

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

**Proposal of the Gas and Electricity Markets Authority to impose a financial penalty, following an investigation into compliance by npower Direct Ltd, npower Ltd, npower Northern Ltd, npower Northern Supply Ltd, npower Yorkshire Supply Ltd, npower Yorkshire Ltd and npower Gas Ltd ("npower") with Standard Licence Conditions 25C and 27.17<sup>1</sup> of the Gas and Electricity Supply Licence and the Gas and Electricity (Consumer Complaints Handling Standards ) Regulations 2008 (" the CHRs")**

**18 December 2015**

**1. Summary**

- 1.1. The Gas and Electricity Markets Authority ("the Authority") proposes to impose a financial penalty on npower Direct Ltd, npower Ltd, npower Northern Ltd, npower Northern Supply Ltd, npower Yorkshire Supply Ltd, npower Yorkshire Ltd and npower Gas Ltd ("npower") following an investigation by Ofgem into their failure to comply with Standard Licence Conditions (SLCs) 25C – Standards of Conduct (SoC), and 27.17 of the Gas and Electricity Supply Licence and the relevant requirements under regulations 3-7 and 10 of the Gas and Electricity (Consumer Complaints Handling Standards ) Regulations 2008 (" the CHRs").
- 1.2. npower has admitted that it breached the relevant SLCs and CHRs set out above. It has acknowledged that its practices fell far short of requirements in relation to its billing issues and complaints handling. npower has made significant improvements in these areas during the investigation and improved its performance as a consequence.
- 1.3. The Authority has taken into account that npower has offered to settle this investigation and also undertake to make consumer redress payments set out in paragraph 1.6 to directly affected customers and to charity(ies)/third sector organisation(s) for the benefit of domestic energy consumers.
- 1.4. Having considered all the circumstances of the case, the Authority considers the consumer redress payments will be of greater benefit to consumers than if a significant financial penalty were to be imposed.
- 1.5. Accordingly the Authority considers it appropriate in the circumstances of this investigation to impose a reduced financial penalty of £1 on each of the npower companies (total £7) provided that the financial penalty is paid within seven days of the date of any Final Penalty Notice issued by the Authority pursuant to section 30A(5) of the Gas Act 1986 ("Gas Act") and section 27A(5) of the Electricity Act 1989 ("Electricity Act") ("Final Penalty Notice"), and npower pays the sum of £26million (less £7) by way of consumer redress on the dates and in the manner set out in paragraph 1.6 below.

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<sup>1</sup> The investigation of npower's activities included consideration of SLC 27.18 (final bills), but did not find sufficient evidence to seek a finding of breach in relation to this licence condition.

- 1.6. The consumer redress<sup>2</sup> of £26million shall be used in the following manner:
- a. to make compensation payments to directly affected npower customers<sup>3</sup> in regard to:
    - i. wrongful or potential wrongful back-billing between July 2010 and December 2014 in addition to providing refunds for bills paid by those customers, by 30 June 2016;
    - ii. wrongful or potential wrongful back billing between January 2015 and December 2015 in addition to providing refunds for bills paid by those customers, by 30 June 2016;
    - iii. billing over 4 months late between August 2013 and October 2013 where customers were not offered extended payment terms (excluding all customers who would not have qualified for extended payment terms), by 30 June 2016;
    - iv. those customers, who at 31 December 2015, are still waiting for bills over 12 months late, by 30 June 2016, in addition to any back bill deduction which may also become due (and any such backbill deduction will not be included in the calculation of the consumer redress of £26million;
    - v. those customers who had a complaint which started on or after 1 July 2011 and remained/or remain open after 12 months, by 30 June 2016.
  - b. the remaining sum (being £26m less the payment at (a) above shall be paid direct to charity(ies) or third sector organisation (s) by 31 July 2016, with such charity(ies) or third sector organization(s) to be nominated by npower and approved by the Authority.
- 1.7. In the event that npower and the Authority do not agree on a nominated charity(ies) or third sector organisation(s) in respect of the destination or apportionment of any funds to be paid out in relation (a) and (b) above by 30 April 2016 such funds, when they become payable, will be paid by npower as a penalty to the Treasury via the Consolidated Fund.
- 1.8. The Authority is satisfied and finds that npower contravened:
- (a) SLC 25C.5- The Standards of Conduct (SoC). This provision, implemented in August 2013, requires a licensee to take all reasonable steps to achieve the SoC and ensure that it is interpreted and applied in a manner consistent with the Customer Objective. The purpose of this provision is to ensure that licensees treat their customers fairly. npower breached this provision between August 2013 and December 2014.<sup>4</sup>
  - (b) SLC 27.17- provision of final bills. This provision requires a licensee to take all reasonable steps to send a final bill or statement of account within 6

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<sup>2</sup> Consumer redress for the purposes of this Notice, refers to redress to consumers who are domestic customers as defined in SLC 1 Standard Condition of Gas and Electricity Supply Licenses.

<sup>3</sup> For the purpose of this investigation, compensation payments to "directly affected npower customers" or "customers" includes former customers with live accounts with npower as at June 2010.

<sup>4</sup> See paragraph 3.6-11 for an explanation of the SoC.

