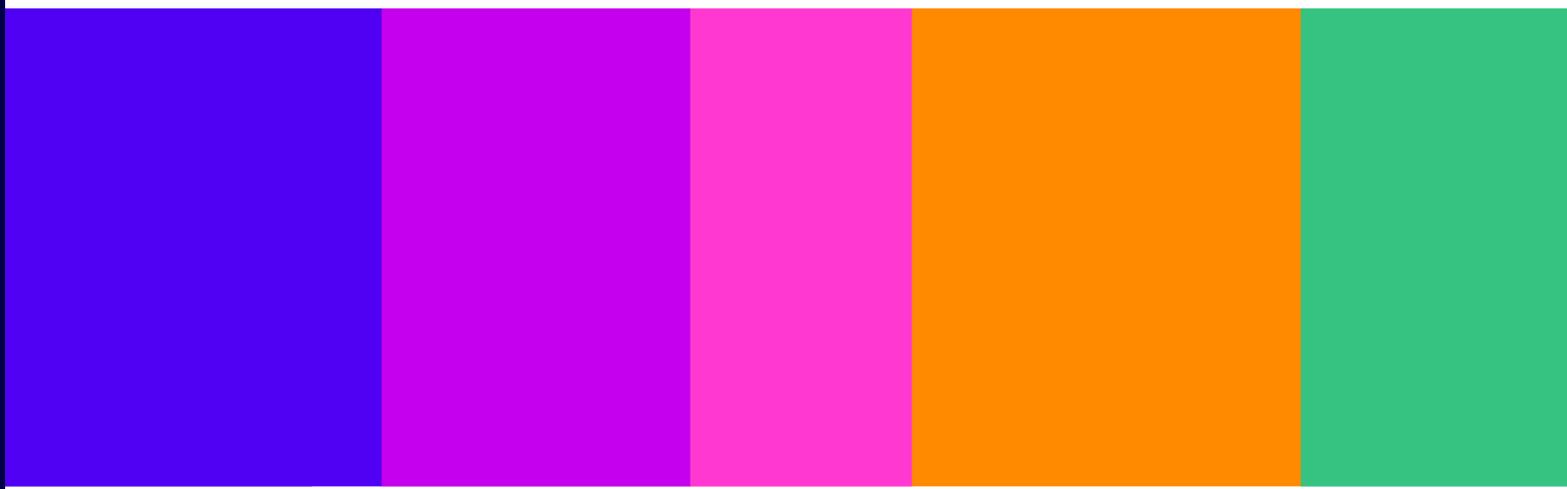


Confirmation Decision under section 96C of the Communications Act 2003

Confirmation Decision served on Shell Energy Retail Limited by the Office of Communications (Ofcom) for contravention of General Conditions (GCs) C1.21, C1.23, C1.24, C1.27, C1.30, C1.32, C1.33 and C1.34 (previously GCs 1.10, C1.11, C1.13, C1.16, C1.17, C1.18 and C1.19).

Non-confidential version - redactions are indicated with [X]



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1. Overview

Ofcom's regulations require every person providing a public electronic communications service, such as telephony and broadband providers, to provide their customers with end-of-contract and annual best tariff notifications.

On 29 April 2022, Ofcom opened an own-initiative investigation into Shell Energy Retail Limited ('Shell Energy') about its compliance with its obligations to send end-of-contract notifications and annual best tariff notifications.

This document explains Ofcom's findings from that investigation that Shell Energy contravened its regulatory obligations by failing to send some end-of-contract notifications and annual best tariff notifications and by failing to include certain required information in those notifications. It also sets out why we consider this to be a serious breach of the regulations and why we have imposed a penalty of £1.4 million on Shell Energy.

What we have found – in brief

Shell Energy failed to send end-of-contract notifications ('ECNs') and annual best tariff notifications ('ABTNs') to some of its customers and in some instances sent notifications with incorrect or incomplete information. Based on information received as part of our investigation, we have found that Shell Energy contravened:

- General Conditions ('GCs') C1.21, C1.23, C1.27, C1.30, C1.32 and GC1.34 (previously GCs C1.10, C1.13, C1.16, C1.17 and C1.19) by failing to send ECNs or ABTNs either at all or within the required timeframes, and
- GCs C1.24 and C1.33 (previously GCs C1.11 and C1.18) by providing incorrect out-of-contract price information or omitting best tariff information from those notifications.

These contraventions occurred between 26 March 2020 and 14 June 2022 as a result of seven different scenarios.

We are satisfied that this was a serious breach of our rules to protect customers. In particular we consider that the following factors support our finding that this was a serious breach of our rules and the penalty we have imposed reflects these factors:

- the duration of Shell Energy's contravention;
- the degree of actual and potential harm caused by Shell Energy's contravention; and
- the absence of effective processes in place to prevent the errors from occurring in the first instance and to identify the errors once they occurred.

Ofcom has imposed a penalty of £1.4 million on Shell Energy. This includes a 30% discount applied to the penalty figure of £2 million which we would have otherwise imposed. This discount reflects resource savings achieved by Ofcom as a result of Shell Energy admitting liability and entering into a settlement with Ofcom. Our view is that this penalty is appropriate and proportionate to the contravention. In taking that view we have had regard to all the evidence referred to in this document, together with our published Penalty Guidelines which explain that the central objective of imposing a penalty is deterrence both in terms of the addressee of our decision and the wider industry. Separate to the penalty, we also consider it appropriate that, to the extent it has not

already done so, Shell Energy should take steps to ensure it is, and remains, compliant with the relevant GCs and that it does not benefit from the contravention.

The penalty would have been significantly higher had Shell Energy not self-reported the contravention, co-operated closely with our investigation and proactively taken steps to remedy the contravention following discovery of the issue. It is important that Communications Providers ('CPs') take compliance with their regulatory responsibilities seriously and that when things go wrong, they recognise this and act quickly and responsibly to remedy any harm that has been caused and allow Ofcom to investigate, as appropriate. Notwithstanding the failings we have found in this case, we strongly encourage CPs to take note of Shell Energy's conduct in this respect.

Shell Energy has taken steps to remedy the breach. Since identifying the errors, Shell Energy has made changes to its systems and processes. It has also advised that it has either credited customer accounts or issued refunds (except for amounts lower than £3) to current and ex-customers affected by the errors, including to ex-Post Office customers who never became customers of Shell Energy. These refunds were all issued by mid-November 2022. For amounts lower than £3, or for refunds that went unclaimed, Shell Energy has advised that it has made a donation to charity – we require Shell Energy to refund customers wishing to claim a refund for these amounts should they contact them.

This overview is a simplified high-level summary only. Our findings and our reasoning are set out in the full document.

2. Introduction and summary

- 2.1 General Condition ('GC') C1 is an important consumer protection provision which sets out the general conditions relating to contract requirements. In particular, GCs C1.21, C1.23, C1.24, C1.27, C1.30, C1.32, C1.33 and C1.34 require every communications provider providing a public electronic communications service ('CP') to provide contract information including end-of-contract notifications ('ECNs') and annual best tariff notifications ('ABTNs'). These provisions ensure that end users understand when they are outside of their minimum contractual term and are free to stay on an existing deal, switch tariff with their existing provider, or change to a different provider depending on their preferred choice. Prior to 17 December 2021 – when GCs C1.21, C1.23, C1.24, C1.27, C1.30, C1.32, C1.33 and C1.34 took effect – substantively similar obligations applied under GCs 1.10, C1.11, C1.13, C1.16, C1.17, C1.18 and C1.19 and had done so since 15 February 2020. Where we refer to this group of GCs collectively in the remainder of the document, we refer to them as the '**Relevant GCs**'. Where we refer to specific GCs, we will set these out individually.
- 2.2 Customers should get a fair deal for their communication services. They should be able to take advantage of the wide choice of services available and shop around with confidence, so that they can get the best deals for their needs. To help customers do this, in May 2019 Ofcom announced new regulatory obligations on providers that would require them to send important information to their customers when their contracts are coming to an end and on a regular basis after that.
- 2.3 Under these rules – which came into effect on 15 February 2020 – broadband, mobile, home phone and pay TV companies must notify residential and business customers when their minimum contract period is coming to an end. Residential customers should receive a standalone notification between 10 and 40 days before the end of that period. The notification should include the date the minimum contract period ends; the services currently provided and the price paid; any changes to the service and price paid at the end of this period; best tariffs available from their providers; and information about the notice period required to terminate the contract. All customers who remain out-of-contract must also be given best tariff information by their provider at least annually.
- 2.4 As detailed below (see paragraphs 3.3 to 3.14 and 3.31 to 3.35), the Relevant GCs applied at all material times to Shell Energy Retail Limited, registered company number 05070887 ('**Shell Energy**').
- 2.5 This document explains Ofcom's decision to give a Confirmation Decision (the '**Confirmation Decision**') to Shell Energy under section 96C of the Communications Act 2003 (the '**Act**') in respect of our findings that Shell Energy has contravened its requirements under the Relevant GCs. In particular, this document accompanies that Confirmation Decision by setting out (among other things) the extent to which we have found that Shell Energy has contravened the Relevant GCs and our reasons for that finding. The Confirmation Decision itself given to (and served on) Shell Energy is attached at Annex 1.
- 2.6 The Confirmation Decision sets out the penalty we have imposed on Shell Energy as well as the steps Shell Energy must take to ensure compliance with its obligations and remedy the consequences of its contravention.

- 2.7 This Confirmation Decision follows our investigation into Shell Energy’s compliance with GCs C1.21, C1.23, C1.24, C1.27, C1.30, C1.32, C1.33 and C1.34 (previously GCs 1.10, C1.11, C1.13, C1.16, C1.17, C1.18 and C1.19). Key steps taken during our investigation (including our previous notification under section 96A of the Act given to Shell Energy) are summarised in Annex 2. Based on the information and evidence we have gathered, we are satisfied that Shell Energy contravened the Relevant GCs between 26 March 2020 and 14 June 2022 by, at times i) failing to send ECNs and ABTNs, and ii) sending ECNs and ABTNs that contained inaccurate or incomplete information.
- 2.8 We have imposed a penalty of £1.4 million on Shell Energy. The penalty includes a 30% discount applied to the penalty figure of £2 million which we would otherwise have imposed. That discount reflects the resource savings achieved by Ofcom as a result of Shell Energy admitting liability and entering into a settlement with Ofcom.
- 2.9 Our view is that this penalty is appropriate and proportionate to the contraventions in respect of which it has been imposed. In taking that view, we have had regard to all the information and evidence referred to in this document, together with our published Penalty Guidelines. The basis for our view as to the amount of the penalty is explained in Section 4.

3. Our findings

Relevant regulatory requirements

- 3.1 The Relevant GCs place obligations on CPs to ensure that customers receive an ECN or ABTN within specified periods, in a clear and comprehensible form. The ECN should include the date the minimum contract period ends, the service(s) currently provided and the price paid, any changes to the service and price paid at the end of this period, and information about the notice period required to terminate the contract. Residential customers should receive a standalone notification between 10 and 40 days before the end of that period. They should also receive annual best tariff information at least annually. These obligations have applied since 15 February 2020.
- 3.2 During the period that the contraventions took place, two substantively similar versions of the GCs applied in relation to the provision of ECNs and ABTNs – those that came into effect from 15 February 2020¹ and those that came into effect (and remain in effect) from 17 December 2021.² The text of these obligations (including associated definitions) is set out more fully in the Confirmation Decision attached at Annex 1. We therefore summarise below the most relevant aspects of the post-17 December 2021 GCs relevant to our findings and reference the location of the earlier, equivalent GCs. We also set out relevant guidance that applied during the period of the contraventions.

End-of-contract notifications

- 3.3 GC C1.21 sets out that the requirement to send ECNs (GC C1.23) applies when:
- “(a) the **Relevant Customer** has a contract with the **Regulated Provider** for a **Relevant Communications Service**;*
 - (b) the contract has a **Commitment Period**; and*
 - (c) the terms of the contract provide (or governing law provides) for the contract to be automatically prolonged after the expiry of the **Commitment Period**.”*
- 3.4 GC C1.23 states that:
- “Where **Condition C1.21** applies, **Regulated Providers** must send an **End-of-Contract Notification** to the **Relevant Customer** in the manner and form specified by **Conditions C1.24** to **C1.28**”.*
- 3.5 GC C1.24 sets out the information that should be set out in ECNs sent to consumers:
- “If the **Relevant Customer** is a **Consumer**, the **End-of-Contract Notification** shall include the following information in respect of the **Relevant Customer’s** contract for the **Relevant Communications Service**, in a clear and comprehensible form:*
- (a) the date on which the **Commitment Period** for that contract ends;*

¹ The text of the 15 February 2020 obligations can be found in this version of the GCs: [General Conditions of Entitlement, Unofficial consolidated version, \(January 2021\)](#)

² [General Conditions of Entitlement, Unofficial consolidated version \(December 2021\)](#)

- (b) details of the services provided by the **Regulated Provider** to the **Relevant Customer** under that contract;
- (c) the notice period (if any) which applies to the **Relevant Customer** under that contract (where the contract is for a **Mobile Communications Service**, the **Regulated Provider** may instead include a message that a notice period may apply);
- (d) a message that the **Relevant Customer** may terminate that contract without paying an **Early Termination Charge** after the **Commitment Period** ends;
- (e) details of other contracts for **Public Electronic Communications Services** between the **Regulated Provider** and the **Relevant Customer**;
- (f) details of other contracts between the **Regulated Provider** and the **Relevant Customer** which form part of a **Bundle** with the contract for the **Relevant Communications Service**;
- (g) how the **Relevant Customer** may terminate that contract;
- (h) the current **Core Subscription Price** payable by the **Relevant Customer** under that contract;
- (i) the **Core Subscription Price** that will be payable by the **Relevant Customer** for the services referred to in (b) (and, where relevant, any changes referred to in (j)) after the **Commitment Period** for that contract ends;
- (j) details of any changes to the services referred to in (b) that will come into effect because the **Commitment Period** for that contract is ending;
- (k) the dates on which the **Commitment Periods** end for the other contracts referred to in (e) and (f);
- (l) details of the options available to the **Relevant Customer** at the end of the **Commitment Period** for that contract; and
- (m) the **Regulated Provider's** best tariffs.”

3.6 Paragraph 1.65 of Ofcom’s guidance under General Condition C1 – contract requirements’ (the ‘Relevant Guidance’) ³ stated that:

“For subscribers who are consumers, we expect this [information in respect of the ‘Regulated Provider’s best tariffs’] to consist of the following tariffs, where applicable:

- a) a tariff, based on the services the subscriber receives, that is the cheapest available to that subscriber;
- b) a tariff, based on the services the subscriber receives, that is the cheapest tariff available to any subscriber (if not the same as in (a));
- c) unless the CP can demonstrate that it is not relevant to the subscriber’s service(s), a tariff based on the subscriber’s usage, that is the cheapest available to that subscriber (if not the same as (a));
- d) where the subscriber has a bundled mobile handset and airtime contract, the cheapest available SIM-only tariff based on the services the subscriber currently receives; and
- e) where a CP chooses to include one, an upgrade tariff.”

³ [Ofcom’s Guidance under General Condition C1 – contract requirements](#)

- 3.7 GC C1.27 states:
*“Regulated Providers must send an **End-of-Contract Notification** in a timely manner, before the end of the **Relevant Customer’s Commitment Period**.”*
- 3.8 Paragraph 1.75 of the Relevant Guidance stated that:
“In complying with this requirement in relation to subscribers who are consumers, we expect CPs to send notifications between 10 and 40 days before the end of the fixed commitment period (we refer to this elsewhere in this guidance as the “31-day window”).”
- 3.9 Prior to 17 December 2021 (when GCs C1.21, C1.23, C1.24 and C1.27 took effect), in the context of this investigation, substantively similar obligations applied under GCs C1.10, C1.11 and C1.13, which came into effect from 15 February 2020. Further, substantively similar guidance regarding the ‘31-day window’ was also in place throughout the period that these requirements have been in effect.

