

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 22 February 2019, the Gas and Electricity Markets Authority (“the Authority”) made a provisional order in respect of contraventions or likely contraventions by Solarplicity Supply Limited (company number 08053210), previously known as Loco2 Energy Supply Ltd, having changed its name to Solarplicity Supply Limited by notice dated 27 April 2017, and as Ganymede Energy Supply Limited having changed its name to Loco2 Energy Supply Ltd by change of name certificate dated 17 March 2014, having its registered office at Unit 8, Peerglow Centre, Marsh Lane, Ware, Hertfordshire, United Kingdom, SG12 9QL (“Solarplicity”) of its obligations under: (i) the standard conditions of the gas supply licence granted or treated as granted under section 7A of the Gas Act 1986 (“the Gas Act”); (ii) the standard conditions of the electricity supply licence granted or treated as granted under section 6(1) 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

3. Solarplicity Energy Limited (Solarplicity’s parent company) acquired Loco2 Energy Supply Ltd (“Loco2”) in 2017. Loco2 held a licence to supply gas and electricity to domestic customers. Loco2 Energy was rebranded as Solarplicity. As set out at paragraph 1, Loco2 Energy Supply Ltd changed its name to Solarplicity Supply Limited on 27 April 2017. After rebranding, Solarplicity grew quickly and, as at January 2019, it had around 68,000 customers. It supplies both gas and electricity to around 51,000 of those customers.
4. In July 2018, Ofgem² became aware of a number of issues concerning Solarplicity, namely: customer service; customer transfer (switching); identification of vulnerable customers; provision of customer service to vulnerable customers; identification of and provision of services to customers who have (or will have) difficulty paying; and complaints handling. These issues highlighted a general decline in Solarplicity’s customer service performance. Ofgem received and obtained this information from a variety of sources such as: Solarplicity itself (following formal and informal Ofgem requests for information); Citizens Advice Consumer Service and the Citizens Advice Extra Help Unit (EHU) (which has a remit to support vulnerable consumers), who reported an increased level of consumer contacts;

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.

and the Ombudsman Services: Energy (OS:E). Online sources such as Trustpilot, Which? and Twitter also indicated that customers are unhappy with the service provided by Solarplicity.

5. Ofgem engaged with Solarplicity between June 2018 and November 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.
6. As a result, a formal Request for Information (RFI) was issued under section 28(1) of the Electricity Act and section 38(1) of the Gas Act on 24 November 2018. The information received to date has been inconsistent, often inaccurate, and contradictory. Solarplicity also initially refused to provide some of the information and some of the information remains outstanding.

Ofgem Concerns

Customer Transfer process and contract renewals

7. In June 2018, Ofgem's compliance team requested information regarding customers who had not received a SLC 22C Statement of Renewal of Terms (Renewal Statement). Solarplicity advised that in the first six months of 2018 around 3,000 customers had not received a Renewal Statement nor had these customers received a bill since their contract ended. Solarplicity advised it had been aware of difficulties issuing Renewal Statements since January 2018 and that it was caused by IT issues and errors when implementing the manual processes for contract renewals. Solarplicity advised Ofgem in July 2018 that it was unable to rectify these issues due to lack of resources but that it would introduce an automated process for generation of Renewal Statements in the first quarter of 2019.
8. In January 2019, Solarplicity advised Ofgem that during the period from 27 November 2017 to 31 October 2018, 9,781 customers had not received their Renewal Statement. Solarplicity has provided us with the names of the tariffs that these customers are now on but not details of whether the customer is paying higher, lower or the same charges on that tariff as on the previous one.
9. Ofgem also has concerns around Solarplicity's customer transfer (switching) process. Information from various sources, such as information received from Solarplicity, Trustpilot, Citizens Advice Consumer Service and the Citizens Advice EHU, and the OS:E showed an increased level of dissatisfied customers in relation to customer transfer:
 - for the period from August 2018 to January 2019, up to 44% of all complaints to Solarplicity were with regard to customer transfer;
 - for the period from August 2018 to January 2019, up to 19% of a sample of Trustpilot 1 star reviews³ of Solarplicity related to customer transfer issues, a further 22% of these 1 star reviews related predominantly to customer refunds, often where customers did not receive refunds due to transfer issues;

