain adequate resources for micro-business customers in order to receive, handle and process complaints in an efficient and timely manner. This was a breach of regulation 7(1).

- 1.5. Having reviewed British Gas' plans, the Authority was satisfied that British Gas had taken and was taking appropriate steps to address the breaches of the CHSR that were identified in order to secure compliance. These steps included a comprehensive re-training timetable, IT system changes, additional management time and a monitoring programme that will assess ongoing compliance. For these reasons the Authority decided not to make an enforcement order.
- 1.6. The Authority considers it appropriate to impose a penalty on British Gas for these contraventions.
- 1.7. The Authority issued a Notice on 27 July 2011 stating that it intended to impose a financial penalty on British Gas and that the penalty should be £2.5 million. It invited representations or objections to be made with respect to the proposed penalty by 5 September 2011.
- 1.8. Representations were received from 27 consumers and from British Gas.

### **British Gas' representations**

- 1.9. British Gas made representations to Ofgem on 5 September 2011. It additionally wrote to Ofgem on 10 October 2011 and 1 November 2011 after the deadline for responses had passed. In its representations, British Gas asserted that the period of the breach alleged in the Notice was incorrect in relation to the regulation 7(1) micro-business breach. It said that it was in compliance until "around mid 2009", but not afterwards.
- 1.10. The Authority has considered British Gas' representations on the period of the breach of regulation 7(1) but has not accepted British Gas' representations that it was in compliance for the period following the introduction of the CHSR until "around mid 2009". Therefore, the Authority has decided, on the basis of the evidence before it, that British Gas was in breach of the CHSR in respect of micro-businesses from 1 October 2008.
- 1.11. British Gas made some representations on the wording of the Notice. The Authority has taken account of them in the wording of this decision.

### **Other representations**

- 1.12. Ofgem received representations from 27 consumers. Out of the consumers representations:
  - 17 queried where the money would go to;
  - 11 queried whether the fine would be passed on to consumers in the form of higher prices;
  - 5 were unhappy British Gas customers with complaints of their own; and
  - 5 considered that the fine was too low.
- 1.13. A number of the consumer representations addressed one or more of the above points. We set out our responses to these representations below.
- 1.14. In answer to the first representations on where the money would go, in accordance with section 27A(10) of the Electricity Act 1989 and 30A(10) of the Gas Act 1986, the penalty must be paid into the consolidated fund (i.e. to the Treasury).

- 1.15. In relation to whether the fine would be passed on to customers, Ofgem does not regulate the prices that companies charge their customers. However, Ofgem would expect that the prices charged by British Gas to its customers are cost reflective in keeping with the conditions of British Gas' licence.
- 1.16. In relation to the individual customers of British Gas who related their complaint to Ofgem, Ofgem has separately communicated with, and assisted, these individuals.
- 1.17. In relation to the representations that the proposed penalty was too low, the Authority decided that the evidence received did not justify an increase in the size of the penalty.

### **Whether to impose a penalty**

- 1.18. The Authority has considered all these representations carefully against the background of its statutory duties and all the circumstances of the case in order to arrive at a final decision in this Notice. It has made amendments to the wording of the Notice, where appropriate.
- 1.19. The Authority has decided to confirm the penalty of £2.5 million.
- 1.20. The penalty must be paid by 22 February 2012.

## **2. Background**

- 2.1 The CHSR came into force on 1 October 2008 as part of the new arrangements for consumer representations. These arrangements introduced a fundamental package of reforms including the requirement for suppliers to establish in-house systems, processes and procedures to receive and record all complaints from customers.
- 2.2 From before the introduction of the CHSR to the months and years after its introduction, suppliers were given ample opportunity to make arrangements to ensure their complaint handling arrangements complied with all aspects of the CHSR. The opportunities to comply included consultations, working groups, independent audit reports and letters from Ofgem's Chief Executive to the Chief Executives of suppliers informing them of the importance of compliance with the CHSR.
- 2.4 Ofgem's investigation was prompted by the results of the Harris Interactive Survey in 2010 which found that consumers perceived that many suppliers did not keep a full and accurate record of a customer complaint. In addition, a large proportion of domestic and micro-business customers indicated they were very dissatisfied with the overall handling of their complaint.
- 2.5 Ofgem announced the investigation on 30 June 2010. On 3 August 2010, Ofgem sent British Gas a formal information request pursuant to section 28(1) of the Electricity Act 1989 and section 38(1) of the Gas Act 1986. The request asked for (a) a list of all complaints received on 31 March 2011; and (b) its policies and procedures on complaints handling. A second information request dated 17 August 2010 required British Gas to send a sample of 50 domestic and 10 micro-business complaints supplied in the first information request.