Annual Best Tariff Notifications

- 3.10 GC C1.30 sets out the requirement to send ABTNs, stating:
*“Regulated Providers must provide best tariff information to a **Relevant Customer** at least annually, if each of the following requirements are met:*
- (a) the **Relevant Customer** has a contract with the **Regulated Provider** for a **Relevant Communications Service**; and*
 - (b) the contract was previously subject to a **Commitment Period** which has now expired.”*
- 3.11 GC C1.32 sets out the requirement to send ABTNs in a specific manner and form, stating:
*“If a **Relevant Customer** is a **Consumer**, the **Regulated Provider** must comply with **Condition C1.30** by sending an **Annual Best Tariff Notification** to that **Relevant Customer**, in the manner and form specified by **Conditions C1.33** to **C1.35**.”*
- 3.12 GC C1.33 sets out that manner and form:
*“An **Annual Best Tariff Notification** shall include the following information in respect of a **Relevant Customer’s** contract for the **Relevant Communications Service**, in a clear and comprehensible form:*
- (a) a message that the contract is not currently subject to a **Commitment Period**;*
 - (b) the notice period (if any) which applies to the **Relevant Customer** under that contract (where the contract is for a **Mobile Communications Service**, the **Regulated Provider** may instead include a message that a notice period may apply);*
 - (c) details of the services provided by the **Regulated Provider** to the **Relevant Customer** under that contract;*
 - (d) the current **Core Subscription Price payable** by the **Relevant Customer** under that contract;*
 - (e) details of other contracts for **Public Electronic Communications Services** between the **Regulated Provider** and the **Relevant Customer**;*
 - (f) details of other contracts between the **Regulated Provider** and the **Relevant Customer** which form part of a **Bundle** with the contract for the **Relevant Communications Service**;*

- (g) the dates on which the **Commitment Periods** end for the other contracts referred to in (e) and (f);
- (h) details of the options available to the **Relevant Customer**; and
- (i) the **Regulated Provider's best tariffs**."

3.13 GC C1.34 sets out that:

*"Regulated Providers must send an **Annual Best Tariff Notification** at least once in every 12-month period."*

3.14 Prior to 17 December 2021 (when GCs C1.30, C1.32 C1.33 and C1.34 took effect), in the context of this investigation, substantively similar obligations applied under GCs C1.16, C1.17 C1.18 and C1.19 which came into effect from 15 February 2020.

Importance of regulatory requirements

3.15 The regulatory requirements set out in the Relevant GCs are important consumer protection provisions.

3.16 Ofcom believes consumers should get a fair deal for their communication services. Customers should be able to take advantage of the wide choice of services available and shop around with confidence, so that they can get the best deal for their needs. This means making an informed decision to take up a new deal with their current provider, switch to a new provider, or to stay on an existing deal.

3.17 Therefore, it is important that providers send important information to their customers when their contracts are coming to an end and on a regular basis after that.

3.18 In 2017 we launched a programme of work with the aim of ensuring that markets work effectively for consumers.⁴ As part of this work we gathered views from interested parties and carried out consumer research. In April 2018, we published an update that highlighted some of the results of this research.⁵ We found that some consumers lack confidence, knowledge and understanding of the communications services they buy.

3.19 In Ofcom's July 2018 consultation "*Helping consumers to engage in communications markets: Consultation on end-of-contract and out of-contract notifications*",⁶ Ofcom proposed to set new general conditions to require providers to send end of-contract notifications and a one-off out-of-contract notification to their residential and small business customers. In December 2018, we issued a further consultation "*Helping consumers get better deals - Consultation on end-of-contract and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband*" as we recognised that the purpose, intended scope and objectives of the European Electronic Communications Code (EECC) tied in with those we set out in our July 2018 Consultation.⁷ We explained that we saw no reason to deprive UK consumers of the benefits and protections of Article 105(3) EECC until the end of 2020, but instead intended (subject to consultation) to introduce this high-level of protection for consumers as soon as possible. We also said customers who

⁴ [Helping consumers to engage in communications markets: Call for Inputs.](#)

⁵ [Helping consumers to engage in communications markets – Update on next steps](#)

⁶ [Consultation on end-of-contract and out-of-contract notifications \(ofcom.org.uk\)](#)

⁷ [Consultation on end-of-contract and annual best tariff notifications, and proposed scope for review of pricing practices in fixed broadband.](#)

remain out-of-contract would be given information about their contract and their provider's best tariffs at least annually.

- 3.20 In Ofcom's statement '*Helping consumers get better deals*' published on 15 May 2019,⁸ we noted our concerns that the market was not working well and too many customers were not on a good deal. We also confirmed that the requirements to send ECNs and ABTNs would come into effect on 15 February 2020.
- 3.21 On 30 November 2021, Ofcom published research⁹ showing that there had been a positive increase in engagement amongst broadband customers since the requirement to send ECNs was introduced, with 1.3 million broadband users securing better deals. In our research, two thirds of customers who were sent an ECN recalled receiving a notice with 90% of them finding it helpful and a fifth reporting that they were prompted into taking action they would not have otherwise taken. This indicates that these timely prompts from providers are crucial to ensure consumers get a fair deal for their services.
- 3.22 Ofcom published an ex-post evaluation on 6 May 2022 which provided further evidence that ECNs increased re-contracting among broadband customers after the ECNs came into effect in February 2020, and this could be attributed in the broadband market directly to the ECN policy.¹⁰
- 3.23 The importance of these regulatory requirements and the need for CPs to comply with them had therefore been drawn to stakeholders' attention in several publications by Ofcom over many years.

Our Investigation

- 3.24 On 1 March 2022 Shell Energy self-reported to Ofcom that, during its migration of legacy Post Office customers onto the Shell Energy platform (see paragraph 3.36 below for an explanation of Shell Energy's purchase of Post Office's broadband and telephony business), some customers did not receive ECNs or ABTNs. It also advised that interim communications put in place to mitigate the issue were not tailored to the customer's individual circumstances including the provision of best tariff information, "*Best Offers*". Later, on 20 April 2022, Shell Energy informed Ofcom that it had identified two separate issues that had caused ECN and ABTN communications not to be sent to some Shell Energy customers.
- 3.25 In light of the information provided to Ofcom, and in accordance with our published Enforcement Guidelines,¹¹ on 29 April 2022 we opened our formal own-initiative investigation into Shell Energy's compliance with the Relevant GCs (the '**Investigation**').
- 3.26 Subsequent to this, on 19 May 2022, Shell Energy informed Ofcom that it had quoted incorrect out-of-contract prices on ECNs sent to some legacy Post Office customers. In response, and in an effort to ensure all additional issues were identified by Shell Energy before the information gathering process of the investigation began (potentially prolonging

⁸ [Helping consumers get better deals.](#)

⁹ [https://www.ofcom.org.uk/news-centre/2021/telecoms-customers-saving-millions.](https://www.ofcom.org.uk/news-centre/2021/telecoms-customers-saving-millions)

¹⁰ [End-of-contract notifications An ex-post evaluation of the impact of the introduction of ECNs on re-contracting and pricing for broadband services.](#)

¹¹ [Regulatory Enforcement Guidelines for investigations \(ofcom.org.uk\)](#) - the administrative priority matters detailed in these current guidelines are substantively similar to those considered when we decided to open our investigation into Shell Energy.

it), on 26 May 2022, Ofcom wrote to Shell Energy encouraging it to carry out a full review of its ECN and ABTN process to ensure it had identified all potential issues. As part of this exercise, on 13 June 2022 Shell Energy informed Ofcom about two further issues relating to ECNs and ABTNs that had impacted customers in stop-sell exchanges¹² and legacy Post Office customers with an international calling plan.

3.27 As part of our investigation, we obtained further information and evidence from Shell Energy using our statutory information gathering powers. The remainder of this document relies on the information Shell Energy has provided to us in response to our information requests. For ease of reference, the table below sets out the requests made under our information gathering powers, Shell Energy’s responses, and how they are referred to throughout this document.

Request	Response
First Information Request sent on 21 September 2022 – referred to as the ‘First Notice’	Shell Energy’s responses received on 26 October 2022, 10 November 2022, 22 June 2023 and 19 September 2023 – collectively referred to as the ‘First Response’
Second Information Request sent on 9 February 2023 – referred to as the ‘Second Notice’	Shell Energy’s response received 9 March 2023 and 12 May 2023 – collectively referred to as the ‘Second Response’
Third Information Request sent on 21 June 2023 – referred to as the ‘Third Notice’	Shell Energy’s responses received 5 July 2023 and 11 July 2023 – collectively referred to as the ‘Third Response’
Fourth Information Request sent on 4 September 2023 – referred to as the ‘Fourth Notice’	Shell Energy’s response received 11 September 2023 – referred to as the ‘Fourth Response’

3.28 On 19 October 2023, Ofcom gave a notification under 96A of the Act to Shell Energy setting out our view that we had reasonable grounds for believing that it had contravened GCs C1.21, C1.23, C1.24, C1.27, C1.30, C1.32, C1.33 and C1.34 (previously GCs 1.10, C1.11, C1.13, C1.16, C1.17, C1.18 and C1.19) between 26 March 2020 and 14 June 2022. The other key steps taken in our investigation are summarised in Annex 2.

3.29 In light of those steps, we have decided and set out in the Confirmation Decision attached at Annex 1 that we are satisfied that between 26 March 2020 and 14 June 2022 (the **‘Relevant Period’**) Shell Energy contravened the Relevant GCs.

3.30 As explained in that Confirmation Decision, the extent of that contravention, and the reasons for Ofcom’s determination, are set out in the remainder of this section.

¹² A stop sell exchange signifies that Openreach is stopping the sale of certain Openreach products. This is different from product withdrawal, as under stop sell, any end customer who already has the product, will be able to continue using it (until it is withdrawn). It only impacts new supply.

Shell Energy services affected and whether the relevant GCs applied

- 3.31 In order to determine whether Shell Energy is a provider to which the Relevant GCs applied, in our First Notice we asked Shell Energy to confirm the relevant services affected by its ECN and ABTN errors,¹³ defining “Relevant Services” as “*Public Electronic Communications Services provided to Subscribers, except when they are provided to Machine-to-Machine Transmission Services, each as defined in Ofcom’s General Conditions of Entitlement*”. In its First Response Shell Energy stated that each of the errors impacted broadband and telephony services.¹⁴
- 3.32 Further, we asked Shell Energy to confirm whether it supplied Public Electronic Communications Services to business customers, or if all of its customers were consumers.¹⁵ In the context of this request, “Customers” were defined as:
- “Shell Energy customers who are Consumers, and whose contracts with Shell Energy for Public Electronic Communications Services:*
- i. *include a Commitment Period, and*
 - ii. *provide that the contract will automatically be prolonged after the expiry of the Commitment Period.”*
- 3.33 In its First Response Shell Energy stated that “*Shell Energy does not supply Public Electronic Communications Services to business Customers.*”¹⁶ We understand this to mean that Shell Energy only provides Public Electronic Communications Services (“PECS”) to customers who are consumers.¹⁷
- 3.34 Finally, in the First Notice and Second Notice we also asked Shell Energy to confirm the dates during which each of the identified errors occurred. Shell Energy confirmed that the first error was in occurrence on 15 February 2020 (the date the obligations came into force), and the final date for an error occurring was 14 June 2022.
- 3.35 Accordingly, we have determined that the services affected by Shell Energy’s errors are PECS and that the errors occurred during a period in which the Relevant GCs applied. As such, Shell Energy was required to comply with the relevant requirements set out in those GCs in respect of those services during the Relevant Period.

Shell Energy’s acquisition of Post Office’s broadband and telephony business

- 3.36 On 16 March 2021, Shell Energy completed its purchase of Post Office’s broadband and telephony business.¹⁸ Some of the issues identified relate to ‘legacy Post Office

¹³ Question 1, 10, 20, 33, 42, 53, First Notice.

¹⁴ Question 1, 10, 20, 33, 42, 53, First Response.

¹⁵ Question 70, First Notice.

¹⁶ Question 70, First Response.

¹⁷ “Consumers” was defined as “any natural person who uses or requests a Public Electronic Communications Service or Bundle for purposes which are outside his or her trade, business, craft or profession.”

¹⁸ <https://www.shellenergy.co.uk/blog/post/post-office-broadband-joins-shell-energy>

customers'.¹⁹ For the purposes of this investigation, we have only considered any potential breaches affecting legacy Post Office customers from 16 March 2021.

The Relevant Period

- 3.37 Shell Energy has explained that the earliest error (which related to ECNs) could have impacted Shell Energy customers from 30 January 2020.²⁰ However, given that the Relevant GCs did not come into effect until 15 February 2020, and our Guidance sets out that we expect ECNs to be sent between 10 and 40 days before the end of the subscriber's contract, Ofcom considers that the first date Shell Energy was required to start sending ECNs was 26 March 2020 (i.e. 40 days after 15 February 2020). As such, Ofcom considers that the period of contravention began from 26 March 2020.
- 3.38 Later in this section we explain how each error was fixed and that the last known occurrence of any error relating to ECNs or ABTNs was 14 June 2022.²¹
- 3.39 As such, we consider that, in making our determination set out in the Confirmation Decision attached at Annex 1 in accordance with sections 96A to 96C of the Act, the Relevant Period for the contraventions of the Relevant GCs occurring was between 26 March 2020 and 14 June 2022.

Our assessment

- 3.40 We set out below the facts and evidence that are particularly relevant to our assessment of Shell Energy's contravention of the Relevant GCs. In particular, we will deal with the following matters before setting out our determination of Shell Energy's contraventions:
- Details of the seven errors we have identified which resulted in Shell Energy failing to either send or send complete and accurate ECNs or ABTNs to customers;
 - Shell Energy's processes for identifying errors; and
 - Shell Energy's processes for addressing the errors.

Seven errors identified related to ECNs and ABTNs

- 3.41 We describe below the seven errors that we have identified relating to ECNs and ABTNs as confirmed to us by Shell Energy. We refer to them collectively as the **'ECN and ABTN Errors'** throughout this document. When referring to specific errors we will set these out individually.

Error 1: ABTNs not sent to Shell Energy customers due to manual error and, later, an automated system error

- 3.42 Error 1 resulted in some Shell Energy customers not receiving an ABTN within the required timeframe. Shell Energy explained that between February 2021 and 6 July 2021 it sent ABTNs *"using a manually generated file"* and that *"a small volume of customers were not*

¹⁹ Customers who were originally customers of Post Office and became Shell Energy customers as part of the purchase.

²⁰ See paragraph 3.49 below in relation to Error 2.

²¹ See paragraph 3.64 below in relation to Error 4.

*sent an ABTN using the manual process due to manual error”.*²² From 6 July 2021, Shell Energy started using an automated process, but this process also resulted in some customers not receiving an ABTN. This was due to a coding error within the file generating process whereby a parameter was “set to NULL”. Shell Energy explained that *“The effect of this parameter setting error was that it incorrectly excluded from the ABTN run some customers that had previously received an ECN communication.”*²³

- 3.43 Shell Energy has explained that Error 1 first occurred on 1 February 2021²⁴ and ended on 27 April 2022.²⁵ However noting that Ofcom’s 2019 statement stated that where a “contract already exists when the Condition comes into force, [an ABTN should be sent] within 12 months of that date”,²⁶ we only consider this breach as occurring from 15 February 2021. Consequently, we consider that Error 1 lasted for a total of 1 year, 2 months and 13 days.
- 3.44 As a result of Error 1, Shell Energy has confirmed that 30,794 customers did not receive an ABTN (i) within 12 months of their commitment period coming to an end, or (ii) within 12 months of receiving a previous ABTN.²⁷
- 3.45 Shell Energy first identified Error 1 on 6 April 2022,²⁸ 1 year, 1 month and 23 days after it first occurred, as a result of it investigating another issue, Issue 6 (discussed in more detail below).
- 3.46 Once identified, Shell Energy customers “were sent the comm [ABTN] between 19 April [2022] and 26 April [2022]. The communications were issued over a week to help mitigate the impact on the call center retention team. A technical fix went live on 27 April 2022 which fully resolved the issue.”²⁹ As such, steps to remedy Issue 1 were completed within 21 days of the issue being identified.

