

Notice of reasons under section 49A of the Electricity Act 1989 and section 38A of the Gas Act 1986 for the decision to make a Provisional Order under section 25(2) of the Electricity Act 1989 and section 28(2) of the Gas Act 1986

- A. **To: Maxen Power Supply Limited** (“Maxen Power”) Company number: 10298693, having its registered office at Olympic House, 28-42 Clements Road, Ilford, Essex, England, holder of an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989 (“the Electricity Act”) and a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986 (“the Gas Act”).
- B. This Notice sets out the reasons why, on 10 May 2024, the Gas and Electricity Authority (“the Authority”) made a provisional order in respect of likely contraventions by Maxen Power (the “Provisional Order”).
- C. Maxen Power is the holder of gas and electricity supply licences granted by the Authority and is subject to the conditions thereunder, which are “relevant conditions” for the purposes of the Electricity Act and the Gas Act.
- D. The Provisional Order was made as it appeared to the Authority that Maxen Power was contravening, or likely to continue to contravene, relevant conditions and requirements by virtue of the following conduct:
- (D.1) Maxen Power’s Change of Tenancy (“CoT”) process appears to expose Customers moving into new premises to a disproportionate level of risk due to the significant volume of documentation requested to process the CoT.
- (D.2) The time taken to collate all the requested materials risks the Customer building up a significant balance, charged on Deemed Rates¹. This risks placing Customers in a position where they are unfairly incentivised to stay with Maxen Power once the CoT has been processed, as Maxen

¹ Meaning the rates charged in terms of a deemed contract created by paragraph 3 of Schedule 6 to the Electricity Act 1989

Power can then offer the Customer cheaper contracted rates backdated to the Customer's move-in date. If the Customer does not agree to enter a contract with Maxen Power and wishes to switch supplier, they would have to pay off the balance they accumulated during the CoT process before they can switch.

- (D.3) Additionally, the Authority is not satisfied with the rationale provided by Maxen Power regarding the relevancy of much of the documentation they request to facilitate the CoT.
 - (D.4) The Authority has received intelligence from numerous sources alleging that Third-Party Intermediaries ("TPIs")², believed to be acting on behalf of Maxen Power, are contacting Non-Domestic Customers and professing to be their current supplier.
 - (D.5) In some instances, the TPIs allegedly present misinformation about the Customer's supplier (eg, allegedly advising that they are increasing prices or intending to stop supply).
 - (D.6) Other allegations against these TPIs include enacting a change of supplier from the Customer's previous supplier to Maxen Power without the customer's knowledge or consent.
 - (D.7) Based on engagement thus far, the Authority is not satisfied that Maxen Power have demonstrated sufficient control over TPIs in a way that protects Customers from potential harm.
 - (D.8) The alleged practices of these TPIs benefit Maxen Power due to the procurement of new Customers.
- E. The Authority has been made aware of the apparent conduct outlined in sections (D.4) – (D.6) via intelligence received from various non-connected sources operating in the non-domestic market. The Authority has also considered evidence provided to their compliance and enforcement teams by Maxen Power during recent periods of engagement.
- F. Standard Licence Condition ("SLC") 0A and 4A provides the following:

² TPI in this context is interchangeable with the definition of "Third Party" defined in SLC1 of the Gas and Electricity Supply licenses.

i. SLC 0A. Treatment of Microbusiness Customers

0A.3- The Standards of Conduct are that the licensee:

(a) behaves and carries out any actions in a Fair, honest, transparent, appropriate and professional manner;

(c) in relation to customer service arrangements:

(i) makes it easy for a Micro Business Consumer to contact the licensee;

(ii) acts promptly to put things right when the licensee makes a mistake; and

(iii) otherwise ensures that customer service arrangements and processes are fit for purpose and transparent.

ii. SLC 4A. Operational Capability

4A.1- The licensee must ensure it has and maintains robust internal capability, systems and processes to enable the licensee to:

(a) efficiently and effectively serve each of its Customers;

(b) efficiently and effectively identify likely risks of consumer harm and to mitigate any such risks; and

(c) comply with relevant legislative and regulatory obligations.

4A.2- The licensee must have Sufficient Control over the Material Economic and Operational Assets used or needed to run its supply business.

G. The Authority considers that the apparent conduct described in section D above, in relation to Maxen Power's existing CoT processes and the behaviour of TPIs acting on their behalf, appears to show that Maxen Power is contravening, or likely to contravene, SLC 0A.3(a), 0A.3(c)(iii), 4A.1(a), 4A.1(b), and 4A.2. .

H. Due to the risk of significant consumer harm, the Authority considers it requisite to issue a provisional order rather than consulting on a Final Order. It is not appropriate in these circumstances to allow the delay (of at least three weeks due to the statutory consultation process) associated with a Final

Order. The Provisional Order prohibits Maxen Power from engaging in sales, marketing, and new non-CoT customer acquisition activity. We have considered this provision carefully, mindful of its likely impact on Maxen Power's business. We consider it requisite to prohibit Maxen Power from acquiring new non-CoT Customers until it can satisfy the Authority that it is in compliance with the relevant license conditions. We consider this requirement to be reasonable and proportionate in the circumstances. The ban will apply for a short period and will be lifted on demonstration that the terms of the Provisional Order are met. We also require Maxen Power to process all CoT Customers who are on Deemed Rates in a fair, reasonable, and timely manner, requesting only those documents which are necessary. The Authority considers it is requisite to immediately intervene to ensure compliance with SLC 0A and 4A.