³ From a sample reviewed of approximately 100 1 star records for each month of the period (i.e. c600 reviews in total)

- for the period from March 2018 to January 2019, up to 23%⁴ of contacts to Citizens Advice regarding Solarplicity related to customer transfer issues;
 - for the period from March 2018 to August 2018, up to 31%⁵ of contacts to the OS:E regarding Solarplicity related to customer transfer issues.
10. Most of the issues are related to general customer transfer issues, on-boarding new customers, issues with customer meter reads and lack of contact during the customer transfer period.
11. Ofgem is concerned that Solarplicity's customer transfer and contract renewal processes are not currently fit for purpose, in particular:
- a. Errors in the manual process have resulted in Solarplicity not sending Renewal Statements to 9,781 customers;
 - b. Customers may be substantially overcharged if they are being moved to a more expensive tariff as a result of not having been notified of their contract ending and not having had the opportunity to exercise their right to enter into a contract with a cheaper tariff either from Solarplicity or another supplier;
 - c. Information received by Ofgem suggests that customer meter reads during the customer transfer process are not being managed correctly and that customers are, on some occasions, double charged by both Solarplicity and the new/previous supplier – this may include customers who are vulnerable and may have difficulty paying.
12. As such, it appears to the Authority that Solarplicity is contravening and is likely to contravene the requirements set out at SLC 14A.1 to take all reasonable steps to complete a supplier transfer within 21 days, at SLC 14A.7 to take all reasonable steps to improve systems and processes governing supplier transfer in order to achieve the objective of completing all supplier transfers within 21 days, and at SLC 0.3c)(i) to make it easy for customers to contact it with regard to customer transfers.
13. It also appears to the Authority that Solarplicity is contravening and is likely to contravene the requirements set out at SLC 22C.3 and SLC 22C.4 to issue a Renewal Statement to customers no earlier than 49 days and no later than 42 days before the fixed term period of their fixed term supply contract is due to end. As a result of this contravention, it also appears to the Authority that Solarplicity is contravening and is likely to contravene the requirements at SLC 22C.6 to allow termination of the customer's contract without charging a renewal fee and at SLC 22C.7 to ensure that all customers not sent a Renewal Statement are subject either to the Relevant Cheapest Evergreen Tariff or the Relevant Fixed Term Default Tariff.

⁴ Between April and September 2018 customer transfer complaints levels ranged from 13% to 23%. Solarplicity removed themselves from Price Comparison Websites from August 2018. Between October 2018 and January 2019 customer transfer complaints ranged from 3% to 8%.

⁵ Between March – August 2018.