Error 2: ECNs not sent to Shell Energy customers due to a system error

- 3.47 Error 2 resulted in Shell Energy customers not receiving an ECN. Shell Energy explained that *“there was no single underlying issue that gave rise to these failures rather they identified a number of issues that had caused some of the ECNs to fail”*. Shell Energy further explained that some of these failures included incorrectly set-up customer packages and email send failure.³⁰
- 3.48 As a result of Error 2, 18,938 Shell Energy customers did not receive an ECN within 10-40 days before the end of the commitment period.³¹

²² Question 1, Third Response.

²³ Question 1, Third Response.

²⁴ Question 1, Third Response.

²⁵ Question 2, First Response.

²⁶ See paragraph 7.45 [Statement: Helping consumers get better deals - statement on end-of-contract notifications and annual best tariff information \(ofcom.org.uk\)](#)

²⁷ Question 4, First Response.

²⁸ Question 7, First Response.

²⁹ Question 9, First Response.

³⁰ Question 4, Third Response.

³¹ Question 1, Fourth Response.

- 3.49 Shell Energy stated that Error 2 *“impacted customers from 30th January 2020 when the process was first Implemented”*.³² However, for the reasons set out in paragraph 3.37 above, we only consider this breach as occurring from 26 March 2020.
- 3.50 In relation to the final date that Error 2 occurred, Shell Energy stated that *“a fix was deployed on 22nd March 2022. We are unable to confirm exactly when the code change occurred.”*³³ In response to further questions from Ofcom, Shell Energy explained *“code changes can be deployed within the day they are released. However, delays to this will happen if reviews find issues or additional reviews aren’t completed on the same day. We don’t have the deployment logs for the code change”*.³⁴ Although Shell Energy has been unable to confirm the exact date Error 2 was remedied, for the purposes of this investigation we will consider 22 March 2022 – the date the code was deployed – as the final date Error 2 occurred. We therefore consider that Error 2 occurred between 26 March 2020 and 22 March 2022 (a total duration of 1 year, 11 months and 25 days).
- 3.51 Shell Energy identified the issue on 2 March 2022 (1 year, 11 months and 5 days after 26 March 2020) after a member of its compliance team *“received an ABTN for her personal Shell Energy broadband contract and did not recollect receiving an ECN nor could she locate one in her emails.”*³⁵ Consequently this means that the fix to Error 2 was implemented 20 days after it was first identified.
- 3.52 Shell Energy decided not to re-issue ECN communications to customers affected by Issue 2 *“given that the customers received the ABTN shortly after their minimum commitment had ended which covered the information provided in the ECN, Shell Energy did not re-contact the impacted customers.”*³⁶

Error 3: Incorrect out-of-contract prices quoted in ECNs to legacy Post Office customers

- 3.53 Error 3 resulted in some legacy Post Office customers being sent an ECN where the out-of-contract price quoted was less than the actual out-of-contract price that would have been charged.
- 3.54 Shell Energy explained that the *“process [for calculating out-of-contract prices on ECNs] was run by an outsourced partner Fujitsu and as such we cannot comment fully on the cause but we can make some assumptions based on our analysis of the information available to us as to the cause of the issue.”*³⁷ Shell Energy went on to explain that *“the issue stemmed from those customers on the Fujitsu platform that had multiple in-contract discounts. When the Fujitsu system generated the ECN, it only removed one of the discounts”*. In other words, at the end of the customer’s minimum term all discounts active on the customer’s account would automatically be removed; however, if the customer had been receiving more than one discount, only one of these was removed from the out-of-contract price quoted in the ECN, meaning that it was lower than the actual out-of-contract price that would be paid and was therefore incorrect.

³² Question 11, First Response.

³³ Question 11, First Response.

³⁴ Question 2, Second Response.

³⁵ Question 17(a), First Response.

³⁶ Question 19, First Response.

³⁷ Question 22, First Response.

- 3.55 For example, if a customer had a £30 a month tariff that included two £5 discounts for the duration of their minimum term (meaning the customer was only actually required to pay £20 a month), when the ECN was generated it would only remove one of those discounts when calculating the out-of-contract price and not both as would be correct. As such the ECN would advise the customer that once their minimum term ended they would be required to pay £25 a month when they would, in fact, be required to pay £30 a month.
- 3.56 Shell Energy told us that its records “indicate that the earliest incorrect out-of-contract price was quoted on 10th December 2019”.³⁸ However, for the purposes of this investigation we have considered the start date as 16 March 2021, the date Shell Energy purchased Post Office’s broadband and telephony business. It also told us “the last date that a customer received an incorrect out of contract price quoted on their ECN was 01/03/2022.”³⁹ As such, for the purpose of this investigation we consider that Error 3 occurred between 16 March 2021 and 1 March 2022 (a total duration of 11 months and 14 days).
- 3.57 Shell Energy has confirmed that, from the date it purchased Post Office’s broadband and telephony business, “7,750 [legacy Post Office] Customers received a letter quoting an incorrect out-of-contract price as a result of Issue 3.”⁴⁰ It further confirmed that, of those 7,750 customers, 6,054⁴¹ went on to overpay a total of £398,417.67.⁴²
- 3.58 Shell Energy first identified the error on 4 May 2022 (1 year, 1 month and 19 days after it purchased Post Office’s broadband and telephony services) as a result of Ofcom complaints data that Ofcom had shared with Shell Energy.⁴³ This was after Error 3 had already been resolved by Shell Energy’s migration of legacy Post Office customers on to its own platform.
- 3.59 Once Identified, Shell Energy launched a “customer compensation plan which includes compensating Post Office customers who have never been a customer of Shell Energy”.⁴⁴ Shell Energy completed all refunds to customers by mid-November 2022.⁴⁵
- 3.60 Shell Energy’s refund programme included:
- **Cohort 1:** Refunding ex-Post Office customers who were never a customer of Shell Energy;
 - **Cohort 2:** Refunding customers who transferred their service to Shell Energy but had since ceased being customers: and
 - **Cohort 3:** Customers who transferred their service to Shell Energy and were still active customers.
- 3.61 Shell Energy explained that Cohort 1 and Cohort 2 customers were sent “an apology letter with an explanation of what has happened. This letter contains a refund, in the form of a detachable cheque. As both of these customer cohorts have left the business and to avoid customer confusion or concerns, we do not intend to issue compensation below the value of £3. This equates to 146 customers. For customers in cohort 2, who have a value less than £3 or have not cashed their cheque after 6 months, Shell Energy will make a charitable donation accordingly. Please note, as cohort 1 were never customers of Shell Energy, we have never

³⁸ Question 21, First Response.

³⁹ Question 9, Second Response.

⁴⁰ Question 23, First Response.

⁴¹ Question 10, Second Response.

⁴² Question 12, Second Response.

⁴³ Question 28, First Response (as amended).

⁴⁴ Question 32, First Response.

⁴⁵ Question 13, Second Response.

received revenue from them but have taken the decision to refund these customers. Cohort 3 customers are receiving an apology comm in their mailing preference with an explanation of what has happened along with details of their compensation. If a customer is owed less than £50 and has an active direct debit, we will transfer the money directly into their bank account. If a customer is owed less than £50 and does not have an active direct debit, we will credit their account balance. If a customer is owed more than £50 we will send a letter with a detachable cheque.”⁴⁶

Error 4: Incorrect best tariff quoted in ECNs and ABTNs to legacy Post Office customers with an International Calling Plan

- 3.62 Error 4 resulted in legacy Post Office customers receiving incorrect best tariff information in both ECNs and ABTNs if they had an international calling plan on their account.
- 3.63 Shell Energy explained that Error 4 occurred *“When Post Office customers who had taken the Post Office International Call plan, had been migrated to the Shell Energy system and received an ECN or ABTN, the communication correctly quoted their current package and out of contract price. However, the best available price was understated. The monthly rentals were correct, however, the call plans were incorrect.”* It further explained *“the International Call plan that was available to Post Office customers was available as a standalone ‘bolt-on’ service. Shell Energy also offers customers an International Call plan but it is only available as a ‘bolt-on’ service to an Evening and Weekend, Anytime or Anytime Plus Call plan i.e. a customer has to have a UK call plan in order to be able to have an International Call plan... The best available failed to include the mandatory parent call plan. Therefore the price shown as best available was too low. It should have been made up of base package price + parent call plan + bolt on International Call plan. The technical system had not been updated to recognise that some customers would not have a UK call plan with the International call plan and notify the customer accordingly.”⁴⁷*
- 3.64 In total, Error 4 occurred between 16 December 2021 and 14 June 2022⁴⁸ (a total of 5 months and 30 days) and resulted in 522 legacy Post Office customers receiving a notification quoting incorrect best tariff information.⁴⁹
- 3.65 Shell Energy first identified the error on 13 May 2022 (4 months and 28 days after it first occurred) as a result of a customer complaint.⁵⁰
- 3.66 Once identified Shell Energy attempted to apply a fix on 19 May 2022 but this was not successful and on 13 June 2022 a customer reported the same issue again. As a result, *“A second fix was applied which went live on 15th June”*,⁵¹ meaning that it took 34 days from the date Error 4 was identified for it to be properly fixed (although Shell Energy confirmed that *“[t]he last customer impacted was on the 14th June 2022”*).⁵²

⁴⁶ Question 32, First Response.

⁴⁷ Question 35, First Response.

⁴⁸ Question 34, First Response.

⁴⁹ Question 36, First Response.

⁵⁰ Question 41, First Response.

⁵¹ Question 41, First Response.

⁵² Question 34, First Response.

- 3.67 The average difference between what affected customers should have been quoted and what they were quoted was £9.08 per month, with the largest difference being £13.79 and the lowest £6.37 per month.⁵³
- 3.68 Shell Energy confirmed that if any customer wanted to proceed with the offer detailed in their notification, then they would have had to call its contact centre, at which point the customer would have *“had the issue explained to them [...] along with the options available to them i.e. shop around, select a UK Call plan with the International Call Plan or proceed with no call plan.”*⁵⁴ After Shell Energy first became aware of the issue *“For the particular customer that resulted in HGS [Hinduja Global Solutions]⁵⁵ flagging the issue to Shell Energy, [X], Service Delivery Manager, approved a credit for the Anytime Plan on the account to honour the best offer during a meeting with HGS on 13th May. He agreed that this would set the precedent for HGS to deal with any future issues.”*⁵⁶ Indeed, Shell Energy confirmed that all ex-Post Office customers who received the incorrect best tariff information and opted for the International & Anytime Plus call package had their call package element discounted.⁵⁷

Error 5: ECNs and ABTNs were not sent to customers in stop-sell exchanges

- 3.69 Error 5 resulted in Shell Energy customers served by a stop-sell exchanges not receiving an ECN or ABTN. As noted above, a stop-sell exchange is where Openreach stops the sale of certain Openreach products on that exchange – customers who already have the product will be able to continue using it (until the product is withdrawn) and so it only impacts new supply.
- 3.70 Shell Energy explained that Error 5 occurred when its process ran a live check against the products that were available in that area. *“In stop-sell exchanges, the checker would show that their existing product was not available. This was because the system had not been updated to reflect the change in products and therefore produced an error and did not generate an ECN or ABTN.”*⁵⁸
- 3.71 Shell Energy has confirmed that *“this issue occurred between the dates of 6th December 2021 to 17th December 2021”*,⁵⁹ a total of 11 days. Shell Energy also confirmed that 69 customers did not receive an ECN and 103 customers did not receive an ABTN within the required timeframes as a result of Error 5.⁶⁰
- 3.72 Shell Energy’s Product Team first identified the issue on 6 December 2021 (the same day that it occurred).⁶¹ On 16 December 2021 (10 days later), Shell Energy *“sent all Customers affected by Issue 5 an ECN or ABTN that detailed the options available to them”*.⁶² It also explained that *“these customers [those affected by Error 5] did not experience a change in*

⁵³ Question 37, First Response.

⁵⁴ Question 41, First Response.

⁵⁵ As confirmed by [X] in an email dated 22 June 2023, HGS provide call centre services for Shell Energy.

⁵⁶ Question 41, First Response.

⁵⁷ Question 9, Third Response.

⁵⁸ Question 44, First Response.

⁵⁹ Question 43, First Response.

⁶⁰ Question 46, First Response.

⁶¹ Question 50, First Response.

⁶² Question 52, First Response.

price when they went out of contract” and that it did “not believe that there was any customer harm therefore no compensation or apology communication was included.”⁶³

- 3.73 Noting that Shell Energy took these steps on 16 December 2021 but has confirmed that the error was not resolved until a day later on 17 December 2021, we asked Shell Energy in our Second Notice to confirm whether all customers affected by Error 5 had indeed received an ECN or ABTN as part of its remedial steps. Shell Energy confirmed that *“those customers impacted by this issue received an ECN or ABTN after the end of their commitment period or after their anniversary date.”⁶⁴* As such, we understand that all customers affected by Issue 5 did receive an ECN or ABTN as part of its remedial steps.

Error 6: ECNs and ABTNs were not sent to legacy Post Office customers upon migration to Shell Energy’s platform

- 3.74 Error 6 resulted in some legacy Post Office customers not receiving ECNs and ABTNs due to their migration onto Shell Energy’s own platform.
- 3.75 Shell Energy explained that *“the system was not set up to accommodate all of the Post Office call plans which caused some of the comms to fail... At the time of discovery Shell Energy thought that a decision was made to turn it off because we could see in the system that all the comms stopped on the 5th January, however following extensive further investigations we established on or around May [2022] that rather than the root cause having been the issue of an instruction to stop it was in fact an overload in the system that caused it to automatically fail and cease issuing further ECNs [and ABTNs].”⁶⁵*
- 3.76 Shell Energy said it is *“unable to identify the exact date the first Customer was impacted by this Issue but the earliest possible date would be the 16th December [2021].”⁶⁶* It also said the last date a customer could have been impacted by this error *“was 30/03/2022.”⁶⁷* Therefore, for the purpose of this investigation we consider that Error 6 occurred between 16 December 2021 and 30 March 2022 (a total of 3 months and 15 days).
- 3.77 Shell Energy has confirmed that Error 6 resulted in 14,642 legacy Post Office customers not receiving an ECN before the end of their commitment period and 19 customers not receiving an ABTN within 12 months of their commitment period coming to an end or of receiving a previous ABTN.⁶⁸
- 3.78 When asked when Shell Energy first became aware of the issue, it advised that it was *“unable to establish this as there was confusion amongst the team about who knew what and when.”⁶⁹* However, it has noted that its Senior Retention Manager *“first became aware of this issue on 17th January 2022.”⁷⁰* Therefore, for the purpose of our investigation we consider that Shell Energy first became aware of Error 6 on 17 January 2022 (33 days after the earliest date Error 6 might have occurred).

⁶³ Question 52, First Response.

⁶⁴ Question 18, Second Response.

⁶⁵ Question 55, First Response.

⁶⁶ Question 54, First Response (as amended by Question 19, Second Response).

⁶⁷ Question 20, Second Response.

⁶⁸ Question 56, First Response.

⁶⁹ Question 61, First Response.

⁷⁰ Question 61, First Response.

- 3.79 Once identified, a miscommunication meant that the error was not escalated immediately.⁷¹ However, once the matter was escalated, Shell Energy has explained that *“in order to limit the impact of the issue on 17th February we [Shell Energy] began to identify and prevent customers who were due to receive an ECN or ABTN from being migrated and to issue the ECN or ABTN (as appropriate) from the POL [Post Office Limited] platform.”*⁷² As such, the first steps taken to prevent customers from being affected by the error were taken a month after it was first identified.
- 3.80 Shell Energy went on to explain *“Our call centre was briefed on 11th February, and we addressed complaints on a case by case basis to ensure that customers are not adversely impacted. A short term plan was put in place [on 10 March 2022 – see Error 7] to issue comms to customers that had not yet received an ECN or ABTN or were due an ECN or ABTN. This addressed the main elements of the comms without tailoring it to a customer’s individual circumstances; instead it provided generic information regarding our current product range and prices which reflected what was accessible via our website (at the time of sending) - these were our best available offers available to customers at the time.”*⁷³
- 3.81 Finally, Shell Energy explained: *“A technical fix went live on 23rd March which fully resolved the issue. On 30th March the ECN and ABTN template was fixed and live in the system. Between 24th February 2022 and 31st March 2022 ECNs were paused and these customers were sent the correct ECN and ABTN template as well as customers in the usual BAU cycle after the 30th March. These customers who were paused still received their comm within the 31-day window.”*⁷⁴
- 3.82 Noting that a *“technical fix went live on 23 March 2022 which fully resolved the issue and on the 30 March the ECN and ABTN template was fixed and live in the system”*⁷⁵ we asked Shell Energy to confirm the last date a consumer was affected by Error 6.⁷⁶ Shell Energy subsequently confirmed the last date the error could have occurred was 30 March 2022,⁷⁷ 73 days after a Senior Retention Manager first became aware of the issue.