- weeks of supply transfer or a Domestic Supply Contract being terminated, npower breached this provision between July 2013 and December 2014.
- (c) Regulation 3(2), 4(6), 5(1), 6(1), 7(1)(a)-(b) and 10(2) of the CHRs. These regulations place requirements on regulated providers in relation to handling consumer complaints. npower breached regulation 3(2) between July 2011 and June 2015, regulations 5(1), 6(1) and 7(1)(b) between July 2011 and July 2015. There are continuing breaches of CHR 4(6), 7(1)(a) and 10(2) from July 2011 but in reduced severity.
- 1.9. The Authority takes these provisions very seriously. The SoC (SLC25C) is a principle-based condition that covers behaviours and actions of suppliers, the provision of information to 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, (SLC25C.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 (SLC25C.4(b)(i) and (iv)); and
  - (c) act promptly and courteously to put things right when suppliers make a mistake and otherwise ensure that customer service arrangements and processes are complete, thorough, fit for purpose and transparent (SLC25C.4 (c)(ii)-(iii).
- 1.10. The CHRs are designed to ensure licensees have appropriate complaints handling systems in place to deal with consumer complaints in an efficient and timely manner. They also require licensees to record sufficient details of complaints and to provide consumers with timely and accurate information about complaint handling procedures. Effective complaints handling allows consumers to voice their dissatisfaction and to gain effective redress when licensees do something wrong.
- 1.11. In a 2011 investigation the Authority found that npower breached CHR 4(1)(e) to (g), CHR 6(2)(b) to (e), and CHR7(1)(a). The earliest of those breaches commenced in October 2008 when the CHRs came into force, and concluded in July 2011. As the present investigation has identified breaches from July 2011 and continuing to date, the Authority notes that npower has been non-compliant with CHRs for an extensive period of time.
- 1.12. The breaches of the SoC and SLC 27.17 stemmed from npower's failure to protect its customers sufficiently well from the adverse effects of implementing a new billing system. npower failed to bill a substantial number of customers on time or accurately and did not take all reasonable steps to address quickly the customer detriment resulting from the system errors. The breaches of the CHRs continued from the 2011 Ofgem investigation, but were exacerbated by the billing system issues. The Authority considers the breaches were inter-related. Failures under the SoC and SLC 27.17 also contributed to failures under the CHRs, but equally, failures under the CHRs meant that customer concerns were not addressed as quickly as they should have been and contributed to the SoC breach.

1.13. The Authority acknowledges that embarking on major business projects such as new billing systems is challenging. However, the Authority considers it unacceptable that in this case customers were detrimentally affected for so long and on such a large scale. npower had a responsibility and accountability to its customers and it failed to resolve quickly the failures that the Authority has found in this case. npower could have done more for the benefit of its customers to ensure customers received a good service and were culpable for not doing so.

1.14. The Authority considers it appropriate to impose a penalty for the contraventions. The proposed penalty takes into account the fact that the Authority finds that npower was in breach of SLCs 25C and 27.17 and the CHRs during various periods set out in paragraph 4.2. The Authority finds that on the basis of improved consumer outcomes since December 2014 in regard to SLCs 25C, 27.17 and CHRs from July 2015, npower has moved towards compliance but is not as yet fully compliant with some of the provisions of the CHRs. With regard to the identified issues, npower agrees to comply with specific targets and compliance as to whether these targets have been met will be confirmed by way of an independent external audit. In the event of default of any of the targets set out in paragraph 1.15, npower agrees to cease all proactive domestic sales via all sales and advertising until they are in compliance.

1.15. The agreed targets are that npower will:

- (a) reduce the number of accounts affected by aged invoices over 6 months old from c46,000 to 15,000 by 30 June 2016;
- (b) reduce substantially the number of unresolved complaints over 56 days old to 4,500 (excluding all complaints to the Ombudsman where npower has not received a decision) and resolve any unresolved complaints which are over 366 days (excluding all complaints where delay is clearly and demonstrably beyond npower's reasonable control or that are pending a decision by the Ombudsman), by 30 June 2016;
- (c) reduce the inflow of new Ombudsman cases from circa 1000 per month as at end of November 2015 to not more than 600 per month, by 30 June 2016;
- (d) identify and make best endeavours to issue compensation to all domestic npower customers that had been wrongly or potentially wrongly back billed, and produce evidence to the Authority by 30 June 2016;
- (e) investigate and request the correction of customers' credit records with any credit agencies to which npower has reported any information where npower has back billed incorrectly, by 30 June 2016; and
- (f) in order to review progress, obtain and receive an independent external audit by 1 July 2016 with findings to be delivered to Ofgem on or before 31 July 2016.

1.16. Ofgem will continue to monitor npower's progress against the above targets.

1.17. The Authority considers the level of the penalty to be reasonable in all the circumstances of the case. If npower had not agreed to settle this investigation on

the terms set out in paragraphs 1.5 and 1.6 above, the Authority would have considered it appropriate to impose a much larger penalty in view of the seriousness of the contraventions.

- 1.18. In the circumstances, and in recognition of the consumer redress payments to be made for the benefit of certain consumers, the Authority hereby gives notice under section 27(A)(3) of the Electricity Act and section 30A(3) of the Gas Act of its proposal to impose a penalty of £1 on each of the npower companies (total £7) in respect of the contraventions set out above provided that the provisions of paragraph 1.6 above are complied with by npower.
- 1.19. Any written representations on the proposed penalty must be received by Martin Campbell ([martin.campbell@ofgem.gov.uk](mailto:martin.campbell@ofgem.gov.uk)) and Laila Benfaida ([Laila.benfaida@ofgem.gov.uk](mailto:Laila.benfaida@ofgem.gov.uk)) at Ofgem at 9 Millbank, London, SW1P 3GE by **5 pm on 15 January 2016**.
- 1.20. Any representations received that are not marked as confidential may be published on the Ofgem website. Should you wish your response or part of your response to remain confidential, please indicate this clearly. Any such requests will be considered by Ofgem on a case by case basis.

