

EDF Energy: Notice of intention to impose a financial penalty pursuant to s30A of the Gas Act 1986 and s27A of the Electricity Act 1989

Proposal of the Gas and Electricity Markets Authority to impose a financial penalty, following an investigation into EDF Energy and suspected breaches of Regulations 4, 5 and 7(1) (a) of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 ("the CHSR")

22 August 2014

Summary

- 1.1 The Gas and Electricity Markets Authority ("the Authority") proposes to impose a financial penalty on EDF Energy following an investigation into its compliance with the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 ("the CHSR").
- 1.2 The CHSR came into force on 1 October 2008. They include the requirement for gas and electricity suppliers to establish and operate systems, processes and procedures to receive, handle, process and record all complaints from customers in an efficient and timely manner. The regulations provide specific details on information to be recorded.
- 1.3 Ofgem's investigation was initially prompted by the results of the Harris Interactive Survey in 2010. The third mass migration stage of EDF Energy's implementation of a new IT system during 2011 led to a significant increase in complaints from customers, specifically relating to call waiting times. In December 2011, Ofgem's investigation was directed to whether EDF Energy's customer contact centre complied with the requirements of the CHSR.
- 1.4 The Authority finds that:
 - between May 2011 and January 2012, EDF Energy did not receive, handle or process complaints in an efficient or timely manner. Specifically, during third mass migration stage of the implementation of a new IT system, there was a significant increase in the waiting times for calls to be answered and in the number and proportion of unanswered calls. This led to a dramatic increase in the level of complaints received and recorded as "dissatisfaction linked to phone queue too long". In addition, some complaints were not registered on a timely basis and others were not properly recorded under the CHSR. As a result of these breaches, EDF Energy did not receive, handle and process complaints in an efficient and timely manner, in breach of Regulation 7(1)(a) of the CHSR;
 - between May 2011 and January 2012 EDF Energy failed in some instances to record, upon receipt of a consumer complaint, all the required details of the complaint. Specifically, when handling some complaints, EDF Energy did not record in adequate detail the date of receipt, a summary of the complaint, a summary of the advice given or action taken, or the basis on which the complaint has been resolved. This is a breach of Regulation 4 of the CHSR; and

- between May 2011 and January 2012, where a complaint was not resolved by the end of the working day after the day on which the complaint was first received, EDF Energy failed in some instances to record what steps were taken in response to each such consumer complaint, including any steps to resolve the consumer complaint, the date upon which the specified time expired. This is a breach of Regulation 5 of the CHSR.
- 1.5 The Authority considers it appropriate to impose a penalty on EDF Energy for these contraventions.
 - 1.6 EDF Energy has taken actions to improve its compliance with the CHSR. EDF Energy completed its implementation of its new IT system in 2012. It fully reviewed its internal processes with regard to complaints recording and its back up/contingency processes for complaints handling in the event of unplanned and unforeseen system outages. For this reason, the Authority is not issuing an Enforcement Order.
 - 1.7 In the circumstances, the Authority hereby gives notice under section 30A of the Gas Act 1986 and section 27A of the Electricity Act 1989 of its proposal to impose a penalty of £1 together with a redress package of £3m to be made by EDF Energy in respect of contraventions of the CHSR. The proposed level of penalty would have been higher had EDF Energy not admitted the breaches of the CHSR and fully co-operated with Ofgem's investigation.
 - 1.8 Any written representations on this notice must be sent to Carol Mounfield (carol.mounfield@ofgem.gov.uk) by **4pm, 19 September 2014**.
 - 1.9 The Authority would prefer it if, as far as possible, responses were provided in a form that can be placed on the Ofgem website. Should you wish your response or part of your response to remain confidential please indicate this clearly.