Error 7: Best tariff information not included in interim ECNs and ABTNs sent to legacy Post Office Customers

- 3.83 GCs C1.24(m) and C1.33(i) require ECNs and ABTNs (respectively) to include details of the ‘Regulated Provider’s best tariffs’. However, as noted above, to limit the impact of Issue 6, on 10 March 2022, Shell Energy implemented a short-term plan to issue interim notifications that (emphasis added) *“addressed the main elements of the comms **without tailoring it to a customer’s individual circumstances.**”*
- 3.84 In explaining its decision to adopt this approach, Shell Energy stated that, *“The working team who were exploring the fix to Issue 6 presented a choice that Shell Energy could deploy a quick fix excluding best tariff information or focus on the full fix which would take longer (approximately 1 month vs 4 months to implement the full solution).”* It therefore decided that it should *“notify them [the customers] of their end of contract so they knew they were*

⁷¹ Question 61(a), First Response.

⁷² Question 64, First Response.

⁷³ Question 64, First Response.

⁷⁴ Question 64, First Response.

⁷⁵ Question 54, First Response.

⁷⁶ Question 20, Second Notice.

⁷⁷ Question 20, Second Response.

no longer subject to early termination fees and could consider their options even if we could not provide the best offer through that communication.”⁷⁸

- 3.85 In total, Issue 7 occurred between 10 March 2022 and 30 March 2022⁷⁹ (a total of 21 days) and resulted in 19,504 customers receiving interim notifications that did not contain best tariff information tailored to the subscriber and their usage.⁸⁰
- 3.86 Shell Energy explained these communications included *“our best available front of shelf packages but did not tailor this to the individual customer.”⁸¹* It also said that it *“intended to send a further communication to these customers with a view of their best available packages that were tailored to them”⁸²* However, due to an upcoming price change to its tariffs, Shell Energy *“felt it would be confusing for customers to receive their “best offer” at this time.”⁸³* It therefore opted to delay sending further communications detailing its best tariff offers to affected customers.
- 3.87 Of the 19,504 customers affected, Shell Energy identified (at the time of its First Response) 9,128 customers who had not re-contracted or left the company.⁸⁴ Shell Energy later stated in the Second Response that, of those customers:
- *“7,934 have had a follow up ECN/ABTN communication since the manual communication*
 - *228 are now in contract, having recontracted*
 - *531 have since left Shell Energy since first response*
 - *435 have not had a follow up communication.”⁸⁵*
- 3.88 In relation to those 435 customers who had not had a follow up communication, Shell Energy explained that they were *“due to be sent an ABTN communication in March 2023 as part of the BAU process.”⁸⁶* We understand this to mean that those customers would not have received any communication detailing their best tariffs until the next ABTN was due, a year after they should have received this information.

Shell Energy’s processes for identifying the errors

- 3.89 The information provided by Shell Energy shows that 92,341 customers were impacted across the seven errors identified, with Shell Energy issuing a significant number of refunds totalling £410,785.53 as a result.⁸⁷ However, as detailed above, the length of time it took Shell Energy to identify each issue varied quite significantly, with the longest timeframe being 1 year, 11 months and 5 days (Error 2). We therefore asked Shell Energy about the processes it had in place throughout the Relevant Period to ensure that ECNs and ABTNs were being sent to customers.

⁷⁸ Question 65, First Response.

⁷⁹ Question 67, First Response.

⁸⁰ Question 22, Second Response.

⁸¹ Question 69, First Response.

⁸² Question 69, First Response.

⁸³ Question 69, First Response.

⁸⁴ Question 69, First Response.

⁸⁵ Question 24, Second Response.

⁸⁶ Question 24, Second Response.

⁸⁷ Of this amount, £12,367.86 related to refunds given to Post Office customers who were never customers of Shell Energy. Question 15, Second Response.

The 'fault log'

- 3.90 Shell Energy said that when “ECNs and ABTNs were first introduced, a fault log report was created which in the early days post deployment was monitored by [X] [Product Manager] on a daily basis and any issues were worked through to resolution to check it was set up correctly.”⁸⁸
- 3.91 Ofcom asked Shell Energy to provide more details about the fault log process. Shell Energy explained that the “Fault log, is an automatically generated excel spreadsheet that is created after the daily files are processed, which explains and shows any customers in that day's file have failed and the reason for any failure.”⁸⁹ In response to our question asking how this worked, Shell Energy explained “After the daily file to send emails to customers is created, the process would automatically produce an excel spreadsheet which explains and shows any customers in that day's file have failed and the reason for any failure. These failure files are monitored each day and errors are investigated and worked, in order that the customer can be processed in the following days file process. Failures will continue to appear in the daily file until they are resolved.”⁹⁰
- 3.92 However, [X] left Shell Energy in August 2021 “and did not pass across management of the fault report and as such it was not monitored going forward.”⁹¹ This was until the discovery of Issue 5 – first identified on 6 December 2021 – when “[X] who was hired to replace [X] in the Product Team, discovered the report and started to monitor the fault report on a daily basis.”⁹² This means that the fault report was not monitored for over 3 months.
- 3.93 Shell Energy also stated that “the error log only reported on singleton errors for accounts presented for processing and would not have picked up the issue [Issue 1] whereby the file size was limited.”⁹³

Monitoring complaints

- 3.94 Shell Energy informed us that it also relies on consumer complaints to become aware of an issue, stating that “Where the Call Centre become aware of issues impacting customers, these are raised with the Product Team either directly or at regular fortnightly meetings. This meant that if any issues related to ECNs or ABTNs which impacted multiple customers, these should have been raised for investigation. The operations team monitors complaints for trends and if there had been a significant amount of complaints related to ECNs or ABTNs they would have flagged this for investigation into the Product Team.”⁹⁴
- 3.95 In response to our question about the number of complaints Shell Energy received during the Relevant Period, it told us that for legacy Post Office customers it was only able to search its platform for complaints and was unable to search for any complaints made prior to the migration.⁹⁵ However, having searched for complaints for Shell Energy customers and

⁸⁸ Question 74, First Response.

⁸⁹ Question 26(i), Second Response.

⁹⁰ Question 26(ii), Second Response.

⁹¹ Question 74, First Response.

⁹² Question 74, First Response.

⁹³ Question 74, First Response.

⁹⁴ Question 74, First Response.

⁹⁵ Question 72, First Response.

migrated Post Office customers, Shell Energy identified “5 complaints” for ECNs, the first of which “was received on 17 March”⁹⁶ It identified no complaints related to ABTNs.⁹⁷

3.96 Shell Energy also advised it “does not tag complaints against ECNs” and “does not tag complaints against ABTNs”.⁹⁸

3.97 Shell Energy, in response to our Second Notice, further identified that 12 customers impacted by Issue 3 had contacted its customer service team in relation to the ECN issue.⁹⁹

Ofcom’s decision on Shell Energy’s contraventions

3.98 In light of the facts and evidence set out above, we are satisfied that Shell Energy failed to meet the requirements set out in the Relevant GCs, in respect of sending its customers for telephony and broadband services ECNs and ABTNs.

3.99 Specifically, we note that that facts and evidence currently before us show that, Shell Energy experienced seven errors that affected ECNs and/or ABTNs. Of those errors:

- Errors 1, 2, 5 and 6 resulted in Shell Energy customers not receiving an ECN and/or ABTN within the required timeframe – a contravention of GCs C1.21, C1.23 and C1.27 (previously GC 1.10 and C1.13) and/or C1.30, C1.32, and C1.34 (previously C1.16, C1.17, and C1.19);
- Errors 4 and 7 resulted in ECNs and/or ABTNs not containing either any or accurate best tariff information – a contravention of GCs C1.24 and C1.33 (previously C1.11 and C1.18); and
- Error 3 resulted in ECNs including incorrect out-of-contract prices – a contravention of GC C1.24 (previously C1.11).

⁹⁶ Question 72, First Response.

⁹⁷ Question 73, First Response.

⁹⁸ Question 72 and 73, First Response.

⁹⁹ Question 10, Second Response.

4. Penalty

Summary

- 4.1 We have imposed a penalty of £1.4 million on Shell Energy for its contraventions of the Relevant GCs in light of our findings discussed in Section 3. The penalty includes a 30% discount reflecting the resource savings achieved by Ofcom as a result of Shell Energy admitting liability and entering into a settlement with Ofcom.
- 4.2 In reaching this decision, we have had regard to Ofcom’s Penalty Guidelines,¹⁰⁰ and (among other things) the need to incentivise Shell Energy, as well as other CPs, to comply with their regulatory obligations and to our principal duty of furthering the interests of citizens and consumers.
- 4.3 Ofcom’s decision is that this penalty is appropriate and proportionate to the contraventions we have found and it will have the appropriate deterrent effect on Shell Energy and the wider industry. When setting the particular penalty amount that we believe would achieve that objective, we considered the relevant factors in the round. Our reasons for reaching this view are set out fully below.

Deterrence

- 4.4 As set out above, our central objective in imposing a penalty is deterrence. The level of the penalty must be sufficient to have a material impact on the regulated body so that it is incentivised to bring itself into compliance and avoid recurrences of the contraventions in future. It is also important that the penalty imposed serves to deter the wider industry from contravening regulatory requirements.
- 4.5 Any penalty we set should therefore be sufficiently high to discourage bad conduct and incentivise management to change the conduct of the company, encouraging good practices and a culture of compliance across the organisation.
- 4.6 Accordingly, we considered that a significant penalty in Shell Energy’s case was also appropriate in order to secure the objective of deterrence and uphold important consumer protection provisions. Therefore, our view was that the penalty we imposed on Shell Energy should be at a level which also signals to others that any failures to comply with the Relevant GCs will be taken very seriously by Ofcom.

Consideration of whether to impose a penalty

- 4.7 As noted, Ofcom’s principal duty in carrying out our functions is to further the interests of citizens and consumers in relevant markets, where appropriate by promoting competition. In this respect, and as already highlighted in Section 3, the Relevant GCs are important consumer protection provisions that seek to ensure consumers are prompted to engage

¹⁰⁰ Section 392 of the Act requires Ofcom to prepare and publish guidelines for determining penalties under sections 96A to 96C of the Act. Section 392(6) of the Act requires us to have regard to those guidelines when determining such penalties. The current version of the [Penalty Guidelines](#) was published on 14 September 2017.

with the market and get a fair deal for their services. We therefore take compliance with these rules very seriously, particularly where a significant number of customers are affected.

- 4.8 In failing to send ECNs and ABTNs and/or sending ECNs and ABTNs with incorrect information, Shell Energy failed to provide affected customers with information that would (i) enable them to make more informed decisions about their broadband and telephony services, and/or (ii) prompt them to do so.

Penalty amount

- 4.9 In considering the level of penalty which should be applied, Ofcom has had regard to its published Penalty Guidelines.

Our Penalty Guidelines and assessment in the round

- 4.10 As set out in our Penalty Guidelines, the central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient, having regard to the relevant turnover, to have a material impact on the regulated body so that it is incentivised to bring itself into compliance and avoid recurrences of the contraventions in future. It is also important that the penalty imposed serves to deter the wider industry from contravening regulatory requirements.
- 4.11 Any penalty we set therefore had to be sufficiently high to discourage bad conduct and incentivise Shell Energy's management to change the conduct of the company, ensure that its processes are effective in preventing and identifying errors when they occur, and encourage good practice and a culture of compliance across the organisation.
- 4.12 In that regard, our Penalty Guidelines set out a range of further factors which may be relevant in any particular case and Ofcom has assessed those factors carefully in relation to the circumstances of this case. Ofcom has also considered whether there are any relevant precedents and, if so, the extent to which they should be followed in this case. We have, however, determined the appropriate and proportionate amount of penalty in this case by taking all of those factors into account in the round. We set out below Ofcom's consideration of these factors.

Relevant turnover of Shell Energy

- 4.13 Our Penalty Guidelines explain that the amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. In so doing, they also make clear that Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty.
- 4.14 Under section 97 of the Act, the amount of a penalty notified under section 96A may not exceed ten percent of the turnover of the person's relevant business¹⁰¹ for the relevant

¹⁰¹ Section 97(5) defines "relevant business" as meaning (subject to the provisions of an order under subsection (3) and to subsections (6) and (7)) so much of any business carried on by the [person] as consists in any one or more of the following—(a) the provision of an electronic communications network; (b) the provision of an electronic communications service; (c) the making available of associated facilities; (d) the supply of directories for use in connection with the use of such a network or service; (e) the making available of directory enquiry facilities for use for purposes connected with the use of such a network or service; (f) any

period¹⁰² as Ofcom determine to be appropriate and proportionate to the contravention in respect of which it is imposed.

- 4.15 In its Third Response, Shell Energy stated that its turnover for its relevant business for the year ending 31 March 2023¹⁰³ was c.£[§<]. In this regard, our penalty of £1.4 million is lower than the maximum penalty (c.£[§<]) Ofcom may therefore have imposed in respect of Shell Energy's contravention.

Consideration of relevant penalty factors

Duration of contraventions

- 4.16 In considering the amount of any penalty, our Penalty Guidelines lists the duration of the contravention as an example of a potentially relevant factor.
- 4.17 As set out above in paragraph 3.37 we consider that the first date Shell Energy was required to send ECNs to subscribers was from 26 March 2020.
- 4.18 Between 26 March 2020 and 14 June 2022, Shell Energy experienced *at least* one error that resulted in customers not receiving ECNs and/or ABTNs that were compliant with the Relevant GCs, and lengthy periods where multiple errors occurred concurrently. This is a total timeframe of 2 years, 2 months, and 20 days and demonstrates a significant period of non-compliance.

Degree of actual or potential harm caused by the contraventions

- 4.19 The degree of harm, whether actual or potential, caused by the contraventions is another factor we may take into account in determining the amount of a penalty under our Penalty Guidelines.
- 4.20 In this regard we have already explained that the Relevant GCs are important consumer protection provisions and any contravention of them are serious, particularly where a significant number of consumers are affected.

Our consideration of the harm caused by Error 7

- 4.21 As detailed in Section 3, in total we have identified seven errors that contravened the Relevant GCs.

business not falling within any of the preceding paragraphs which is carried on in association with any business in respect of which any access-related condition is applied to the person carrying it on.

¹⁰² Section 97(5) also defines "relevant period", in relation to a contravention by a person of a condition set under section 45, as meaning (a) except in a case falling within paragraph (b) or (c), **the period of one year ending with the 31st March next before the time when notification of the contravention was given under section 94 or 96A**; (b) in the case of a person who at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which he has been carrying it on; and (c) in the case of a person who at that time has ceased to carry on that business, the period of one year ending with the time when he ceased to carry it on. (emphasis added because this part is the relevant definition for Shell Energy's circumstances in this case).

¹⁰³ This is the relevant period for the purposes of calculating the maximum penalty, as defined in section 97(5) of the Act.

4.22 Notwithstanding the above, while we have found that Error 7 did contravene the Relevant GCs – and resulted in 19,504 customers experiencing potential harm due to them not receiving tailored best tariff information – we recognise and have taken into account that Shell Energy’s decision to introduce interim notifications was made in an effort to minimise a greater harm that would have otherwise been caused had those customers instead received no notification at all as a result of Error 6. Indeed, and as set out in Section 3, Shell Energy explained that, as part of its decision, it took into consideration that a full fix was not anticipated to be in place for a further 3 months.¹⁰⁴ Further, while the interim notifications did not contain tailored best tariff information as required, Shell Energy did include details of its “*best available front of shelf packages*” meaning affected customers did have *some* information to help review their options.