## **2. Background**

- 2.1. In July 2011, npower began migrating domestic customer accounts to a SAP<sup>5</sup>-based billing and complaints handling system. It completed the migration process in August 2013. The system was designed to achieve greater efficiency in key business processes such as billing and complaints handling. However, npower acknowledged that the process of implementing SAP led to issues. As it progressed in 2013 and 2014, customers experienced poor outcomes including late and inaccurate billing and poor complaints handling to an increasing extent.
- 2.2. It appeared that npower was not treating its customers fairly. Ofgem therefore opened the investigation in June 2014. This was preceded by several months of engagement with npower and against a backdrop of continuing poor customer outcomes and performance on key measures as evidenced by public interventions by Ofgem in December 2013 and June 2014:
  - **failure to meet voluntary recovery plan targets:** in November 2013, npower agreed to implement a recovery plan to resolve the billing issues. At the same time npower apologised to all its customers for the poor level of customer service and donated £1million to charity. Its then CEO made a commitment that its customers should not lose out financially as a direct result of its billing system problems. Recovery Plan targets included a reduction in the number of accounts affected by late invoicing from 794k to 100k per month by the end of March 2014. By April 2014 npower's late billing back log stood at approximately 600K accounts. By May 2014 the number of accounts affected was still 500k.

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<sup>5</sup> Systems Applications and Products in data processing

- **complaints numbers:** in December 2013 the number of complaints npower received was 133k. In May 2014 npower received 133k complaints – far above npower’s previous standards (eg pre-SAP level 36k in May 2011) – and the number was not reducing as expected.
- **public concern with poor customer outcomes:** Ofgem and organisations such as Citizens Advice continued to receive high numbers of complaints about npower from consumers and MPs in the first half of 2014. Complaints in the media and on social networks also drew attention to poor customer service and billing problems. In June 2014 npower publicly apologised for the slow progress in dealing with customer service issues and gave a public commitment to put things right. Following pressure from Ofgem, npower gave a commitment to reduce late invoices from 497k to 100k by August 2014; significantly reduce its complaints numbers and live Ombudsman complaints (3544 to 600); and reduce unresolved cases where decisions of the Ombudsman had not been implemented after 28 days to 0 by July 2014. npower agreed to an outbound telesales ban if it failed to comply with the target on late invoiced accounts.

### **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 npower has breached SLC 25C, 27.17 and regulations 4(6), 5(1), 6(1), 7(1) (a) -(b) and 10(2) of the CHRs. Details of the contraventions and their duration are set out below, grouped together as follows:

- Breach 1 relates to the Standards of Conduct;
- Breach 2 relates to the provision of final bills; and
- Breaches 3-9 relate to complaints handling under the CHRs.

#### **Breach 1: SLC 25C - Standards of Conduct (August 2013 – December 2014)**

3.2. Under SLC 25C.5, a Licensee is required to take all reasonable steps to achieve the SoC and ensure that it interprets and applies the SoC in a manner consistent with the Customer Objective. This SLC includes the principle that suppliers treat customers fairly. The Authority finds that npower failed to comply with SLC25C and breached this requirement from August 2013 to December 2014.

3.3. SLC 25C introduced SoC in August 2013. They are notable for their principles based approach, which differs from the prescriptive regulations adopted under most other SLCs. Ofgem has therefore adopted a bespoke approach to the enforcement of SLC 25C when assessing the supplier’s actions and omissions and the seriousness of any breach. Given the fact-sensitive nature of any such enforcement action, the approach adopted to the assessment of npower’s actions and omissions in this case should not be taken as precedent as to Ofgem’s approach to the assessment of any potential breach in future cases.

- 3.4. The approach taken in this investigation reflects the nature of the evidence that Ofgem gathered. The Authority finds a broad root-cause systemic failure, with multiple knock-on issues resulting in customers not being treated fairly. These arose because of npower's failure to take all reasonable steps to ensure that its SAP implementation did not have serious and unfair adverse effects on its customers.
- 3.5. The Authority considered three factors within SLC 25C.5 in assessing whether npower breached this provision. These factors are as follows: (1), relevant behaviours (actions or omissions) that infringe the SoC set out in SLC 25C.4 are identified on the evidence as being engaged. (2) consideration is given to whether those identified behaviours were "fair" within the meaning of SLC25C.3. (3) in relation to any identified actions and omissions which were not "fair" within that meaning, it is necessary to establish whether a supplier took "all reasonable steps" to achieve the SoC and that in doing so had interpreted and applied the SoC in a manner consistent with ensuring that each domestic customer was treated fairly.

3.6. The Authority finds that npower did not comply with the SLC 25C.5 because:

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

3.7. This was because of four main failings to treat customers fairly as exhibited during the period of breach:

- *not billing in a timely manner.* During the period September 2013 to December 2014 npower sent out 510k bills late (i.e. according to npower's definition of 'late' as over 30 days from the point at which it should have been sent. This began following the initial migrations of customers to SAP and peaked in January 2014. At its height 859 thousand customer accounts were affected by late invoicing. npower provided its customers with terms and conditions that explained when they would receive a bill, however npower did not bill as frequently as it said it would. In general, suppliers must ensure that they can bill their customers according to their payment plan for the energy that they use. It is a basic and essential service that a supplier must provide. It is important for consumers to know how much and when a supplier will charge them for their energy, so that they can plan their personal finances and not be caught out by unexpected bills. This demonstrated that npower failed to behave and carry out its actions in a fair, transparent, appropriate and professional manner nor otherwise ensured that customer service arrangements were fit for purpose(SLC25C.4(a) and (c)(iii)).
- *npower did not provide up to date and accurate information to customers affected by the SAP billing issues.* It also provided bills that were inaccurate. Customers also received backbills, which in themselves were inaccurate but which were clearly financially detrimental to customers because they contain billing for consumption over 12 months that should have been written off under clause 5.1 of the Code of Practice for Accurate Bills (CPAB) to which

npower is a signatory.<sup>6</sup> npower had expressed support for CPAB in communications with its customers and therefore had the benefit of consumer confidence that they would comply with the provisions of that Code. However npower failed to always write off bills over 12 months old that should have been eligible for write-off. Providing up to date and accurate information to customers is important so that customers understand how their bill was calculated and that suppliers are proactive in updating them when issues occur. npower's customers were unclear about why these bills were so large, and did not agree with the amounts being asked for. This led to them complaining about their bill and experiencing shock and inconvenience.. Examples included a customer that had not received a bill for three years, and who then received one for several thousand pounds with no backbill write off. Another received one for over £1500 that npower said they would collect from their account in one payment. Consumers must have confidence in their supplier's ability to get these crucial functions right. If they do not then complaints can increase, and poor consumer outcomes such as bill shock and inconvenience can be the result. This demonstrated that npower failed to carry out any actions in a transparent (and ) appropriate manner nor provided information to each domestic customer which was complete, accurate and not misleading (SLC 25C.4(a) and (b)(i)).

