

Notice of reasons pursuant to Section 38A(1)(f) of the Gas Act 1986 and Section 49A(1)(f) of the Electricity Act for the decision of the Authority to make a provisional order under Section 28(2) of the Gas Act 1986 and Section 25(2) of the Electricity Act 1989

1. This notice sets out the reasons why, on 4 January 2019, the Gas and Electricity Markets Authority (“the Authority”) made a provisional order in respect of contraventions or likely contraventions by Economy Energy Trading Limited (company number 07513319) having its registered office at 10th Floor Friars House, Manor House Drive, Coventry, England, CV1 2TE (“Economy Energy”), of its obligations under: (i) the standard conditions of the gas supply licence granted under section 7A(1) of the Gas Act 1986 (“the Gas Act”); (ii) the standard conditions of the electricity supply licence granted under section 6(1)(d) of the Electricity Act 1989 (“the Electricity Act”)¹; and the Gas and Electricity (Consumer Complaints Handling Standards Regulations) 2008 which are a relevant requirement in terms of section 25(2)(a) and Schedule 6A of the Electricity Act and section 28(2)(a) and Schedule 4B of the Gas Act.
2. This is a notice pursuant to section 38A(1)(f) and (2) of the Gas Act and section 49A(1)(f) and (2) of the Electricity Act which provide that the Authority shall publish a notice stating the reasons for the decision to make a provisional order as soon as reasonably practicable after making such a decision.

Background

4. In 2017, Economy Energy moved into the credit customer market. Until then it had focused on the supply of energy to prepayment customers. By entering this market, Economy Energy faced new obligations such as setting direct debits and issuing credit refunds.
5. In June 2018, Ofgem² became aware of a number of customer service, billing and payment issues which showed a decline in Economy Energy’s customer service performance. This information was received from a variety of sources such as: Economy Energy, following Ofgem requests for information; Citizens Advice consumer service and the Citizens Advice Extra Help Unit (which has a remit to support vulnerable consumers), who reported an increased level of consumer contacts; and the Ombudsman Services: Energy (OS:E). Online sources such as Trustpilot, Money Saving Expert and Twitter have also indicated that customers are unhappy with the service provided by Economy Energy.
6. Ofgem engaged with Economy Energy between June 2018 and October 2018 and made various attempts to request information informally. Whilst some information was provided there were occasions when key details of requested information were missing and lacked a full explanation of the situation.

¹ Obligations under the standard conditions of the gas and electricity supply licences are collectively referred to as the “SLCs”

² The Office of the Gas and Electricity Markets, governed by the Gas and Electricity Markets Authority.

7. As a result, a formal Request for Information (RFI) was issued under s.28(1) of the Electricity Act and s.38(1) of the Gas Act on 4 October 2018. Only some of the information requested was received by the deadline for response, and much of the information requested remains outstanding.

Ofgem Concerns

8. In June 2018, Ofgem's compliance team requested information regarding customers who had received notifications that a "one off" payment would be taken from their account. Economy Energy advised Ofgem that roughly 28,000 Electricity customers were contacted³ as those customers had an average negative balance of £120. Economy Energy informed Ofgem that customers were given 10 working days' notice and asked to choose an option to bring their account up to date: pay a lump sum; increase their direct debit; or keep the negative balance until they could afford to pay. Economy Energy also advised that if the customer had not contacted it within 10 days a one off payment would be taken regardless. Economy Energy indicated that customers who were identified as vulnerable, as having financial difficulties or who had open complaints were removed from this group and were not contacted as there was not a suitable process in place to do so.
9. Approximately 3,500 Electricity customers contacted Economy Energy to spread their outstanding payments over a period of time. Economy Energy informed Ofgem that this took into account an individual's affordability and financial circumstances. All other customers who did not contact Economy Energy within the 10 working day notice period had a one off payment taken directly from their account.
10. Ofgem is concerned for a number of reasons that these customer accounts were not accurately reviewed to determine the account balances before pursuing the one off payment option:
 - a. The explanation for the determination of 'debt' provided by Economy Energy to Ofgem does not appear to align with the 'one off payment' process used by Economy Energy;
 - b. Similarly, the explanation for the determination of debt states that a customer may be 'in debt' throughout their direct debit cycle and provided that the direct debit value will adequately cover the bill, no collection measures will be used; i.e. one off payment or debt collection;
 - c. The 'Direct Debit increase' criteria explanation provided to Ofgem seems to suggest that Economy Energy conduct a 6 monthly account review and Direct Debits are adjusted accordingly. It is not clear that this links to the one off payment process or how this interlinks with the debt collection.