4.23 As a result, in assessing the harm caused by Shell Energy’s contraventions of the Relevant GCs, we decided not to consider the potential harm caused by Error 7 as a significant factor in our penalty assessment. This decision is based on the specific facts of this case and does not in any way minimise our view that best tariff information is an important aspect of both ECNs and ABTNs which we further discuss in paragraphs 4.41 - 4.43 below.

Harm and potential harm caused by Errors 1 – 6

4.24 In total, 72,837 customers¹⁰⁵ were impacted by Errors 1 - 6, with:

- 64,565 customers not receiving an applicable notification;
- 7,750 customers receiving notifications that included incorrect information about out-of-contract pricing; and
- 522 customers receiving notifications that included incorrect information about best tariff offers.

4.25 This is a significant number of customers who either experienced or had the potential to experience harm. Below we consider the actual and potential harm caused by each of these scenarios.

Financial harm

4.26 Of the 7,750 customers who, as a result of Error 3, received an ECN that contained incorrect out-of-contract pricing information, 6,054 went on to pay more than what they had been quoted.¹⁰⁶ Further, Shell Energy has confirmed that the average amount overpaid was £9.65 per month, with the lowest monthly overpayment being £1 and the highest £22. It also confirmed that the total amount of overcharges paid by customers impacted by Error 3 (whilst a Shell Energy customer) was £398,417.67.¹⁰⁷ This is an average of £65.81 per affected customer and demonstrates significant actual harm.

Non-financial harm

Customers who did not receive an ECN or ABTN

4.27 In total, 64,565 Shell Energy customers did not receive an ECN or ABTN in the required timeframe as a result of Errors 1 - 6. To help understand the potential impact on those

¹⁰⁴ In practice the length of time between the interim fix and implementation of the final fix was 20 days, but we accept that Shell Energy based its decision on the information it had available at the time.

¹⁰⁵ This figure is not the total number of customers impacted by the ECN and ABTN errors. It excludes those customers impacted by Error 7.

¹⁰⁶ Question 10, Second Response.

¹⁰⁷ Question 12, Second Response.

customers, we asked Shell Energy to provide details of the numbers of customers sent an ECN or ABTN between 1 July 2022 and 31 January 2023 (a prolonged period of time where – as we understand it – customers received notifications within the required timeframes and with all required information). We also asked it to confirm how many of those customers:

- went onto recontract with Shell Energy within 1 - 3 months of receiving that notification; or
- went on to leave Shell Energy within 1 - 3 months of receiving that notification.

- 4.28 We then used this data as a representative sample (the ‘**Representative Sample**’) of typical Shell Energy customer engagement with these notifications¹⁰⁸ and compared it to similar data provided in relation to those errors that had led to customers not receiving notifications.¹⁰⁹ The full details of this data can be found in Annex 3.
- 4.29 When analysing this data, we identified that c.37% of customers from the Representative Sample either entered into a new agreement or left Shell Energy within 3 months of being sent an ECN. This engagement was significantly lower for customers affected by Error 2¹¹⁰ at c.23%. This is despite some harm likely being mitigated as a result of some consumers receiving an ABTN communication shortly after their minimum term ended.¹¹¹
- 4.30 For Error 6, overall engagement was unexpectedly higher than the Representative Sample at 43%. We are unable to say precisely why engagement was higher,¹¹² but we consider that the likely reason engagement was not adversely affected was due to Shell Energy’s decision to send interim notifications to all affected customers as part of its remedial steps (see Error 7). While these notifications did not contain personalised best tariff information, they would still have acted as a prompt for customers to engage. Further, as these interim notifications were, in the most part, sent shortly after – but still later than – the date that ECNs should have been sent, this likely explains the notable difference in Month 2 engagement (20.4% vs 13.2% in the Representative Sample), a driving factor behind the overall increased engagement.
- 4.31 In relation to Error 5, we consider that the number of customers affected (69) does not allow for a fair or reliable comparison with the Representative Sample but do consider that these customers were less likely to have engaged with the market once their minimum term had ended.
- 4.32 For ABTNs, we identified that c.13% of customers from the Representative Sample either entered into a new agreement or left Shell Energy within 3 months of being sent an ABTN. This engagement was significantly lower, at c.5%, for customers who did not receive an ABTN as a result of Error 1.

¹⁰⁸ Questions 10 - 13, Third Notice.

¹⁰⁹ Error 1 (ABTNs), Errors 2 and 5 (ECNs), and Error 6 (both ECNs and ABTNs).

¹¹⁰ We recognise that a higher % of customers affected by Error 2 – compared to the Representative Sample – went onto leave Shell Energy within 1 month of when they should have received a notification (10% vs 4.9%), but also note that engagement during months 2 and 3 remained similar/was lower.

¹¹¹ We note that some consumers did not receive a notification until several months later and some not until over 12 months later.

¹¹² Anecdotally we note that Error 6 exclusively affected legacy Post Office customers and so it is possible that the increased engagement was driven by the interim notifications alerting them to a range of tariffs (Shell Energy’s own tariffs) that were not previously available to them when they entered a new minimum term/received an ABTN from Post Office.

- 4.33 For Errors 5 and 6, we consider that the number of customers affected (103 and 19 respectively) do not allow for a fair or reliable comparison with the Representative Sample, but again consider that, particularly in the case of Error 5, these customers were less likely to engage with the market than they would have been had they received an ABTN at the required time.

Customers who received incorrect best tariff information

- 4.34 In relation to Error 4, 522 customers were quoted an incorrect best tariff price that was between £6.37 and £13.79 per month lower than the actual price that they would have had to have paid. However, when considering harm, we note that these customers would have been required to contact Shell Energy to take up that best tariff offer and would have been made aware of the mistake, mitigating any potential financial harm. Further, Shell Energy has confirmed that, once the error was identified, it made a decision to honour the quoted price for all customers.

Overall assessment of harm

- 4.35 When assessing the harm caused by the ECN and ABTN errors, we considered that the number of customers who went on to pay incorrect out-of-contract charges (6,054) was significant. Further, the average monthly amount overpaid (£9.65), the total amount overpaid (£398,417.67) and the average total amount paid per customer (£65.81) were also significant and demonstrated significant levels of actual financial harm and this has been taken into account when assessing the level of the penalty.
- 4.36 For those 64,565 customers who did not receive an ECN or ABTN as a result of the ECN and ABTN Errors, we recognise that – due to Shell Energy’s default policy of not increasing charges when a customer continues with their service beyond their minimum term – those customers did not go on to pay increased out-of-contract charges. However, the potential harm caused by a failure to send ECNs and ABTNs was not limited to the potential for out-of-contract price increases.
- 4.37 Indeed, we remain of the view, as set out in our 2019 statement, that *“the possibility of switching provider and informing customers that providers may offer new customers better deals and switching may save them money”*.¹¹³
- 4.38 Further, Ofcom considers that the availability of transparent, up-to-date and comparable information on offers and services is important for consumers in competitive markets where several providers offer services.¹¹⁴ In order to take full advantage of the competitive environment, consumers should be enabled to make informed choices and change providers when it is in their best interest to do so.¹¹⁵ In this respect it is important to note that the decision to recontract with an existing provider or change to a new provider can be based on several factors including (but not limited to) price, their experience with their provider, the quality of service on offer (e.g., faster broadband speeds) or incentives offered as part of a deal.
- 4.39 As detailed in Ofcom’s ex-post evaluation of the impact of ECNs, Ofcom’s aim of introducing ECNs was to *“encourage consumers to engage with the market and consider different*

¹¹³ [Statement: Helping consumers get better deals - statement on end-of-contract notifications and annual best tariff information](#) Paragraph 4.91

¹¹⁴ See also the [EECC Directive](#), recital 265.

¹¹⁵ [EECC Directive](#), recital 273.

options available to them at the end of their minimum contract period, to save or to find better deals, with their existing or other communications provider”,¹¹⁶ and we consider that there is a strong indication that ECNs are working in the way Ofcom intended.¹¹⁷

- 4.40 As such, while we acknowledge that the remedial steps taken by Shell Energy in relation to Error 6 are likely to have significantly mitigated any potential harm caused by that specific error, we consider that customers affected by Errors 1 and 2 (which accounted for the bulk (49,732) of those customers who did not receive a notification as a result of the ECN and ABTN Errors), still faced significant potential harm even if the price stayed the same. Indeed, by not providing these customers with the required notifications at the right time, we consider that they were less likely to engage with the market and consider different options available to them at the end of their minimum contract period or at the point they should have received an ABTN. This view is supported by our comparison with the Representative Sample which clearly demonstrates lower engagement from those customers affected by these two issues.
- 4.41 In relation to Error 4 we recognise that any significant harm was likely to have been mitigated by the fact that customers were required to contact Shell Energy in order to change to another tariff and, depending on when they contacted them, would either have i) had the error and correct available options explained to them or ii) had the incorrectly quoted tariff honoured. While we consider that any potential harm caused by this error was in the most part likely to be limited to inconvenience, there is also a risk that it could have made it harder for Shell Energy’s customers to compare tariffs across providers. In this respect we think it is important to remind Shell Energy, and other stakeholders, of the importance of providing accurate best tariff information.
- 4.42 In our 2019 statement¹¹⁸ we noted that specific tariffs are a key part of the best tariff advice.¹¹⁹ The complexity of choices customers face means it can be difficult for them to identify specific tariffs which suit them. Part of best tariff advice, therefore, should be information which can act as a prompt for the customer to consider their options more broadly and enable them to understand what suitable tariffs are available.¹²⁰
- 4.43 Indeed, we remain of the view (as set out in our statement) that *“a key objective of the best tariff requirements is to prompt customer engagement with the market. While a customer may sign up to one of their existing provider’s tariffs as set out in the notification, they may also use the tariff information (and information on the options available) to seek out different tariffs both with their existing provider and across the market more generally.”*¹²¹
- 4.44 When assessing all of the above, we considered that both the actual harm and potential harm caused by the ECN and ABTN Errors was significant and this has been taken into account when determining the size of the penalty.

¹¹⁶ See paragraph 2.3: [End-of-contract notifications: an ex-post evaluation of the impact of the introduction of ECNs on re-contracting and pricing for broadband services](#)

¹¹⁷ See paragraph 4.1: [End-of-contract notifications: an ex-post evaluation of the impact of the introduction of ECNs on re-contracting and pricing for broadband services](#)

¹¹⁸ [Statement: Helping consumers get better deals - statement on end-of-contract notifications and annual best tariff information](#)

¹¹⁹ See paragraph 5.6, [‘Helping consumers get better deals’](#).

¹²⁰ See paragraph 5.16, [‘Helping consumers get better deals’](#).

¹²¹ See paragraph 5.62, [‘Helping consumers get better deals’](#).

Preventing, identifying and fixing the errors

- 4.45 Our Penalty Guidelines set out that we may also take into account the following factors as part of our penalty assessment:
- whether, in all the circumstances, appropriate steps had been taken by the regulated body to prevent the contravention;
 - the extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur; and
 - whether the contravention in question continued, or timely and effective steps were taken to end it, once the regulated body became aware of it.
- 4.46 In assessing the above factors, Ofcom recognises that errors can and - on occasion - will occur. It is therefore vital that providers not only have effective processes in place to try and prevent such errors from occurring in the first instance, but to also have effective processes for identifying and fixing those errors as soon as possible when they do occur.
- 4.47 It is Ofcom's view that such processes should give providers effective oversight of their systems and equip employees with the necessary tools to ensure that steps are taken, as soon as practicable, to prevent the same or similar errors from reoccurring. We also expect effective processes to be sufficiently documented, with appropriate bottom-up and top-down information flows that ensure that the underlying cause of errors are properly understood (especially where they relate to systems that could impact customers more generally) and followed up with appropriate and effective checks.

Processes for preventing errors

- 4.48 As part of our information gathering, we asked Shell Energy to explain the process(es) it had in place throughout the Relevant Period to ensure that ECNs and ABTNs were being sent to customers. While its response focused on the steps it had in place for identifying when notifications were not being sent (see sub-section below), in setting out the background to Error 6 it also explained some of the preventative measures it implemented in relation to that specific issue.
- 4.49 As already noted, Error 6 occurred during the migration of ex-Post Office customers from the Fujitsu platform onto Shell Energy's own platform. In preparation of this, Shell Energy has explained that it conducted a *"full impact assessment based around the principle of a "like for like" migration for all Post Office customers"*, with this assessment including *"a review of customers packages to ensure customers could be migrated from one package to another without causing any material detriment."* To accommodate this, *"call plans were adjusted accordingly in the Shell Energy systems"*.¹²²
- 4.50 Despite implementing these steps, we understand from Shell Energy's response that no specific testing was carried out and it instead *"assumed that as the Shell Energy system that generated ECNs and ABTNs already supported call plans there was no reason to believe that changes would be required to the Shell Energy ECN and ABTN production."*¹²³ Consequently, Error 6 still occurred despite these steps.

¹²² Question 63, First Response.

¹²³ Question 63, First Response.

Processes for identifying errors

The 'fault log'

- 4.51 In Section 3, we explained the 'fault log' process, implemented by Shell Energy when ECNs and ABTNs were first introduced, which identified when notifications had not been sent to customers. Shell Energy explained how *"in the early days post deployment"* this log was monitored daily to identify any issues and work them through to resolution.
- 4.52 We recognise that this was a proactive step taken by Shell Energy to help monitor and ensure early compliance. However, Shell Energy has acknowledged that *"the error log only reported on singleton errors for accounts presented for processing and would not have picked up the issue whereby the file size was limited"*, demonstrating that this process alone was not sufficient in identifying all ECN and ABTN issues that might have – and did – occur.
- 4.53 Moreover, this process was not handed over when the member of staff responsible for monitoring the log left the business, meaning that for a period of three months this fault log was not monitored. This lapse demonstrates a lack of effective oversight that risked errors going unnoticed. Indeed, the log was only rediscovered by chance when Error 5 was identified rather than a result of documented processes.¹²⁴
- 4.54 To prevent this from reoccurring, Shell Energy has explained that it has *"now implemented new processes that are monitored across a number of teams in the business to give the process greater resilience."*¹²⁵

Complaints monitoring

- 4.55 Shell Energy explained that *"[w]here the Call Centre become aware of issues impacting customers, these are raised with the Product Team either directly or at regular fortnightly meetings."* Consequently, if the call centre became aware of an issue that impacted multiple customers, this should have been raised for review. Separately, its operations team also *"monitors complaints for trends and if there had been a significant amount of complaints related to ECNs or ABTNs they would have flagged this for investigation into the Product Team."*¹²⁶
- 4.56 In relation to the above, Shell Energy has explained that it *"does not tag complaints"* as relating to 'ECN' or 'ABTN',¹²⁷ but has been able to identify (via a keyword search) five complaints from the Relevant Period that related to its failure to send ECNs.¹²⁸ However, none of these were raised with the Product Team, and it did not identify any complaints related to ABTNs.¹²⁹
- 4.57 Separately, and noting the disparity between the number of customers who, as a result of Error 3, went on to pay out-of-contract prices larger than what was quoted in their ECN (6,054) vs the number of complaints identified, we asked Shell Energy how many customers received a refund outside of its refund programme i.e., how many of these customers had

¹²⁴ We note that Error 5 was identified the same day it first occurred and so would not have been identified sooner had the log continued to have been monitored prior to this.

¹²⁵ Question 26(iv), Second Response.

¹²⁶ Question 74 First Response.

¹²⁷ Question 72 and Question 73, First Response

¹²⁸ Question 72, First Response.

¹²⁹ Question 73, First Response.

proactively contacted Shell Energy regarding the issue and asked to be refunded. Shell Energy has confirmed that just 12 customers contacted them about this issue.¹³⁰

- 4.58 Noting that the General Conditions define a complaint as *“an expression of dissatisfaction [...] where a response or resolution is explicitly or implicitly expected”*, it is unclear why the contact from these 12 customers was not recorded as a complaint.¹³¹ However, we acknowledge that the number of refund requests was relatively low, particularly when compared to the number of customers affected, and may not have resulted in the relevant escalation even if they had been recorded as complaints.
- 4.59 Notwithstanding the above, while we accept that many consumers may not have been aware they should have received an ECN or ABTN, given that 72,837 customers were impacted by Errors 1 - 6, it seems improbable that only five customers would complain. While we have not taken this directly into account when assessing the level of any penalty, we would encourage Shell Energy to review its complaints processes to ensure that all complaints are being recorded accurately. We would also encourage it to consider how it may better track complaints, including about ECNs and ABTNs e.g., via improved ‘tagging’.