2. Background

- 2.1 The CHSR came into force on 1 October 2008. They include the requirement for gas and electricity suppliers to establish and operate systems, processes and procedures to receive, handle, process and record all complaints from customers in an efficient and timely manner and as set out in detail in the regulations. Ofgem initially commenced an investigation into EDF Energy's adherence with complaint handling standards in August 2010 prompted by the results of a Survey conducted by Harris Interactive¹ in 2010. This found that consumers perceived that many suppliers did not keep a full and accurate record of a customer complaint.
- 2.2 From 2007, EDF Energy began planning the introduction of a new IT system with an intention to provide benefits to consumers through improved service, better value and increased accessibility. Following an initial pilot in 2010, the first two phases of the formal implementation commenced in January 2011. The third mass migration stage of the implementation, involving the migration of a significant proportion of customers, was originally planned to take place at the end of May 2011.
- 2.3 During the third mass migration stage of implementation of this new IT system, call waiting times for EDF Energy customers began to increase significantly, resulting in difficulties for customers in contacting EDF Energy. This led to a substantial increase

¹ <https://www.ofgem.gov.uk/ofgem-publications/57617/customer-complaints-handling-research-report-2010.pdf>

in complaint levels, specifically concerning call waiting times, from customers over the period May 2011 to January 2012. In December 2011, these difficulties led Ofgem to extend a 2010 investigation to focus on whether EDF Energy's customer contact centre complied with the requirements of the CHSR.

- 2.4 Ofgem sent EDF Energy a series of formal information requests pursuant to section 28(1) of the Electricity Act 1989 and section 38(1) of the Gas Act 1986 between April 2012 and December 2013. EDF Energy provided responses to all information requests as required.
- 2.5 The Authority considered breaches of Regulations 7(1)(a), 4, and 5 of the CHSR as outlined below:

Regulation 4

This regulation provides that, upon receipt of a consumer complaint, a regulated provider must record in a written electronic format:

- the date the complaint was received;
- the identity and contact details of the relevant customer making the complaint or on whose behalf the consumer complaint is made;
- a summary of the complaint;
- a summary of the advice given or action taken or agreed; and
- whether the complaint has been resolved and if so, the basis upon which it is considered that the complaint has been resolved.

The provision also provides that, where any subsequent contact is made with a regulated provider in relation to an existing consumer complaint that regulated provider must record the date of the subsequent contact, a summary of that contact and a summary of any advice given or action taken or agreed in response to any points raised in that contact.

Regulation 5

This regulation provides that a regulated provider must keep a written, electronic record of specified matters (set out in 5 (2)) for each consumer complaint which it receives where that consumer complaint has not become resolved by the end of the working day after the day on which the consumer complaint was first received by that regulated provider.

Regulation 7 (1) (a)

This provision requires regulated providers to receive, handle and process consumer complaints in an efficient and timely manner.

3. The Authority's decision on contraventions

- 3.1 After considering the relevant information of the case, it is the Authority's view that EDF Energy was in breach of Regulations 4, 5 and 7 (1) (a) of the CHSRs. These breaches have been admitted by EDF Energy.
- 3.2 The Authority made the findings below in relation to the breaches in the period from May 2011 to January 2012:

Regulation 7(1) (a):

- 3.3 In the course of the investigation, the Authority found there was evidence of EDF Energy's failure to receive, handle and process complaints in an efficient and timely manner. Evidence from four key indicators demonstrated that during the third mass migration stage of the implementation of its new IT system EDF Energy's customer contact centre did not have robust arrangements to meet the requirements of the CHSR during the period of the breach between May 2011 and January 2012. The key indicators were:
- the number of unanswered (dropped) calls, which increased significantly and to unacceptable levels;
 - call waiting times, which increased significantly and to unacceptable lengths;
 - the level of complaints received, which increased substantially as a result of dissatisfaction linked to call waiting times being too long; and
 - in addition, EDF Energy failed to record all complaints received in a timely or efficient manner.

