

# Guidance



## Heat Network Enforcement Guidelines

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Contact:	Enforcement Team
Team:	Enforcement
Email:	<a href="mailto:heatnetworksregulation@ofgem.gov.uk">heatnetworksregulation@ofgem.gov.uk</a>

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## Foreword

Ofgem is the regulator of heat networks across England, Scotland and Wales. It is important that we can act swiftly and decisively to put things right if businesses fail to meet their obligations, including where they demonstrate poor behaviours or conduct. By doing so, Ofgem can send strong deterrent messages to all the relevant businesses operating in the heat network sector to help stamp out bad and sharp practice and provide a fair and positive environment for heat network consumers.

This document describes the following:

- how we may use our enforcement powers and tools in situations relating to breaches
- how our decision-making process works;
- how we will provide redress and remedies for consumers;
- how breaches will be addressed and deterred; and
- the actions we may take as an alternative to exercising our statutory enforcement powers.

The aim of these guidelines is to provide greater clarity, consistency and transparency to our enforcement policies and processes, and to describe the framework we have in place to maximise the impact and efficiency of our work. It is aimed at current and potential heat network operators, users of the networks and anyone with an interest in the heat networks sector.

Consumers who wish to make a complaint about their Heat Network suppliers should contact their Heat Network Supplier in the first instance and then, if unhappy with the response, consumers should contact the Energy Ombudsman (see paragraph 1.6). Generally, Ofgem does not intervene in individual disputes between consumers and energy businesses.

## Executive Summary

The Gas and Electricity Markets Authority ('the Authority') regulates heat network markets in Great Britain<sup>1</sup>. The Office of Gas and Electricity Markets (Ofgem) conducts the Authority's day-to-day work and investigates matters on its behalf. It also has powers to investigate suspected infringements of competition law and suspected breaches of certain consumer legislation.

The Authority undertakes a range of monitoring, supervision, and compliance activities to ensure that regulated person(s) are meeting their obligations. These activities form a core part of the Authority's regulatory approach and are designed to promote early identification and resolution of issues, support industry compliance, and protect consumer interests. This proactive oversight helps to maintain confidence in the regulatory framework and informs decisions about whether formal enforcement action is necessary.

Ofgem is introducing heat network regulation for the first time, marking a key step toward a fair and transparent market. Our priority in the first year is to get a good understanding of the sector. This will lay strong foundations for the long-term standards we expect to see. As was drawn out in the responses to our consultation, the sector is diverse covering not only a wide range of operators and suppliers, but also a wide range of heat networks in terms of scale, age and characteristics. When working with the sector we recognise that our approach to both compliance and enforcement will have to be mindful of this diversity.

We are taking a principles-based, outcomes-focused approach that balances flexibility for operators with improvements for consumers. Our aim is proportionate, pragmatic regulation that supports compliance and good practice without unnecessary burdens. The goal is to deliver good outcomes for heat network customers—fair treatment, transparent information, reliable service, and fair prices. The authorisation conditions and other regulatory requirements underpinning this regime are designed to be proportionate, cost-effective, and investment-friendly while driving better consumer outcomes. This approach informs how we monitor compliance and decide whether to

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<sup>1</sup> The regulatory framework for heat networks, as established under the Energy Act 2023, applies to Great Britain (England, Scotland, and Wales). Ofgem has been appointed as the regulator for heat networks within this jurisdiction. Under the Act the Secretary of State has the power through regulations to provide for functions of the Authority to be carried out by another person or body. In accordance with Regulation 4 of the Regulations, the Secretary of State has the function of determining and enforcing general authorisation conditions related to the accuracy of heat meters. [These functions are carried out by the Office for Product Safety and Standards ([OPSS](#)). In Northern Ireland, the Act enables the Department for the Economy to introduce a separate regulatory framework, with the Northern Ireland Authority for Utility Regulation (NIAUR) designated as the regulator.

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investigate potential breaches of authorisation conditions or other relevant legal requirements. Where necessary, enforcement action will ensure obligations are met and consumer interests protected.

As part of its general duty to protect the interests of heat network consumers, Ofgem will consider whether it is appropriate to investigate a potential breach of an authorisation condition or relevant legal requirement. Investigations into breaches or infringements, which can be conducted formally or informally, may result in us deciding to take enforcement action.

Enforcement action may include making orders to bring an end to a breach; remedying the loss or harm caused by a breach; imposing financial penalties, imposing consumer redress orders; or obtaining voluntary redress payments. It can also include accepting commitments or undertakings relating to future conduct or arrangements. Alternatively, the Authority may decide not to take further action.