Compliance checks following Post Office purchase

- 4.60 Noting that Error 3 pre-dated Shell Energy’s purchase of Post Office’s broadband and telephony business, we asked Shell Energy to confirm what reassurance, if any, it sought or received from Post Office, to confirm that processes for sending ECNs were compliant with Ofcom’s General Conditions.
- 4.61 Shell Energy has explained that, as part of its due diligence with the Post Office it *“sought confirmation from the Post Office that they were not aware of any legal or regulatory issues affecting the target business”* and confirmed that the subsequent Disclosure Letter made no reference to Error 3. It further explained that the *“sale and purchase agreement contained the usual Representations and Warranties against giving assurance that the business had complied with the law in the period prior to completion of the sale against which we, like any other buyer would expect disclosures to be made if any such issues were known about and no disclosures on this subject were made.”*¹³²
- 4.62 Noting the above, Ofcom acknowledges that it was reasonable for Shell Energy to accept these assurances as part of its purchase of Post Office’s broadband and telephony business. However, the fact that Error 3 was not identified for a further 1 year, 1 month and 19 days demonstrates that its own internal processes were not sufficient in identifying this error. Indeed, we note that Error 3 was identified as a result of complaints data shared by Ofcom, and not a result of Shell Energy’s processes.

Processes once an error was identified

- 4.63 We have not requested, as part of our investigation, specific information regarding the processes Shell Energy followed during the Relevant Period to ensure that:
- the identification of errors was communicated and escalated appropriately;
 - fixes were implemented successfully; or
 - root cause analysis was both conducted and adequately documented.

¹³⁰ Question 10, Second Response.

¹³¹ Noting that these customers i) would have been dissatisfied that they had been charged more than had been quoted in their ECN and ii) expected a refund as a resolution to their concern.

¹³² Question 30, First Response.

- 4.64 However, based on the information we have received, we have some concerns about each of these and their adequacy.
- 4.65 Specifically, while we acknowledge that for most of the ECN and ABTN Errors, timely steps were taken to fix the issue, in the case of Error 6 we note that “*a breakdown in communication*” meant that a fix was not initiated/expedited until *at least* 23 days after it was first identified on 17 January 2022.¹³³ Indeed, the steps to expedite a fix and implement remedial steps were only initiated after Shell Energy’s Head of Telecoms Regulation, Policy and Compliance was copied into an email on 8 February 2022 in order to answer “*What the cost of delayed compliance looks like/potentially looks like*”.¹³⁴
- 4.66 Regarding checks to ensure that a fix has been successful, we note that Shell Energy only identified that its intended fix for Error 4 had not been successful following a consumer complaint. This complaint was received 26 days after the initial fix had been implemented¹³⁵ and meant that Error 4 continued for a further 27 days.
- 4.67 Finally, during our investigation Shell Energy has been unable to provide Ofcom with some requested information due to colleagues having left the organisation since the errors were first identified. Specifically, it has been unable to state the precise cause of Error 2 or confirm when Error 6 was first identified.
- 4.68 We recognise that Shell Energy’s record retention policy *may* have resulted in some documents being cleansed, but would expect CPs to retain at least some record of the root cause analysis conducted for a period of time that would allow it to sufficiently refer back to it should a related or similar issue occur. While it is not for Ofcom to specify how long such records should be retained for, we note that Ofcom’s First Request was sent less than a year after Error 2 was fixed, and we would find it unusual for such records to have been cleansed so quickly.

Process changes since the ECN and ABTN Errors

- 4.69 Shell Energy has explained that, since the identification of the ECN and ABTN Errors, it has made changes to its internal processes to ensure that any future issues are identified sooner, and any harm is minimised.
- 4.70 As mentioned at paragraph 4.73, Shell Energy acknowledged that it needs to improve its checks and monitoring, and it has introduced a number of changes. As such, Shell Energy has explained that it now has the following process in place:
- “Two reports will be compared on a monthly basis, one that shows ECNs and ABTNs due out and another which shows the volumes of comms that were issued to ensure that they align.”*
- i) *“The first report will be monitored to ensure that the volumes are in line with our forecasts.”*
 - ii) *“The second report will be subject to spot checks, where specific comms will be checked to ensure it was sent and that it was issued in the correct format... [A] team was set up formally to do the proofing process. The team consists of two individuals*

¹³³ Question 61(a), First Response.

¹³⁴ Annex ‘Question 61bc’, First Response.

¹³⁵ Shell Energy attempted to apply a fix on 19 May 2022 but this was not successful and on 13 June 2022 a customer reported the same issue again.

who perform spot checks on a weekly basis on the comms that have been sent to ensure it was sent and that it was issued in the correct format”.

“Monitoring of the ECN and ABTN rejection report will happen on a daily basis to understand why comms have been rejected and the appropriate fix put in place... [they] sends off any issues to the relevant teams for investigation and to get it fixed. If there are any serious concerns or issues with sending out the comms within the 31-day window they escalate this to [X] to act accordingly.”

“Changing the date we issue the comms from 10 to 30 days to give us more time to correct any issues.”¹³⁶

- 4.71 It has also told us that further developments are in progress to develop the ECN and ABTN dashboard, *“to provide ECN, ABTN and ECN \ ABTN actual volumes. We also plan to integrate the ECN and ABTN file error processing details. 2. Once the ECN \ ABTN Dashboard has been enhanced as described in 1) above the operations team will view actuals versus forecast and file processing errors and investigate and remediate and highlight issues”*.¹³⁷

Assessment

- 4.72 We welcome the changes that Shell Energy has made since the ECN and ABTN Errors were identified. However, we are also mindful that, had it implemented some of these changes earlier then it would likely have led to some of those errors being identified and resolved much sooner.
- 4.73 While Shell Energy did have some existing processes in place, the ECN and ABTN Errors have proven these to be inadequate. Indeed, Shell Energy itself has *“acknowledged that [it] needed to improve the checks and monitoring in place”*.¹³⁸
- 4.74 As part of our assessment, we have given particular weight to the fact that:
- the steps it took ahead of migrating ex-Post Office customers onto Shell Energy’s own systems were not adequately tested and resulted in Error 6 occurring – in this respect we consider that it is vital that effective testing is considered and included within planning processes to ensure that processes do indeed run as expected; it also provides an early opportunity to identify any potential issues before they occur, and provides opportunity to quickly implement a fix should an error occur;
 - one of the processes Shell Energy had in place for identifying individual errors was not followed for a number of months following a member of staff leaving the business, indicating that it did not form part of an effective, documented process;
 - a number of errors were identified by chance rather than through established processes;¹³⁹ and
 - Error 3 was not identified until more than a year after it purchased Post Office's broadband and telephony business, indicating that Shell Energy’s internal processes were not sufficient.
- 4.75 Accordingly, we have found that Shell Energy failed to take appropriate steps to prevent the ECN and ABTN Errors. In our view, while we do not consider that the breach was committed

¹³⁶ Question 75, First Response.

¹³⁷ Question 75, First Response.

¹³⁸ Question 75, First Response.

¹³⁹ For example, Error 2 was identified when a member of staff queried their personal account, and Error 3 following Ofcom sending it complaints data.

either deliberately or recklessly, we do consider that Shell Energy did not adopt and/or implement adequate processes for identifying such errors when they did occur. On this latter point, we note that it is not only the responsibility of senior management to ensure that adequate governance processes are put in place, but it is also responsible for ensuring that such processes are followed.

- 4.76 In this respect, our Penalty Guidelines state that the level of penalty should be high enough that management recognises that it is not more profitable for a business to break the law and pay the consequences, than it is to comply with the law in the first instance. While we do not consider that Shell Energy's management team purposely sought to contravene the GCs - and note that when, in relation to Error 6, a colleague questioned the cost of non-compliance it did not engage in such discussions – our consideration of this point includes the extent to which management chose to invest resource and effort at the right time to ensure that it had robust processes that worked. In this regard we consider that Shell Energy's management should have done more.
- 4.77 Taking the above into account, we consider these matters to be a significant factor in this case and this has been taken into account as part of the penalty assessment.

Remedial steps taken by Shell Energy

- 4.78 Another factor we have taken into account as part of our Penalty Guidelines is any steps taken for remedying the consequences of the contravention.

Customers affected by Error 3

- 4.79 As noted, following Shell Energy's purchase of Post Office Office's broadband and telephony business on 16 March 2021, 6,054 customers affected by Error 3 went on to pay more than what they had been quoted in their ECN. Error 3 lasted until 1 March 2022, and the total amount overpaid during this time totalled £398,417.67.
- 4.80 To address these overpayments, Shell Energy initiated a refund programme which began shortly after it identified Error 3 on 4 May 2022 and was completed in mid-November 2022.¹⁴⁰
- 4.81 For those who were still active customers of Shell Energy when a refund was arranged, customers received an apology and:
- amounts under £50 were:
 - transferred directly into the customer's bank account if there was an active direct debit;
 - credited to the customer's account balance if there was not an active direct debit;
 - any refunds above £50 were made via a cheque.
- 4.82 Except where the amount owed was less than £3 (see paragraph 3.61), customers who had left Shell Energy before receiving a refund were sent an apology letter and a cheque.

¹⁴⁰ Question 32 First Response and Question 13 Second Response.

- 4.83 In addition to refunding affected Shell Energy customers, Shell Energy also decided to refund affected Post Office customers who had not migrated across to Shell Energy following its purchase.¹⁴¹ These additional refunds totalled £12,367.86.¹⁴²
- 4.84 For those customers who had left or had never been a customer, Shell Energy decided not to refund any amount under £3 so as to “avoid customer confusion or concerns”. It further explained that “This equates to 146 customers.”¹⁴³ It did, however, commit to donating any amounts not refunded to ex-Shell Energy customers, as well as the amounts of any cheques not cashed after six months, to charity.

Customers affected by Error 4

- 4.85 As detailed above, customers affected by Error 4 received ECNs and ABTNs that included incorrect best tariff information where – due to the cost of certain call plans not being taken into account – the price quoted was lower than the price the customer would have actually been required to pay. We recognise that, once identified, although the information quoted in ECNs and ABTNs was incorrect, Shell Energy chose to honour the offer by discounting the relevant call plan(s).

Assessment

- 4.86 While we understand that some customers affected by Error 3 may not have received a refund until more than a year after they first paid charges above what had been quoted in their ECN, we welcome and recognise the proactive steps Shell Energy took to begin refunding affected customers shortly after it first identified the issue.
- 4.87 We also welcome and recognise Shell Energy’s decision to:
- refund affected ex-Post Office customers who never joined Shell Energy; and
 - honour the incorrect price quoted in ECNs affected by Error 4.
- 4.88 We consider that both of these latter steps went beyond remedying the direct consequences caused by the contravention.
- 4.89 Finally, while we make no finding as to whether Shell Energy’s decision not to issue refunds lower than £3 to ex-customers was correct, we do recognise its decision to donate this amount – and the amount of any cheques not cashed after six months – to charity. This decision satisfies Ofcom that Shell Energy is unlikely to have gained financially from the effects of Error 3.
- 4.90 Taking the above into account, we consider that the remedial steps taken by Shell Energy were positive and these have been taken into account when determining the level of the penalty.

Gain made by Shell Energy

- 4.91 Any gain (financial or otherwise) made by the regulated body in breach (or any connected body) as a result of the contravention is another factor set out in our Penalty Guidelines. We have therefore considered whether in failing to comply with the Relevant GCs Shell Energy raised any additional revenue or saved any costs.

¹⁴¹ Question 32, First Response.

¹⁴² Question 12, Second Response.

¹⁴³ Question 32, First Response.

- 4.92 As noted, between 16 March 2021 and 1 March 2022, Shell Energy overcharged 6,054 customers £398,417.67 as a result of Error 3. We have already recognised in our consideration of its remedial steps that upon identifying these errors Shell Energy moved quickly to begin refunding affected customers and has now completed its refund programme (see paragraphs 4.79 - 4.84). While we note that these refunds offset the additional amounts actually paid to Shell Energy by its customers, we also recognise that in some instances refunds are unlikely to have been issued until over a year after customers paid the overcharges and Shell Energy is likely to have benefited from having that money in its accounts over that period of time. Notwithstanding this, we also recognise that Shell Energy refunded £12,367.86 to those ex-Post Office customers affected by Error 3 but who never became Shell Energy customers. This action goes beyond offsetting the money Shell Energy gained and is something we have taken into account as part of our penalty consideration.
- 4.93 Another action we considered was offsetting the effects of the contravention, and again as already recognised in our consideration of its remedial steps, was Shell Energy's decision to honour the incorrect, lower, price quoted in ECNs as a result of Error 4. While the number of customers affected was relatively low (522), by honouring this amount rather than simply informing the customer that an error had occurred, Shell Energy decided to accept a reduction in revenues.
- 4.94 Beyond the amounts overcharged as a result of the ECN and ABTN errors, we consider that Shell Energy is likely to have gained from those customers affected by, in particular, Errors 1 and 2 as a result of customers not switching or changing to an alternative tariff as soon as they otherwise would have had they received their ECN or ABTN at the correct time. While it is not possible to quantify a precise number of customers who this could apply to, a comparison of the engagement data for Errors 1 and 2 with the Representative Sample indicates that a significant number of customers (in the 1,000's) are likely to have engaged later than they otherwise would have.¹⁴⁴

Assessment

- 4.95 Taking all of the above into consideration in the round, we consider that it is possible that Shell Energy *may* have benefitted financially from the ECN and ABTN errors. We recognise that by i) completing its refund programme, ii) refunding ex-Post Office customers who never became customers of Shell Energy, and iii) donating unclaimed refund amounts to charity, any gain caused by overcharging has been mitigated. Notwithstanding this, in relation to those customers who did not receive an ECN or ABTN at the required times, whilst we are unable to quantify the gain, we consider that the number of customers affected was significant and Shell Energy was likely to have gained as a result of these customers not engaging with the market. Therefore, this is another factor in this case which has been taken into account as part of the penalty assessment.

Precedents

- 4.96 As set out in our Penalty Guidelines, Ofcom will have regard to any relevant precedents set by previous cases, where they are relevant, but we will not regard the amounts of previously

¹⁴⁴ As an indication, customers affected by Error 1 showed c.8% lower engagement than those customers in the Representative Sample. This would amount to c.2,400 customers. Similarly, customers affected by Error 2 showed c.14% lower engagement than those customers in the Representative Sample. This would amount to c.2,500 customers.

imposed penalties as placing upper thresholds on the amount of any penalty. In this regard there has been one previous investigation in relation to the sending of ECNs.

- 4.97 On 19 August 2022, we issued a confirmation decision to Sky UK Limited ('Sky') confirming that it had contravened, and continued to contravene, GCs C1.21 to C1.29 (and their predecessor obligations GCs C1.10 to C1.15) – from at least 26 March 2020 to the date of our decision – by failing to send ECNs to its pay TV customers.¹⁴⁵ As part of that decision we noted that our investigation centred on a point of *“legal interpretation that may ultimately need to be resolved by the Courts”* and that in the *“specific and highly unusual circumstances [of the case] the deterrent effect of any penalty on Sky would be minimal.”*¹⁴⁶ We therefore decided, based on the specific facts of the case, not to impose a financial penalty on Sky but noted that we would *“continue to consider whether to impose a penalty in all future cases in light of their specific facts and circumstances.”*¹⁴⁷
- 4.98 We consider that there is no similar point of legal interpretation present in this case and, for the reasons set out above, consider that a penalty is appropriate and proportionate in light of the facts and circumstances of this case.
- 4.99 We have not previously taken formal enforcement action in relation to the sending of ABTNs.

History of contraventions

- 4.100 Ofcom has not previously investigated Shell Energy or found it in contravention of its regulatory requirements including the General Conditions.

