

# Decision

## **Decision of the Gas and Electricity Markets Authority to close its investigation into Utilita's compliance with its obligations under Standard Licence Condition 28A (Prepayment Charge Restriction) of its gas and electricity supply licences**

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This investigation was opened in January 2020 after Utilita Energy Limited ('Utilita') advised Ofgem that it had overcharged some gas customers in excess of the Prepayment Charge Restriction (more commonly known as the PPM Price Cap), between May 2019 and September 2019.

The investigation focused on the extent to which Utilita overcharged its customers, the process shortcomings that led to the overcharges, and the impact on Utilita's customers.

The investigation also revealed that between July 2018 and September 2019 Utilita had overcharged some electricity customers amounts that were either in excess of the PPM price cap, or were below the cap, but were in excess of the advertised tariff.

This document sets out what we found, the action taken by Utilita to resolve the issues, and our reasons for closing this investigation following agreement of appropriate 'alternative action' enforcement measures.

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## Investigation outcome

- 1.1 In November 2019, Utilita self-reported to both the Competition and Markets Authority ('CMA') and Ofgem that it had overcharged some gas customers in excess of the levels permitted under the PPM Price Cap in the 01 April 2019 - 30 September 2019 Charge Restriction Period. Thereafter an investigation was opened into Utilita's compliance with Standard Licence Condition ('SLC') 28A (Prepayment Charge Restriction). Utilita had previously breached the PPM price cap in December 2017 and, as such, this was a potential repeat breach.<sup>1</sup>
- 1.2 Our investigation examined the circumstances leading to the overcharge, the processes Utilita had in place to ensure compliance with SLC 28A, and the impact on its customers of any breach.
- 1.3 Utilita operates a tariff that has no standing charge but has different unit rates for initial daily consumption and subsequent daily consumption. Where there is no, or limited, communication with a customer's SMART meter the way the rates are applied can be affected and lead to temporary overcharging. To address this, Utilita manually reconciles these accounts every month and credits back the difference to the customer's SMART meter.
- 1.4 During the investigation we found evidence that:
  - Due to an administrative error, the manual reconciliation did not take place between May 2019 and September 2019 in respect of the gas accounts for around 2,000 customers. These gas customers were overcharged by c. £14,000 and these overcharges were in excess of the PPM Price Cap. This is a contravention of SLC 28A of the gas supply licence.
  - Prior to the opening of the investigation, Utilita had been unaware that it was necessary to carry out the same manual reconciliation process in respect of some electricity accounts. As a result, Utilita had overcharged around 4,600

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<sup>1</sup> <https://www.ofgem.gov.uk/publications-and-updates/utilita-refunds-361m-mistakenly-overcharging-prepayment-customers>

electricity customers c. £8,700 in the period from July 2018 to September 2019. This is in contravention of SLC 28A of the electricity supply license.

- Between July 2018 and September 2019, Utilita overcharged around 33,000 electricity customers c. £105,000 above the amount they should have paid under their advertised tariff, but below the PPM Price Cap. Again, this was due to Utilita not carrying out the manual reconciliation process in respect of these accounts. This overcharge was not covered by the scope of the existing investigation, as it was not above the level of the PPM Price Cap.<sup>2</sup>

1.5 We found no evidence that the root cause of this PPM Price Cap breach was linked to the previous breach in 2017, nor that Utilita intended to deliberately overcharge its customers and in turn breach its regulatory obligations.

1.6 We found no evidence that Utilita's tariff itself was set above the level permitted by the PPM Price Cap. Rather, the overcharge was caused by Utilita's failure to carry out an administrative process that corrected temporary overcharging.

1.7 Utilita took steps to change its policies and procedures surrounding the manual reconciliation process to reduce the risk of the issue reoccurring. Utilita also carried out detailed calculations for the overcharges and refunded these to impacted customers.

1.8 Utilita has offered a package of redress totalling no less than £500,000.<sup>3</sup> This comprises of:

- £10 goodwill payments to all existing overcharged customers<sup>4</sup> (increased to £15 if the customer is on the Priority Services Register<sup>5</sup>)

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<sup>2</sup> The investigation was opened in respect of whether Utilita had breached SLC 28A

<sup>3</sup> This amount covers the SLC28A breaches and the separate issue of overcharging customers in excess of their tariff but below the PPM price cap

<sup>4</sup> There are approximately 28,000 impacted customers still on Utilita's supply of which around 10,000 are on the Priority Services Register.

<sup>5</sup> <https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/extra-help-energy-services/priority-services-register>

- A £140 payment to the c. 900 existing impacted customers who had applied for the Warm Home Discount (WHD) but were unsuccessful<sup>6</sup>
- An additional payment of c. £45,000 to be paid into the Voluntary Redress Fund

1.9 Having considered our findings, we have decided that, whilst Utilita had fallen short of its obligations under its gas and electricity supply licences, this investigation was suitable for resolution via alternative action under Ofgem’s Enforcement Guidelines.<sup>7</sup> This enables Ofgem to agree a package of remedial action to address the impact on customers that can be targeted and timely. Ofgem assessed this as appropriate because:

- Utilita self-reported the issues both to Ofgem and the CMA when it became aware there was a problem
- Utilita has introduced changes to its policies and procedures to minimise the risk of the issue occurring again
- Utilita engaged positively during the course of the investigation and highlighted the additional issue of the electricity overcharges, investigated and rectified it when it was discovered
- Utilita accepts the adverse impact the issues had on its customers
- Utilita identified and refunded all overcharges to all impacted customers to the extent that no residual detriment remained
- Utilita has offered to compensate impacted customers over and above the refunds issued. This will directly compensate the customers impacted by the issues quickly and conveniently.

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<sup>6</sup> These are customers for whom all the verification checks had been carried out and were found to be eligible for WHD but were outside Utilita’s allocated quota. For further information on the scheme see <https://www.ofgem.gov.uk/environmental-programmes/warm-home-discount-whd-scheme>

<sup>7</sup> The Enforcement Guidelines can be found at: <https://www.ofgem.gov.uk/publications-and-updates/enforcementguidelines>

- 1.10 Our decision is subject to Utilita issuing the necessary compensation to impacted customers and the payment to the Voluntary Redress Fund by 31 December 2020 and confirming that the payments have been made.

**Gas and Electricity Markets Authority**

**29 October 2020**