- *npower sent out over 500k late bills during the SoC breach period (August 2013 – December 2014), a significant proportion of which were very late (eg 51k over 6 months old) and inappropriate debt collection methods were sometimes used.* This caused customers to fall into debt for which npower subsequently sought payment. There is evidence that npower collected this debt from customers without permission, and chased debt when customers disputed it. Examples included a customer being told that npower would fit a prepayment meter because of an unpaid debt of several thousand pounds, despite npower not explaining the bill and not responding to the customer's attempts at contact. Another secured compensation following npower chasing the customer for bills they did not owe. In general, npower did not always act on customers' concerns about the debt they were being asked to pay, which it should have done given the billing issues it was experiencing. Where consumers raise issues on debt suppliers must do all they can to ensure they deal with these issues with sensitivity. This demonstrated that npower failed to behave and carry out its actions in a professional manner and failed to promptly and courteously put things right when npower sent very late bills (complying with its own terms and conditions (SLC 25C.4(a)and (c)(iii))
- *when customers did complain, npower did not always complete all the actions that it agreed with the customer.* This was despite its complaints handling policy telling customers it would do its best to resolve their complaint within 10 days. This meant customers had to call again to query progress, and also that the actions were completed later than they should have been. The Authority considers it crucially important that customers' complaints are dealt with properly, and that energy suppliers deliver on their commitments, to

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<sup>6</sup> Energy UK Code of Practice for Accurate Bills <http://www.energy-uk.org.uk/publication.html?task=file.download&id=4991>



avoid customers being inconvenienced further. This demonstrated that npower failed to behave and carry out its actions in a fair and professional manner and failed to promptly and courteously put things right when npower made a mistake (SLC25C.4(a) and (b) (iii)).

2: npower's actions or omissions did not ensure that customers were treated fairly

- 3.8. Under SLC 25C.2 the objective of the licence condition is for the licensee to treat each Domestic Customer fairly. SLC 25C.3 provides that a Licensee would not be regarded as treating its customers fairly if its actions or omissions (a) significantly favour the interests of the Licensee and (b) give rise to a likelihood of detriment to the Domestic Customer.

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

- 3.9. Owing to the actions and omission referred to above, npower failed to treat domestic customers fairly as it did not ensure it could bill on time or accurately. This had knock-on effects which were all inter-related, such as not providing enough information to customers, pursuing debt and not completing all actions in relation to a complaint. The Authority considers that combined these actions significantly favoured npower's interests in that, for example, it received revenue from backbilling it should not have had, avoided reputational damage by not proactively admitting the scale of the issues it was facing and received money through debt collection it should not have had.

*npower's actions and omissions caused a likelihood of detriment to its customers 25C.3 (b)*

- 3.10. The Authority considers that npower's actions and omissions set out above caused significant detriment to its customers. These poor consumer outcomes included bill shock over a late and/or inaccurate bill; financial detriment caused by npower's contravention of the backbilling code; time spent making additional complaints; and inconvenience and distress caused by debt recovery. Issues included npower:

- issuing over 500k late bills (over one month late) in the SoC period, some of which were over 1 and 2 years old. The individual monetary values were also large in some cases. Other evidence has shown that customers were surprised and shocked by these bills.
- admitting that it backbilled in contravention of the backbill code. This resulted in financial detriment to its customers between August 2013 and December 2014. npower has committed to paying this money back to all potentially affected customers.
- experiencing a far higher volume of complaints because of the billing and complaints handling failures and at a level that was significantly higher than pre-SAP levels. This resulted in customers spending time on complaining to npower that they would not otherwise have had to spend.
- causing a proportion of its customers unnecessary shock and distress as it tried to collect debt caused by its computer system. npower did not always tell

customers why a debt had accrued on their account, and sometimes pursued this debt without engaging customers on the reasons why.

- potentially depriving customers of essential information (through late and inaccurate billing) that would enable them to make an informed decision about whether to switch supplier to a more competitive rate.

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

3.11. The Authority finds that in relation to identified actions and omissions which were not fair within the meaning of SLC 25C.3, npower 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 npower did not take sufficient action and did not take actions quickly enough to resolve its issues. It is not the Authority's role or wish to prescribe appropriate actions but some steps could have included:

- resolving underlying billing issues in a more timely manner;
- ensuring it had a method for billing customers if its main systems did not work;
- ensuring that manual billing review processes worked effectively;
- prioritising accounts that were difficult to resolve more quickly;
- prioritising compliance with the backbilling code;
- halting acquisition of new customers until billing issues were resolved; and
- providing sufficient updates to customers on the extent of the problems and in individual cases.

#### Provision of final bill or statement of account

#### **Breach 2:** SLC 27.17 (July 2013 – December 2014)

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

3.13. The Authority having considered the evidence, finds that the breach of SLC 27.17 started at least in July 2013 and continued until December 2014. During this period npower issued 20% of final bills after six weeks. This included several major spikes, particularly in Q1 and Q2 2014, during which the proportion was never less than 40% issued after 6 weeks. Moreover, the evidence of problems in relation to non-final bills under the breach of SLC25C applies equally to final bills – they were affected by the same issues and by the same failure to take all reasonable steps to ensure customers were not adversely affected by the SAP migration.

