

Notice of decision to impose a financial penalty pursuant to section 30A(5) of the Gas Act 1986 and 27A(5) of the Electricity Act 1989

Decision of the Gas and Electricity Markets Authority to impose a financial penalty, following an investigation into British Gas Trading Limited and its compliance with its obligations under the gas and electricity supply licences¹ (Standard Licence Conditions 7A, 7B, 14², 14A and 21B) and with the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008.

29 June 2017

1. Summary

1.1. The Gas and Electricity Markets Authority ("The Authority") has decided to impose a financial penalty on British Gas Trading Ltd ("BG") following an investigation by the Authority into BG's compliance, in the context of its non-domestic supply business, with a number of relevant conditions and requirements set out in the Standard Licence Conditions ("SLCs") of BG's gas and electricity supply licences and the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008³ ("CHRs"). The SLCs set out the rules on how licensees must operate within the terms of their gas and electricity supply licences. The CHRs prescribe the minimum standards regulated providers are required to meet in the handling of consumer complaints.

1.2. The Authority found that BG breached⁴ the following relevant conditions and requirements⁵:

- SLC 14A – this SLC relates to customer registrations, and requires a licensee to take all reasonable steps to complete a supplier transfer within 21 days. The Authority found that this provision was breached between September 2014 and November 2015;
- SLC 21B.5 – this SLC relates to billing, and SLC 21B.5 specifically sets out the requirements on licensees regarding the frequency of billing. The Authority found that this provision was breached between January 2015 and November 2015;
- SLC 7A.10A – this SLC relates to information that a licensee is required to display on its micro-business customers' bills, and includes a requirement to display the contract end date on each bill. The Authority found that this provision was breached between March 2015 and July 2015;

¹ The SLCs considered within this Notice have similar wording in the Gas and Electricity Supply Licences and are interpreted by the Authority in a consistent manner. In this document, a reference to an SLC by number refers to the identical condition in both licences. All terms used in this Notice are deemed to have the same definitions as those in the Electricity and Gas Supply Licences or the CHRs, unless indicated otherwise.

² The investigation of British Gas' activities included consideration of SLC 14 (Customer Transfer Blocking). The Authority found that, based upon the evidence provided, British Gas did not breach SLC 14.

³ Statutory Instrument reference SI 2008/1898

⁴ SLC 14A and SLC 21B.5 relate to all non-domestic customers. SLC 7A, SLC 7B and the CHRs relate to micro-business consumers (see footnote 9 to paragraph 1.9 for the full statutory definition). BG has advised Ofgem that it treats all of its Small and Medium Enterprise (SME) customers as micro-business consumers. It takes the same approach in addition with some of its larger Industrial and Commercial (I&C) customers, where relevant consumption/turnover/employee criteria for the micro-business consumer definition are met.

⁵ "Relevant condition" and "relevant requirement" have the meanings set out in section 28(8) of and in Schedule 4B to the Gas Act 1986, and in section 25(8) of and in Schedule 6A to the Electricity Act 1989.

- SLC 7B (Standards of Conduct) – this SLC requires a licensee to take all reasonable steps to achieve the Standards of Conduct (“SOC”) and to ensure it interprets and applies the SOC in a manner consistent with the Customer Objective of ensuring that each micro-business customer is treated fairly. The Authority found that this provision was breached over a period between March 2014 and March 2016;
 - CHR 3(2) – this Regulation relates to a licensee’s compliance with its own complaints handling procedure. The Authority found that this provision was breached between March 2014 and December 2015;
 - CHR 7(1)(a) - this Regulation requires a licensee to receive, handle and process consumer complaints in a timely and efficient manner. The Authority found that this provision was breached between April 2014 and December 2015; and
 - CHR 7(1)(b) - this Regulation requires a licensee to allocate and maintain sufficient resources for timely and efficient complaint handling. The Authority found that this provision was breached between March 2014 and July 2015.
- 1.3. BG has admitted that it breached the relevant conditions and requirements set out above. It has acknowledged that its practices fell short of requirements in relation to practices involving billing, registrations, notification of contract terms, adhering to the SOC and complaints handling. It has made improvements in a number of areas since the investigation was opened, such that each of the breaches has now ended.
 - 1.4. The Authority took into account BG’s offers to settle this investigation and also to undertake to make both payments to its customers directly affected by the breaches, and payments to an appropriate charity identified by BG and approved by the Authority (“consumer redress”).
 - 1.5. The Authority considers that these consumer redress payments will be of greater benefit to business energy consumers than if a significant financial penalty were to be imposed. Accordingly the Authority considers it appropriate to impose a reduced financial penalty of £1 on BG provided that BG pays the sum of £9.5 million (less £1) in consumer redress. If BG had not agreed to settle this investigation by making these payments, the Authority would have considered it appropriate to impose a much larger penalty in view of the seriousness of the contraventions.
 - 1.6. The consumer redress shall predominantly be used to make payments to BG’s micro-business customers directly affected by the breaches. A portion of the consumer redress shall be used to fund the charity the Money Advice Trust (which provides the Business Debtline service). These redress payments will be used to provide debt advice services to business customers who are experiencing difficulties in paying their energy bills.
 - 1.7. The Authority takes all of the breaches set out in paragraph 1.2 very seriously. SLC 14A.1 requires a licensee to take all reasonable steps to complete a supplier

transfer within 21 days of the Relevant Date⁶ subject to certain exceptions⁷. Experiencing a delayed registration can have a detrimental impact on a business customer, because for each day that their registration is delayed they may incur higher tariff rates with their previous supplier for the energy they consume.

- 1.8. SLC 21B.5 requires that a licensee must make available a bill or statement of account to each of its customers at least twice a year, and at least quarterly to any qualifying customer⁸. These requirements do not apply to customers with a prepayment meter, a smart meter or to customers on unmetered supply. Not receiving a bill may, under certain circumstances, impact customer switching decisions, because bills can act as a prompt to switch supplier, for example to seek lower tariff rates. Also, by not receiving a bill some customers may unknowingly fall into debt.
- 1.9. SLC 7A.10A provides that, where the licensee has entered into a micro-business consumer⁹ contract, specified information must be provided on each bill and statement of account. The specified information, which includes the date the fixed term period of a micro-business consumer contract is due to end (i.e. the contract end date), must be displayed in a prominent position and drafted in plain and intelligible language. Micro-business consumers who did not receive a contract end date on their bill missed one of a number of prompts to consider either renewing their contract or switching supplier.
- 1.10. The SOC (under SLC 7B) is a principles-based licence condition that covers the behaviours and actions of suppliers when dealing with micro-business consumers, the provision of information to those customers and also covers effectiveness of customer service arrangements. Specifically, the SOC require suppliers (amongst other things) to:
 - (a) ensure that they behave in a fair, honest, transparent, appropriate and professional manner (SLC 7B.4(a));
 - (b) provide information that is complete and accurate and not misleading and provide information which is otherwise fair both in terms of content and in terms of how it is presented (SLC 7B.4(b)(i) and (iv)); and
 - (c) act promptly to put things right when suppliers make a mistake and otherwise ensure that customer service arrangements and processes are fit for purpose and transparent (SLC 7B.4 (c)(ii)-(iii)).

⁶ As defined in SLC 14A.12.

⁷ Exceptions under which the obligation to complete the supplier transfer within 21 days does not apply, include: if the customer requests that the supplier transfer be completed at a later date, if the customer notifies the licensee that it does not wish the supplier transfer to take place or one or more conditions in SLC 14A.3 applies.

⁸ A qualifying customer is defined in SLC 21B as a customer who requests quarterly billing or who has online account management.

⁹ "Micro-business Consumer" means a Non-Domestic Customer which in respect of premises other than domestic premises has

(i) an annual consumption of—

(aa) electricity of not more than 100,000 kWh; or

(bb) gas of not more than 293,000 kWh; or

(ii)

(aa) fewer than 10 employees (or their full time equivalent); and

(bb) an annual turnover or annual balance sheet total not exceeding Euros 2 million.