Unanswered (dropped) calls

- 3.4 EDF Energy's performance in responding to telephone calls dropped during the first migration stages of the implementation of the new IT system between January and March 2011. The volume of dropped calls doubled to around 20% of call volume in this period. During the third mass migration stage of the implementation of the new IT system between May 2011 and January 2012, there was a dramatic increase in the volume of unanswered (dropped) calls. Dropped calls accounted for a significant proportion averaging over 40% of all calls made to EDF Energy during the relevant period. In June and July 2011, EDF Energy experienced the highest incidence of unplanned system outages and during this period there were more dropped calls than answered calls. The majority of dropped calls were repeat callers. During this period, over 8,000 consumers made 10 or more attempts to contact EDF Energy before their calls were answered, and a further 2,000 not having any answered call despite making 10 or more attempts. In the Authority's view, the increase in volume in dropped calls was due to EDF Energy's inability to respond to, and answer, the volume of calls it was receiving due to the problems experienced with its new IT system.

Call waiting times

- 3.5 Following the completion of the first two mass transfers of customers in the first quarter of 2011, a third mass transfer of customers to the new IT system took place in May 2011. Following this third system migration, customers who attempted to

make contact with EDF Energy experienced significant increases in the time they had to wait to have their calls answered. Call waiting times for the calls that were answered were longer than should have reasonably been expected. Delays were at their worst in July 2011, where customers had to spend an average of 13 minutes waiting to have their call answered.

- 3.6 Prolonged times waiting for calls to be answered and processed led customers to experience detriment through loss of personal time.

Complaint levels

- 3.7 In 2009, 2010 and the first half of 2011, EDF Energy received under 50,000 complaints per month. During the third mass migration stage of the implementation of its new IT system from May 2011, complaint levels began to increase dramatically, rising to over 140,000 complaints being made in January 2012. Data provided by EDF Energy showed the key reason for the increase in complaints to be dissatisfaction linked to phone queue being too long. In July 2011 there were over 8,500 complaints recorded under "dissatisfaction linked to phone queue too long". The first mass migration stages of the implementation during January – March 2011 period did not see complaints of this nature rise above 2500.
- 3.8 Given the numbers of unanswered calls, the Authority concludes that the complaint figures recorded by EDF Energy during the period of deteriorated service levels are likely to underestimate the true level of customer dissatisfaction.

Delayed registration of receipts of complaints and inadequate recording

- 3.9 During the third mass migration stage of its implementation, the new IT system had unplanned outages of over 700 minutes in June 2011 and nearly 400 minutes in July 2011. The Authority noted instances of complaints received via email or letter or recorded elsewhere during this period, which were not registered as received and processed until sometime after they had actually been received.
- 3.10 On the basis of the evidence of these four indicators, the Authority concluded that EDF Energy failed to receive, handle and process all complaints which customers attempted to make in the relevant period. Those complainants who were able to make contact with EDF Energy would frequently have done so after long call waiting times and/or previous unsuccessful attempts to make contact with EDF Energy and would have spent longer having their calls processed. Furthermore, the Authority concludes that where contact was made, the complaint was not always recorded and processed fully in accordance with the regulations.

Regulation 4

- 3.11 In the course of its investigation, Ofgem requested from EDF Energy a representative sample of 150 complaint records received from three randomly selected dates within the relevant period (7 July 2011, 23 September 2011, and 14 November 2011). The analysis of this evidence demonstrated that a significant proportion (20 per cent) of the sample complaints did not satisfy one or more of the requirements under the Regulations.
- 3.12 The Authority found that in this period EDF Energy failed in some instances to record customer complaints upon receipt, in accordance with Regulations 4(1)(a), 4(1)(b),

4(1)(c), 4(1)(e), 4(1)(f), 4(1)(g) and 4(2)(a), 4(2)(d) and 4(2)(e). In particular, the Authority found that EDF Energy failed to record one or more of the following:

- complaints upon receipt (regulation 4 (1));
- the date that the consumer complaint was received and whether the complaint was made orally or in writing, and the identity and contact details of the relevant consumer making the complaint or on whose behalf the complaint was made (regulation 4(1)(a),4(1)(b) and 4(1)(c));
- the detail of the complaint and/or the action that was taken or the advice that was given (regulation 4(1)(e) and 4(1)(f)); and
- whether the complaint was resolved and, if so, the basis on which the supplier considered the consumer complaint was a resolved complaint (regulation 4(1) (g)).