3.14. The Authority therefore considers that the evidence presented in relation to general billing issues also applies to the contravention of SLC27.17. In addition, the Authority finds that npower could have taken additional reasonable steps to ensure final bills were not issued after six weeks.

#### npower's handling of customer complaints

**Breach 3:** CHR Regulation 3(2) - adherence to own complaint handling procedure (July 2011 to June 2015)

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

3.16. The Authority finds on the evidence produced that between July 2011 and June 2015 npower failed to achieve compliance with this regulation by not "doing [its] best to resolve complaints within 10 working days" as stated in its published complaints procedure. The two primary causes of failure to comply were:

1. complaints were not received, handled and processed in a timely efficient manner (see paragraphs 3.25 and 3.26 below concerning Regulation 7(1)(a); and
2. npower's internal complaints handling policies and processes did not ensure that complaints were resolved within 10 working days.

The Authority concludes that this breach continued beyond December 2014 until June 2015, at which time npower's published complaints procedure was amended to state 28 days as the duration within which npower would do its best to resolve complaints.

**Breach (4):** Regulation 4(6)(a),(b),(c),(d) - recording complaints upon receipt (July 2011 to July 2014 and ongoing where npower's SAP Customer Relationship Management System (CRM) is used by outsource partners)

3.17. Regulation 4(6)(a),(b),(c),(d) – requires the supplier to:

- a) change the status of a recorded complaint from resolved to unresolved, where subsequent contact makes it clear that the complaint is unresolved;
- b) in line with (a) to signpost returning complainants to its complaint handling policy;
- c) to take account of unresolved complaint numbers in its reporting; and
- d) to otherwise refrain from treating complaints as resolved when they are not.

3.18. The Authority finds on the evidence produced that for the period between July 2011 and July 2015 and to date where npower's SAP CRM is used by outsource partners, npower failed to comply with Regulation 4(6) in respect of all repeat complaints that were raised in SAP CRM.

- 3.19. Where a complaint had previously been raised in SAP CRM, and a subsequent complaint was made, a new complaint was recorded and the status of the original complaint remained unchanged as closed/resolved. As a result of not reopening complaints or otherwise changing their status, there was associated failure to signpost npower's complaints handling procedure; inaccurate reporting; and in addition, unresolved complaints were treated as resolved.
- As of July 2015 npower's in-house complaints services reverted fully to use of a legacy complaints system (ONCE) which is able to change the status of complaints. On this basis the Authority concludes that npower was in compliance internally in July 2015 but not with regard to outsource partners. Npower has confirmed as of December 2015 that its outsource partners are no longer using ONCE.

**Breach (5):** Regulation 5(1) – recording handling of complaints (July 2011- July 2015)

- 3.20. Regulation 5(1), through 5(2)(c), applies to repeat complaints as outlined above at Regulation 4(6)(a), and requires the supplier to record the date on which Ombudsman signposting becomes due (8 weeks/56 days from receipt of complaint).
- 3.21. The Authority finds on the evidence produced that npower failed to comply with regulation 5(1) because as a result of not re-opening complaints, npower failed to record the date on which 8 weeks from the initial unresolved complaint expired, from July 2011 to July 2015.
- 3.22. In January 2015 npower updated its complaint handling policy. The new policy sets out that repeat complaints must be aged from the point of the original complaint being received therefore the expiry of 56 days can be effectively tracked. This policy became fully embedded in July 2015.

**Breach (6):** Regulation 6(1) - signposting consumers to the redress scheme if complaints cannot be resolved (July 2011 to July 2015)

- 3.23. Regulation 6(1), through 6(3)(b), requires a supplier to signpost consumers to the Ombudsman on expiry of the specified time period (56 days/8 weeks). The Authority finds on the evidence that npower failed to comply with this requirement from July 2011 to July 2015.
- 3.24. Whilst npower did signpost the Ombudsman in connection with complex complaints recorded on its legacy system (ONCE), npower failed to recognise some complaints recorded on its SAP CRM system as unresolved as set out under Breach 4(a) above and therefore failed to signpost consumers to the Ombudsman on expiry of the specified time period.
- 3.25. The Authority also finds below (regulation 7(a)(i)) that npower closed up to 50% of first-time complaints when unresolved – increasing the significance of failing to re-open complaints upon subsequent contact.
- 3.26. As set out at paragraph 3.22 above, a new policy which addresses complaint ageing of repeat complaints and associated Ombudsman signposting was implemented by npower as of July 2015.

**Breach (7):** Regulation 7(1)(a) - efficient and timely receipt, handling and processing of complaints ( July 2011 and ongoing)

- 3.27. Regulation 7(1)(a) - requires a supplier to receive, handle and process complaints in an efficient and timely manner. The Authority finds on the evidence produced that npower did not comply with this requirement from July 2011 and that this breach is ongoing in regard to a backlog of unresolved complaints over 57 days old.
- 3.28. npower failed to achieve the requirement in the following ways:
- i) closing complaints prematurely when unresolved (July 11 to July 2015);
  - ii) allowing backlogs of a) unprocessed and b) unresolved complaints to accrue (January 2013 and ongoing) ;
  - iii) failing to implement the Ombudsman’s directed remedies within the required 28 days (June 2014- September 2015; and
  - iv) failing to record Expressions of Dissatisfaction as complaints, resulting in the customer having to contact the supplier again (July 2011-July 2015).
- 3.29. npower implemented its new complaints policy in July 2015 which addresses the issue of properly defining ‘complaint’ and ‘resolved complaint’ in accordance with the Complaint Handling Regulations. Based on this evidence the Authority concludes that breaches i) and iv) above continued until July 2015. By September 2015 npower had closed a substantial proportion of Ombudsman cases which were overdue and unresolved (save for exceptional cases). A number of aged npower complaints persist unresolved, and on which basis the Authority concludes that some breaches of Regulation 7(1)(a) are continuing.