³ Gas customers were contacted via this process in April however Ofgem do not know how many Gas customers were contacted as this information was not been provided by Economy Energy as requested in the RFI of 4 October 2018.

11. Economy Energy's "One off payments" process is explained in its Terms and Conditions, which provide that this process may be followed should a customer's account be in debit. In addition to the concerns that arise due to conflicting information Ofgem is also concerned that this process is used in circumstances where Economy Energy's billing and payment processes are non-compliant, giving rise to a more significant level of consumer harm. Ofgem has received reports of difficulties and inconsistencies in the billing and debt collection for both credit and pre-payment customers. Ofgem is also concerned that customers who fall into "vulnerability" and "ability to pay" categories may not be adequately catered for in this process and may be subject to unwarranted payments being taken or unnecessary debt collection procedures. It appears to the Authority that Economy Energy has contravened and may be likely to contravene the requirements set out by the Standards of Conduct at SLC 0.2, 0.3a), 0.3b)(i), 0.3c)(i), (ii) and (iii), 0.3d), in particular the requirements to treat customers fairly, to provide information which is complete and accurate and to act promptly and courteously to put things right when the licensee makes a mistake. Furthermore, Economy Energy would appear to have contravened and may be likely to contravene the requirement to seek to identify each Domestic Customer in a Vulnerable Situation and act in a manner which takes into account any Vulnerable Situation of each such Domestic Customer identified.
12. Customers have also reported issues to Ofgem (through its monitoring function), Citizens Advice consumer service and the Citizens Advice Extra Help Unit (which has a remit to support vulnerable consumers), and via social media concerning not receiving refunds:
 - a. when they switch supplier – final bills may not be sent to customers when they switch supplier, or if they have been sent the customer may not have received their outstanding credit balance;
 - b. when they have credit balances – customers requesting or due refunds have not received them and have been waiting a considerable period of time with no explanation.
13. As such, it appears to the Authority that Economy Energy has contravened and may be likely to contravene the requirements set out at SLC 27.16 to issue refunds on request or by the Standards of Conduct at SLC 0.2, 0.3a) to treat customers fairly by providing refunds on closed accounts in the absence of such a request.
14. There have been complaints made via Citizens Advice consumer service and the Citizens Advice Extra Help Unit (which has a remit to support vulnerable consumers), and social media stating that Economy Energy has been using inappropriate debt collection procedures, often when the customer is not in debt. Ofgem asked Economy Energy for information on this subject via its RFI in October 2018. The response showed that a customer is advised of their account balance through provision of the bill either via Economy Energy's online facility or by post. Thereafter, customers receive reminders by calls, texts, emails and letters⁴ at regular intervals.

⁴ Minimum of 3 attempts per contact source.