3.13 The Authority also found that, in cases where subsequent contact was made in relation to an existing customer complaint, EDF Energy failed to:

- record the date of the subsequent contact (regulation 4(2)(a));
- record a summary of that contact (regulation 4(2)(d));
- record a summary of any advice given or action taken or agreed in response to any points raised in that contact (regulation 4(2) (e)).

3.14 Additionally, the Authority found that, where subsequent contact was made, EDF Energy failed to make links between the subsequent contact and existing complaints (regulation 4(3)).

3.15 As a consequence, the Authority concluded that in this period EDF Energy failed to handle and process consumer complaints in accordance with regulations 4(1)(a), 4(1)(b),4(1)(c), 4(1)(e), 4(1)(f), 4(1)(g) and 4(2)(a), 4(2)(d), and 4(2)(e) and, where subsequent contact was made in relation to an existing complaint, the information provided was not always handled and processed in accordance with Regulation 4.

Regulation 5

3.16 From analysis of the representative sample of 150 complaints received within the relevant period, the Authority found that during the relevant period, where a complaint was not resolved by the end of the working day after the day on which the complaint was first received, EDF Energy failed to record the complaints in accordance with Regulation 5(1) and 5(2) (a), 5(2) (b), 5(2) (c) and 5(2) (d).

3.17 In particular, the Authority found that EDF Energy in some instances:

- failed to record the steps that were taken in response to each such consumer complaint, including any steps to resolve the consumer complaint (regulation 5(2) (a)).

- failed to record the date upon which any such consumer complaint became a resolved complaint (regulation 5(2) (b)).
- failed to record the date upon which the specified period expired (regulation 5(2) (c)).
- failed to record the date upon which the relevant consumer who made the complaint was informed of their right to refer that consumer complaint to a qualifying redress scheme (regulation 5 (2) (d)).

3.18 As a consequence, the Authority concludes that in this period EDF Energy failed to record the handling of the complaints in accordance with the Regulations.

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 The Authority has considered whether a financial penalty is appropriate in accordance with the requirements of the Gas Act 1986 and the Electricity Act 1989 and with its published Statement of Policy with respect to Financial Penalties (October 2003) (the Policy).
- 4.2 The Authority is required to carry out all its functions, including the taking of any decision as to penalty, in the manner which it considers is best calculated to further its principal objective, having regard to its other duties. The Authority is not, under its own Policy, limited to consideration of matters specifically mentioned in the Policy, but will consider all the circumstances. The matters detailed in this Policy are considered below.

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

- 4.3 The Authority finds that the general interests of consumers have been damaged by the contraventions. Firstly, consumers suffered harm from calls not being answered or prolonged call waiting and processing times. Secondly, because EDF Energy did not hold details of their complaints when it should have done, consumers will have suffered harm through delay and cost through repeating that information, often by telephone. Thirdly, inadequate recording of complaints limits management's ability to effectively respond to customers.

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

- 4.4 The Authority considers that imposing a financial penalty on EDF Energy is likely to incentivise compliance and help deter future breaches by sending a message to the company, its shareholders and the industry at large that a failure to adhere to the requirements of the CHSR at all times, including when undergoing change processes such as large-scale IT projects, will not be tolerated.

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

If the contravention is trivial in nature

- 4.5 The Authority considers that the infringements were not trivial. EDF Energy's breaches happened for a period of nine months and had serious effects on its customers who failed to have their complaints received and/or processed properly.

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

- 4.6 There is nothing in the Authority's principal objective and duties to preclude the imposition of a penalty in this case.

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

- 4.7 The Authority recognises that unplanned IT outages contributed to the increased call waiting times and longer call processing times resulting in the breach. However, the Authority considers that a diligent regulated provider should have ensured its arrangements, even in a period of transition between one IT system and another, were sufficiently robust to comply with the CHSR. Whilst EDF Energy planned for the transition over an 18 month period and recruited additional resources to handle customer calls, these measures were ultimately not sufficient to ensure full compliance.
- 4.8 In light of the above, the Authority considers it appropriate to impose a financial penalty in this case.