- 1.11. The CHRs are designed to ensure Regulated Providers (in this case, BG) have appropriate complaints handling systems in place to deal with micro-business customer complaints in a timely and efficient manner. These systems should have such a level of resources allocated to them, and maintained, to enable the receipt, handling and processing of such complaints in an efficient and timely manner, and as required under the CHRs. 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 Regulated Providers do something wrong.
- 1.12. The issues above arose during the implementation of BG's new billing system. The Authority welcomes programmes to improve customer service, and acknowledges both the complexity of business projects of this nature and the challenges they present to licensees. However, the Authority considered that the steps BG took to prevent service challenges did not fully mitigate the risks of disruption before they occurred. When significant issues did occur, BG did not always respond quickly enough and take sufficient action to resolve these issues. Ultimately, many of BG's non-domestic customers were detrimentally affected and suffered poor customer service for an unacceptable length of time.
- 1.13. The Authority recognised that when planning the migration to its new billing system, BG took steps to try to ensure that it remained compliant with its obligations as a licensee. BG used project management tools extensively and there is evidence that it took appropriate decisions during the pre-implementation phase, such as delaying the migration of some of its customer accounts in November 2013. Some decisions relating to the new billing system were also taken to the British Gas Business Customer Fairness Committee (CFC), which had a role in monitoring the implementation of the new system and assessing any impacts it had on customers.
- 1.14. As noted above in paragraph 1.3, all of BG's breaches have now ceased. BG expended significant costs to resolve issues with its new billing system, increased its staff resources in order to clear its backlog of customer complaints and also provided compensation to some of the affected customers. The Authority also notes that BG is now delivering a significantly improved billing performance compared to under its old systems.
- 1.15. Notwithstanding the matters set out in paragraphs 1.13 and 1.14 and applying the criteria identified in section 4 of this Notice, the Authority considered it appropriate to impose a penalty for the contraventions. The penalty takes into account the fact that the Authority found that BG breached SLCs 14A, 21B, 7A.10A, and 7B, and CHRs 3(2), 7(1)(a) and 7(1)(b) during various periods set out in paragraph 1.2.
- 1.16. In deciding whether to impose a penalty and the determination of the penalty amount the Authority had regard to the factors set out at section 4 of this Notice.
- 1.17. The Authority considered the amount of the penalty to be reasonable in all the circumstances of the case.

1.18. In the circumstances, and mindful of its principal objective, to protect the interests of existing and future consumers, and in recognition of the consumer redress payments to be made for the benefit of energy consumers as set out in paragraph 1.4, the Authority hereby gives notice under section 27(A)(5) of the Electricity Act 1989 and section 30A(5) of the Gas Act 1986 of its decision to impose a penalty of £1 on BG in respect of the contraventions set out above. The £1 penalty must be paid no later than 11 August 2017.

2. Background

- 2.1. The Slingshot programme started in 2012. In March 2014, after a period of system and controls testing, BG began migrating its non-domestic customers from a large number of legacy systems to a single SAP¹⁰-based billing system (named "Slingshot"). This process took until October 2014 to complete and in total 715,000 customer accounts were migrated.
- 2.2. The purpose of the Slingshot system was to enable BG to provide its business customers with an improved customer experience, by making available a number of beneficial services to them, including online account management.
- 2.3. In December 2014, BG self-reported to Ofgem that it was experiencing problems with the roll-out of the new billing system, including increased complaints, a large number of late bills and delayed registrations. Between January 2015 and September 2015, BG met with Ofgem on two occasions and corresponded with Ofgem by email.
- 2.4. In October 2015 Ofgem opened an investigation into BG's compliance with SLCs 7A, 14, 14A and 21B. This investigation was announced on 30 October 2015. In February 2016 the scope of the investigation was expanded to include SLC 7B (SOC) and CHRs 3(2), 7(1)(a) and 7(1)(b) of the CHRs.

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 BG has breached SLCs 14A, 21B, 7A.10A, and 7B, and CHRs 3(2), 7(1)(a) and 7(1)(b). Details of the contraventions are set out below, grouped together as follows:
 - Breach 1 relates to customer registrations, and requires a licensee to take all reasonable steps to complete a supplier transfer within 21 days (SLC 14A);
 - Breach 2 relates to billing, and the requirements on licensees regarding the frequency of billing (SLC 21B.5);
 - Breach 3 relates to the requirement to display the contract end date on each micro-business customer's bill (SLC 7A.10A);

¹⁰ Systems Applications and Products in data processing

- Breach 4 relates to the requirement of a licensee to take all reasonable steps to achieve the SOC in a manner consistent with the Customer Objective of ensuring that each micro-business customer is treated fairly (SLC 7B); and
- Breaches 5 – 7 relate to the CHRs, which require a licensee to:
 - Comply with its own complaints handling procedure (CHR 3(2));
 - Receive, handle and process consumer complaints in a timely and efficient manner (CHR 7(1)(a)); and
 - Allocate and maintain sufficient resources for timely and efficient complaint handling (CHR 7(1)(b)).

Breach 1: SLC 14A – Obligation to complete a Supplier Transfer within three weeks (September 2014 to November 2015)

- 3.2. Under SLC 14A, a licensee is required to take all reasonable steps to complete a supplier transfer within 21 days, unless one or more exemptions under SLC 14A.1 apply¹¹.
- 3.3. The Authority, having considered the evidence, found that BG failed to comply with SLC 14A and breached this requirement from September 2014 until November 2015. During this time 5,733 non-domestic customers experienced delayed registrations for reasons where there was no relevant exemption under SLC 14A.1.
- 3.4. The Authority found that BG did not take all reasonable steps to ensure compliance with SLC 14A. The Authority considered there were reasonable steps BG could have taken over and above the steps it did take, to improve its registrations process. Additional steps that the Authority considered that it would have been reasonable for BG to have taken include:
- More robust testing and piloting of the Slingshot system before migrations commenced, to ensure that all of its business customers (including the most complex multi-site customers) would have been registered within 21 days;
 - Having sufficient controls in place prior to the implementation of Slingshot to allow early visibility of problems and their root causes; and
 - More effective staff training on the registrations process.
- 3.5. The Authority noted that BG’s registrations process has now improved, and considered that this breach ended in November 2015.

Breach 2: SLC 21B.5 – Frequency of billing (January 2015 to November 2015)

¹¹ SLCs 14A.1 to 14A.12 were first introduced with effect from 10 November 2011. Modifications to SLC 14A, in particular a new SLC 14A.1 introducing the 21 day deadline for completing a supplier transfer, came into effect on 1 September 2014.

- 3.6. SLC 21B.5¹² requires a licensee to make available a bill or statement of account to each of its customers at least twice yearly and at least quarterly to any qualifying customer i.e. one who requests it, or who has online account management. These requirements do not apply to customers with a prepayment meter, a smart meter or to customers on unmetered supply.
- 3.7. The Authority found that from January 2015 to November 2015 BG breached SLC 21B.5. The number of non-domestic customers who did not receive a quarterly bill peaked in January 2015 at 44,675 (15% of qualifying customers) and fell to 19,002 in November 2015.
- 3.8. Billing is an essential service, providing customers with information on their energy usage, charges and tariff rates. For some customers, bills may act as an additional prompt for switching to a different tariff and/or supplier. Without accurate bills, some of BG's business customers would have lacked the information they required to make informed choices about switching their energy supplier.
- 3.9. The Authority noted that BG's billing performance has now improved, and considered that this breach ended in November 2015.

