

# NOTICE OF PROPOSAL TO IMPOSE A FINANCIAL PENALTY PURSUANT TO SECTION 27A(3) OF THE ELECTRICITY ACT 1989

**Date: 06 11 2024**

Proposal of the Gas and Electricity Markets Authority ('the Authority') to impose a financial penalty, following a Provisional Order ("PO") served on Farringdon Energy Limited (Farringdon) trading as Champion Energy, in relation to its compliance with its obligations under Standard Licence Conditions ('SLCs') 4A.1 of its electricity supply licence.<sup>1</sup>

## 1. Summary

- 1.1. The Authority is satisfied that Farringdon has contravened SLC 4A.1 (a) and (b) as it did not have the internal capability, systems and processes to efficiently and effectively serve its customers or to efficiently and effectively identify likely risks of consumer harm and to mitigate any such risks. This resulted in Farringdon, without legitimate reason, collecting payments for energy not supplied to customers.
- 1.2. An investigation was launched by the Authority and a Provisional Order (PO) was issued to Farringdon on the 9 May 2024 on the basis that it appeared:
  - (i) Farringdon had been receiving payments from in the region of 200 Customers and consumers for supply of electricity that Farringdon had not supplied and had not informed the Customers and consumers that it had not been supplying.
  - (ii) The Customers and consumers were, unknowingly, being supplied by other energy companies, and there was evidence that these energy companies were not being paid for their supply.
- 1.3. There was evidence that the Customers and consumers were unknowingly accruing debt to the true suppliers of their electricity.

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<sup>1</sup> The SLCs considered within this Notice of Proposal have similar wording in the Gas and Electricity Supply Licences and are interpreted by the Authority in a consistent manner. In this document, a reference to an SLC by number refers to the identical condition in both licences. All terms used in this Notice of Proposal are deemed to have the same definitions as those in the Electricity and Gas Supply Licences, unless indicated otherwise.

- 1.4. Following the PO, Farringdon has supplied the Authority with evidence showing that it had, without legitimate reason, been collecting payments from 25 customers and consumers for energy it did not supply. This resulted in Farringdon gaining payments it was not entitled to, causing a collective detriment of in excess of £175,00 to those customers. This was a failure to have the internal capability, systems and processes required by SLC 4A (a) and (b) to efficiently and effectively serve its customers or to efficiently and effectively identify likely risks of consumer harm and to mitigate any such risks.
- 1.5. Conditions of the PO required Farringdon to contact all affected customers and terminate any direct debit payments. Farringdon has made attempts to comply with this order. However, some affected customers could not be contacted as contact details were no longer valid, the customer had moved, or the (non-domestic) customer had ceased trading.
- 1.6. Farringdon has taken appropriate remedial actions. However, applying the criteria in section 3 of this Notice, the Authority considers that a penalty ought to be imposed for the contraventions set out in the PO. In determining the amount of the proposed penalty, the Authority has considered the factors set out in section 4 of this Notice. The Authority considers the proposed penalty to be reasonable in all the circumstances of this case.
- 1.7. In these circumstances, and mindful of its principal objective to protect the interests of existing and future consumers, the Authority hereby gives notice under section 27A (3) of the Electricity Act 1989 ("EA 89") of its intention to impose a penalty of £223,676 on Farringdon.
- 1.8. Any written representations or objections to this notice must be received by email to Head of Enforcement Paul Stuart, [Paul.Stuart@ofgem.gov.uk](mailto:Paul.Stuart@ofgem.gov.uk), or Senior Enforcement Investigator Stefano Gurini, [Stefano.Gurini@ofgem.gov.uk](mailto:Stefano.Gurini@ofgem.gov.uk), or by post to Paul Stuart, Head Of Enforcement, Ofgem, Enforcement, 4<sup>th</sup> Floor, 10 South Colonnade, Canary Wharf, London E14 4PU by **4pm on 27 November 2024** . Any representations received by this date will be considered by the Authority before it makes a final decision on imposing a penalty.
- 1.9. The Authority may publish any representations or objections that are not marked as confidential. Should you wish your response or part of your response to remain confidential, please indicate this clearly. The Authority will consider whether to comply with any such requests on a case-by-case basis.