### The breaches

2.6 After considering the relevant information in the case, the Authority found that British Gas had contravened the CHSR.

2.7 The breaches were as follows:

(a) Regulation 4(6)(a) and (d) (in relation to domestic and micro-business customers)

These provisions require that if a regulated provider such as British Gas has recorded that a consumer complaint is resolved but subsequent contact with the complainant indicates that the complaint is not resolved, the regulated provider is required to record the details of that change in status and must not continue to treat the complaint as resolved.

British Gas had a policy which stated that a complaint would be closed 28 days after British Gas had marked it as being resolved. Therefore any subsequent contact from a customer or their representative in relation to their existing complaint would not be linked to the customer's existing complaint, even if the customer indicated that in their opinion the complaint was not resolved.

(b) Regulation 6(2)(d) and (e) (in relation to domestic and micro-business customers)

These provisions specify the information that must be included in a notice to customers when their complaint cannot be resolved. This includes information about the types of redress that may be available to the consumer under a qualifying redress scheme and that the outcome of the qualifying redress scheme process is binding on the regulated provider but not upon the relevant consumer.

The notice which British Gas provided complainants (contained within British Gas' 8 week template letters for domestic customers) was missing the information required by regulation 6(2)(d), namely the types of redress available from the Energy Ombudsman. This same information, as well as the information required by regulation 6(2)(e) (namely that the outcome of an Ombudsman investigation is binding upon the supplier (but not on the consumer)) was also missing from British Gas' 8 week template letters for micro-businesses and the micro-business template deadlock letter for unresolved complaints. British Gas explained in a meeting on 5 April 2011 that the template letters were copied directly from the domestic policies and procedures to the micro-business area. This is why the micro-business template letters Ofgem reviewed were not fully compliant. It appears that no check against the requirements of the CHSR was undertaken when these policies and procedures were copied. British Gas informed Ofgem that the letters in question were remedied by 5 April 2011.

(c) Regulation 7(1) (in relation to micro-business customers only)

This provision requires regulated providers to receive, handle and process consumer complaints in an efficient and timely manner and to allocate and maintain such level of resources as may reasonably be required to enable that regulated provider to receive, handle and process complaints in an efficient and timely manner and in accordance with the CHSR.

In a letter dated 7 September 2010 to Ofgem's Chief Executive, British Gas admitted to Ofgem that it was not compliant with Regulation 7(1) CHSR in

relation to micro-businesses. British Gas informed Ofgem that it became compliant on 9 February 2011 when it copied all the domestic policies and procedures to micro-business side. For the period 1 October 2008 until that date, the Authority considers that there were serious breaches of regulation 7(1) by British Gas failing to receive, handle and process complaints in an efficient and timely manner; and to allocate and maintain sufficient resources as could be reasonably expected in order to do so.

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

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

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

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

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

- 3.3. The Authority finds that the general interests of consumers were likely to have been damaged by the contraventions.
- 3.4. The breaches are set out in paragraph 2.7(a) to (c) above and took place from 1 October 2008 until February, April or July 2011 (depending on the breach). In any event, this was a period of some two and a half years. The Authority considers that as a result of British Gas' contraventions, consumers may have suffered harm:
  - micro-business customers are likely to have suffered harm from having to repeat their complaint and may have suffered delay caused by the failures in British Gas' micro-business complaint handling arrangements;
  - domestic customers seeking to reopen an existing complaint after 28 days of their complaint being closed may have suffered harm from having to repeat information to British Gas often by telephone or through third party representatives; and
  - micro-business and domestic customers may not have referred their case to the Energy Ombudsman because they were not provided with all the required details of the Energy Ombudsman.
- 3.5. Compliance with the CHSR serves several purposes in order to protect the interests of consumers. Firstly, as a key indicator both for Ofgem and also its current and prospective customers, of how a supplier treats its customers. Secondly, it gives an adequate record of complaints allowing for appropriate management of customers and their complaints. Thirdly, correct information about the Energy Ombudsman and the timing of the letter signposting the scheme is essential so that consumers know about this free service and remedies available to them. It is likely that the incomplete information deterred some

customers from seeking redress in this way. Finally, a CHSR compliant complaints system assists the supplier to make necessary improvements to its customer service arrangements.