Breach 3: SLC 7A.10A – Supply to Micro-business Consumers: provision of contract end dates on bills (March 2015 to July 2015)

- 3.10. SLC 7A.10A provides that, where the licensee has entered into a micro-business consumer contract¹³, specified information must be provided on each bill and statement of account. The specified information, set out at SLC 7A.10B, includes the date the fixed term period of a micro-business consumer contract is due to end (i.e. the contract end date), which must be displayed in a prominent position and drafted in plain and intelligible language.
- 3.11. The Authority found that from March 2015 to July 2015 BG did not comply with obligations set under SLC 7A.10A. During the period above, a total of 388,734 of BG's micro-business customers did not receive a bill displaying a contract end date message. There are a number of different prompts, including a periodic bill, that customers on fixed-term contracts receive. These prompts are important because if a fixed-term contract customer remains with its energy supplier beyond its fixed-term contract end date without renewing its contract, it would typically move onto a more expensive variable rate.
- 3.12. Of the 388,734 micro-business customers who did not receive a contract end date on their bill, 60,872 did not receive another bill displaying a contract end date before the end date was reached. Although these customers did not receive

¹² SLC 21B.5 came into force on 31 December 2014.

¹³ A micro-business consumer contract includes a new non-domestic supply contract between a licensee and a micro-business consumer or an extension to an existing non-domestic supply contract with a micro-business consumer.

another bill displaying their contract end date the Authority recognised there are other ways BG notifies customers of their contract end date.

- 3.13. Other methods of communication BG uses include a renewal letter - called the D60 - and a D30 letter¹⁴ which are served 60 and 30 days before a contract end date respectively, reminding customers of their right to switch and what to do in preparation of the end of their contract. However, whilst the Authority recognised that customers were provided with contract end dates in other forms of communication, it remains the fact that they received less information than they should have done on their bills.
- 3.14. Although the majority of micro-business customers who did not receive a contract end date on their bill received a D60 and/or a D30 letter, BG also had some minor problems issuing these letters. 224 of the micro-business customers who received a bill without a contract end date on it did not receive any further communication (i.e. a bill, D60 or D30 letter) from BG displaying its contract end date before the end of their contract. These customers are likely to have suffered harm as they did not receive a timely reminder of their contract end date. BG did put in place two treatments to provide compensation or other appropriate remedies for customers affected by its problems with issuing renewal letters, and these 224 customers would have been covered by these measures.
- 3.15. The Authority noted that the Contract End Dates issue has now been resolved. This breach ended in July 2015.

Breach 4: SLC 7B - Standards of Conduct (March 2014 to March 2016)

- 3.16. Under SLC 7B, 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 micro-business consumer is treated fairly. The Authority found that BG failed to comply with SLC 7B and breached this requirement between March 2014 and March 2016¹⁵.
- 3.17 SLC 7B 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 7B 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 BG'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.
- 3.18 It should be noted that the SOC stands as a binding and enforceable obligation in its own right. It does not depend on identifying an existing obligation such as

¹⁴ A further renewal letter (additional to communications required by its licence obligations) which BG sends to its customers 30 days before the end of their contract to remind them of their option to switch supplier if they wish.

¹⁵ The Authority finds a single breach of SLC 7B. It should be noted that the different elements of the breach set out in the Three Stage Test (in paragraphs 3.21 – 3.25) arose and were resolved at varying dates between March 2014 and March 2016. All had been resolved by the latter date.

another SLC or under the CHR. However, just as the same facts or behaviour can evidence a breach of more than one relevant condition or requirement, it can also be the case, as in this present investigation, that the facts relevant to consideration of possible breaches of other SLCs or CHR may also be relevant to possible breaches of the SOC.

3.19 SLC 7B relates only to micro-business customers in the context of certain “designated activities” defined at SLC 7B.12 as:

- (a) the accuracy of a Bill or statement of Account;*
- (b) the timeframe for a Micro-business Consumer receiving a Bill or statement of account and the timeframe for the payment of a Bill;*
- (c) any written or oral communications regarding Billing or Contractual Information;*
- (d) Customer Transfers;*
- (e) any matters relating to Deemed Contracts; and*
- (f) any matters which fall within the scope of standard conditions 7A, 14, 14A and 21B (in so far as they relate to a Micro-business Consumer).*

The Authority is satisfied that the various behaviours identified at paragraph 3.21, fall within the scope of the “designated activities”. The nature of the evidence that the case team gathered highlighted a range of issues that resulted in some of BG’s micro-business customers not being treated fairly in the context of a range of designated activities. These included problems as to poor or inaccurate communications between BG and its customers regarding billing and contractual information (often in the context of the mishandling of consumer complaints, such as in relation to the opening and closing of complaints, delay in their resolution or failure to alert customers as to their rights to seek an Ombudsman’s adjudication), the delayed provision and inaccuracy of bills, and complaints concerning customer transfers. These issues arose because of BG’s failure to take all reasonable steps to protect all of its micro-business customers from serious and unfair adverse effects during its SAP implementation and, when there were problems with its SAP implementation, BG’s failure to take all reasonable steps in response to these issues.

3.20 The Authority considered three factors within SLC 7B (“the Three Stage Test”), in assessing whether BG breached this provision:

- (1) relevant behaviours (actions or omissions) that infringe the SOC set out in SLC 7B.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 7B.3; and
- (3) in relation to any identified actions and omissions which were not “fair” within that meaning, whether BG 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 micro-business consumer was treated fairly.

1: BG’s behaviours and omissions infringed the SOC, particularised in SLC 7B.4(a) – (c)

3.21 The Authority found that BG failed to meet the SOC in respect of the “designated activities” under SLC 7B through its following actions or omissions:

- Poor customer outcomes: BG’s customers experienced a significant drop in customer service following the implementation of Slingshot, which is shown by the increased number of non-domestic complaints BG received. Prior to the implementation of the system, these were at the level of around 9,500 per month, but they increased significantly towards the end of 2014, and during the first half of 2015 reached the level of around 18,000 per month. BG did not, “act promptly to put things right” for customers (7B.4(c)(ii)) and failed to provide information which was, “complete, accurate and not misleading” (7B.4(b)(i)). Customers did not always have their complaints opened and closed properly, meaning they did not always go through a proper complaints process, and also that the age of some complaints was artificially reduced. Between November 2014 and August 2015, an average of 45% of open complaints (or 5,872 per month on average) were over 56 days old, with a peak of 8,527 complaints in May 2015. Some straightforward complaints took much longer than they should have done to resolve because of issues with Slingshot which prevented staff from carrying out the required actions. Some customers whose complaints were open for 56 days weren’t signposted to the Energy Ombudsman.
- Poor communications in relation to SLC 14A compensation: In December 2014, BG started sending out letters to customers identified by BG as being affected by the late registration issue. In the letter sent, BG apologised and invited customers to contact BG if they had incurred additional charges, although the letter did not make it clear that customers were entitled to receive compensation. Those contacted only received compensation if they responded to BG and provided specific information that allowed BG to calculate the compensation due. Despite identifying the affected customers, BG only wrote once to each of these customers and did not make any attempt to contact them by other means, such as by telephone. Less than a quarter of customers responded to these letters. The Authority considered that BG failed to, “act promptly to put things right” for affected micro-business customers (7B.4(c)(ii)) and failed to provide information which was, “complete, accurate and not misleading” (7B.4(b)(i)). Furthermore the Authority considered that BG was not sufficiently clear about the availability of compensation where a consumer had suffered detriment meaning that its communications were not, “fair in terms of content and in terms of how that content was presented” (7B.4(b)(iv)).
- Inaccurate billing and failure to issue bills: The monthly percentage of SME (Small and Medium Enterprise – please see footnote 4 to paragraph 1.2) customer bills issued by BG prior to the implementation of Slingshot was between 87% and 88%. In May, June and July 2014, the percentage fell below 80% and didn’t consistently return to pre-Slingshot levels until January 2015. During the first quarter of 2015, the number of SME customers that BG hadn’t billed accurately for at least two consecutive billing cycles reached an average of 45,000 per month. Between March 2014 and September 2015, BG

issued 19,065 invoices to customers based on an incorrect energy consumption of zero. Through inaccurate billing and its failure to bill, BG failed to act, "in a fair, transparent, appropriate and professional manner" towards its customers (7B.4(a)), and failed to provide information which was, "complete, accurate and not misleading" (7B.4(b)(i)).