Vulnerable customers and ability to pay

14. Solarplicity advised Ofgem that out of almost 70,000 customers, only 1,367 are registered as vulnerable. This is 2% of its customer base. The average for smaller suppliers is 7%⁶. Ofgem is aware of past issues with Solarplicity's Social Obligations Reporting in relation to a very low number of customers being added to the Priority Service Register and it appears that vulnerable customers are still not being added as they should be.
15. Out of these 1,367 customers, there are 353 in debt⁷ (amounting to total debt among those customers of £172,000)⁸ and only 9 of these customers (and only 9 overall in Solarplicity's customer base) are on a repayment plan. Concerns about Solarplicity were highlighted in Ofgem's vulnerability report in 2018 which stated that *"Solarplicity...who have a large percentage of customers in arrears and a very small percentage of customers on repayment plans"*. Solarplicity's response to the November RFI shows that there are very few customers on repayment plans and therefore there has been no clear improvement since the 2018 report. These low numbers indicate that Solarplicity does not have a sufficient process in place to identify vulnerable customers or customers with difficulty paying. Solarplicity says it has an ability-to-pay procedure⁹ but the figures provided suggest they may not be adhering to it consistently.
16. From March 2018 to January 2019, the Citizens Advice EHU recorded most complaints as relating to billing, customer transfer (switching) and customer service.
17. Ofgem is concerned that vulnerable customers and those with difficulty paying are not being managed as they should be because:
 - a. Solarplicity has shown that it does not focus on providing services to customers who have difficulty paying – an email submitted as part of the response to the November RFI states *'we focused on the people who could pay us'* as there was not enough staff to manage every debt account which required attention;
 - b. In 2017 the average supplier weekly debt repayment amount was £6.50; for Solarplicity it was £97. This repayment amount therefore seems very high. Solarplicity have not provided any evidence to show that repayment amounts are now lower than they were in 2017. We have no evidence as to whether these repayment rates take into account the customer's ability to pay or whether the customer is in payment difficulty.
18. As such, it appears to the Authority that Solarplicity is contravening and is likely to contravene the requirements set out at SLC 0.3d)(i) to identify customers in a vulnerable situation in a manner which is effective and appropriate and has regard to the interests of the customers, at SLC 0.3 d)(ii) to apply the

⁶ Vulnerable Consumers in the Energy Market report 2018, Figure 1.1 -

https://www.ofgem.gov.uk/system/files/docs/2018/11/vulnerability_report_2018.pdf

⁷ Solarplicity's explanation of debt is acceptable however the level of debt for this small group of customers is very high and looks to be unmanaged.

⁸ Solarplicity's response to the formal RFI issued in November 2018.

⁹ A procedure to identify and provide certain required services to customers who have (or who will have) difficulty paying.

Standards of Conduct at SLC 0.3 a), b) and c) in a manner which takes account of the vulnerable situation, and at SLC 27.5 to offer the services in SLC 27.6 to customers when it becomes aware, or has reason to believe, that a customer is having or will have difficulty paying.

Customer service arrangements

19. Prior to November 2018, Solarplicity did not have a clear and consistent process to manage emails. In particular, it did not record email response times. Solarplicity advised Ofgem that Ofgem's November RFI prompted it to realise there was a problem with its email management process. Solarplicity's internal target is to respond to customers within 5 working days. Ofgem cannot ascertain whether it meets this due to the lack of recorded information. Trustpilot reviews show that reviewers are frustrated at not being able to contact Solarplicity and because they do not receive replies to their emails. A large number of reviewers note that emails are ignored or only responded to weeks/months later.
20. From March to October 2018, the number of emails received by Solarplicity each month ranged between 10,000 and 20,000¹⁰. Evidence provided by Solarplicity in December 2018 showed that there was often not enough staff to manage the level of emails being received. Despite this, Solarplicity recently advised Ofgem in December 2018 that it has 'no emails outstanding'¹¹. However, it has not fully explained this and it seems very unlikely, given the multitude of issues which may be communicated by customers via email. Solarplicity advised Ofgem on 6 December 2018¹² that it had now implemented a better process to monitor emails. We have not received any details from Solarplicity of this process.
21. Ofgem continue to be concerned about Solarplicity's email process for the following reasons:
 - a. Solarplicity has not demonstrated that it is managing its email process appropriately. We are concerned that Solarplicity remains unaware of the issues communicated to it in emails prior to November 2018.
 - b. Failure to properly record and manage emails may have had, and be having, serious adverse effects for customers. For example, emails may contain unrecorded or unmanaged complaints and/or communications from customers in a vulnerable or payment difficulty situation.
22. In July 2018, Ofgem became aware of issues regarding Solarplicity's complaint handling, mainly around customers being unable to contact Solarplicity to make a complaint or to track the progress of the handling of a complaint made. Sources such as Citizens Advice Consumer Service and the Citizens Advice EHU, the OS:E and Ofgem's internal social media team have provided information to show that complaints about Solarplicity were increasing from as early as March 2018 and that these complaints were not being dealt with as promptly as they should be. The majority of these complaints were in

¹⁰ Sometimes up to 650 emails per day.