Heat networks typically operate under conditions of natural monopoly, whereby end users are connected to a single network without the ability to switch supplier. This structural feature distinguishes heat networks from other regulated energy markets and presents distinct regulatory challenges, particularly in relation to consumer protection, pricing, and service standards.

For the purposes of this document, the term “authorised person” is used to refer to any individual or legal entity subject to relevant statutory or regulatory requirements under the heat network framework<sup>2</sup>. This may include heat suppliers, network operators, developers and other parties regardless of their legal form or profit-making status, such as public bodies, sole traders and partnerships.

By ensuring that we have a robust framework in place to address immediate or future consumer loss or harm, and that there are appropriate consequences for the heat network authorised person(s) that fail to comply, we aim to create an effective deterrent for authorised person(s) to refrain from breaching legal requirements.

Our vision is to achieve a culture where businesses put consumers first and act in line with their obligations. This means ensuring fair treatment for all consumers, especially the vulnerable, and protecting consumers’ interests by stamping out bad and sharp practice. Enforcement action is a core part of Ofgem’s role and is essential to the delivery of that vision.

The relevant legal requirements that the Authority can enforce include:

- imposing financial penalties, making consumer redress orders, and making provisional or final orders, for breaches of authorisation conditions and relevant

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<sup>2</sup> This includes an “authorised person” within the meaning of Regulation 2 of Regulations.

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requirements under the Heat Networks (Market Framework) (Great Britain) Regulations 2025 (the “Regulations”) which were introduced under powers in the Energy Act 2023<sup>3</sup> (our heat network “Sectoral” powers);

- issuing infringement decisions, accepting commitments to address the Authority’s competition concerns and imposing directions and penalties for breaches of the prohibitions on anti-competitive agreements and abuses of a dominant position in the Competition Act 1998; and <sup>4</sup>
- taking action to address breaches of certain consumer legislation, including under the Digital Markets, Competition and Consumers Act 2023, the Consumer Rights Act 2015, and the Business Protection from Misleading Marketing Regulations 2008.<sup>5</sup>

Formal enforcement action is not the only tool available to Ofgem in achieving a culture where businesses put consumers first. Through our monitoring and engagement with authorised person(s), we aim to identify poor conduct leading to loss or harm at an early stage; and to put things right swiftly through compliance engagement or Alternative Action where appropriate, which may result in voluntary redress.

Alternative Action may be agreed with authorised person(s) (in heat network Sectoral matters) as an alternative to concluding matters via formal enforcement. It may include remedies such as non-statutory undertakings or assurances to ensure future compliance, independent audits of conduct and/or voluntary action to remedy any concerns, which could include redress payments to affected parties and/or into the Ofgem voluntary redress fund.<sup>6</sup>

These guidelines set out our general approach to enforcing the heat network legislation and cover the following:

- Section 1: Explains what these guidelines cover and our objectives and regulatory principles in exercising our enforcement functions;
- Section 2: Describes the legislation and legal requirements covered by these guidelines;
- Section 3: Sets out our governance processes;
- Section 4: Sets out our information gathering processes;
- Section 5: Sets out our enforcement processes;

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<sup>3</sup> It is anticipated that further regulations will be introduced in future which may supplement or change these provisions. These guidelines will be interpreted consistently with the legal framework in place or applicable at the relevant time.

<sup>4</sup> See the Electricity and Gas [Enforcement Guidelines](#) for more information.

<sup>5</sup> See the Electricity and Gas [Enforcement Guidelines](#) for more information.

<sup>6</sup> We have appointed an expert independent third party to manage the allocation of voluntary redress payments from authorised parties to charitable organisations. [Authority guidance on the allocation of redress funds](#) | Ofgem.