15. The response did not clearly set out how customer vulnerability and ability to pay elements are managed. Economy Energy advised that its collections agents use Economy Energy's billing systems, which would indicate that a similar customer collection process is followed internally and externally. However, no evidence has been provided to substantiate Economy Energy's claims. Furthermore, although Economy Energy states that visits to customers' homes may take place during any external debt collection process, it is unclear as to who would conduct these visits; Economy Energy or the collection agent. These debt collection practices may be based on an inaccurate account of customer's balances for the reasons set out at paragraph 10. These debt collection practices appear to the Authority to contravene the requirements set out by the Standards of Conduct at SLC 0.2, 0.3a), 0.3b)(i), 0.3c)(i), (ii) and (iii), 0.3d), in particular the requirements to treat customers fairly, to provide information which is complete and accurate and to act promptly and courteously to put things right when the licensee makes a mistake. Furthermore, Economy Energy would appear to have contravened and may be likely to contravene the requirement to seek to identify each Domestic Customer in a Vulnerable Situation and act in a manner which takes into account any Vulnerable Situation of each Domestic Customer identified.
16. As a consequence of the behaviours set out at paragraphs 8 – 15 many customers tried to contact Economy Energy, but it failed to provide adequate means of dealing with customer queries. Call volumes and call waiting times increased in June - August 2018. In September Economy Energy deleted all of its social media accounts which removed a previously important means of customer contact and no alternative and equivalent customer service provision was made for dealing with the customer queries Economy Energy's behaviour generated.
17. Economy Energy's response to the RFI also shows that it does not record response times for emails (despite an internal target to respond to emails within 10 working days) and forms of customer contact such as post, web chat and social media. Ofgem has since received conflicting and un-evidenced information from Economy Energy about how such contacts are dealt with. There is evidence to suggest that contacts are not resolved to customers' satisfaction or whether customers in payment difficulty or vulnerability have had their queries addressed in a timely manner.
18. Between August 2018 and October 2018, Ofgem became aware of further concerns regarding complaints handling. In particular, it appears to Ofgem that Economy Energy does not always signpost complaints to the OS:E when they should. Those customers who did complain to the OS:E found that Economy Energy did not always implement the remedy provided by the OS:E leading to repeat contacts. Since August 2018 to the end of November 2018, with the exception of September, cases to OS:E increased each month. For November the OS:E accepted 399 cases which was a 256% increase on the number of cases accepted at the start of 2018 (January 112 cases). Issues included disputed account balances, failure to issue refunds and concerns about billing delays.
19. For the reasons given in paragraphs 16 - 18 it appears to the Authority that Economy Energy's customer service arrangements contravene the requirements set out by the Standards of Conduct at SLC 0.2, 0.3a), 0.3b)(i), 0.3c)(i), (ii) and (iii), 0.3d), in particular

the requirements to treat customers fairly, to provide information which is complete and accurate, to make it easy for a Domestic Customer to contact the licensee; act promptly and courteously to put things right when the licensee makes a mistake; and otherwise ensure that customer service arrangements and processes are complete, thorough, fit for purpose and transparent. Furthermore, when handling complaints, Economy Energy would appear to have contravened and may be likely to contravene the requirements of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 to record complaints upon receipt; maintain appropriate record handling of complaints; signpost consumers to the OS:E if complaints cannot be resolved; receive, handle and process consumer complaints in an efficient and timely manner; and allocate and maintain sufficient level of resources to complaints handling.

A. Contravention or likely contravention

20. Based on the information received by Ofgem, for the reasons set out above, it appears to the Authority that Economy Energy is contravening or is likely to contravene the following relevant requirements and conditions:
- a. SLC 0.3a), 0.3b)(i), 0.3c)(i), (ii) and (iii), 0.3d) (Treating Customers Fairly);
 - b. SLC 27.16; and
 - c. The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (the "CHSR").
21. SLC 0.2⁵ provides "The licensee must, and must ensure that its Representatives, achieve the Standards of Conduct in a manner consistent with the Customer Objective".
22. SLC 0.3 provides the Standards of Conduct, which are that the licensee and any Representative must:
- "a) behave and carry out any actions in a Fair, honest, transparent, appropriate and professional manner;
 - b) provide information (whether in Writing or orally) to each Domestic Customer which:
 - i. is complete, accurate and not misleading (in terms of the information provided or omitted);
 - ...
 - c) in relation to customer service arrangements:
 - i. make it easy for a Domestic Customer to contact the licensee;
 - ii. act promptly and courteously to put things right when the licensee or any Representative makes a mistake; and
 - iii. otherwise ensure that customer service arrangements and processes are complete, thorough, fit for purpose and transparent;
 - d) in relation to Domestic Customers in Vulnerable Situations:

⁵ A copy of the relevant condition can be found on the Ofgem website at <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions>.

i. seek to identify each Domestic Customer in a Vulnerable Situation, in a manner which is effective and appropriate, having regard to the interests of the Domestic Customer; and

ii. when applying the Standards of Conduct in paragraphs (a) to (c) above, do so in a manner which takes into account any Vulnerable Situation of each Domestic Customer identified in accordance with (d)(i) above or otherwise.”

23. The Customer Objective is set out in SLC 0.1, namely “to ensure that each Domestic Customer, including each Domestic Customer in a Vulnerable Situation, is treated Fairly. The term “Fair” and other cognate expressions is defined at SLC 0.9 as:

“The licensee or any Representative would not be regarded as treating a Domestic Customer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer, unless the detriment would be reasonable in all the relevant circumstances.”