- Not using customer service arrangements and processes that were fit for purpose: As well as implementing Slingshot, BG was undertaking a wider business transformation programme during 2014. BG expected to need fewer staff as Slingshot would improve productivity and reduce customer demand. This expectation translated into a 3 year plan with gradually reducing FTE. Prior to the implementation of Slingshot, BG decided to delay backfilling staff positions despite the steady increase in the number of open complaints. BG therefore provided services to its customers that were not, "fit for purpose" (7B.4(c)(iii)).
- Customers not contacted for extended periods of time: BG failed to communicate promptly with all micro-business customers. In September 2015, BG estimated that up to 17,000 of its micro-business customers may not have been contacted in any way, including as a result of missed bills, by BG within the past three months. These customers may have been unaware of the problems affecting their accounts, and if so, would not have been in a position to make contingency plans while the problems were dealt with. Therefore BG failed to provide information to customers which was, "complete, accurate and not misleading" (7B.4(b)(i)), and failed to behave in an, "appropriate and professional manner" (7B.4(a)). In October 2015 Ofgem required BG to write to this group of customers, and BG completed this process in December 2015.

2: Fairness of BG's actions or omissions

3.22 SLC 7B.5 requires the licensee to interpret and apply the SOC in a manner consistent with the Customer Objective. Under SLC 7B.2 the Customer Objective is for the Licensee to ensure that each Micro-business Consumer is treated fairly. SLC 7B.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 Micro-business Consumer.

BG's actions and omissions significantly favoured its interests - 7B.3(a)

3.23 The Authority found that owing to the actions and omissions referred to above, BG's interests were significantly favoured. These actions include:

- Financial gains: Energy Ombudsman fees – By artificially reducing the length of time some complaints were open and not signposting some customers to the Energy Ombudsman, BG reduced the number of complaints that went to the Energy Ombudsman. Each of these would have attracted a case fee and a financial remedy, which BG has not had to pay. **SLC 14A compensation letters** – BG benefited from only sending out one letter

which did not make it sufficiently clear that compensation was available to each affected customer. The Authority considered that this would have reduced the likelihood that its customers would respond: under a quarter of those contacted responded. BG has retained the money that should have gone to affected customers.

- Under-stating complaints levels: By not opening some complaints when it should have and closing some complaints before they had been fully resolved, BG artificially reduced its complaint figures and improved its appearance in published statistics. The Authority acknowledged that BG did not under-state its complaints levels knowingly, but nevertheless did so as a result of its failures to always open and close complaints correctly. By artificially reducing the length of time complaints were open and not signposting customers to the Energy Ombudsman, BG artificially reduced the number of complaints that went to the Energy Ombudsman and therefore improved their standing in the statistics published by the Energy Ombudsman.
- Customer retention: By not being sent bills, or where these were delayed, some business customers did not receive an important prompt to consider switching. These customers would have found it more difficult to calculate potential savings from switching in the absence of accurate billing information and might have therefore been more likely to remain with BG. Poor customer service, including not sending bills, might have caused some customers to disengage with the market. It was accepted that after initial problems emerged BG acted to reduce levels of delayed bills and contacted customers to explain problems with the billing system. In addition it was accepted that BG allowed some customers to switch despite being in debt and that levels of billing have significantly improved to date, with unbilled accounts now largely relating to factors such as de-energised sites, changes in tenancy where details are sometimes hard to come by and delays in industry data flows of information.

BG's actions and omissions gave rise to a likelihood of detriment to its customers 7B.3 (b)

3.24 The Authority considered that BG'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 micro-business customers. Poor outcomes for these customers included:

- being denied the opportunity to go to the Energy Ombudsman to have their complaint resolved, and receive the remedy that might have followed;
- not receiving the compensation they might have been entitled to, due to the delay to their registration with BG;
- losing business time from having to contact BG repeatedly to have their issues resolved, and experiencing distress and frustration due to the extended time taken to resolve complaints; and

- not receiving information from BG that could have helped them make an informed switching decision thereby limiting their exposure to suppliers who could have provided a better service and / or a more competitive tariff.

3: BG failed to take all reasonable steps to achieve the SOC – 7B.5

3.25 The Authority found that in relation to identified actions and omissions which were not fair within the meaning of SLC 7B.3, BG 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 BG did not take sufficient action and did not take actions quickly enough to resolve its issues. The Authority considered that it would have been reasonable for BG to have taken additional steps to achieve the SOC including:

- Ensuring its new billing system was fit for purpose from the outset: Slingshot delivered poor outcomes for many business customers from the point in time that they were migrated to it until the issues were resolved. A reasonable step would have been for BG to have gone further in ensuring its new billing system could deliver against all of its customers' requirements, before commencing customer migrations.
- Monitoring: BG failed to put in place adequate monitoring processes and management information regarding the accuracy of its micro-business customers' bills during the transition to the new billing system. Analysis of the root causes of some system issues could also have taken place at an earlier stage.
- Resourcing: BG failed to take the reasonable step of having sufficient complaints handling staff resources in place at an early enough stage. This would have allowed BG to avoid the build-up of a backlog of complaints and many customers would have had their complaints resolved sooner.
- Communication: Regarding the compensation letters for customers that had suffered delays to their registrations, BG failed to take the reasonable step of attempting to contact its customers by issuing more than one letter, and failed to contact customers by any other means.
- Planning: It would have been a reasonable step for BG to have managed the planning of its other business transformation projects differently to ensure that the issues arising from Slingshot weren't further compounded. This would have reduced the impact of the problems with Slingshot because complaints would have been handled by more experienced staff.

3.26 In conclusion, the Authority found that BG breached SLC 7B between March 2014 and March 2016.

Breach 5 - 7: Complaints Handling Regulations (CHRs)

Breach 5: CHR 3(2) – requirement for a licensee to comply with its own complaints handling procedure (March 2014 – December 2015)

- 3.27 CHR 3(2) requires that each regulated provider must comply with its complaint handling procedure in relation to each consumer complaint it receives.
- 3.28 The Authority found that from March 2014 until December 2015, BG did not always comply with its own complaints handling policy. BG’s policy for complaints handling¹⁶ was consistent during the implementation of the Slingshot system in stating to BG’s customers, amongst other factors, that BG would:
- Always aim to respond promptly to your complaint
 - Treat you with fairness and courtesy at all times
 - Take action to put things right
- 3.29 The Authority found on the evidence produced¹⁷ that between March 2014 and December 2015, BG failed to comply with its own complaints policy by not always responding promptly to customer complaints, by not treating customers with fairness and by not always taking action to put things right. The two primary causes of the failure to comply were:
1. Complaints were not received, handled and processed in a timely and efficient manner (please also see paragraphs 3.31 to 3.34 below regarding CHR 7(1)(a))
 2. BG prematurely closed a significant proportion of complaints which were materially unresolved with actions still outstanding.
- 3.30 The Authority found that this breach began in March 2014 and ended in December 2015.

Breach 6: CHR 7(1)(a) - requirement for a licensee to receive, handle and process consumer complaints in a timely and efficient manner (April 2014 – December 2015)

- 3.31 CHR 7(1)(a) - requires a supplier to receive, handle and process complaints in an efficient and timely manner.
- 3.32 The sample of complaints provided by BG shows a 47% breach rate of CHR 7(1)(a)¹⁸, from which the Authority can conclude with 95% confidence that

¹⁶ Three different versions of BG’s complaints handling policy for business consumers were in use during the implementation of Slingshot, but all three versions included the policy items listed at paragraph 3.28.

¹⁷ BG provided Ofgem with a representative sample of 100 complaints records, and their associated documentation.

¹⁸ Based on a representative sample of 100 micro-business complaints, taken from a population of 380,624 complaints from the date range October 2013 to June 2016.

between 141,000 and 216,000 micro-business customer complaints were not processed in a timely and efficient manner by BG¹⁹.