¹¹ Solarplicity categorises some emails as 'other', but has not been able to explain what this category comprises – this indicates that its process does not allow it to properly record what emails it is receiving.

¹² Information quoted from the response to the November RFI (Q12) received on 6 December 2018.

relation to customers struggling to obtain advice and information (with customer contact failure being the primary reason for complaints), billing processes, metering and customer transfer (switching).

23. The data submitted by Solarplicity in response to the November 2018 RFI indicates that its complaints resolution times are poor. It is not clear that it is complying with the Gas and Electricity (Consumer Complaints Handling Standards Regulations) 2008. The deadlock process (the process to manage complaints that Solarplicity has been unable to resolve and where it must advise the customer that they can refer the complaint or complaints to OS:E if not resolved to the customer's satisfaction within 56 days) appears unmanaged and the deadlock figures unrealistic. We queried the figures and were told that Solarplicity *'do not record deadlock information in a way that can be effectively reported, as this information is specific to each complaint and our CRM [Customer Relationship Management system] will not support this level of detail. We are planning to address this in the current update to our CRM which now provides this functionality. This upgrade is planned to go live during March 2019'*.¹³
24. Solarplicity's internal Complaints Handling Procedure states that *'a CSR (Customer service representative) will contact you within 5 working days and a thorough investigation will be carried out'*. However, elsewhere its website states that *'we aim to acknowledge all complaints within 6 weeks'*¹⁴. In contrast, Solarplicity's internal target requires it to respond to complaints made via social media or via a Solarplicity Director within 24 hours. This indicates that customers who know how to escalate a complaint and/or are IT literate receive a far superior service. Those who are not IT literate and who do not take steps themselves to escalate a complaint (and generally, therefore, those likely to be most vulnerable) will experience a further delay in Solarplicity dealing with their complaints. From March 2018 to October 2018:
- a. of the 3,745 complaints received, only 30% (1,119) were resolved;
 - b. of the resolved complaints, only 13% (149) were resolved within 24 hours and nearly half (45%) took 56 days or longer to resolve;
 - c. of a sample of Trustpilot 1 star reviews, up to 14% relate to complaints handling¹⁵.
25. From March 2018 until mid-September 2018, Solarplicity had long call waiting times (with an average of 13 minutes 23 seconds and a maximum time of 22 minutes 01 second) and an unacceptably high number of calls received that it failed to answer (dropped calls). Over the period, Solarplicity dropped between 58% and 90% of its calls. On 23 July 2018, Solarplicity only answered 6% of the calls it received. Solarplicity opened a new call centre in South Africa in mid-September. Its performance then improved. From 17 September 2018 to 31 October 2018, it answered between 84% and 97% of the calls that it received. On 6 February 2019, Solarplicity sent Ofgem call handling information which showed: in December 2018 it had an average call waiting time of 42 seconds and that it answered 97% of the calls that it received; in January 2019, it had an average call waiting time of 38 seconds and that

¹³ Information was received on 24 January 2019 (q24).

¹⁴ <https://solarplicity.com/help/complaints-energy-advice>

¹⁵ Ofgem reviewed a sample of c100 '1 star' reviews at random per month from March 2018 to October 2018 (so c800 in total). On a per month basis, between 4% and 14% related to complaints handling.

it also answered 97% of the calls that it received. The Provisional Order requires Solarplicity to maintain this improved level of performance in call handling. This is so that the requirements to improve its performance in relation to other customer contact routes do not result in a deterioration in its call handling performance.