The extent of Shell Energy’s co-operation with Ofcom’s investigation

- 4.101 The extent to which the regulated body in breach has cooperated with our investigation is another factor in our Penalty Guidelines.
- 4.102 In that regard, we note that Shell Energy self-reported its failure to send ECNs and ABTNs shortly after it became aware of Error 6 and subsequently reported all other errors once they were identified.¹⁴⁸
- 4.103 It is important that CPs take compliance with their regulatory responsibilities seriously and that when things go wrong, they recognise this and act quickly and responsibly to remedy any harm that has been caused and allow Ofcom to investigate, as appropriate.
- 4.104 Notwithstanding the failings we have found in this case, we strongly encourage CPs to take note of Shell Energy’s conduct in this respect.
- 4.105 Shell Energy has also cooperated closely with our investigation and has provided Ofcom with information in a timely manner, both when requested informally and formally under section 135 of the Act.

¹⁴⁵ [Confirmation decision: Investigation into Sky’s compliance with the obligation to provide end-of-contract notifications \(ofcom.org.uk\)](https://www.ofcom.gov.uk/consult/condocs/sky/sky_confirmation_decision_investigation_into_sky_compliance_with_the_obligation_to_provide_end-of-contract_notifications_ofcom.org.uk)

¹⁴⁶ Paragraph 8.8 of the Sky confirmation decision.

¹⁴⁷ Paragraphs 8.9 and 8.10 of the Sky confirmation decision.

¹⁴⁸ An exception to this was Error 5 which was already known, with Shell Energy explaining that this *“was not previously disclosed to Ofcom due to the small number of customers affected and lack of detriment”* – email from [X] to [X] on 13 June 2022.

4.106 We have taken the above into account when determining the penalty in this case.

Ofcom's conclusion on the penalty amount

4.107 Considering all of the factors discussed above in the round, Ofcom considers this to be a serious breach and have imposed a penalty of £1.4 million on Shell Energy. This includes a 30% discount applied to the penalty of £2 million which we would otherwise have set. That discount reflects resource savings achieved by Ofcom as a result of Shell Energy admitting liability and entering into a settlement with Ofcom.

4.108 Ofcom's view is that this level of penalty is appropriate and proportionate to the contraventions in respect of which it has been imposed. Our objectives in determining the amount of that penalty are, in particular:

- the duration of Shell Energy's contraventions;
- the degree of actual and potential harm caused by Shell Energy's contraventions;
- the absence of effective processes in place to prevent the errors from occurring in the first instance and to identify the errors once they occurred; and
- the importance of deterrence both in respect of Shell Energy and of wider industry from contravening the GCs, and in particular the Relevant GCs.

4.109 Having regard to Shell Energy's turnover, our view is that a penalty of £1.4 million will secure these objectives in a proportionate way. It appropriately reflects each of the factors described in more detail above, whilst not exceeding the maximum penalty Ofcom may impose in Shell Energy's case.

4.110 Finally, we note that the penalty would have been significantly higher had Shell Energy not self-reported the contravention, co-operated closely with our investigation and proactively taken steps to remedy the contravention following discovery of the issue.

5. Remedial steps

- 5.1 In addition to imposing a penalty, Ofcom has decided that, to the extent they have not already been taken, Shell Energy must take the following steps to comply with the Relevant GCs and remedy the consequences of the contravention:
- i) ensure that its processes and governance systems are resilient, clearly documented, and supported - where appropriate - by clear and robust guidance to ensure there is limited risk of such process becoming lost or overlooked in cases of personnel absence or change;
 - ii) ensure that there is regular reporting to senior leaders for identification of issues and to ensure proper oversight;
 - iii) ensure that its processes are audited regularly and updated (as appropriate) to mitigate the risk of similar errors arising in the future and not being identified;
 - iv) ensure that it does not benefit from the contravention by refunding customers who have been overcharged, donating any unclaimed amounts to an independent charity; and
 - v) put in place steps to allow any affected customer who Shell Energy was unable to contact in order to issue a refund, and those affected customers who were not issued with a refund due to the amount owed falling below the £3 threshold set by Shell Energy, to contact Shell Energy and claim a refund.
- 5.2 The steps required by paragraph 5.1(i)-(iii) above must be taken by Shell Energy as soon as possible and no later than one month of it receiving this Confirmation Decision.
- 5.3 The step required by paragraphs 5.1(iv)-(v) above must be taken by Shell Energy within one month of it receiving this Confirmation Decision, with Shell Energy providing written confirmation of the steps it has taken or is planning to take.

A1. Confirmation Decision to Shell Energy Retail Limited of contravention of General Conditions C1.21, C1.23, C1.24, C1.27, C1.30, C1.32, C1.33 and C1.34 and previous General Conditions C1.10, C1.11, C1.13, C1.16, C1.17, C1.18 and C1.19 under Section 96C of the Communications Act 2003

Section 96C of the Communications Act 2003

A1.1 Section 96C of the Communications Act 2003 (the “**Act**”) allows the Office of Communications (“**Ofcom**”) to issue a Confirmation Decision to a person where that person has been given a Notification under section 96A of the Act; that person has been given the opportunity to make representations about the matters notified, and the period allowed for the making of representations has expired. However, Ofcom may not give a Confirmation Decision to a person unless, having considered any representations, it is satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 96A.

A1.2 A Confirmation Decision:

- a) Must be given to the person without delay;
- b) must include the reasons for the decision;
- c) may require immediate action by the person to comply with the requirements of a kind mentioned in section 96A(2)(d) of the Act, or may specify a period within which the person must comply with those requirements; and
- d) may require the person to pay:
 - i. the penalty specified in the notification issued under Section 96 A of the Act, or
 - ii. such lesser penalty as Ofcom consider appropriate in light of the person’s representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention;

and may specify the period within which the penalty is to be paid.

The General Conditions of Entitlement

- A1.3 Under the regulatory regime set out in the Act, communications providers do not require a licence to operate in the United Kingdom, but they can be made subject to conditions of general application. The General Conditions of Entitlement (“GCs”) are the regulatory conditions that all providers of electronic communications networks and services of a particular description specified for the respective General Conditions must comply with if they want to provide their services in the United Kingdom.
- A1.4 Section 45(1) of the Act gives Ofcom the power to set conditions, including GCs, binding on the person to whom they are applied.
- A1.5 GCs were imposed, and amended from time to time, between 2003 and 2018. On 1 October 2018 a new set of General Conditions came into effect (“the 2018 Notification”). Further amendments were made following October 2018, and a new set of General Conditions came into effect on 17 December 2021.¹⁴⁹ The GCs have since been further amended; however the 2018 and 2021 GCs are those relevant for the purpose of this Notification.
- A1.6 General Condition (‘GC’) C1 is an important consumer protection provision which sets out the general conditions relating to contract requirements. GCs C1.21, C1.23, C1.24, C1.27, C1.30, C1.32, C1.33 and C1.34 require every communications provider providing a public electronic communications service (‘CP’) to provide contract information including end-of-contract notifications (‘ECNs’) and Annual Best Tariff Notifications (‘ABTNs’). These provisions ensure that end users understand when they are outside of their minimum contractual term and are free to stay on an existing deal, switch tariff with their existing provider, or change to a different provider depending on their preferred choice. Prior to 17 December 2021, when GCs C1.21, C1.23, C1.24, C1.27, C1.30, C1.32, C1.33, and C1.34 took effect, substantively similar obligations applied under GCs 1.10, C1.11, C1.13, C1.16, C1.17, C1.18, and C1.19 and had done so since 15 February 2020. The wording of these conditions is set out below. Terms in bold have specific definitions which are set out in the applicable version of the General Conditions.

End-of-Contract Notifications: General Conditions C1.21, C1.23, C1.24 and C1.27 (previously General Conditions C1.10, C1.11 and C1.13)

- A1.7 General Conditions C1.10, C1.11 and C1.13 under the 2018 notification in relation to **End-of-Contract Notifications** required that:
- “C1.10 **Regulated Providers must send an End-of-Contract Notification to a Subscriber, in the manner and form specified by Conditions C1.11 to C1.14, if each of the following requirements are met:***
- (a) the **Subscriber** has a contract with the **Regulated Provider for Public Electronic Communications Services**, other than machine-to-machine transmission services;*
- (b) the contract has a **Fixed Commitment Period**; and*

¹⁴⁹ https://www.ofcom.org.uk/data/assets/pdf_file/0016/209500/annex-3-revised-gc-eecc-17-dec-21.pdf

(c) *the terms of the contract provide (or governing law provides) for the contract to be automatically prolonged after the expiry of the **Fixed Commitment Period**.*

*“C1.11 If the **Subscriber** is a **Consumer**, the **End-of-Contract Notification** shall include the following information in respect of the **Subscriber’s** contract, in a clear and comprehensible form:*

- (a) the date on which the **Fixed Commitment Period** for that contract ends;*
- (b) details of the services provided by the **Regulated Provider** to the **Subscriber** under that contract;*
- (c) the notice period (if any) which applies to the **Subscriber** under that contract (where the contract is for a **Mobile Communications Service**, the **Regulated Provider** may instead include a message that a notice period may apply);*
- (d) a message that the **Subscriber** may terminate that contract without paying an **Early Termination Charge** after the **Fixed Commitment Period** ends;*
- (e) details of other contracts for **Public Electronic Communications Services** between the **Regulated Provider** and the **Subscriber**;*
- (f) how the **Subscriber** may terminate that contract;*
- (g) the current **Core Subscription Price** payable by the **Subscriber** under that contract;*
- (h) the **Core Subscription Price** that will be payable by the **Subscriber** for the services referred to in (b) (and, where relevant, any changes referred to in (i)) after the **Fixed Commitment Period** for that contract ends;*
- (i) details of any changes to the services referred to in (b) that will come into effect because the **Fixed Commitment Period** for that contract is ending;*
- (j) the dates on which the **Fixed Commitment Periods** end for the other contracts referred to in (e);*
- (k) details of the options available to the **Subscriber** at the end of the **Fixed Commitment Period** for that contract; and*
- (l) the **Regulated Provider’s** best tariffs.”*

*“C1.13 **Regulated Providers** must send an **End-of-Contract Notification** in a timely manner, before the end of the **Subscriber’s Fixed Commitment Period**.”*

A1.8 With effect from 17 December 2021, General Conditions C1.10, C1.11 and C1.13 were replaced by General Conditions C1.21, C1.23, C1.24 and C1.27 which required in relation to End-of Contract Notifications:

*“C1.21 **Regulated Providers** must comply with Conditions C1.22 and C1.23, if each of the following requirements are met:*

- (a) the Relevant **Customer** has a contract with the **Regulated Provider** for a Relevant **Communications Service**;*

(b) the contract has a **Commitment Period**; and

(c) the terms of the contract provide (or governing law provides) for the contract to be automatically prolonged after the expiry of the **Commitment Period**.”

“C1.23 Where Condition C1.21 applies, **Regulated Providers** must send an **End-of-Contract Notification** to the Relevant **Customer** in the manner and form specified by Conditions C1.24 to C1.28.”

“C1.24 If the Relevant **Customer** is a **Consumer**, the **End-of-Contract Notification** shall include the following information in respect of the Relevant **Customer**’s contract for the Relevant Communications Service, in a clear and comprehensible form:

(a) the date on which the **Commitment Period** for that contract ends;

(b) details of the services provided by the **Regulated Provider** to the Relevant **Customer** under that contract;

(c) the notice period (if any) which applies to the Relevant **Customer** under that contract (where the contract is for a **Mobile Communications Service**, the **Regulated Provider** may instead include a message that a notice period may apply);

(d) a message that the Relevant **Customer** may terminate that contract without paying an **Early Termination Charge** after the **Commitment Period** ends;

(e) details of other contracts for **Public Electronic Communications Services** between the **Regulated Provider** and the Relevant **Customer**;

(f) details of other contracts between the **Regulated Provider** and the Relevant **Customer** which form part of a **Bundle** with the contract for the Relevant Communications Service;

(g) how the Relevant **Customer** may terminate that contract;

(h) the current **Core Subscription Price** payable by the Relevant **Customer** under that contract;

(i) the **Core Subscription Price** that will be payable by the Relevant **Customer** for the services referred to in (b) (and, where relevant, any changes referred to in (j)) after the **Commitment Period** for that contract ends;

(j) details of any changes to the services referred to in (b) that will come into effect because the **Commitment Period** for that contract is ending;

(k) the dates on which the **Commitment Periods** end for the other contracts referred to in (e) and (f);

(l) details of the options available to the Relevant **Customer** at the end of the **Commitment Period** for that contract; and

(m) the **Regulated Provider**’s best tariffs.”

*“C1.27 **Regulated Providers** must send an **End-of-Contract Notification** in a timely manner, before the end of the Relevant **Customer’s Commitment Period**.”*

- A1.9 Accordingly, General Conditions C1.10, C1.11 and C1.13, and subsequently C1.21, C1.23, C1.24 and C1.27, with effect from 17 December 2021, in similar terms, applied at all material times for the purposes of this notification.

Annual Best Tariff Information: General Conditions C1.30, C1.32, C1.33 and C1.34 (previously General Conditions C1.16, C1.17, C1.18 and C1.19)

- A1.10 General Conditions C1.16, C1.17, C1.18 and C1.19 under the 2018 Notification in relation to Annual Best Tariff Information required that:

*“C1.16 **Regulated Providers** must provide best tariff information to a **Subscriber** at least annually, if the following requirements are met:*

*(a) the **Subscriber** has a contract with the **Regulated Provider** for **Public Electronic Communications Services**, other than machine-to-machine transmission services; and*

*(b) the contract was previously subject to a **Fixed Commitment Period** which has now expired.”*

*“C1.17 If a **Subscriber** is a **Consumer**, the **Regulated Provider** must comply with Condition C1.16 by sending an **Annual Best Tariff Notification** to that **Subscriber**, in the manner and form specified by Conditions C1.18 to C1.20.”*

*“C1.18 An **Annual Best Tariff Notification** shall include the following information in respect of a **Subscriber’s** contract, in a clear and comprehensible form:*

*(a) a message that the contract is not currently subject to a **Fixed Commitment Period**;*

*(b) the notice period (if any) which applies to the **Subscriber** under that contract (where the contract is for a **Mobile Communications Service**, the **Regulated Provider** may instead include a message that a notice period may apply);*

*(c) details of the services provided by the **Regulated Provider** to the **Subscriber** under that contract;*

*(d) the current **Core Subscription Price** payable by the **Subscriber** under that contract;*

*(e) details of other contracts for **Public Electronic Communications Services** between the **Regulated Provider** and the **Subscriber**;*

*(f) the dates on which the **Fixed Commitment Periods** end for the other contracts referred to (e);*

*(g) details of the options available to the **Subscriber**; and*

(h) the **Regulated Provider's** best tariffs.

*"C1.19 **Regulated Providers** must send an **Annual Best Tariff Notification** at least once in every 12- month period."*

A1.11 With effect from 17 December 2021, General Conditions C1.16, C1.17, C1.18 and C1.19 were replaced by General Conditions C1.30, C1.32, C1.33 and C1.34 which require in relation to **Annual Best Tariff Notifications**:

*"C1.30 **Regulated Providers** must provide best tariff information to a Relevant **Customer** at least annually, if each of the following requirements are met:*

*(a) the Relevant **Customer** has a contract with the **Regulated Provider** for a Relevant Communications Service; and*

*(b) the contract was previously subject to a **Commitment Period** which has now expired.*

*"C1.32 If a Relevant **Customer** is a **Consumer**, the **Regulated Provider** must comply with Condition C1.30 by sending an **Annual Best Tariff Notification** to that Relevant **Customer**, in the manner and form specified by Conditions C1.33 to C1.35."*

*"C1.33 An **Annual Best Tariff Notification** shall include the following information in respect of a Relevant **Customer's** contract for the Relevant Communications Service, in a clear and comprehensible form:*

*(a) a message that the contract is not currently subject to a **Commitment Period**;*

*(b) the notice period (if any) which applies to the Relevant **Customer** under that contract (where the contract is for a **Mobile Communications Service**, the **Regulated Provider** may instead include a message that a notice period may apply);*

*(c) details of the services provided by the **Regulated Provider** to the Relevant **Customer** under that contract;*

*(d) the current **Core Subscription Price** payable by the Relevant **Customer** under that contract;*

*(e) details of other contracts for **Public Electronic Communications Services** between the **Regulated Provider** and the Relevant **Customer**;*

*(f) details of other contracts between the **Regulated Provider** and the Relevant **Customer** which form part of a **Bundle** with the contract for the Relevant Communications Service;*

*(g) the dates on which the **Commitment Periods** end for the other contracts referred to in (e) and (f);*

*(h) details of the options available to the **Relevant Customer**; and*

*(i) the **Regulated Provider's** best tariffs."*

*"C1.34 **Regulated Providers** must send an **Annual Best Tariff Notification** at least once in every 12- month period."*

A1.12 Accordingly, General Conditions C1.16, C1.17, C1.18 and C1.19 and subsequently C1.30, C1.32, C1.33 and C1.34, with effect from 17 December 2021, in similar terms, applied at all material times for the purposes of this notification.