24. The term Vulnerable Situation is defined as:

“the personal circumstances and characteristics of each Domestic Customer create a situation where he or she is:

- (a) significantly less able than a typical Domestic Customer to protect or represent his or her interests; and/or
- (b) significantly more likely than a typical Domestic Customer to suffer detriment or that detriment is likely to be more substantial.”

25. SLC 27.16 provides that,

“Where any Credit has accumulated under a Domestic Supply Contract and the relevant Domestic Customer requests that the licensee do so, the licensee must, save where it is fair and reasonable in all the circumstances for the licensee not to do so, refund, in a timely manner any Credit which has accumulated under that Domestic Supply Contract to the relevant Domestic Customer. Where the licensee considers that it is fair and reasonable in all the circumstances for it not to refund any Credit which has accumulated under a Domestic Supply Contract in accordance with this provision, it must inform the relevant Domestic Customer of its view and of the reasons for holding that view.”

The capitalised terms used at paragraphs 20 – 25 are defined in the SLCs.

26. The CHSR⁶ provide that the Licensee must:

- a. Regulation 4 - Record complaints upon receipt;
- b. Regulation 5 - Maintain appropriate records of the handling of complaints;
- c. Regulation 6 - Signpost consumers to the OS:E if complaints cannot be resolved;
- d. Regulation 7 - Receive, handle and process consumer complaints in an efficient and timely manner; and allocate and maintain sufficient level of resources.

⁶ The Regulations are not quoted in full but are available at <http://www.legislation.gov.uk/uksi/2008/1898/made>.

Reasons for provisional order

27. Section 28(2) of the Gas Act and section 25(2) of the Electricity Act provide that where it appears to the Authority:
- a. that a regulated person is contravening, or is likely to contravene, any relevant condition or requirement; and
 - b. that it is requisite that a provisional order be made,
- the Authority shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to it requisite for the purpose of securing compliance with that condition or requirement.
28. As described in paragraphs 8 to 19 above, it appears to the Authority that Economy Energy is contravening, or is likely to contravene, SLCs 0.2, 0.3a), 0.3b)(i), 0.3c)(i), (ii) and (iii), 0.3d), 27.16 and regulations 4, 5, 6, and 7 of the CHSR .
29. The Authority considers that it is requisite to make a provisional order against Economy Energy. In reaching this decision, the Authority has considered the following factors pursuant to section 28(3)(a) of the Gas Act and section 25(3)(a) of the Electricity Act that:
- a. it appears to the Authority that Economy Energy appears to have acted and/or is likely to act in contravention of SLCs 0.2, 0.3(a), 0.3b)(i), 0.3c(i), (ii) and (iii), 0.3d), 27.16 and regulations 4, 5, 6 and 7 of the CHSRs meaning that action must be taken by the Authority as a matter of urgency to ensure the compliance of Economy Energy with SLCs 0.,2, 0.3(a), 0.3b)(i), 0.3c(i), (ii) and (iii), 0.3d), 27.16 and regulations 4, 5, 6 and 7 of the CHSR;
 - b. despite engagement between Ofgem and Economy Energy, Economy Energy has failed to demonstrate, to the satisfaction of Ofgem, that it is compliant with SLCs 0.2, 0.3(a), 0.3b)(i), 0.3c(i), (ii) and (iii), 0.3d), 27.16 and regulations 4, 5, 6 and 7 of the CHSR;
 - c. Economy Energy's one off payment processes continue to cause detriment to its customers and is closely related to issues with debt, ability to pay procedures and payments such as customer refunds and direct debit. As such it is requisite for the Provisional Order to order that Economy Energy review customer accounts to ensure they were correctly assessed and for any anomalies to be rectified;
 - d. customers would appear to have been and are likely to continue to be caused detriment to by poor payment services in relation to refunds, which has involved many customers contacting Economy Energy repeatedly and facing long waiting times for receiving refunds. As such it is requisite for the Provisional Order to order that Economy Energy issues the refund of credit balances and reports on its progress in doing so;
 - e. customers would appear to be have been and are likely to be caused detriment to by inadequate customer service arrangements in relation to email contact, web chat, social media and other forms of customer contact. Customers who have attempted or may attempt to contact Economy Energy may be subject to long email response waiting times. As such it is requisite for the Provisional Order to order that Economy Energy ensures that its customer service arrangements and processes are complete, thorough, fit for purpose and

transparent and that it adheres to the specific timescales for doing so provided in the Provisional Order;