26. For the reasons given in paragraphs 19 to 24 it appears to the Authority that Solarplicity is contravening or is likely to contravene the requirements set out at SLCs 0.3 c)(i), (ii) and (iii) to make it easy for a customer to contact it, to act promptly and courteously to put things right when it makes a mistake and to otherwise ensure that its customer service arrangements and processes are complete, thorough, fit for purpose and transparent. It also appears to the Authority that Solarplicity is contravening / likely to contravene the requirements of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (regulations 3, 4, 5, 6 and 7) to have a complaints handling procedure in place at all times and comply with this in relation to each complaint it receives, to record complaints upon receipt, to keep a written, electronic record of how a complaint is handled where that complaint is not resolved by the end of the working day after it was first received, to signpost customers to the redress scheme if complaints cannot be resolved, to receive, handle and process consumer complaints in a timely manner and to allocate and maintain such level of resources as may reasonably be required for it to so receive, handle and process consumer complaints.

A. Contravention or likely contravention

27. Based on the information received by Ofgem, for the reasons set out above, it appears to the Authority that Solarplicity is contravening or is likely to contravene the following relevant requirements and conditions:
- a. SLC 0.3c)(i), (ii) and (iii), 0.3d) (i) and (ii) (Treating Customers Fairly);
 - b. SLC 14A.1 and 14A.7;
 - c. SLC 22C.3
 - d. SLC 22C.4;
 - e. SLC 22C.6;
 - f. SLC 22C.7;
 - g. SLC 27.5;
 - h. The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (the "CHSR").

28. SLC 0.3 c) and(d) provide, under the Standards of Conduct, that the licensee must:

"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:

- 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.”

29. 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.”

30. 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.”

31. SLC 14A.1 provides that:

“The licensee must take all reasonable steps to complete a Supplier Transfer within 21 days of the Relevant Date unless:

- (a) the Customer requests that the Supplier Transfer be completed at a later date; or
- (b) the Customer notifies the licensee that he does not wish the Supplier Transfer to take place; or
- (c) one or more of the conditions in paragraph 14A.3 applies”

32. SLC 14A.7 provides that:

“In order to achieve the objective of completing all Supplier Transfers within 21 days of the Relevant Date, the licensee must take all reasonable steps to improve the systems and processes governing the Supplier Transfer process.”

33. SLC 22C.3 provides that:

“The licensee must prepare a statement (hereafter referred to as an “SLC 22C Statement of Renewal Terms”) which:

(a) is set out in Writing;

(b) contains a prominent title which clearly informs the Domestic Customer that the fixed term period of their existing Fixed Term Supply Contract is due to end and they need to consider their options;

(c) without prejudice to SLC 22C Exempt Information only contains the following information:

- (i) the date the fixed term period of the existing Fixed Term Supply Contract is due to end;
- (ii) the following statement, presented in a manner which is readily distinguishable from the other text presented in the Statement of Renewal Terms: “Remember – it might be worth thinking about switching your tariff or supplier”;
- (iii) information about where the Domestic Customer may obtain impartial advice and information about changing their Electricity Supplier;
- (iv) a statement explaining that if the Domestic Customer does not change supplier or does not expressly agree a new Evergreen Supply Contract, a new Fixed Term Supply Contract or a further fixed term period for a Fixed Term Supply Contract by the date the fixed term period of the existing Fixed Term Supply Contract is due to end, the Domestic Customer will become subject to either the Relevant Cheapest Evergreen Tariff or a Relevant Fixed Term Default Tariff, as applicable;
- (v) a statement explaining that the following information is provided in a separate part of the SLC 22C Statement of Renewal Terms:
 - (1) the Principal Terms that currently apply to the Domestic Customer;
 - (2) the Principal Terms that would apply if the Domestic Customer becomes subject to either the Relevant Cheapest Evergreen Tariff or a Relevant Fixed Term Default Tariff, as applicable, by virtue of paragraph 22C.7; and
 - (3) where a Notice is also being provided to the Domestic Customer pursuant to sub-paragraph 22C.5(a) below, the Principal Terms that would apply if the Domestic Customer agrees a further fixed term period for an existing Fixed Term Supply Contract;
- (vi) information about how and when the Domestic Customer may terminate their Fixed Term Supply Contract without being charged a Termination Fee and a statement explaining the effect of paragraphs 24.8 to 24.12 of standard condition 24;
- (vii) the Domestic Customer’s Estimated Annual Costs in the event that the Domestic Customer becomes subject to either the Relevant Cheapest Evergreen Tariff or a Relevant Fixed Term Default Tariff, as applicable, by virtue of paragraph 22C.7;
- (viii) the Exact Tariff Name of the Domestic Customer’s Relevant Cheapest Tariff and the Domestic Customer’s Estimated Annual Savings based on the premise that the Domestic Customer is now subject to either the Relevant Cheapest Evergreen Tariff or a Relevant Fixed Term Default Tariff, as applicable; and
- (ix) the Exact Tariff Name of the Domestic Customer’s Alternative Cheapest Tariff and the Domestic Customer’s Estimated Annual Savings based on the premise that the Domestic Customer is now subject to either the Relevant Cheapest Evergreen Tariff or a Relevant Fixed Term Default Tariff, as applicable; and