**Breach (8): Regulation 7(1)(b) – allocation and maintenance of resources reasonably required** (July 2011 to July 2015)

- 3.30. Regulation 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 Complaint Handling Regulations. The Authority finds on the evidence produced that npower did not comply with this requirement from July 2011 to July 2015.
- 3.31. npower failed to achieve the requirement in the following ways:
- i) failing to allocate the resources required to correct its SAP system inadequacies between July 2011 and July 2015 resulting in a complaint handling system which did not process complaints in accordance with the CHRs; and
  - ii) failing to maintain sufficient staff resources between January 2013 and April 2014.

As of July 2015 npower’s in-house complaints handling services had changed

their processes so that all complaints, as opposed to some complaints, are recorded on a legacy system which is able to ensure compliance with Complaint Handling Regulations. Npower also confirmed in December 2015 that its outsource partners are no longer using ONCE.

**Breach (9):** Regulation 10(2) – signposting complaints handling procedure for unresolved complaints, and offering to provide a copy (July 2011 and ongoing)

- 3.32. Regulation 10(2) – applies in respect of complaints which remain unresolved at the end of the first working day following day of receipt. It requires a supplier to (a) direct consumers with unresolved complaints to its complaint handling policy and (b) to offer to provide a copy of the complaints handling procedure free of charge.
- 3.33. The Authority finds on the evidence produced that npower has failed to comply with Regulation 10(2) requirements, both in respect of complaints which it closed while unresolved and also in respect of complaints which it recognised as open and unresolved (through policy deficiencies).
- 3.34. npower contravened regulation 10(2) as a result of failing to direct complainants to its complaints handling procedure on its website and offer to provide a copy of the complaints handling procedure to the complainant free of charge, in respect of complaints which remained unresolved by the end of the first working day after receiving it. npower is in the process of updating its policies to address this issue. The Authority finds that npower did not comply with this requirement from July 2011 and that this breach is ongoing.

#### Continuing breaches

- 3.35. The Authority finds that npower breached the CHRs up to July 2015. The Authority finds that three CHR breaches are ongoing on the evidence as set out in this Notice but on the basis of improved consumer outcomes, processes and procedures since December 2014 npower has moved towards compliance in 2015. With regard to the identified issues, npower agrees to comply with specific targets and compliance as to whether these targets have been met will be confirmed by way of an independent external audit. In the event of default of any of the targets set out in paragraph 1.15, npower agrees to cease all proactive domestic sales via all sales and advertising until until they are in compliance.

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

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

- 4.1. In deciding whether to impose a penalty, and in determining the amount of any penalty, the Authority is to have regard to its statement of policy most recently published at the time when the contravention or failure occurred. The 2003 Penalty Statement was introduced in October 2003 (“the 2003 Penalty Statement”). In November 2014, the Authority introduced a new policy (“the 2014 Penalty Statement”) which the Authority must have regard to when deciding whether to impose a financial penalty, and determining the amount of any such

penalty, in respect of any contravention which occurred on or after 6 November 2014. In such cases, the 2014 Penalty Statement applies instead of the 2003 Penalty Statement.

- 4.2. In this case the contraventions occurred during the time periods set out in Table 4.1.

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

<b>Relevant requirement</b>	<b>Breach period</b>
Breach 1 - SLC25C – Standards of Conduct	Aug 13 – Dec 14
Breach 2 - SLC 271.7 – provision of final bill	Jul 13 – Dec 14
Breach 3 - CHR 3(2) –complaints handling policy	Jul 11 – Jun 15
Breach 4 - CHR 4(6) –unresolved complaints	Jul 11 – present because of npower’s use of outsource partners
Breach 5 - CHR 5(1) – recording 56 day expiry date	Jul 11 – Jul 15
Breach 6 - CHR 6(1) – signposting to Ombudsman	Jul 11 – Jul 15
Breach 7 - CHR 7(1)(a) – timely & efficient complaints handling	Jul 11 – present because of allowing backlogs of unprocessed and unresolved complaints to accrue
Breach 8 - CHR 7(1)(b) – allocation of resources	Jul 11 – Jul 15
Breach 9 - CHR 10(2) – signposting complaints procedure	Jul 11 - present

- 4.3. Each of those breaches commenced within the timescale that the 2003 Penalty Statement applies to. The Authority recognises that instances of the breaches will also have occurred after November 2014 and may therefore fall within the scope of the 2014 Penalty Statement. However, the Authority considers that the overall severity and duration of the breaches largely took place during the period that the 2003 Penalty Statement applied to and has therefore decided to determine the penalty by reference to the 2003 Penalty Statement.
- 4.4. In this case the breaches of the CHRs were not remedied by December 2014 but continued in 2015 with reducing severity. Improvements in measurable outcomes for domestic customers suggest that during 2015 the breach is not ongoing. However the Authority finds that there are continuing breaches of regulations 4(6), 7(1)(a) and 10(2) but is of the view that if the 30 June 2016 targets are met then this will demonstrate that npower will have moved fully into compliance.
- 4.5. The Authority is required to carry out all its functions, including the taking of any decision as to the imposition of a penalty, in the manner which it considers is best calculated to further its principal objective,<sup>7</sup> having regard to its other duties.

<sup>7</sup>The Electricity Act 1989 (section 3A) and the Gas Act 1986 (section 4AA) set out the Authority’s principal objective for energy regulation, thereby defining the purpose of Ofgem’s activities as to protect the interests of

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

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

- 4.7. The Authority is required to take into consideration the particular facts and circumstances of the contravention or failure that were outside the control of the licensee.