3.33 BG failed to meet the requirement to receive, handle and process complaints in an efficient and timely manner during the implementation of its new billing system. This led to a variety of poor outcomes for BG's micro-business customers, as follows:

- there were significant increases in the length of time taken to resolve complaints, and as a result BG did not process a significant proportion of complaints within a reasonable timeframe (April 2014 – December 2015). This meant that customers spent more time than was acceptable in reporting complaints and seeking updates on open complaints;
- BG did not record and deal with some complaints properly, leading customers to contact BG several times (April 2014 – December 2015);
- BG closed some complaints prematurely when they were still unresolved (April 2014 – December 2015); and
- there were high numbers of calls to BG that were abandoned of which some would have been complaints, and therefore these complaints were not received or handled at all (April 2014 – August 2015). This meant that some customers did not pursue a complaint when normally they would have.

3.34 The Authority found that this breach began in April 2014 and ended in December 2015.

Breach 7: CHR 7(1)(b) – requirement for a licensee to allocate and maintain sufficient resources for timely and efficient complaint handling (March 2014 – July 2015)

3.35 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.

3.36 The main reason for this failing was that BG delayed in backfilling staff vacancies at the beginning of the Slingshot rollout in early 2014, because it expected to need fewer staff once its customer migrations had commenced. In the event, BG's levels of received complaints increased during 2014, leading to the development of a backlog which continued into 2015. BG increased its complaints handling staff resources in 2015 and returned to a position of having sufficient numbers of customer service agents in place by August 2015.

3.37 The lack of suitable resourcing during the breach period contributed directly to the poor outcomes associated with Breach 6.

¹⁹ The range given reflects the fact that the 95% confidence interval for a breach rate of 47% is +/- 9.78%.

3.38 The Authority found that this breach began in March 2014 and ended in July 2015.

Investigation into SLC 14 – Customer transfer blocking

3.39 SLC 14 states a licensee must not (in the context of non-domestic supply) make a request to prevent a proposed supplier transfer except in accordance with certain specific provisions.

3.40 The BG contract for business, applicable during the relevant time period, namely January 2014 to November 2015, states that an objection may be raised if:

- A termination notice is not received;
- If the customer is in debt greater than 28 days or has outstanding debt on another gas or electricity account; and
- If a customer tries to leave within a fixed term contract.

3.41 BG advised that it withdrew any invalid objections within one day which is within the industry standard timeframe for clearing such objections. The Authority considers that by withdrawing objections within industry accepted timeframes, the customer transfer journey would not have been adversely impacted, and therefore there was no consumer detriment present.

3.42 The Authority found that, based upon the evidence provided, BG did not breach SLC 14.

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"²⁰). In November 2014, the Authority introduced a new policy ("the 2014 Penalty Statement"²¹) 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.

²⁰ The Authority's statement of policy with respect to financial penalties (October 2003): <https://www.ofgem.gov.uk/ofgem-publications/74207/utilities-act-statement-policy-respect-financial-penalties.pdf>

²¹ The Authority's statement of policy with respect to financial penalties and consumer redress (6 November 2014): <https://www.ofgem.gov.uk/ofgem-publications/91201/financialpenaltiesandconsumerredresspolicystatement6november2014.pdf>

- 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 conditions and requirements

Relevant conditions and requirements	Breach period
Breach 1 – SLC 14A – Obligation to complete a Supplier Transfer within three weeks	Sep 14 – Nov 15
Breach 2 – SLC 21.B – Frequency of billing	Jan 15 – Nov 15
Breach 3 – SLC 7A.10A – Supply to Micro-business Consumers: provision of contract end dates on bills	Mar 15 – Jul 15
Breach 4 – SLC 7B – Standards of Conduct	Mar 14 – Mar 16
Breach 5 – CHR 3(2) – Complaints handling policy	Mar 14 – Dec 15
Breach 6 – CHR 7(1)(a) – Timely and efficient complaints handling	Apr 14 – Dec 15
Breach 7 – CHR 7(1)(b) – Allocation of resources	Mar 14 – Jul 15

- 4.3 The Authority considered that for breaches 2 and 3, the penalty should be determined with reference to the 2014 Penalty Statement only.
- 4.4 The Authority considered that for the other five breaches (breach 1 and breaches 4-7) both the 2003 and 2014 Penalty Statements applied, and it therefore decided to determine the penalty by reference to both the 2003 and 2014 Penalty Statements.
- 4.5 For all breaches, the behaviour in question came to the attention of the Authority after 1 June 2014. For those breaches that occurred before November 2014 and to which the 2003 Penalty Statement applied, the Authority applied the approach set out in the letter dated 27 March 2014 from the Chairman of the Authority²² that, in respect of those breaches, the level of any penalty must reflect the importance it places on deterring future breaches. The Authority also noted the emphasis placed within the Chairman’s letter on the importance of companies promptly self-reporting issues, and putting right any non-compliance that they have identified.
- 4.6 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,²³ having regard to its other duties.

²² Chairman’s letter on future financial penalties 2014 - <https://www.ofgem.gov.uk/ofgem-publications/86815/theauthorityspositiononfuturefinancialpenaltiesletter27march2014.pdf>

²³The 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.

- 4.7 In deciding whether it was appropriate to impose a financial penalty, the Authority considered all the circumstances of the case including, but not limited to, the specific matters set out in the 2003 and 2014 Penalty Statements and representations made by BG. These matters are examined in detail below.

2003 Penalty Statement - 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

- 4.8 The Authority found that BG's failings led to detriment to many of its business customers. The migration to the new billing and customer service system led to BG experiencing significant billing issues, which in turn led to increased levels of customer complaints. When customers complained, in many cases BG did not record or handle the complaint correctly, and closed the complaints prematurely. This led to some customers having to call back about issues that should have been resolved more quickly. In addition, BG did not have sufficient resources in place to deal with all complaints in a timely and efficient manner. As a result, many customers who called BG were left on hold for longer than they might have expected, which led to high numbers of customers abandoning their calls.
- 4.9 There were occasions where BG did not open all complaints they should have. Consequently, these customers may have been inhibited in seeking redress through the Energy Ombudsman.
- 4.10 The overall impact was 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.
- 4.11 The Authority also noted that some customers that wished to switch supplier to BG experienced delays to their transfer. Only some of those customers were compensated.
- 4.12 The Authority therefore considered that the breaches caused significant damage to the interests of some of BG's business customers.

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

- 4.13 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. The Authority is supportive of system investments such as Slingshot, and recognises the challenges posed by large scale IT projects of this nature. The imposition of a penalty in this case creates the right incentives around the need for regulated parties to prepare appropriately for major system implementations, and to put appropriate recovery plans in place.

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

If the contravention is trivial in nature

4.14 The Authority considered that BG's breaches of the SLCs and the CHRs were not trivial.

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

4.15 The Authority considered that its principal objective and duties, as set out in section 3A of the Electricity Act 1989 and section 4A of the Gas Act 1986, did 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

4.16 The Authority considered 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. In addition, BG was on notice of the issues on the CHRs following Ofgem's formal investigation in 2012 and was fully aware of the need for extra vigilance to ensure compliance in this area.

2014 Penalty Statement - General Criteria in relation to imposing a financial penalty and/or making a consumer redress order

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

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

4.17 The Authority found that BG's failings led to detriment to many of its business customers, for the same reasons as those set out in paragraphs 4.8 to 4.12 above.

4.18 Furthermore, the Authority found that both by not billing all of its customers on time, and by failing to display contract end dates correctly on all of its bills, some of BG's business customers would not have had access to all the information they required to make an informed choice about switching their supplier. Some business customers might have stayed with BG who otherwise would have been prompted to switch to another provider, or to a more competitive tariff.

Whether the contravention or failure has damaged, or could have damaged, the confidence that consumers and/or other market participants have in the market

4.19 The Authority considered that these contraventions could have damaged the confidence that BG's customers have in the market. The standard of customer service that some consumers received was not of an acceptable level, and could lead to a lack of belief among these consumers that the GB energy retail market is functioning effectively.