5. Criteria Relevant to the Level of Financial Penalty

- 5.1 Under Electricity Act 1989 and the Gas Act 1986 the Authority may impose a financial penalty up to 10 per cent of the annual turnover of the relevant license holder. Annual turnover is defined in the Regulations issued by the Secretary of State.² In the year ended December 2012, EDF Energy's turnover was £5,626.80 million according to their Regulatory Accounts.
- 5.2 In arriving at the quantum of the penalty in this case, the Authority has considered the following factors in accordance with its Policy.

Factors which are first considered when determining the level of penalty

The seriousness of the contravention and failure

- 5.3 The Authority considers the contraventions described above to be serious. In addition to the detriment suffered by consumers in this particular case, Ofgem considers compliance with the rules governing the processing of complaints to be particularly important. This is because it is one of the key ways that customers can communicate to suppliers their dissatisfaction and to access potential remedies, including their rights to seek review through the Energy Ombudsman. Customers should be able to complain, and have their complaint handled properly, at all times, even during large-scale IT changes aimed at improving the customer experience.

² The Electricity and Gas (Determination of Turnover for Penalties) Order 2002.

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

- 5.4 The Authority considers that collectively a significant degree of harm was incurred by domestic consumers for the period in which EDF Energy did not have fully compliant complaint-handling arrangements.
- 5.5 EDF Energy has publicly apologised to its customers. EDF Energy has not compensated any of its customers for the increased costs incurred by them due to its breaches of the CHSR.

The duration of the contravention or failure.

- 5.6 The breach occurred for a period of nine months between May 2011-January 2012 inclusive.

Any gain (financial or otherwise) made by the regulated provider

- 5.7 EDF Energy invested heavily in a new IT system with the aim of improving customer experience and also incurred expenditure in recruiting additional staff above planned levels to try and reduce call waiting times once they started to deteriorate during the key stages of the new IT system implementation. However, the Authority considers that EDF Energy could have gained a financial benefit from incurring lower expenditure by not ensuring their complaint handling arrangements were sufficiently resilient to comply with the CHSR whilst it was migrating customer records from one IT system to another.

Factors tending to increase the level of any penalty

Repeated contravention or failure

- 5.8 In June 2010 Ofgem found a contravention of regulation 4(1) occurred between October 2008 and December 2008 in failing to record all complaints received. EDF Energy made changes to its CHSR arrangements from February 2009. To demonstrate its ongoing commitment to the CHSR and to its customers EDF Energy also made payments totalling £200,000 to two consumer funds. The payments were in addition to payments the company would otherwise have made to the funds. The Authority considered that these payments, together with EDF Energy's acceptance of the problem and action taken to resolve it, obviated the need for a financial penalty.
- 5.9 Given this previous breach, EDF Energy would have been aware of the requirements to ensure that it was recording all complaints in accordance with the CHSR and the seriousness with which Ofgem viewed any breaches. The Authority considers it an aggravating factor, that despite a previous breach, EDF Energy did not appear to have taken the necessary steps to comply with the requirements of the CHSR even during the period of a large-scale IT changes aimed at improving the customer experience.

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

- 5.10 Following the extension of this investigation in December 2011, the case team engaged with EDF Energy in relation to the CHSR issues being identified by this investigation. Complaints and call waiting times began to reduce after December 2011.

The involvement of senior management in any contravention or failure

- 5.11 As a large supplier with a significant customer base, having experienced a prior breach of the CHSRs, senior management should have been expected to ensure customer complaints were handled in a timely and efficient manner during the implementation of the new IT system. EDF Energy did establish contingency arrangements, such as the use of overtime, additional recruitment and redeployment of management and a back-up system for recording complaints. These plans did not prevent the breaches of the CHSRs; however, management's response enabled action to be taken to address the contravention more promptly than would have otherwise been the case.

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

- 5.12 The Authority notes that EDF Energy had in place a number of policies for dealing with customer complaints and training of staff. That said, the Authority is of view that the back-up arrangements for recording complaints during periods of system unavailability were not as effective as could have reasonably been expected in the circumstances and in light of the legal requirements under the CHSR.