Subject of this Confirmation Decision

A1.13 This Confirmation Decision is addressed to Shell Energy Retail Limited ('Shell Energy'), whose registered company number is 05070887. Shell Energy's registered office is Shell Energy House, Westwood Business Park, Westwood Way, Coventry CV4 8HS.

Ofcom's previous Notification given to Shell Energy under section 96A of the Act

A1.14 On 19 October 2023 Ofcom gave a notification under section 96A of the Act ("the section 96A Notification") to Shell Energy, as Ofcom had reasonable grounds for believing that during the period between 26 March 2020 and 14 June 2022 (the "**Relevant Period**") Shell Energy contravened:

- General Conditions ('GCs') C1.21, C1.23, C1.27, C1.30, C1.32 and C1.34 (previously C1.10, C1.13, C1.16, C1.17, and C1.19) by failing to send ECMs or ABTNs within the required timeframes or at all, and
- GCs 1.24 and C1.33 (previously C1.11 and C1.18) by providing incorrect out-of-contract price information or omitting best tariff information from those notifications.

A1.15 The Section 96A Notification also specified the penalty that Ofcom was minded to impose on Shell Energy in respect of its contraventions of the above GCs. It further specified the steps that Ofcom thought should be taken by Shell Energy in order to comply with the above GCs and remedy the consequences of the contraventions.

A1.16 The Section 96A Notification allowed Shell Energy the opportunity to make representations to Ofcom about the matters set out in the Section 96A Notification.

Confirmation Decision given to Shell Energy under section 96C of the Act

A1.17 On 23 October 2023, in a letter to Ofcom, Shell Energy confirmed that it waived its rights to make representations about the matters notified and admitted liability for the contraventions. The period for Shell Energy to make representations has therefore expired.

A1.18 Accordingly, Ofcom is satisfied that Shell Energy has contravened the GCs set out above by failing to send ECMs or ABTNs within the required timeframes or at all; and by providing incorrect out of contract price information or omitting best tariff information from those notifications.

A1.19 Ofcom has therefore decided to give Shell Energy this Confirmation Decision confirming its contravention of the above GCs.

A1.20 The extent of these contraventions and the reasons for Ofcom’s decision are set out in the explanatory statement to which this Confirmation Decision is annexed.

Steps that should be taken by Shell Energy

A1.21 In order to comply with General Condition C1.23, C1.24, C1.32 and C1.33 going forwards, Ofcom requires that Shell Energy, to the extent it has not already do so, takes such steps as are necessary to:

- ensure that its processes are resilient, clearly documented, and supported (where appropriate) by clear and robust guidance to ensure there is limited risk of such process becoming lost or overlooked in cases of personnel absence or change;
- ensure that there is regularly reporting to senior leaders for identification of issues and proper oversight; and
- ensure that its processes are audited regularly and updated, as appropriate, to mitigate the risk of similar errors arising in the future and not being identified.

A1.22 In order to remedy the consequences of the contravention, Ofcom considers that, to the extent it has not already done so, Shell Energy should:

- ensure that it does not benefit from the contravention by refunding **Customers** who have been overcharged, donating any unclaimed amounts to an independent charity; and
- allow any affected **Customer** whom Shell Energy was unable to contact in order to issue a refund, and those affected **Customers** who were not issued with a refund due to the amount owed falling below the £3 threshold set by Shell Energy, to contact Shell Energy and claim a refund.

A1.23 The steps required by A1.21 should be taken as soon as possible by Shell Energy upon its receipt of this Confirmation Decision, and no later than one month following the issue of the Confirmation Decision in any event.

A1.24 The steps required by A1.22 should be taken within 1 month of receipt of this Confirmation Decision, and Shell Energy is required to provide written confirmation of the actions it has taken.

Penalty

A1.25 Ofcom has imposed a penalty of **£1,400,000** on Shell Energy in respect of its contravention of General Conditions C1.21, C1.23, C1.24 and C1.27 (previously C1.10, C1.11 and C1.13) and C1.30, C1.32, C1.33 and C1.34 (previously C1.16, C1.17, C1.18 and C1.19), during the Relevant Period. This includes a 30% discount to the penalty of £2,000,000 which Ofcom would otherwise have imposed, which is given as a result of Shell Energy’s admission of liability and its entry into settlement with Ofcom.

A1.26 Ofcom requires Shell Energy to pay that penalty to Ofcom by no later than **4 weeks** from the date of receipt of this Confirmation Decision. If not paid by that deadline, it can be recovered by Ofcom accordingly under section 96C(7)(b) of the Act.

Interpretation

A1.27 Except insofar as the context otherwise requires, words or expressions used in this Confirmation Decision have the meaning assigned to them in this Confirmation Decision and otherwise any word or expression shall have the same meaning as it has been ascribed for the purposes of General Conditions or the Act.

Signed by

[✂]

Madhu Gohil

Principal, Enforcement Team

A person duly authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

21 November 2023

A2. Ofcom's investigation

The decision to investigate

- A2.1 On 1 March 2022, Shell Energy informed Ofcom that during its migration of legacy Post Office customers on to the Shell Energy platform, some customers did not receive ECNs or ABTNs.
- A2.2 Later, on 20 April 2022, Shell Energy informed Ofcom that it had identified two separate issues that had caused ECN and ABTN communications to not be sent to some Shell Energy customers.
- A2.3 In light of the information provided to Ofcom, and in accordance with our published Enforcement Guidelines, on 29 April 2022 Ofcom opened a formal own-initiative investigation into Shell Energy's compliance with GCs C1.23, C1.24, C1.32, and C1.33 (previously GCs C1.10, C1.11, C1.17 and C1.18).
- A2.4 Subsequent to this, on 19 May 2022, Shell Energy informed Ofcom that it had quoted incorrect out-of-contract prices on ECNs sent to some legacy Post Office customers. In response, and in an effort to ensure all additional issues were identified by Shell Energy before the information gathering process of the investigation began (potentially prolonging it), on 26 May 2022, Ofcom wrote to Shell Energy encouraging it to carry out a full review of its ECN and ABTN process to ensure it had identified all potential issues. As part of this exercise, on 13 June 2022 Shell Energy informed Ofcom about two further issues relating to ECNs and ABTNs that had impacted customers in stop-sell exchanges and legacy Post Office customers with an international calling plan.

Information gathering

Information requests and other information from Shell Energy

- A2.5 During the investigation, we issued four formal notices to Shell Energy under section 135 of the Act, requiring it to provide information to us.

First information notice

- A2.6 The information notice issued to Shell Energy on 21 September 2022 (the '**First Notice**') required it to confirm the services affected, the cause of the incidents, the number of customers impacted by each incident, how and when the incidents were identified, the processes it had in place to ensure that it sent ECNs and ABTNs, any remedial steps it had taken, and its Relevant Turnover.
- A2.7 Shell Energy provided its initial response in two tranches on 26 October 2022 and 10 November 2022.
- A2.8 On 22 June 2023, Ofcom asked Shell Energy to provide a clarification related to Question 41 of the First Notice. Shell Energy provided this by email on the same day.
- A2.9 On 18 September 2023, Ofcom asked Shell Energy to provide a further clarification in relation to Question 28 of the First Notice. Shell Energy provided the requested clarification by email on 19 September 2023.

A2.10 Collectively these responses are referred to as the **'First Response'**.

Second Information notice

A2.11 We issued a second information notice to Shell Energy on 9 February 2023 (the **'Second Notice'**). The Second Notice sought additional information for the purposes of the Investigation as well as clarifications or confirmations of the information provided in the First Response.

A2.12 Shell Energy initially responded to the Second Notice on 9 March 2023.

A2.13 Ofcom later met with Shell Energy on 3 May 2023 and followed up by email on 4 May asking Shell Energy to review its response to Question 8 of the Second Notice. Shell Energy provided a clarification by email on 12 May 2023.

A2.14 Collectively these responses are referred to as the **'Second Response'**.

Third Information Notice

A2.15 We issued a third information notice to Shell Energy on 21 June 2023 (the **'Third Notice'**) seeking updated information related to Shell Energy's Relevant Turnover, as well as some additional questions regarding the investigation and clarifications or confirmations of the information provided in the Second Response.

A2.16 Shell Energy replied to this on 5 July 2023 and, following a meeting on 10 July 2023, provided a further response on 11 July 2023.

A2.17 Collectively these responses are referred to as the **'Third Response'**.

Fourth Information Notice

A2.18 We issued a fourth information notice to Shell Energy on 4 September 2023 (the **'Fourth Notice'**) seeking updated information in relation to Issue 2.

A2.19 Shell Energy replied to the Fourth Notice on 11 September 2023 (the **'Fourth Response'**).

Updating the scope of the investigation

A2.20 On 9 February 2023 we wrote to Shell Energy (within the Second Information Notice) informing them that we had updated the scope of the investigation to include consideration of Shell Energy's compliance with GC C1.30, previously GC C1.16.

A2.21 On 28 July 2023 and 23 August 2023, we wrote to Shell Energy informing them that we had updated the scope of the investigation to further include consideration of Shell Energy's compliance with GC C1.21, C1.27 and C1.34 previously GC C1.10, C1.13 and C1.19.

A2.22 Consequently, this investigation has considered Shell Energy's compliance with C1.21, C1.23, C1.24, C1.27, C1.30, C1.32, C1.33 and GC1.34 (previously GCs C1.10, C1.11, C1.13, C1.16, C1.17, C1.18 and C1.19).

Ofcom's provisional notification and the settlement procedure

A2.23 On 19 October 2023, Ofcom gave a notification under section 96A of the Act (the **'Section 96A Notification'**) to Shell Energy setting out our view for having reasonable grounds to

believe that it had contravened the Relevant GCs between 26 March 2020 and 14 June 2022. This was because, in Ofcom's provisional view, Shell Energy had failed to send ECNs and ABTNs to some of its customers and in some instances sent notifications with incorrect or incomplete information.

A2.24 On 25 October 2023, Shell Energy wrote to Ofcom as part of the voluntary settlement procedure it had entered into with Ofcom:

- a) admitting it had contravened the Relevant GCs as set out in the Section 96A Notification;
- b) waiving its rights to submit representations; and
- c) confirming its recognition that the penalty imposed by Ofcom in respect of the contravention would be reduced because of its admissions.

A3. Analysis of engagement following receipt/non-receipt of an ECN or ABTN

Table 1: Engagement from customers sent an ECN between 1 July 2022 and 31 January 2023 (the 'Representative Sample')

Total ECNs sent 90,498

	Within 1 month of receiving an ECN	Within 1-2 months of receiving an ECN	Within 2-3 months of receiving an ECN	Total
Number of accounts who entered a new agreement	9,294	7,707	5,137	22,138
% of total customers sent an ECN	10.3%	8.5%	5.7%	24%
Number of accounts who left (including via switching)	4,443	4,224	2,562	11,229
% of total customers sent an ECN	4.9%	4.7%	2.8%	12%
Total # of customers sent an ECN who engaged				33,367
Total % of customers sent an ECN who engaged				37%

Table 2: Engagement from customers sent an ABTN between 1 July 2022 and 31 January 2023 (the 'Representative Sample')

Total ABTNs sent 75,328

	Within 1 month of receiving an ABTN	Within 1-2 months of receiving an ABTN	Within 2-3 months of receiving an ABTN	Total
Number of accounts who entered a new agreement	523	1,821	2,420	4,764
% of total customers sent an ABTN	0.7%	2.4%	3.2%	6%
Number of accounts who left (including via switching)	1,882	1,807	1,550	5,239
% of total customers sent an ABTN	2.5%	2.4%	2.1%	7%
Total # of customers sent an ABTN who engaged				10,003
Total % of customers sent an ABTN who engaged				13%

Table 3: Engagement from customers affected by Error 1

Total number of customers not sent an ABTN 30,794

	Within 1 month of receiving an ABTN	Within 1-2 months of receiving an ABTN	Within 2-3 months of receiving an ABTN	Total
Number of accounts who entered a new agreement	59	283	141	483
% of total customers sent an ABTN	0.2%	0.9%	0.5%	2%
Number of accounts who left (including via switching)	217	516	452	1,185
% of total customers sent an ABTN	0.7%	1.7%	1.5%	4%
Total # of customers sent an ABTN who engaged				1,668
Total % of customers sent an ABTN who engaged				5%

Table 4: Engagement from customers affected by Error 2

Total number of customers not sent an ECN 18,938

	Within 1 month of receiving an ECN	Within 1-2 months of receiving an ECN	Within 2-3 months of receiving an ECN	Total
Number of accounts who entered a new agreement	785	293	148	1,226
% of total customers sent an ECN	4.1%	1.5%	0.8%	6%
Number of accounts who left (including via switching)	1,889	809	473	3,171
% of total customers sent an ECN	10.0%	4.3%	2.5%	17%
Total # of customers sent an ECN who engaged				4,397
Total % of customers sent an ECN who engaged				23%

Table 5: Engagement from customers affected by Error 5 (ECNs)

Total number of customers not sent an ECN 69

	Within 1 month of receiving an ECN	Within 1-2 months of receiving an ECN	Within 2-3 months of receiving an ECN	Total
Number of accounts who entered a new agreement	1	0	0	1
% of total customers sent an ECN	1.4%	0.0%	0.0%	1%
Number of accounts who left (including via switching)	0	0	0	0
% of total customers sent an ECN	0.0%	0.0%	0.0%	0%
Total # of customers sent an ECN who engaged				1
Total % of customers sent an ECN who engaged				1%

Table 6: Engagement from customers affected by Error 5 (ABTNs)

Total number of customers not sent an ABTN 103

	Within 1 month of receiving an ABTN	Within 1-2 months of receiving an ABTN	Within 2-3 months of receiving an ABTN	Total
Number of accounts who entered a new agreement	0	0	0	0
% of total customers sent an ABTN	0.0%	0.0%	0.0%	0%
Number of accounts who left (including via switching)	0	0	0	0
% of total customers sent an ABTN	0.0%	0.0%	0.0%	0%
Total # of customers sent an ABTN who engaged				0
Total % of customers sent an ABTN who engaged				0%

Table 7: Engagement from customers affected by Error 6 (ECNs)

Total number of customers not sent an ECN 14,642

	Within 1 month of receiving an ECN	Within 1-2 months of receiving an ECN	Within 2-3 months of receiving an ECN	Total
Number of accounts who entered a new agreement	1,827	2,356	274	4,457
% of total customers sent an ECN	12.5%	16.1%	1.9%	30%
Number of accounts who left (including via switching)	854	626	343	1,823
% of total customers sent an ECN	5.8%	4.3%	2.3%	12%
Total # of customers sent an ECN who engaged				6,280
Total % of customers sent an ECN who engaged				43%

Table 8: Engagement from customers affected by Error 6 (ABTNs)

Total number of customers not sent an ABTN 19

	Within 1 month of receiving an ABTN	Within 1-2 months of receiving an ABTN	Within 2-3 months of receiving an ABTN	Total
Number of accounts who entered a new agreement	0	0	1	1
% of total customers sent an ABTN	0.0%	0.0%	5.3%	5%
Number of accounts who left (including via switching)	0	1	2	3
% of total customers sent an ABTN	0%	5.3%	10.5%	16%
Total # of customers sent an ABTN who engaged				4
Total % of customers sent an ABTN who engaged				21%