A penalty and/or a consumer redress order is necessary to deter future contraventions or failures and to encourage compliance

4.20 The Authority considered that imposing a financial penalty and/or a consumer redress order in this case was necessary to create an incentive for compliance and deter future breaches generally. The Authority is supportive of system investments such as Slingshot, and recognises the challenges posed by large scale IT projects of this nature. The imposition of a penalty in this case creates the right incentives around the need for regulated parties to prepare appropriately for major system implementations, and to put appropriate recovery plans in place.

Whether the contravention or failure was deliberate or reckless

4.21 The Authority considered that BG's contraventions were unintended side effects of its billing system implementation. BG's failure to effectively manage the transition between its old and new billing systems resulted in serious breaches of licence conditions and the CHRs, with negative outcomes for many of its business customers. The Authority did not find that the contravention was deliberate or reckless.

Whether the circumstances from which the contravention or failure arose were or should have been within the control of the regulated person under investigation

4.22 The Authority considered that BG was in full control of the customer outcomes resulting from the implementation of its new billing system. The Authority noted that BG began its planning for the billing system transition over two years before the first account migrations took place; it did not consider that BG's failures were due to external factors.

Whether the contravention or failure (or possibility of it) would have been apparent to a regulated person acting diligently

4.23 The Authority considered that the breaches would have been apparent to a regulated person acting diligently. BG would have been aware that the implementation of a major new billing system could have the potential to cause undesirable outcomes for its business customers.

Whether there was a lack of effective remedial action after the contravention or failure became apparent to the regulated person

4.24 The Authority noted that since the opening of the investigation, BG has now remedied all of the breaches. The Authority also noted that BG proactively attempted to remedy each of its contraventions during the course of the Slingshot system implementation once they became apparent.

Whether the regulated person has a record of previous contraventions or failures, similar or otherwise

4.25 The Authority noted that in the 2012 investigation BG was found to be in breach of CHRs 4, 6 and 7. Therefore, BG has a record of previous contraventions of both

the CHRs generally, and of CHR 7 specifically. The Authority considered BG was fully aware of the need for extra vigilance to ensure compliance with the CHRs.

5 Determining the amount of a financial penalty and/or amounts payable under a consumer redress order

- 5.1 The 2003 and 2014 Penalty Statements set out two different approaches to determining the level of financial penalty in relation to this matter. In deciding the appropriate level of financial penalty, the Authority considered each of these approaches in turn below. For breach 1 and breaches 4-7 to which the 2003 Penalty Statement applies, the Authority also applied the approach set out in the Chairman's Letter (please see paragraph 4.5 above).
- 5.2 In accordance with section 270 of the Electricity Act 1989 and section 300 of the Gas Act 1986, the Authority may impose a financial penalty of up to ten per cent of the turnover of the relevant licence holder (this is also set out in both the 2003 and 2014 Penalty Statements²⁴). Turnover is defined in an Order made by the Secretary of State²⁵. The Authority is satisfied that the proposed penalty does not exceed ten per cent of the turnover of BG.

2003 Penalty Statement

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

The seriousness of the contravention and failure and continuation of contravention

- 5.3 The Authority considered that BG's failure to comply with SLC 7B and SLC 14A as well as three of the CHRs was serious and took this into account in deciding the level of penalty. This was particularly the case because of the large number of business 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 considered that affected customers were harmed by the contraventions after taking into account compensation already paid by BG, and calculated the amount of consumer harm arising from these breaches which falls under the 2003 Penalty Statement.

The duration of the contravention or failure

- 5.5 The Authority considered the duration of the contraventions overall to be significant, with some of the breaches lasting eight months as assessed under the 2003 Penalty Statement.

The gain (financial or otherwise) made by the licensee

- 5.6 The Authority considered that BG made a gain in the following ways:

²⁴ Please see paragraph 5.5 of the 2003 Penalty Statement, and paragraph 5.4 of the 2014 Penalty Statement.

²⁵ The Electricity and Gas (Determination of Turnover for Penalties) Order 2002.

- Closing complaints prematurely – BG avoided Energy Ombudsman case fees by not always signposting customers to the Energy Ombudsman correctly, and by closing some customer complaints before they were fully resolved. This also meant BG under-stated its complaints levels, reducing the level of its negative publicity;
- Insufficient resourcing – BG deferred the costs of adequately resourcing its customer contact centres under the breach of CHR 7(1)(b);
- Compensation letters for delayed registrations - BG gained from only sending out one letter which did not make it sufficiently clear that compensation was available to each affected customer, which the Authority considers would have reduced the likelihood that its customers would respond; and
- Not processing complaints – BG avoided the costs of handling complaints and potential Energy Ombudsman fees by not correctly opening complaints.

5.7 However, the Authority acknowledged that BG allowed its customers to leave BG's supply in debt if that debt was related to BG's failure to produce a bill. Additionally, the Authority acknowledged that BG expended significant costs to resolve issues arising from the implementation of the Slingshot system and in providing compensation. If it had not taken these actions the Authority would have considered it appropriate to impose a higher penalty.

Factors tending to increase the level of penalty

Repeated contravention or failure

5.8 BG has previously contravened CHR 7. This factor applied to a significant extent.

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

5.9 BG was aware of its contraventions when they arose. Those failures continued after BG was aware of them. The Authority recognised that BG attempted to remedy those continuing failures, but considered that this factor applied.

The involvement of senior management in any contravention or failure

5.10 Although the actions taken by BG's senior management overall were not effective enough to prevent breaches of the SLCs and CHRs occurring, the Authority did not consider that the actions of BG's senior management caused the breaches. Therefore this factor did not apply.

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

5.11 The Authority noted that the mechanisms and procedures that BG put in place were not adequate. BG did not effectively identify all the risks of poor outcomes for its customers prior to the implementation of Slingshot. This failing was taken into account by the Authority in establishing the contraventions of the relevant SLCs and CHRs which occurred, and their seriousness. However, the Authority

noted that the issues were around the adequacy of BG's mechanisms or procedures rather than the absence of them. Therefore this factor did not apply.

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

5.12 The Authority did not see any evidence that suggested that BG attempted to conceal the contravention or failure. BG also self-reported its issues relating to the Slingshot implementation in December 2014. Therefore this factor did not apply.

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

5.13 BG did take some steps to achieve compliance, and there is evidence that BG's senior management supervised the implementation of its new billing system. However, the Authority considered that these steps were not effective enough. It is noted, however, that BG expended considerable resources in its efforts to remedy the deficiencies in its Slingshot billing system, bringing its operations back into compliance. Therefore this factor partially applied.

Appropriate action by the licensee to remedy the contravention or failure

5.14 The Authority noted that the breaches have all now ceased. BG has made significant improvements to its billing and customer registrations processes, and has also increased its resourcing for customer complaints. BG's actions to remedy the contraventions were not taken during the time period that the 2003 Penalty Statement applied, but the Authority was of the view that it would be appropriate for BG to benefit from this mitigating factor despite the limitation period of the 2003 Penalty Statement. Therefore this factor applied.

Evidence that the contravention or failure was genuinely accidental or inadvertent

5.15 The Authority considered that BG did not seek to breach the SLCs and CHRs. However, the Authority also considered that the problems BG encountered were within its control and therefore could not be treated as genuinely accidental or inadvertent. Therefore, the Authority considered that this factor did not apply.

Reporting the contravention or failure to the Authority

5.16 The Authority noted that BG self-reported its issues relating to the Slingshot implementation in December 2014. It did not report the contravention during the time period that the 2003 Penalty Statement applied, but the Authority was of the view that it would be appropriate for BG to benefit from this mitigating factor despite the limitation period of the 2003 Penalty Statement. Therefore this factor applied.