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

- 3.6. The Authority considers that imposing a financial penalty on British Gas is likely to incentivise compliance and help deter future breaches by sending a message to the company, its shareholders and the industry at large that a failure to adhere to regulations under the CHSR will not be tolerated.

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

If the contravention is trivial in nature

- 3.7. The Authority considers that the infringements are not trivial. The contraventions of the CHSR had a number of knock-on effects on compliance with the CHSR as a whole and the management of consumer complaints under them. The Authority considers that some customers would have suffered inconvenience and incurred additional time and costs when they had to repeat their complaint to British Gas as a result of British Gas' failure to record complaints properly and if they had not understood the nature of the Energy Ombudsman service.
- 3.8. In addition, domestic customers receiving an 8 week letter or a micro- business customer receiving a deadlock or 8 week letter were not given all the details of the Energy Ombudsman that they should have had. The Authority considers that the types of redress available to the customer and that redress, including financial compensation, would be binding on the supplier, is important information for a customer to have in order to make an informed decision. British Gas may have derived benefit from fewer customers referring their case to the Ombudsman. This could have saved a referral fee and potentially a further financial payout to a customer whose complaint had not been satisfactorily resolved by British Gas. In addition, there is a potential detriment to customers caused by not knowing all the required details of the Energy Ombudsman. There is a chance that a proportion of customers may not have referred their case to the Energy Ombudsman because they were not provided with all the required details of this service and therefore may have lost out on the potential of a financial award. Ofgem does not consider this potential benefit to British Gas and the detriment to British Gas' customers, trivial.
- 3.9. Finally, British Gas' micro-business customers would have suffered as a result of a number of failures in working practices and procedures arising from British Gas not complying with the CHSR.

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

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

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

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

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

#### **4. Criteria Relevant to the Level of Financial Penalty**

- 4.1 Under the Electricity Act 1989 and the Gas Act 1986 the Authority may impose a financial penalty up to 10 per cent of the annual turnover of the relevant license holder. Annual turnover is defined in the Regulations issued by the Secretary of State.<sup>1</sup> In the year ended 2010, British Gas' turnover was £12,730 million according to the Regulatory Accounts. On this basis, the maximum fine leviable is £1,273 million.
- 4.2 In arriving at the quantum of the penalty in this case, the Authority has considered the following factors in accordance with its Policy.

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

The seriousness of the contravention and failure

- 4.3 Compliance with the Regulations is a legal requirement upon regulated providers, contravention of which the Authority takes seriously. Ofgem has set out in paragraphs 3.3 to 3.5 above the likely impact of British Gas being in breach of the CHSR for around two and half years.

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

- 4.4 There is a degree of harm to the interests of individual micro-business consumers for the period in which British Gas did not have compliant complaint-handling arrangements, i.e. 1 October 2008 until the breaches were remedied. This is explained in more detail in paragraphs 3.3 to 3.5 above. Ofgem has examples of micro-business customers finding problems with the handling of their complaint by British Gas. It is reasonable to assume that some domestic and micro-business customers may have suffered harm or inconvenience or incurred additional costs purely as a result of not having their repeat complaint to British Gas clearly linked to their original complaint if they got in touch after 28 days. British Gas stated that the period of 28 days was a pragmatic choice, not based on, or resulting from consultation with customers as to its suitability.
- 4.5 British Gas did not discover its micro-business failings until a formal investigation into complaints handling commenced.

The duration of the contravention or failure

- 4.6 The breaches occurred for around two and a half years following the introduction of the CHSR, on 1 October 2008 (see paragraph 1.4 above). In respect of regulation 4, the breaches continued until July 2011. In respect of regulation 6, the breaches continued until April 2011. In respect of regulation 7, the breaches continued until February 2011.

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

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<sup>1</sup> The Electricity and Gas (Determination of Turnover for Penalties) Order 2002.

- 4.7 British Gas has benefitted in relation to micro-business complaints until 9 February 2011, by not having incurred the cost of allocating and maintaining the necessary resources required to enable them to receive, handle and process consumer complaints in an efficient and timely manner. The Authority notes that British Gas said that it has incurred significant costs during 2010 and 2011 in putting in place a remedial action plan.