(d) contains a separate part which provides the following information in a form which is easily comparable and clearly illustrates the main differences in the Principal Terms:

- (i) the Principal Terms that currently apply to the Domestic Customer;
- (ii) the Principal Terms that would apply if the Domestic Customer becomes subject to either the Relevant Cheapest Evergreen Tariff or a Relevant Fixed Term Default Tariff, as applicable, by virtue of paragraph 22C.7; and,

(iii) where a Notice is also being provided to the Domestic Customer pursuant to SLC 22C.5(a) below, the Principal Terms that would apply if the Domestic Customer agrees a further fixed term period for an existing Fixed Term Supply Contract;

(e) contains a separate part which, in accordance with paragraph 31E.8 of standard condition 31E (Provision of Tariff Information Label and Estimated Annual Costs at the same time as Principal Terms), contains the Tariff Information Label for each set of Principal Terms provided pursuant to sub-paragraph 22C.3(d); and

(f) contains a separate part which, in accordance with paragraph 31E.8 of standard condition 31E (Provision of Tariff Information Label and Estimated Annual Costs at the same time as Principal Terms), contains the Domestic Customer's Estimated Annual Costs for each set of Principal Terms provided pursuant to sub-paragraphs 22C.3(d)(i) and (iii) (but not the Domestic Customer's Estimated Annual Costs for the set of Principal Terms provided pursuant to sub-paragraph 22C.3(d)(ii), which must already be provided in accordance with sub-paragraph 22C.3(c)(vii))."

34. SLC 22C.4 provides that:

"The licensee must:

(a) provide a Domestic Customer with a copy of the SLC 22C Statement of Renewal Terms which complies with paragraph 22C.3 no earlier than 49 days and no later than 42 days before the fixed term period of their Fixed Term Supply Contract is due to end; and
(b) with the exception of the Notice described in paragraph 22C.5, ensure that the SLC 22C Statement of Renewal Terms is separate from any other document (including, but not limited to, a Bill, statement of account, Annual Statement or marketing material) and is provided to the Domestic Customer separately from any other document (including, but not limited to, a Bill, statement of account, Annual Statement or marketing material)."

35. SLC 22C.6 provides that:

"Where the licensee fails to comply with paragraphs 22C.2 to 22C.5 and extends the duration of an existing Fixed Term Supply Contract for a further fixed term period, the licensee may not charge or otherwise seek to enforce a Termination Fee in respect of that Domestic Supply Contract."

36. SLC 22C.7 provides that:

"Where a Domestic Customer does not change supplier or does not expressly agree a new Evergreen Supply Contract, a new Fixed Term Supply Contract or a further fixed term period for a Fixed Term Supply Contract by the date the fixed term period of an existing Fixed Term Supply Contract is due to end, the licensee must ensure that the terms of the Fixed Term Supply Contract provide that the Domestic Customer will become subject to either the Relevant Cheapest Evergreen Tariff or if the licensee considers it appropriate to do so, a Relevant Fixed Term Default Tariff."