## 2. The authority's view on the contravention

- 2.1. SLC 4A.1 states that 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*".

- 2.2. Farringdon informed the Authority there were two legitimate circumstances in which customers were paying by Direct Debit (DD) to, but not receiving supply from, Farringdon. These were:
  - a. Customers deemed a credit risk whereby, Farringdon requested advance payments to build credit to mitigate risks. Farringdon identified 270 customers within this category.
  - b. Customers permitted to switch, from Farringdon, despite being in debt with Farringdon. In this instance, the customer continued to pay Farringdon, following the switch, to cover the outstanding debt. Farringdon identified 3 customers within this category.
- 2.3. On 5 June 2024, Farringdon informed the Authority it had identified 14 customers, referred to as "Prejudiced Customers", who, for no legitimate reason, were paying DD without receiving supply. On 20 June 2024, this number was revised to 16. In June 2024 Farringdon informed the Authority it had employed an independent consultant who had identified a further 9 Prejudiced Customers. In total 25 Prejudiced Customers were identified.
- 2.4. Evidence provided by Farringdon indicates that over the course of their business, since 2021, they have allowed 30 customers to switch to another supplier despite being in debt. These customers continued making DD payments to pay off this debt. Of these 30 customers, 21 have been categorised as Prejudiced Customers because Farringdon continued to take payments after the debt was cleared. In addition, Farringdon have provided evidence of 4 cases in which they failed to take supply but set up, and continued to take, direct debits.
- 2.5. Farringdon had no documented internal systems and processes to manage customers' accounts and payments. Farringdon failed to identify that it was taking DD from customers illegitimately, in some cases since 2021. Farringdon's policies and procedures were managed by one employee relying on personal knowledge and experience. Farringdon had no contingency plans or resilience in place to manage customer accounts and payments should a change in management be necessary.
- 2.6. The detriment caused to the 25 Prejudiced Customers is evidence that Farringdon were unable to efficiently and effectively identify risk of consumer harm and mitigate any such risks in breach of SLC 4A.1(a) and (b). The total detriment is £175,112. It can be broken down as follows:
  - (a) The detriment associated with the customers who were never supplied electricity by Farringdon is £23,715.
  - (b) The detriment associated with customers who switched to another supplier, while having a debt with Farringdon, is calculated at £151,397.
- 2.7. It is noted that Farringdon have reimbursed to Prejudiced Customers they have been able to contact and have compensated those customers an additional gesture of goodwill.

- 2.8. The lack of internal controls, systems and processes to manage customer accounts has contributed to Farringdon being unable to contact 9 (nine) Prejudiced Customers to reimburse the overpayment. This may have been due to the customers moving or ceasing to trade.
- 2.9. For the reasons set out above, the Authority is satisfied that, in breach of SLC 4A.1 (a) and (b), Farringdon did not have the internal capability, systems and processes to efficiently and effectively serve its customers or to efficiently and effectively identify likely risks of consumer harm and to mitigate any such risks.

### **3. The authority's view on whether to impose a financial penalty**

- 3.1. In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure, the Authority is required to have regard to its Statement of Policy with Respect to Financial Penalties and Consumer Redress<sup>2</sup>.
- 3.2. The Authority is required to carry out its functions under Part 1 of the EA 89 including the taking of any decision as to the imposition of a penalty, in the manner which it considers is best calculated to further its principal objective set out in section 3A EA 89 having regard to its other duties.
- 3.3. The Authority is clear that regulated persons should not benefit financially from any contravention or failure. Indeed, the Authority considers that non-compliance should normally cost significantly more than compliance and that financial penalties should act as a significant deterrent to future non-compliance.
- 3.4. When determining the amount of a financial penalty and/or consumer redress payment, the Authority will consider any remedial measures that have been taken by a regulated person. However, the Authority may impose a financial penalty significantly in excess of the gain or detriment even where the gain or detriment has been mitigated in full. The Authority considers that this may be necessary in order to deter non-compliance and provide appropriate encouragement for all regulated persons to comply with their obligations.
- 3.5. The Authority will take into consideration various factors when deciding to impose a financial penalty. The following factors are applicable in this case:

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<sup>2</sup> [Statement of Policy With Respect to Financial Penalties And Consumer Redress 2022 | OFGEM](#), drafted in accordance with Section 27B(2) EA 89 and section 30B GA 86

Seriousness and impact of the contravention or failure.

- 3.6. Farringdon received in excess of £175,000 from 25 customers which it was not entitled to take. This could have been prevented had Farringdon implemented internal processes, and regular reviews of accounts.
- 3.7. Farringdon have made attempts to reimburse money taken from Prejudiced Customers. However, several appear to have moved premises or ceased trading and cannot be contacted. The Authority cannot know the reasons why these businesses have ceased trading, these unnecessary payments may have impacted on the business' liquidity.
- 3.8. Farringdon have also offered these customers a goodwill payment (approximately 5% of the detriment) in compensation. This has been considered in determining what penalty should be imposed.
- 3.9. The impact of the contravention on these microbusinesses cannot be determined but is likely to be significant. The lack of procedures and internal controls resulted in Farringdon taking money from consumers for no legitimate reason. This would likely have continued without the intervention by the Authority and the issue of the PO. Were it not for the PO, more customers could have been affected.

Deterrence, including whether a financial penalty and/or restitution payment is necessary to deter future contraventions or failures by all market participants and encourage compliance.

- 3.10. The integrity of a supplier's oversight of customers' accounts and payments relies on robust systems and clear internal policies and procedures. Customers must have confidence that suppliers will manage accounts effectively. Farringdon took payments from 25 microbusinesses, which it was not entitled to take, over a sustained period of time and involved a significant amount of money.
- 3.11. The Authority has noted that, since the PO was issued, Farringdon has attempted to return the payments to the Prejudiced Customers. However, in 9 cases, this has not been possible due to Farringdon not being able to make contact with the customers.
- 3.12. Whilst Farringdon has not previously been the focus of enforcement action, a strong deterrent message must be sent to focus its attention on taking its licence obligations seriously.
- 3.13. The Authority also considers it necessary for a strong deterrent message to be sent to the wider market, to encourage the compliance of all suppliers and put them on notice that breaches of this nature will be penalised.

3.14. Taking all of these factors into account, the Authority considers it necessary to impose a penalty.

#### **4. Determining the amount of the financial penalty**

4.1. The Penalty Policy outlines the steps that should be taken in calculating the penalty amount for any given case. This is a six-step process, and the Authority's views and determinations for each of these steps is laid out below.

##### Step 1 – Calculate the detriment and gain

4.2. The Authority, in reviewing all the available evidence, has attempted to obtain information that would allow it to quantify the full gain to Farringdon and detriment suffered by the consumer in this case. When the Prejudiced Customers were identified, the detriment was in excess of £175,000. Where possible, since the PO was issued, Farringdon has voluntarily refunded some of the Prejudiced Customers.

4.3. The effect of the financial gain to Farringdon over the contravention period cannot be fully determined or quantified as it is unknown how Farringdon used these additional funds or if any interest was earned.

4.4. For these reasons it is not possible to accurately quantify the gain and detriment here. Instead, the Authority intends to consider this at Step 2 in assessing the seriousness of the breach.