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- Section 6: Covers our processes for settling or contesting cases;
- Section 7: Covers our processes for enforcement orders;
- Section 8: Sets out our processes for closing cases, publicity, and communications, when follow-up compliance might be appropriate and how we evaluate cases and share lessons learnt;

## 1. Introduction

### What do these guidelines cover?

- 1.1 As the heat network sector regulator, we have several roles identifying and responding to conduct in the heat networks markets which may be unlawful, anti-competitive, or otherwise harm consumer interests.
- 1.2 We handle a number of different types of investigations including:
- compliance with authorisation conditions and relevant requirements as defined in the Regulations;<sup>7</sup>
  - alleged anti-competitive agreements and abuses of dominant positions and related matters under the Competition Act 1998 (the Competition Act) and related legislation;
  - compliance with consumer protection provisions under Part 3 of the Digital Markets, Competition and Consumers Act 2024 (DMCCA)
  - potentially unfair terms in consumer contracts and potentially unfair consumer notices under the Consumer Rights Act 2015 (the Consumer Rights Act);<sup>8</sup>
  - compliance with misleading marketing provisions in the Business Protection from Misleading Marketing Regulations 2008 (the BPMMRs).
- 1.3 Matters relating to consumer law and Competition Act enforcement, including how Ofgem exercises its concurrent powers under the Competition Act 1998, are addressed in the main Enforcement Guidelines. These guidelines outline the framework for addressing breaches, providing redress, and ensuring compliance across the gas and electricity sectors. Readers seeking further information on these areas should refer to the main Enforcement Guidelines.<sup>9</sup>

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<sup>7</sup> Authorisation conditions and relevant requirements are defined in Regulation 2 of the Regulations. The Authority may also take enforcement action in respect of certain other provisions including requirements treated as such under other legislation such as under section 12A of the Heat Networks (Scotland) Act 2021. It is also anticipated that provision for further enforcement powers of the Authority will be made in regulations in accordance with provisions of the Energy Act 2023.

<sup>8</sup> The Unfair Terms in Consumer Contracts Regulations 1999 may also be relevant in certain circumstances.

<sup>9</sup> See the Electricity and Gas [Enforcement Guidelines](#) for more information. The Guidelines will be updated in due course to reflect recent updates to our competition and consumer law powers.

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- 1.4 We have published separately the Authority’s statement of policy on imposing financial penalties and making consumer redress orders under the Regulations (“heat network penalty and redress policy statement”<sup>10</sup>).
- 1.5 In certain cases, conduct may amount to an offence which we have the power to prosecute (subject to any requirements for consent). Our separate prosecution policy statement explains the process we will follow for criminal investigations.<sup>11</sup> We will launch any criminal investigations in accordance with statutory requirements and relevant codes of practice, notably the Criminal Procedure and Investigations Act 1996 and the Police and Criminal Evidence Act 1984 (PACE).<sup>12</sup>
- 1.6 We do not generally intervene in individual disputes between consumers and heat network businesses. If consumers are worried about an issue concerning a business in the heat network sector or have a complaint they wish to make, they should make direct contact with the business in the first instance. If they are not happy with the outcome, they can contact the Energy Ombudsman in relation to businesses who are regulated persons and are authorised to supply heat through a heat network.<sup>13</sup> More information on how to make a complaint can be found on our website,<sup>14</sup> which also provides details about the Energy Ombudsman and the Citizens Advice Consumer Service, Consumer Scotland, Advice Direct Scotland and the Citizens Advice Extra Help Unit (EHU) (which has a remit to support vulnerable consumers in Scotland).

## Our objectives and regulatory principles

- 1.7 The Authority’s principal objective in conducting its functions under the Regulations is to protect the interests of heat network consumers<sup>15</sup>. The interests of heat network consumers include their interests in the reliability, proportionate charges and plain communication of information about services

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<sup>10</sup> <https://www.ofgem.gov.uk/energy-regulation/how-we-regulate/compliance-and-enforcement/enforcement>

<sup>11</sup> <https://www.ofgem.gov.uk/publications-and-updates/ofgems-criminal-prosecution-policy-statement>

<sup>12</sup> In Scotland, after the investigation has concluded, we submit a report to the Procurator Fiscal who considers the evidence and decides what action to take in the public interest.

<sup>13</sup> [Resolve Energy Complaints | Energy Ombudsman](#)

<sup>14</sup> [Complain about your energy supplier | Ofgem](#)

<sup>15</sup> Heat network consumers is defined in Regulation 2 of the Regulations and includes future consumers.

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and charges for the supply of heating, cooling or hot water and compliance with wider net zero targets<sup>16</sup>. The Authority must:

- a) carry out its functions under the Regulations in a manner that is best calculated to further its principal objective
- b) when carrying out its functions under the Regulations, consider the need to ensure that persons carrying on a regulated activity under a heat network authorisation are able to finance obligations imposed by or under the Regulations.

When complying with these duties the Authority must have regard to the interests of heat network consumers who are in vulnerable circumstances.<sup>17</sup> The duty under a) includes a duty to promote effective competition between persons engaged in the operation of relevant heat networks, the supply of heating, cooling, or hot water to heat network consumers by such networks and commercial activities connected with the supply of heating, cooling, or hot water to heat network consumer by means of a relevant heat network.