#### 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 considers that the breaches had a significant detrimental impact on npower's customers. And this occurred for several years in the case of the CHR breaches, and for well over a year on SLC 25C and SLC 27.17. At least 500,000 customers were adversely impacted by the systemic failures. npower received over 1 million complaints in respect of issues relevant to the investigation. npower's customers did not receive bills on time, and in a significant proportion of cases these delays were lengthy. They received bills that were inaccurate and with little accompanying explanation of how they had been calculated. Customers did not always agree with the amounts that they were being asked for, and when they tried to engage npower they did not get the resolution they wanted. npower caused some customers distress when trying to recover monies that npower perceived it was owed. Customers had to complain frequently and in high numbers. This indicated that npower failed to monitor and respond to the needs of its customers, and that these customers suffered poor outcomes as a result.
- 4.9. The Authority considers that the general interests of the market have been damaged by the contraventions. Breaches such as these have a wider impact on the energy market as consumer confidence and trust in suppliers is vital for a healthy domestic market.
- 4.10. In addition, the Authority considers that npower's failure to adequately record and address customer complaints would have exacerbated the negative effect the contraventions had on its customers, as well as causing consumer harm in their own right.

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

- 4.11. The Authority considers compliance with SLC and CHRs to be very important and to that end, the Authority considers that imposing a financial penalty is likely to create an incentive for compliance and deter future breaches generally. Imposing

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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.



a penalty in this case would create the right incentives around the need for regulated parties to comply with their obligations and treat customers fairly.

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

If the contravention is trivial in nature

4.12. The Authority considers that npower's breaches of the SoC and the CHRs are not trivial.

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

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

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

4.14. The Authority considers that the breaches would have been apparent to a diligent licensee. In particular npower was on notice of the issues on the CHRs following Ofgem's formal investigation in 2011 and was fully aware of the need for extra vigilance to ensure compliance in this area.

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

5.1. In accordance with section 270 of the Electricity Act, the Authority may impose a financial penalty of up to 10 per cent of the turnover of the relevant licence holder. Turnover is defined in an Order made by the Secretary of State.<sup>8</sup> The relevant figure is the turnover shown in published or prepared accounts for the business year preceding the date of this notice. For the financial year ending 31 December 2014, npower's total turnover was £4.5bn.<sup>9</sup>

5.2. In deciding the appropriate level of financial penalty, the Authority has considered all the circumstances of the case, including the following specific matters set out in the 2003 Penalty Statement.

Factors which are first considered when determining the level of penalty

The seriousness of the contravention and failure and continuation of contravention

5.3. The Authority considers that npower's failure to comply with SLC 25C and 27.17 as well as the CHRs is very serious and this has been taken into account in deciding the level of penalty. This is particularly the case because of the wide ranging and large scale detriment caused to npower's customers.

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<sup>8</sup> The Electricity and Gas (Determination of Turnover for Penalties) Order 2002.

<sup>9</sup> npower Limited Annual Report and Financial Statements for the year ended 31 December 2014

- 5.4. The Authority also notes that this is not the first time that npower has been subject to findings of CHR breach by the Authority. This indicates that senior management did not take these issues sufficiently seriously, and did not ensure that appropriate processes and procedures were in place. The Authority is concerned by this and the finding that some of the areas of concern identified in that investigation still persist albeit not to the same extent.

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

- 5.5. The Authority considers that affected customers and other market participants were harmed by the contraventions. This has been set out in paragraphs 4.8 – 4.10.
- 5.6. The Authority notes that npower has paid back approximately £5.4million to its customers as at November 2015 that it could have wrongfully backbilled during the investigative period. npower also wrote off bills and provided some customers with free energy if it could not implement their Ombudsman remedy in a timely manner. npower has also proposed other means of ensuring customers receive appropriate compensation. The Authority has taken this into account.

The duration of the contravention or failure

- 5.7. In the case of the CHRs, several of the failings continued from the end of Ofgem's 2011 investigation to the present and breaches of 4(6), 7(1)(a) and 10(2) are continuing. The breach of SLC25C and SLC 27.17 lasted over 1 year each (August 2013 – December 2014 and July 2013 – December 2014 respectively).

The gain (financial or otherwise) made by the licensee

- 5.8. The Authority considers that npower has made a financial gain by avoiding the costs associated with the breach of CHR6 (failure to signpost to the Ombudsman). npower did not consistently signpost customers in some cases, and so it avoided paying the costs and fees associated with a case being taken up by the Ombudsman between 2011 and 2015. The Authority also considers that npower gained by not having in place adequate resources to handle complaints in a timely and efficient manner as required by 7(1)(b) between January 2013 and April 2014. Finally, npower received payments for consumption over 12 months old that should have been written off under the Code of Practice for Accurate Bills. Taken together, the Authority considers this gain could be several million pounds.
- 5.9. However, the Authority acknowledges that npower has incurred significant costs to resolve the issues, including personnel, IT costs and the costs of debt write off for some customers. If it had not done so the penalty would have been much larger.

Factors tending to increase the level of penalty

Repeated contravention or failure

- 5.10. npower continued to contravene the CHRs even after the Authority found that it breached these requirements following a 2011 Ofgem investigation. This has been

set out in section three of this penalty notice. This factor therefore applies to a significant extent.

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

5.11. The Authority considers that npower continued to contravene the CHRs and the SLCs after becoming aware of Ofgem's investigation. This was particularly pronounced on the CHRs, as these failings continued since a previous Ofgem investigation in 2011. This factor therefore applies.

The involvement of senior management in any contravention or failure

5.12. The Authority acknowledges that npower's senior management took action to remedy the contraventions, particularly on the billing issues. The Authority does not consider that npower's senior management willfully contravened the SLCs and CHRs. However it is clear that the actions taken were not enough to stop the contraventions from happening, nor did the actions stop them quickly enough to minimise the consumer impact. This factor therefore applies.

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

5.13. The Authority considers that npower did have internal mechanisms and procedures in place to prevent contravention or failure, although these were not sufficient to secure compliance. This factor therefore does not apply.