- I. The Provisional Order contains a provision requiring Maxen Power to provide an independent audit report outlining whether Maxen Power (and/or their representatives), in line with SLC 0A.3, behave and carry out actions in a fair, honest, transparent, appropriate, and professional manner, alongside a remedial action plan if the findings indicate the requirement for one. Maxen Power must commission this audit at its own expense. The resources of the Authority do not permit continuous detailed supervision of Maxen Power's operations, and the Authority requires the assurance of an independent auditor. The Authority considers this requirement to be reasonable and proportionate in the circumstances. Maxen Power is required to engage with the Authority regarding the independent audit and particularly with regard to the acceptability of the independent auditor that Maxen Power proposes to appoint.
- J. The Authority has had regard to the matters sections 25(3), (4A), (4B), (5) and (5A), and section 26 of the Electricity Act and the equivalent provisions in the Gas Act.³ In particular:

³ The equivalent provisions in the Gas Act 1986 being sections 28 (3), 28 (4A), 28 (4B), 28 (5), 28 (5A) and 29

- i. it does not consider that it would be more appropriate to proceed under the Competition Act 1998 (that Act has no application to the present circumstances);
 - ii. it is satisfied that the duties imposed on the Authority by sections 3A to 3C of the Act do not preclude Authority from making the Provisional Order (on the contrary, it considers that its duties require it to make the provisional order); and
 - iii. it does not consider that the contraventions are trivial.
- K. For the above reasons, the Authority decided to make the Provisional Order requiring Maxen Power to take the following actions:
- (1) Not act in contravention of SLC 0A and 4A.
 - (2) By no later than 4pm on 24 May 2024 to provide the Authority with an updated CoT policy/process which is to the Authority's satisfaction. This must outline which documentation they will initially request with full written rationale as to why each document is necessary for progressing a CoT.
 - (3) By no later than 4pm on 21 June 2024 to provide the Authority with either sufficient evidence of their control over TPIs acting on their behalf or a remedial action plan outlining the steps they will take to ensure they have sufficient control over Operational Assets.
 - (4) By no later than 4pm on 21 June 2024 to provide the Authority with an independent audit report (commissioned by Maxen Power's own expense and prepared by an independent professional acceptable to the Authority with a framework and remit also acceptable to the Authority⁴) regarding Maxen Power's start-to-end customer journey with relation to acquisition of new customers. The report must outline whether Maxen Power (and/or their representatives) behave and carry out actions in a fair, honest,

⁴ Maxen Power must consult with the Authority's Responsible Officer(s) prior to a) engaging its proposed auditor, and b) providing its appointed auditor with remit for their audit. These steps must be taken by no later than 24 May 2024 (allowing at least four weeks for the audit to be undertaken). The Authority will provide Maxen Power with direction on the scope, data, and performance metrics to be included in the report.

transparent, appropriate and professional manner, alongside a remedial action plan if the findings indicate the requirement for one.

- (5) By no later than 4pm on 10 July 2024 with regards to paragraphs (3) and (4) any remedial plan actions are to be completed and a Director with responsibility for retail/individual with significant managerial responsibility or influence/the Chief Operating Officer is to confirm completion in writing to the Authority.
 - (6) Until the terms of the Provisional Order are met and the Authority has confirmed in writing to Maxen Power that the terms of the Provisional Order are met, Maxen Power shall refrain from all sales, marketing and new non-CoT customer acquisition activity.
 - (7) Until the terms of this Provisional Order are met and the Authority has confirmed in writing to Maxen Power that the terms of the Provisional Order are met, Maxen Power shall process all CoT customers who are on Deemed Rates in a fair, reasonable, and timely manner, requesting only those documents which are necessary. Any failure to comply with this requirement will be considered by the Authority when deciding on the level of any penalty or consumer redress order it might impose.
- L. The Provisional Order is published online at: [Compliance and enforcement - Investigations, orders and penalties | Ofgem](#). The Provisional Order has been served to Maxen Power on 10 May 2024.
- M. The Authority will, in due course, consider whether to consult on confirming the Provisional Order (with or without modifications). Unless earlier confirmed or revoked by the Authority, the Provisional Order will lapse on 10 August 2024.
- N. The issuance of the Provisional Order is without prejudice to any further or other enforcement action the Authority may decide to take, in relation to this or any other outstanding or future breaches. The Authority will consider whether it is appropriate to impose a financial penalty on Maxen Power in relation to this breach.



Making a positive difference
for energy consumers

Dated: 10 May 2024

Signed:

Charles Hargreaves

Deputy Director, Enforcement

Duly Authorised on behalf of the Gas & Electricity Markets Authority