37. SLC 27.5 provides that:

“The licensee must offer each of the services set out in paragraph 27.6 when it becomes aware or has reason to believe that a Domestic Customer is having or will have difficulty paying all or part of the Charges.”

38. SLC 27.6 sets out the services required by SLC 27.5:

“The services referred to in paragraph 27.5 are:

(a) the facility for a Domestic Customer to pay Charges:

(i) by using, where available, a means by which payments may be deducted at source from a social security benefit received by that customer;

(ii) by regular instalments calculated in accordance with paragraph 27.8 and paid through a means other than a Prepayment Meter; and

(iii) by using a Prepayment Meter, where it is safe and reasonably practicable in all the circumstances of the case for the Domestic Customer to do so and where any instalments to be paid are calculated in accordance with paragraph 27.8; and

(b) the provision of information about how the Domestic Customer could reduce the Charges for the Supply of Electricity that he must pay by using the electricity supplied to his premises more efficiently.”

The capitalised terms used at paragraphs 29 to 38 are defined in the SLCs.

39. The CHSR¹⁶ provide that the Licensee must:

- a. Regulation 3 – Have a complaints handling procedure in place at all times and comply with this in relation to each complaint it receives;
- b. Regulation 4 - Record complaints upon receipt;
- c. Regulation 5 – Record its handling of complaints;
- d. Regulation 6 - Signpost consumers to the OS:E if complaints cannot be resolved;
- e. Regulation 7 - Receive, handle and process consumer complaints in an efficient and timely manner; and allocate and maintain sufficient level of resources.

Reasons for provisional order

40. 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.

¹⁶ The Regulations are not quoted in full but are available at <http://www.legislation.gov.uk/ukxi/2008/1898/made>.

41. As described in paragraphs 7 to 27 above, it appears to the Authority that Solarplicity is contravening, or is likely to contravene SLCs 0.3c)(i), (ii) and (iii), 0.3d) (i) and (ii), 14A.1, 14A.7, 22C.3, 22C.4, 22C.6, 22C.7, 27.5 and regulations 3, 4, 5, 6, and 7 of the CHSR.
42. The Authority considers that it is requisite to make a provisional order against Solarplicity. 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 Solarplicity has acted and/or is likely to act in contravention of SLCs 0.3c)(i), (ii) and (iii), 0.3d) (i) and (ii), 14A.1, 14A.7, 22C.3, 22C.4, 22C.6, 22C.7, 27.5 and regulations 3, 4, 5, 6, and 7 of the CHSR meaning that action must be taken by the Authority as a matter of urgency to prevent loss and damage to customers by ensuring the compliance of Solarplicity with SLCs 0.3c)(i), (ii) and (iii), 0.3d) (i) and (ii), 14A.1, 14A.7, 22C.3, 22C.4, 22C.6, 22C.7, 27.5 and regulations 3, 4, 5, 6, and 7 of the CHSR;
 - b. 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. Customers who have attempted or may attempt to contact Solarplicity appear to be subject to long email response waiting times. Solarplicity's improvements in relation to email contact must not be made at the expense of recent improvements made in call handling customer service arrangements or cause a deterioration in performance in respect of other forms of customer contact (such as web chat and social media). As such it is requisite for the Provisional Order to order that Solarplicity ensures that its customer service arrangements and processes are complete, thorough, fit for purpose and transparent and so that it makes it easy for customers to contact it. It is also requisite that Solarplicity maintains an appropriate level of performance in relation to call handling and other forms of customer contact and that it adheres to the specific timescales for doing so provided in the Provisional Order and that Solarplicity reports on its progress in meeting the requirements of the Provisional Order;
 - c. customers would appear to have been and are likely to be unable to resolve complaints with Solarplicity in a timely manner and appear not to have been signposted to the consumer redress scheme in a timely manner as required by the complaints handling arrangements. As such it is requisite for the Provisional Order to order that Solarplicity ensures that its complaints handling arrangements and processes are compliant with the CHSRs and that it adheres to the specific requirements regarding its complaints process, monitoring and managing those complaints set out in the Provisional Order and report on its progress in doing so;
 - d. customers would appear to have been and are likely to continue to be caused detriment by Solarplicity's poor identification of Domestic Customers in a Vulnerable Situation. As such it is requisite for the Provisional Order to order that Solarplicity reviews all of its Domestic Customer accounts to determine whether customers are in a Vulnerable situation, to put

in place customer service arrangements that are appropriate and take account of those customers in a Vulnerable Situation and to report on its progress in doing so;