- f. customers would appear to have been and are likely to be unable to resolve complaints with Economy Energy. As such it is requisite for the Provisional Order to order that Economy Energy ensures that its complaints handling arrangements and processes are compliant with the CHSRs and that it adheres to the specific requirements regarding recording, monitoring and managing those complaints set out in the Provisional Order;
- g. following the issue of the RFI in October 2018, Ofgem has found that Economy Energy's responses in relation to debt balances, credit balances (which would help to show a better picture of the refund issues) and direct debits to be particularly concerning. As far as Ofgem are aware the 'one off payment' process is still a part of its business operations and therefore customers may still be at risk of receiving a demand for this type of payment when their account has not been adequately reviewed to determine their actual account balance. Economy Energy has provided no information to indicate that it is not in contravention of SLCs 0.2, 0.3(a), 0.3b)(i), 0.3c(i), (ii) and (iii), 0.3d) and 27.16. As such it is requisite for the Provisional Order to order that Economy Energy review customer accounts to ensure they were correctly assessed and for any anomalies to be rectified;
- h. in light of the above, a significant number of customers of Economy Energy are likely to sustain loss or damage in consequence of Economy Energy's poor consumer service arrangements and complaints handling processes in apparent contravention of SLCs 0.2, 0.3(a), 0.3b)(i), 0.3c(i), (ii) and (iii), 0.3d), 27.16 and regulations 4, 5, 6 and 7 of the CHSR and before a final order may be made; and
- i. if Economy Energy continues to increase direct debits, ask for one-off payments (where customers are not in default) without having first addressed the shortcomings in its customer service arrangements and withhold refunds, this would likely generate significant volumes of customer enquiries made via e-mail, telephone and web chat, which in turn is likely to lead to longer call waiting times, unanswered e-mails with no response date for resolution and thus result in Economy Energy continuing to fail to meet the requirements of SLCs 0.2, 0.3a), 0.3b)(i), 0.3c(i), (ii) and (iii), 0.3d), 27.16 and regulations 4, 5, 6 and 7 of the CHSR.

30. Given these significant concerns, Ofgem also considers it necessary to place a prohibition on Economy Energy acquiring new Domestic Customers, on the basis that Economy Energy is unable to provide adequate customer service to its existing customers. Furthermore, Ofgem considers it necessary to prohibit further one-off payment requests and/or increases to customer direct debits or the use of debt collection agents to pursue debts. This is because a key driver of Economy Energy's customer service problems (and so the apparent contraventions of SLCs 0.2, 0.3a), 0.3b)(i), 0.3c(i), (ii) and (iii), 0.3d), 27.16 and regulations 4, 5, 6, and 7 of the CHSR) has been its inability to field customer enquiries generated by such payment requests and direct debit reviews.

31. Pursuant to section 28(3)(b) of the Gas Act and section 25(3)(b) of the Electricity Act, the Authority has had regard to the fact that the effect of the provisions of sections 28 and 30 of the Gas Act and section 25 and 27 of the Electricity Act is to exclude the availability of

any remedy (apart from under those provisions of the Act or for negligence) in respect of any contravention of a relevant condition or requirement.

32. Pursuant to section 28(5) of the Gas Act and section 25(5) of the Electricity Act, the Authority has considered that the duties imposed on it by sections 4AA, 4AB and 4A of the Gas Act and sections 3A to 3C of the Electricity Act do not preclude the making of this provisional order.
33. Pursuant to section 28(4A) and section 25(4A) of the Electricity Act, the Authority has considered that it would not be more appropriate to proceed under the Competition Act 1998.
34. For the reasons set out above, the Authority has made the Provisional Order. It will cease to have effect on 4 April 2019 unless confirmed by the Authority on or before that date.

B. Content of the order

35. The Provisional Order is available on the Ofgem website at:
<https://www.ofgem.gov.uk/investigations>

Charles Hargreaves
Deputy Director
Conduct and Enforcement, Consumers and Markets

Duly authorised on behalf of the Gas and Electricity Markets Authority

Dated: 4 January 2019