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

5.14. The Authority does not consider that npower willfully concealed the contraventions from Ofgem. This factor therefore does not apply.

Other factors

5.15. It is noted that npower did not provide full responses to IRs and submitted incomplete information on other matters. Ofgem subsequently had to engage with npower on the gaps in information. Had npower provided it according to agreed timelines and quality standards, it would have assisted in the conduct of the investigation. The Authority notes that npower does not accept Ofgem's position, and that it considers it complied with all IRs and other informal requests for information. However the Authority considers this applies.

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.

5.16. The Authority considers npower failed to maintain adequate compliance procedures in respect of the breaches of CHRs, and failed to take all reasonable

steps to comply with the standards of conduct and SLC27.17. This factor applies, to a limited extent.

#### Appropriate action by the licensee to remedy the contravention or failure

5.17. The Authority finds that npower has taken steps to remedy the contraventions, and that it has improved its performance significantly since Ofgem opened the investigation in June 2014. The factor therefore applies.

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

5.18. The Authority considers that npower did not seek to breach the SLCs and CHRs. Ultimately the implementation of a new billing system was at the heart of the problems that npower experienced, and it was npower's failure to mitigate the impact of this on customers that led to the contraventions. This factor therefore applies.

#### Reporting the contravention or failure to Ofgem

5.19. npower reported issues with the SAP billing platform to Ofgem in December 2012. The possibility of contravention was highlighted by Ofgem and was re-enforced through evidence gathered during the investigative phase. npower did not report any possible breaches of the SLCs or CHRs however. This factor therefore does not apply.

#### Co-operation with Ofgem's investigation

5.20. The Authority notes npower has responded to all requests for information that have been sent to it. However the Authority also notes that some of these responses were of poor quality and there were issues as set out in paragraph 5.15. The Authority considers that at present no behaviours have been identified that go beyond what would be expected of any regulated party involved in enforcement action.

5.21. The Authority notes npower's willingness to settle the investigation early, which has reduced the resources required from Ofgem if the case were to continue and to this extent this factor applies and a discount has been given.

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

6.1. Taking account of all these factors and also mindful of its principal objective to protect the interests of existing and future energy consumers, the Authority hereby proposes to impose a financial penalty of £1 on each of the npower companies (total £7) in respect of the breaches it finds of SLCs 25C and 27.17 and regulations 3-7 and 10 of the CHRs, which it considers to be reasonable in all the circumstances of the case. In reaching its decision the Authority has taken the following factors into account:

- npower's failure to treat customers fairly and deal with complaints in accordance with the CHRs were very serious contraventions;
  - there was significant and widespread harm and detriment experienced by many thousands of consumers;
  - there are four factors tending to increase the level of any penalty (see paragraphs 5.10 – 5.15); and
  - there are three factors tending to decrease the level of any penalty (see paragraphs 5.16 – 5.21).
- 6.2. npower has agreed to settle the investigation on the basis of paying a financial penalty of £1 on each of the npower companies (total £7) within seven days of the date of any Final Penalty Notice issued by the Authority and pay the sum of £26million (less £7) by way of consumer redress on the dates and in the manner set out below.
- 6.3. The consumer redress<sup>10</sup> of £26million shall be used in the following manner:
- a. to make compensation payments to directly affected npower customers in regard to:
    - i. wrongful or potential wrongful back-billing between July 2010 and December 2014 in addition to providing refunds for bills paid by those customers, by 30 June 2016;
    - ii. wrongful or potential wrongful back billing between January 2015 and December 2015 in addition to providing refunds for bills paid by those customers, by 30 June 2016;
    - iii. billing over 4 months late between August 2013 and October 2013 where customers were not offered extended payment terms (excluding all customers who would not have qualified for extended payment terms), by 30 June 2016;
    - iv. those customers, who at 31 December 2015, are still waiting for bills over 12 months late, by 30 June 2016, in addition to any back bill deduction which may also become due (and any such backbill deduction will not be included in the calculation of the consumer redress of £26million);
    - v. those customers who had a complaint which started on or after 1 July 2011 and remained/or remain open after 12 months, by 30 June 2016.
  - b. the remaining sum (being £26m less the payment at (a)) above shall be paid direct to charity(ies) or third sector organisation (s) by 31 July 2016, to be nominated by npower and approved by the Authority.
- 6.4. In the event that npower and the Authority do not agree on a nominated charity(ies) or third sector organisation(s) in respect of the destination or apportionment of any funds to be paid out in relation (a) and (b) above by 30

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<sup>10</sup> Consumer redress for the purposes of this Notice, refers to redress to consumers who are domestic customers as defined in SLC 1 Standard Condition of Gas and Electricity Supply Licenses.

April 2016, such funds will be paid by npower as a penalty to the Treasury via the Consolidated Fund.

- 6.5. npower has agreed to settle the investigation early and the aggregate of the financial penalty and the amount of consumer redress is a lower figure than the Authority would have sought if npower had not taken such action. Also owing to its agreement to settle early, npower has been offered a discount on the penalty which would otherwise have been payable. Had npower not agreed to the early settlement of the investigation, the Authority would have imposed a higher penalty.
- 6.6. Any written representations on the proposed penalty must be received by Martin Campbell ([martin.campbell@ofgem.gov.uk](mailto:martin.campbell@ofgem.gov.uk)) and Laila Benfaida ([Laila.benfaida@ofgem.gov.uk](mailto:Laila.benfaida@ofgem.gov.uk)) at Ofgem at 9 Millbank, London, SW1P 3GE by **5 pm on 15 January 2016.**
- 6.7. Any representations received that are not marked as confidential may be published on the Ofgem website. Should you wish your response or part of your response to remain confidential, please indicate this clearly. Any such requests will be considered by Ofgem on a case by case basis.

**Gas and Electricity Markets Authority  
18 December 2015**