- e. customers do not appear to be offered the services set out at SLC 27.6 when Solarplicity becomes aware or has reason to believe that a customer is in payment difficulty. For that reason it is requisite that the Provisional Order orders that Solarplicity offers the required services to customers in payment difficulty and reports on its progress in doing so.;
- f. customers do not appear to have received the Statement of Renewal of Terms required by SLC 22C from Solarplicity when their fixed term contract comes to an end. As such it is requisite for the Provisional order to order that Solarplicity:
 - i. reviews all of its accounts to identify those occasions when it should have issued the required Statement of Renewal of Terms,
 - ii. contacts each customer that it failed to issue such a Statement to setting out the information required in the Statement and additional information enabling customers to make informed choices about whether they would like to remain customers of Solarplicity now that their fixed term contract has come to an end,
 - iii. reports on its progress in doing so; and
 - iv. ensures customers who were not sent the Statement of Renewal of Terms when they ought to have been are on Solarplicity's cheapest tariff.
- g. Solarplicity's customer transfer processes do not appear to be compliant with the requirements of SLC 14A.1 and continue to cause detriment to its customers. This issue is closely related to those of vulnerability, ability to pay procedures and payments such as direct debit. As such it is requisite for the Provisional Order to order Solarplicity to review customer accounts, to progress supplier transfer processes within the timescales set out in the Provisional Order and to report on its progress in doing so;
- h. in light of the above, a significant number of customers of Solarplicity are likely to sustain loss or damage in consequence of Solarplicity's poor compliance with the requirements of the SLCs and CHSRs. Therefore it is requisite to issue the Provisional Order urgently in order to prevent that loss and damage.

43. Given these significant concerns, Ofgem also considers it necessary to place a prohibition on Solarplicity acquiring new Domestic Customers, on the basis that, although its call handling services would appear to have improved, Solarplicity is unable to provide adequate customer service in many other areas to its existing customers. Ofgem has recently been informed that Solarplicity's main means of acquiring new Domestic Customers is currently through what it refers to as a "Community Energy Scheme" (Scheme) at Stoke-on-Trent. Solarplicity claims that the customers of this Scheme present a proportionately low number of complaints. Ofgem has given consideration to the information presented to it and has permitted Solarplicity to continue to process the switching process of those customers who have already agreed to participate in the Scheme. The Provisional Order prevents Solarplicity from acquiring New Domestic Customers under the Scheme. Ofgem considers this a proportionate and necessary measure on the basis that, on the information available to it, Domestic

Customers supplied by Solarplicity under the Scheme would be at the same risk of harm from the contraventions outlined in this notice as other existing or future customers.

44. Furthermore, Ofgem considers it necessary to prohibit an increase of direct debits of vulnerable customers or customers in payment difficulty or to use debt collection agents to pursue debts against those categories of customers as a preventative measure. This is because it appears to the Authority that Solarplicity does not have an adequate process in place to ensure that it applies the Standards of Conduct at SLCs 0.3 a), b) and c) in a manner which takes account of customers in a vulnerable situation or has the processes in place to deal with customers in payment difficulty in a compliant manner.
45. 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.
46. 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.
47. 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.
48. For the reasons set out above, the Authority has made the Provisional Order. It will cease to have effect on 14 May 2019 unless confirmed by the Authority on or before that date.

B. Content of the order

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

Charles Hargreaves
Deputy Director
Enforcement, Consumers and Markets

Duly authorised on behalf of the Gas and Electricity Markets Authority

Dated: 22 February 2019