##### Step 2 – Assess the seriousness of the breach

4.5. In assessing the seriousness of the breach, the Authority has given due regard to factors outlined in the Penalty Policy (Paragraph 5) and considers all those listed within Step 2 to be applicable in this case. These are outlined below:

##### Factors relating to the nature of a contravention or failure

4.6. The Authority considers the contravention to be serious. It occurred over a substantial period, demonstrating a long-term systemic failure of Farringdon's operational capability. Farringdon should have been aware that payments were being taken from customers who had never been or were no longer being supplied energy by Farringdon.

##### Impact of the contravention or failure, including any detrimental effect on the ability of Ofgem or the Authority to fulfil its statutory duties and whether there was any consumer or market participant detriment or gain (financial or otherwise) made by the regulated person.

4.7. Farringdon was unable to identify all "Prejudiced Customers", requiring them to engage a consultant to assist complying with regulatory obligations after the PO has been issued.

Without directions given under the PO, it is likely that these customers would not have been identified and Farringdon would have continued to take payments from customers erroneously.

- 4.8. Customers affected were all micro businesses which are likely to be at higher risk from financial harm than larger businesses due to lower turnover and profit. Micro-businesses should have confidence that energy suppliers have sufficient procedures and capabilities in place to ensure that direct debits are justified.
- 4.9. Farringdon took payments, in excess of £175,000, from 25 identified Prejudiced Customers with some of these payments commencing in 2021. The Authority is satisfied that the contravention likely caused significant impact to the Prejudiced Customers.

### Step 3 - Consider aggravating or mitigating factors

- 4.10. The Penalty Policy provides a non-exhaustive list of aggravating factors and mitigating factors that ought to be considered when determining a penalty. In this case, the Authority deems the following aggravating factors (table 2) and mitigating factors (table 3) to be applicable.

#### 4.11. Table 2 - Aggravating factors

<b>No</b>	<b>Aggravating Factor</b> (factors tending to increase penal element)	<b>Applies</b> <b>Y/N/P</b> <b>(partial)</b>	<b>Detail</b>
<b>1</b>	Compliance history	<b>N</b>	Farringdon has not previously been the subject of Ofgem's enforcement action.
<b>2</b>	Actions, or lack thereof, taken after becoming aware of the contravention or failure prior to Ofgem's investigation	<b>Y</b>	Farringdon was taking incorrect payments from customers for a substantial period of time. Customer accounts should be regularly reviewed. Farringdon's complaint data provided to Ofgem details four similar cases resolved by the Ombudsman. These complaints date as far back as 31 October 2021. Therefore, Farringdon should have been aware or could reasonably have been expected to

<b>No</b>	<b>Aggravating Factor</b> (factors tending to increase penal element)	<b>Applies Y/N/P (partial)</b>	<b>Detail</b>
			have been aware of its contraventions before our action.
<b>3</b>	Actions, or lack thereof, taken after becoming aware of the contravention or failure during Ofgem's investigation	<b>P</b>	Farringdon initially identified 14 affected customers following the issue of a Provisional Order. After requests for information by the Authority, 2 further customers were identified. Farringdon then employed a consultant to assist, and a further 9 customers were identified. Farringdon did not have the capability to identify failures and affected customers without the services of an outside consultant.
<b>4</b>	The involvement of senior management in any contravention or failure	<b>Y</b>	Farringdon is a small supplier, and its senior management were, as might be expected, heavily involved in the day-to-day management of the business.
<b>5</b>	The absence of any evidence of internal mechanisms or procedures intended to prevent contravention or failure	<b>Y</b>	Farringdon had no documented internal policies or procedures to adequately identify and prevent the contravention.
<b>6</b>	The absence of any evidence that such internal mechanisms and procedures as exist within the regulated person have been properly applied and kept under appropriate review by senior management	<b>Y</b>	As above.