*Factors tending to increase the level of any penalty*

Repeated contravention or failure

- 4.8 This is the first time that British Gas has been found to have contravened the CHSR.
- 4.9 The background to this investigation comes as a result of a PKF audit report and two Harris interactive research surveys. Although, British Gas has not been the subject of a prior enforcement action in relation to the CHSR, it should have been aware of the action Ofgem took in relation to EDFE in July 2010 when it concluded that EDFE had breached regulation 4(1) in failing to record all complaints received. All suppliers would therefore have been on notice to ensure that they were recording all complaints in accordance with the CHSR.
- 4.10 British Gas would have been aware of the findings in the PKF audit which stated *"At present, 5 different systems are used to record complaints from micro businesses. We understand that a new CRM system is to be implemented during 2009, although this was not operational at the time of our audit."* British Gas does not appear to have taken the steps as indicated in the audit to install a new CRM complaint handling system for its micro businesses. Installation of the new system would have helped ensure that micro business complaints were consistently received, handled and processed in an efficient and timely manner (see paragraph 4.12 below).

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

- 4.11 British Gas provided Ofgem with details of how it planned to devote resources to bring itself into, and maintain, compliance with regulations 4 and 7 of the CHSR.

The involvement of senior management in any contravention or failure

- 4.12 British Gas' senior management was responsible for ensuring the company would be compliant with the CHSR when they took effect in October 2008. Ofgem has received a number of responses from British Gas' senior management demonstrating the commitment British Gas has towards meeting the requirements of the CHSR.<sup>2</sup> It was, and is to date, aware of the need to implement proper complaint handling procedures.
- 4.13 In the PKF Audit report commissioned by Ofgem soon after the CHSR came into force, it was noted that a new CRM system for complaint handling arrangements

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<sup>2</sup> In its response to the PKF Audit on March 2009, in its response to Alistair Buchanan's letter of 30 June 2009 and in a letter to Maxine Frerk, Partner, Ofgem dated 31 July 2009.



for micro-business customers would “*be implemented in 2009*”<sup>3</sup> to replace the existing systems.

- 4.14 In a letter dated 7 September 2010 Phil Bentley admitted to Alistair Buchanan, Chief Executive of Ofgem, that British Gas had found that “*complaints procedures [had] been implemented on an inconsistent basis and that the ongoing training in place for staff [had] been inadequate. Regrettably, this [had] resulted in a number of failures in working practices and processes.*”.

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

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

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

- 4.16 The Authority acknowledges that British Gas reported under the Regulations and the CEAR Act as required and did not attempt to conceal the contraventions from Ofgem. British Gas complied fully with Ofgem’s requests for information. It admitted the micro-business breaches to Ofgem in its response to our information requests.

*Factors tending to decrease the level of any penalty*

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

- 4.17 The Authority notes that British Gas put in place a robust action plan for dealing with the breach of regulation 4 by the end of July 2011. It amended the noncompliant template letters about the Energy Ombudsman service to comply with regulation 6. British Gas has assured Ofgem that its revised micro-business complaint handling system has been up and running adequately since 9 February 2011.

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

- 4.18 British Gas has provided Ofgem with a plan to remedy the breaches identified in domestic and micro-businesses complaint handling arrangements.

Evidence that the contravention or failure was genuinely accidental or inadvertent

- 4.19 It has been more than two and a half years since the CHSR came into force and to date there is evidence that British Gas may never have been in full compliance with all aspects of the CHSR. However, Ofgem considers this has not been wilful on British Gas’ part.

Reporting the contravention or failure to Ofgem

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<sup>3</sup> PKF audit report March 2009.

- 4.20 British Gas said that it was not aware of its contraventions prior to commencement of the investigation. However, in response to the information requests it admitted its breach of the CHSR in relation to micro-businesses.

Co-operation with Ofgem's investigation

- 4.21 British Gas has co-operated fully with Ofgem's investigation.

**5. The Authority's Decision**

- 5.1 As a result of the matters set out above, the Authority has decided to impose a financial penalty on British Gas of £2.5 million which it considers is reasonable in all the particular circumstances of the case. This represents 0.02% of the company's turnover in 2010.
- 5.1. The penalty must be paid by 22 February 2012.

**Gas and Electricity Markets Authority**

**10 January 2012**