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

- 5.13 EDF Energy did not conceal the contraventions from Ofgem and fully co-operated in providing weekly data to enable Ofgem to monitor performance during the period from May 2011 onwards.

Factors tending to decrease the level of any penalty

The extent to which the regulated provider had taken steps to secure compliance either specifically or by maintaining an appropriate compliance policy, with suitable management supervision

- 5.14 The Authority notes that in investing in a new IT system with the aim of improving customer experience, EDF Energy:
- brought in expert external advisors to implement this new IT system and planned the implementation over an 18 month period;
 - recruited additional resources to deal with additional calls during the transition period;
 - redeployed resources and increased overtime when call waiting times began to increase;

- acted responsibly in relation to its transition programme, particularly when call waiting times began to increase, by suspending further planned migrations until greater system stability had been achieved.

Appropriate action taken by the regulated provider to remedy the contravention or failure

5.15 The Authority also notes that EDF have taken steps to improve their complaints handling through:

- improving its processes for back-up arrangements for recording complaints during periods of system unavailability and specifically ensuring these are tailored for recording, and subsequently facilitating, the prompt processing of complaints during periods of system outages;
- making significant efforts in further increasing all call centre staff awareness of the regulations, their importance for consumers and how they should be applied in all cases;

Evidence that the contravention or failure was genuinely accidental or inadvertent

5.16 Whilst unplanned IT outages contributed to the increased call waiting times and longer call processing, the Authority does not consider all contraventions to be accidental or inadvertent. This particularly relates to the breaches of regulations 4 and 5 where EDF Energy staff failed in some instances to record information required under legislation when processing complaints. This breach occurred more than three years after the CHSR came in to force and EDF Energy were aware from an earlier breach of the requirements of these conditions.

Reporting the contravention or failure to Ofgem

5.17 EDF Energy did not report its contraventions to Ofgem prior to commencement of the investigation.

Co-operation with Ofgem's investigation

5.18 EDF Energy has fully co-operated with Ofgem's investigation. EDF Energy has decided not to contest Ofgem's findings. This has meant that Ofgem has not had to spend additional resources on preparing for an oral hearing. The Authority also gives weight to EDF Energy's willingness (and agreement) to settle this investigation on the basis of this decision.

6. The Authority's Proposed Decision

6.1 The Authority considers that the seriousness of the contraventions, the degree of harm experienced by consumers, the duration of the contravention and the financial gain made by EDF Energy warrant a financial penalty.

6.2 However, the Authority also recognises EDF Energy admission of the breaches, and the efforts and investment it made in seeking to address the issues resulting from the implementation of its new IT system as quickly as possible. It also places emphasis on EDF Energy's commitment to improve its complaints handling processes.

- 6.3 The Authority also has regard to payments to be made by EDF Energy totalling £3m made up of :-
- £2.7m in payment to the Citizens Advice's 'Energy Best Deal Extra' scheme, and
 - £300,000.00 in payment to the Plymouth Citizens Advice Bureau's Debt Helpline.
- 6.4 The Authority considers that the scale of these payments and measures listed above will have a significant impact on EDF Energy's future compliance and a deterrent effect against future breaches by EDF Energy or other parties.
- 6.5 Taking all these factors into account, in particular the payments and measures listed above for the benefit of consumers, and also mindful of its principal objective to protect the interests of existing and future consumers, the Authority proposes to impose a financial penalty of £1 which it considers reasonable in all the circumstances of the case.
- 6.6 The penalty would have been significantly higher if EDF Energy:
- a) had not agreed to settle the investigation;
 - b) had not agreed to make the payments described above;
 - c) had not admitted the breaches;
 - d) had not made changes to its systems and processes to comply with the CHSRs.
- 6.7 Any representations or objections with respect to the Authority's proposal must be sent to Carol Mounfield (carol.mounfield@ofgem.gov.uk) by **4pm, 19 September 2014**. The Authority would prefer it if, as far as possible, responses were provided in a form that can be placed on the Ofgem website. Should you wish your response or part of your response to remain confidential please indicate this clearly.