Table 3 – Mitigating factors



No	Mitigating Factor (factors tending to decrease penal element)	Applies Y/N/P (partial)	Detail
1	The extent to which the regulated person had taken steps to secure compliance either specifically or by maintaining an appropriate compliance policy, with effective management supervision	N	Farrington had no internal procedures, or controls to monitor and review customer accounts and payments being taken from customers.
2	Evidence that the contravention or failure was genuinely accidental or inadvertent	N	The Authority considers it a reasonable expectation if Farrington had in place relevant policies and procedures, it could or should have identified the contravention earlier.
3	Promptly, accurately and comprehensively reporting the contravention or failure to Ofgem (self-reporting breach)	N	Farrington did not report this failure to the Authority
4	Appropriate action by the regulated person to remedy the contravention or failure	Y	Farrington has complied with the terms of the Provisional Order and employed the services of a consultant to assist with its regulatory obligations.
5	The terms of the Order are likely to have already led to some financial penalty for the supplier	P	<p>Farrington has offered all customers affected a voluntary goodwill payment which has been taken into account within the penalty figure imposed in Para 5.1.</p> <p>As part of the PO Farrington was compelled to refrain from all sales acquisition activity including the acquisition of new non-domestic customers. The financial impact of this</p>

No	Mitigating Factor (factors tending to decrease penal element)	Applies Y/N/P (partial)	Detail
			<p>cannot be assessed but it is likely this would have had some impact.</p> <p>Farringdon has also engaged the services of a consultant to assist with its compliance of licence conditions. The Authority acknowledges that this may have come at a considerable financial cost however Farringdon should have had the resources, policies and procedures already in place to ensure compliance.</p> <p>Therefore, the Authority has partially considered this factor.</p>

#### Step 4 – Consider an adjustment for deterrence

- 4.12. As outlined elsewhere in this Notice, the Authority considers that a strong deterrent message ought to be sent to Farringdon, to focus their attention on complying with their relevant regulatory obligations. Equally important to this, is sending a clear deterrent message to the wider market that this kind of misconduct will not be tolerated and will be appropriately penalised.
- 4.13. For this reason, the Authority proposes an appropriate uplift to the penal element for deterrence.

#### Step 5 – Apply a discount in settled cases

- 4.14. Not applicable

#### Step 6 – Establish the total financial liability

- 4.15. Having considered all the available evidence, and the factors outlined earlier in this section, the Authority proposes to impose a penalty of £223,676.

## 5. The Authority's decision

- 5.1. The Authority is satisfied that Farringdon breached SLC 4A.1 (a) and (b). Having considered the relevant facts and circumstances in its possession, and having regard to the Penalty Policy, the Authority hereby proposes to impose a penalty of **£223,676** on Farringdon, which it considers to be an amount that is reasonable in all the circumstances of the case.
- 5.2. In reaching its decision, the Authority took the relevant factors under the Penalty Policy into account, including but not limited to:
- (i) The very serious nature of the breach.
  - (ii) The likely, but unquantifiable, detriment that the breach would have caused to consumers and other market participants; and the resultant gain to Farringdon.
  - (iii) The aggravating and mitigating factors outlined in Tables 1 and 2, that are either applicable or partially applicable in this case.
  - (iv) Sending a strong deterrence message to Farringdon and the market.
- 5.3. The Authority hereby gives notice under section 27A (3) of the EA 89 of its proposal to impose a penalty of **£223,676** on Farringdon, in respect of the contraventions set out above.
- 5.4. Any written representations or objections to this notice must be received by **4pm on 27 November 2024**.
- 5.5. Any representations or objections received by this date will be considered by the Authority before it makes a final decision on imposing a penalty. If as a result of representations or objections the Authority proposes to vary the penalty per section 27A(3)(a) EA 89, it will consult again in accordance with section 27A (4) EA 89.
- 5.6. Any representations or objections received that are not marked as confidential may be published on the Ofgem website. Should you wish your response or part of your response to remain confidential, please indicate this clearly. The Authority will consider whether to comply with any such requests on a case-by-case basis

**The Gas and Electricity Markets Authority**

**Date: 6 November 2024**