Co-operation with the Authority's investigation

- 5.17 The Authority noted that BG was generally co-operative throughout the investigation. It met most deadlines for information requests, provided responses that were prompt and of the required standard. Senior management were engaged throughout, including during Ofgem's site visit to BG's call centre. BG also continued providing voluntarily monthly reporting metrics to assist with Ofgem's investigation. However, the Authority considered that no behaviours were identified that went beyond what would be expected of any regulated party involved in enforcement action.
- 5.18 The Authority also noted BG's willingness to settle the investigation early, which reduced the resources the Authority would have used if the case continued. Therefore to this extent this factor applied and a discount was given.

Application of the Chairman's letter (for breaches falling under the 2003 Penalty statement)

- 5.19 The Authority took the position set out in the Chairman's Letter that, in respect of those breaches coming to its attention after 1 June 2014, the level of any penalty must reflect the importance it places on deterring future breaches. In setting the level of penalty for such breaches, the Authority took into consideration its stated position on deterrence of future breaches as set out in the Chairman's Letter. The Authority also considered that BG self-reported, and took action to put things right.
- 5.20 The Authority considered that the penalty it imposed in respect of the breaches under the 2003 Penalty Statement in this case would act to deter future breaches and ensure that there were visible and meaningful consequences for BG from its non-compliance.

The Authority's decision under the 2003 Penalty Statement

- 5.21 The Authority considered all of the circumstances of the case when determining the appropriate level of penalty under the 2003 Penalty Statement.
- 5.22 Having taken all the above factors into account, the Authority considered that it would be appropriate in the circumstances of this investigation to impose a penalty of £2.3m on BG.
- 5.23 However, in the circumstance that BG is to pay £2.3m by way of consumer redress as set out at paragraph 1.6, the Authority has imposed a penalty of £1 (which will be a single payment, in respect of the breaches covered by the 2003 Penalty Statement and by the 2014 Penalty Statement). The Authority considered this penalty to be reasonable in all the circumstances of the case.

2014 Penalty Statement

5.24 The 2014 Penalty Statement, which came into force in November 2014, requires that a six step process is followed in order to determine the level of financial penalty²⁶:

1. Calculate the gain and detriment;
2. Assess seriousness;
3. Consider aggravating or mitigating factors;
4. Consider an adjustment for deterrence;
5. Apply a discount in settled cases; and
6. Establish the total financial liability.

The Authority therefore assessed the breaches which occurred within the period which falls under the 2014 Penalty Statement with reference to this six step framework.

1 Consider the gain and detriment

5.25 The Authority identified financial gain and consumer detriment associated with all of BG's breaches totalling £5.4 million, of which 72% comprising a total of £3.9m of the gain and detriment is attributable to the breaches that occurred after the 2014 Penalty Statement came into force.

5.26 The Authority considered that consumer detriment from the breaches arose in four areas, namely:

- Unclaimed compensation from customers that experienced delays to their registrations - BG only sent out one letter which did not make it sufficiently clear that compensation was available to each affected customer, which the Authority considered would have reduced the likelihood that its customers would respond. Under a quarter of BG's customers who were sent letters responded, and therefore only these customers received compensation;
- Time spent complaining – BG experienced a significant increase in the number of complaints it received during the implementation of the new billing system. These additional complaints represent a tangible detriment to customers as they expended time and energy complaining to BG;
- Abandoned calls – Some of BG's customers that wanted to complain were unable to get through to BG within a period of time they would have considered acceptable because BG was struggling to cope with the volume of calls it was receiving. These customers expended time and energy without managing to raise their complaints; and
- Energy Ombudsman remedies – on the evidence produced, BG failed to signpost all the complainants to the Energy Ombudsman that it should have, and also closed some complaints prematurely. Therefore, some

²⁶ Please see section 5 of the 2014 Penalty Statement (pages 5-10).

customers' complaints, which should have become Energy Ombudsman cases, did not. These BG customers may have been prevented from receiving the remedies and/or compensation they may have been due.

- 5.27 The Authority considered that financial gain from the breaches arose in two areas:
- Deferred resourcing costs – BG delayed in backfilling staff vacancies at the beginning of the Slingshot rollout in early 2014, which led to a backlog of complaints building up. Later, BG increased its staff resources and was able to clear this backlog. However, the Authority considered that BG in effect deferred some of its staffing costs, and benefited financially from doing so; and
 - Energy Ombudsman case fees – by failing to signpost all the complainants to the Energy Ombudsman that it should have (please see paragraph 5.26 above), BG also avoided the costs of Energy Ombudsman case fees for the cases that were not opened.

5.28 However, the Authority acknowledged that BG allowed its customers to leave BG's supply in debt if that debt was related to BG's failure to produce a bill. Additionally, the Authority acknowledged that BG expended significant costs to resolve issues arising from the implementation of the Slingshot system and in providing compensation. If it had not taken these actions the Authority would have considered it appropriate to impose a higher penalty.

2 Assess seriousness

5.29 In assessing seriousness, the Authority considered the nature and impact of the breaches. In terms of their nature, the duration of these breaches was significant. The 2014 Penalty Statement came into force in November 2014, but the breaches of SLC 7B, 14A and CHRs 3(2) and 7(1)(a) all persisted until at least November 2015. The 47% breach rate for CHR 7(1)(a) also highlights a serious weakness in BG's compliance processes for handling customer complaints.

5.30 The Authority also considered that the impact of these breaches on BG's business customers was significant. Many thousands of customers received inaccurate bills, and the analysis of a sample of BG's complaints records (please see paragraph 3.32) suggests a high number of breaches of CHR 7(1)(a). The consumer detriment and financial gain associated with the breaches was assessed at £3.9 million in financial terms.

5.31 In assessing whether BG's actions were deliberate or reckless, the Authority considered that BG's contraventions were unintended side effects of its billing system implementation. The Authority noted there was no attempt made by BG to avoid the breaches being detected, since it self-reported the issues it experienced throughout its system implementation to Ofgem. BG also took steps to try to mitigate the risk that the transition to its new billing system would result in breaches of the SLCs and CHRs. The Authority did not consider that BG's actions were either deliberate or reckless.

3 Consider aggravating or mitigating factors

Factors tending to increase the penal element

Repeated contravention or failure, including failure to comply with previous non-statutory undertakings or agreed action

5.32 BG has a record of previous contraventions of both the CHRs generally, and of CHR 7 specifically. This factor applied to a significant extent.

Continuation of the contravention or failure after becoming aware of it

5.33 The Authority considered that many of the breaches assessed under the 2014 Penalty Statement continued for a significant period of time beyond when BG first became aware of them. Therefore this factor applied.

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

5.34 The Authority noted that the formal investigation was announced in October 2015, and that some of the breaches continued beyond this date, with the breach of SLC 7B continuing until March 2016. Therefore, the Authority considered that this factor applied.

The involvement of senior management in any contravention or failure

5.35 Although the actions taken by BG's senior management overall were not effective enough to prevent breaches of the SLCs and CHRs occurring, the Authority did not consider that the actions of BG's senior management caused the breaches. Therefore this factor did not apply.

A lack of sufficient senior management involvement to prevent the contravention or failure

5.36 The Authority considered that the actions of BG's senior management were insufficient to prevent serious breaches of the SLCs and CHRs occurring. Therefore this factor applied.

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

5.37 The Authority did not consider that there was an absence of internal mechanisms or procedures to prevent breaches of the SLCs and CHRs, on the evidence produced. Therefore this factor did not apply.

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

5.38 The Authority noted that the mechanisms and procedures that BG put in place were inadequate to prevent the breaches. However, BG's engagement with Ofgem since self-reporting the problems associated with the Slingshot implementation demonstrated that BG properly applied its internal mechanisms

and procedures and kept them under appropriate review. Therefore, the Authority considered that this factor applied but to a limited extent.

Any attempt to conceal all or part of a contravention or failure from Ofgem

- 5.39 The Authority did not see any evidence that suggested that BG attempted to conceal all or part of any contravention or failure from Ofgem. BG also self-reported its issues relating to the Slingshot implementation in December 2014. Therefore this factor did not apply.

Failure to cooperate fully with reasonable requests from Ofgem's investigation team

- 5.40 The Authority considered that BG generally cooperated with Ofgem, both prior to and during the investigation. However, there were some minor issues relating to the timeliness of responses to formal information requests. The Authority noted that BG did not accept Ofgem's position, and that it considered it complied fully with all reasonable requests from Ofgem. The Authority still considered that this factor applied, but only to a limited extent.

Withholding relevant evidence and/or submitting it in a manner that hinders the investigation

- 5.41 The Authority did not consider that BG withheld information or submitted it in a manner which hindered the investigation. Therefore this factor did not apply.

Factors tending to decrease the penal element

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

- 5.42 BG did take some steps to achieve compliance, and there was evidence that BG's senior management supervised the implementation of its new billing system. However, the Authority considered that these steps were not effective enough. It was noted, however, that BG expended considerable resources in its efforts to remedy the deficiencies in its Slingshot billing system, bringing its operations back into compliance. Therefore this factor partially applied.

Evidence that the contravention or failure was genuinely accidental or inadvertent

- 5.43 The Authority considered that BG did not seek to breach the SLCs and CHRs. However, the Authority also considered that the problems BG encountered during the implementation of its new billing system were within its control and therefore could not be treated as genuinely accidental or inadvertent. Therefore, the Authority considered that this factor did not apply.

Promptly, accurately and comprehensively reporting the contravention or failure to Ofgem

- 5.44 The Authority noted that BG self-reported its issues relating to the Slingshot implementation in December 2014. There was also a good deal of engagement with Ofgem prior to the opening of the investigation, during 2015.

5.45 The 2014 Penalty Statement sets out that the Authority attaches significance to the self-reporting of breaches. The Authority considered that BG self-reported issues to Ofgem at an early stage, and also provided updates on its performance issues which were accurate and comprehensive. This included the voluntary monthly reporting of billing and complaints metrics to Ofgem during the entire course of the investigation. Therefore, this factor applied to a significant extent.

Appropriate action by the regulated person to remedy the contravention or failure

5.46 The Authority noted that the breaches have all ceased. BG made significant improvements to its billing and customer registrations processes, and also increased its resourcing for customer complaints. Therefore, the Authority considered that this factor applied.

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

5.47 The Authority considered that BG took steps to review its compliance activities, and is better placed than it was before the investigation began to prevent future breaches. Therefore, the Authority considered that this factor applied.

Providing cooperation 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

5.48 The Authority considered there was co-operation but within the bounds expected of a regulated person. Therefore, the Authority considered that this factor did not apply.

4 Consider an adjustment for deterrence

5.49 The Authority considered that an upward adjustment for deterrence to the penal element, as assessed under the 2014 Penalty Statement, was appropriate in this case.

5.50 Taking into account the steps set out at paras 5.25-5.48 above the Authority determined that, after this upward adjustment was added, £4.7m was an appropriate overall penal element to the penalty under the 2014 Penalty Statement.

5 Apply a discount in settled cases

5.51 The Authority applied a discount of 30% to the penal element of the financial penalty amount, to reflect the early settlement of this investigation.

5.52 Having applied this discount to the penal element of the penalty, this resulted in a total penal element of £3.3m.

6 Establish the total financial liability

- 5.53 The Authority established the total financial liability of BG under the 2014 Penalty Statement by adding the final penal element of £3.3 million to the gain and detriment of £3.9 million, resulting in a total financial liability of £7.2 million.

The Authority's decision under the 2014 Penalty Statement

- 5.54 The Authority considered all of the circumstances of the case when determining the appropriate level of penalty under the 2014 Penalty Statement.
- 5.55 Having taken all the above factors into account, the Authority considered that it would be appropriate in the circumstances of this investigation to impose a penalty of £7.2m on BG under the 2014 Penalty Statement.
- 5.56 However, in the circumstance that BG is to pay £7.2m by way of consumer redress as set out at paragraph 1.6, the Authority has imposed a penalty of £1 (which will be a single payment, in respect of the breaches covered by the 2003 Penalty Statement and by the 2014 Penalty Statement). The Authority considered this penalty to be reasonable in all the circumstances of the case.

6 The Authority's decision

- 6.1 The Authority found that BG breached SLCs 14A, 21B, 7A.10A, and 7B, and CHRs 3(2), 7(1)(a) and 7(1)(b) during various periods set out in paragraph 1.2. Taking account of the factors set out above, the Authority considered it appropriate to impose a financial penalty of £1 for the contraventions.
- 6.2 The penalty takes into account the fact that BG will pay a total of £9.5m (less £1) in consumer redress constituted by:
- a) £2.3m in consumer redress in lieu of the penalty that would otherwise be imposed having regard to the 2003 Penalty Statement, and
 - b) £7.2m in consumer redress in lieu of the penalty that would otherwise be imposed having regard to the 2014 Penalty Statement.

Representations or Objections on the Proposed Penalty

- 6.3 The Authority received six representations or objections in response to the notice of intention to impose a financial penalty issued pursuant to section 30A(3) of the Gas Act 1986 and section 27A(3) of the Electricity Act 1989 dated 24 January 2017. The points made by the respondents can be grouped into three areas:
- BG has not yet resolved all of its performance issues in relation to its non-domestic customers;
 - The level of proposed penalty was too low; and
 - Points in relation to consumer redress.

- 6.4 The Authority has considered carefully all of the representations or objections, and its responses in respect of these three areas are set out below.
- 6.5 In three of the six representations received, the respondents submitted that BG has not yet resolved all of its performance issues in relation to its non-domestic customers. Whilst these submissions raised credible examples of potential poor outcomes for some business customers, the overall billing performance information presented to the Authority by BG does not suggest an ongoing breach of SLC 21B.5.
- 6.6 Two respondents submitted that the level of proposed penalty was too low. The Authority is satisfied that in determining the level of the financial penalty it has applied the 2003 and 2014 Penalty Statements appropriately. The Authority is satisfied that the level of penalty addresses the seriousness of the contraventions and considers that the upwards adjustment made to the penalty for deterrence (under the 2014 Penalty Statement) was determined correctly.
- 6.7 Several respondents felt that not all of the consumer redress should be directed to the charity the Money Advice Trust (which provides the Business Debtline service). The Authority notes that the consumer redress is predominantly intended to be distributed to BG's micro-business customers directly affected by the breaches, while a smaller portion of the consumer redress is intended to go to the Money Advice Trust (expected to be less than a quarter of the total).
- 6.8 In deciding the level of the penalty the Authority took into account the relevant factors under the 2003 and 2014 Penalty Statements, including:
- a) the seriousness of the contraventions;
 - b) the extent of consumer harm and detriment (please see paragraphs 4.8-4.12 and 4.17-4.18 for details of the detriment caused to some of BG's business customers);
 - c) the fact that BG has made a financial gain (please see paragraphs 5.6, 5.25 and 5.27);
 - d) the fact that BG has incurred losses associated with remedying the problems which arose;
 - e) the fact that BG has admitted the breaches set out in this Notice;
 - f) the fact that BG has agreed to settle the investigation; and
 - g) the fact that BG has agreed to pay consumer redress.
- 6.9 The Authority considered the level of the penalty to be reasonable in all the circumstances of the case.
- 6.10 In the circumstances, and mindful of its principal objective, to protect the interests of existing and future consumers, and in recognition of the consumer redress payments to be made for the benefit of energy consumers as set out in paragraph 1.4, the Authority hereby gives notice under section 27(A)(5) of the Electricity Act 1989 and section 30A(5) of the Gas Act 1986 of its decision to impose a penalty of £1 on BG in respect of the contraventions set out above. The £1 penalty must be paid no later than 11 August 2017.

6.11 BG has agreed to settle the investigation on the basis of paying a financial penalty of £1 and to pay the sum of £9.5 million (less £1) by way of consumer redress.

Gas and Electricity Markets Authority
29 June 2017