- 1.8 The Authority may also, in carrying out functions under the Regulations, have regard to the interests of consumers in relation to:
  - a) electricity conveyed by distribution systems or transmission systems (under the Electricity Act 1989),
  - b) gas conveyed through pipes (under the Gas Act 1986),
  - c) communications services and electronic communications apparatus which are affected by the carrying out of that function and
  - d) water and sewerage services (under the Water Industry Act 1991) which are affected by the carrying out of that function.<sup>18</sup>
- 1.9 Where appropriate, the Authority must also have regard to the desirability of promoting economic growth in line with its statutory duties<sup>19</sup>.
- 1.10 Our vision for our enforcement work is to achieve a culture where businesses put heat network consumers first and act in line with their obligations.

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<sup>16</sup> Regulation 6 of the Heat Network (Market Framework) (Great Britain) Regulations 2025

<sup>17</sup> Regulation 7 of the Heat Network (Market Framework) (Great Britain) Regulations 2025

<sup>18</sup> Further details of duties in relation to other utility consumers are set out in Regulation 8 of the Heat Network (Market Framework) (Great Britain) Regulations 2025. A person or body exercising a regulatory function mentioned in this paragraph may have regard to the interests of heat network consumers.

<sup>19</sup> See section 108 of the Deregulation Act 2015 and the Economic Growth (Regulatory Functions) Order 2017. Guidance on the 'Growth Duty' can be found at:[final\\_growth\\_duty\\_statutory\\_guidance\\_2024.pdf](#)

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1.11 Our strategic enforcement objectives for heat networks are to:

- stamp out bad and sharp practice and ensuring fair treatment for all consumers, especially those in vulnerable situations;
- enable innovation which drives down prices and results in better quality and new products and services for consumers;
- ensure that there are consequences for businesses and, when appropriate, company directors, who fail consumers and who do not comply; and
- achieve the greatest positive impact by prioritising enforcement resources and using the full range of our powers and regulatory “toolkit.”

1.12 We aim to achieve these objectives by:

- identifying poor conduct or behaviour early and acting in a timely manner;
- using a range of appropriate enforcement processes;
- being fair and transparent throughout the enforcement process and visible in the actions that we take; and
- learning from everything we do, including sharing lessons learnt across Ofgem and from across the energy industry.

1.13 We will, as appropriate, have regard to the regulatory principles of proportionality and other principles that we consider represent best regulatory practice.

1.14 In relation to our enforcement activities, this will include:

**Proportionality:** We will generally prioritise our enforcement investigations and actions in cases where the potential breach, if confirmed, is serious (our assessment will include harm to consumers/competition and our ability to regulate), and/or where there is a need to address contravening behaviours or conduct in the energy market and send a deterrent signal to the market. We will not normally prioritise enforcement action for isolated issues affecting small numbers of consumers, unless any harm they have suffered is significant. We will focus on systemic weaknesses, including where those weaknesses adversely affect groups of consumers such as those in vulnerable situations.

**Targeting:** We will generally use our enforcement tools and resources where they are most needed to tackle the most serious harm or contravening conduct while delivering maximum impact. Where appropriate, we will also work with other enforcement authorities or regulatory bodies to achieve these aims.

**Timely actions:** We will also generally have regard to the timeliness of our enforcement work. We aim to reach a view on the appropriate way to manage issues which come to our attention and to make decisions as quickly as possible. One of our objectives is to respond more quickly to events and speed up our decision-making to promote consumer protection. The options for settlement decision-making aim to support these objectives and provide greater flexibility during an enforcement investigation.

### Status of these guidelines

- 1.15 These guidelines were introduced on 18 February 2026 and apply to all current and future investigations. However, if the circumstances of a particular case justify it, or our strategic enforcement objectives are better met by adopting a different approach, we may depart from the general approach to enforcement set out in these guidelines.
- 1.16 These guidelines are not a substitute for any regulation or law and should not be taken as legal advice. Businesses concerned about a complaint that has been made against them should consider seeking independent legal advice. These guidelines will be kept under review and amended in the light of further experience and developing law and practice.

### Your Feedback

- 1.17 We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this guidance. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall quality of this guidance?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Any further comments?

Please send any general feedback comments to:

[heatnetworksregulation@ofgem.gov.uk](mailto:heatnetworksregulation@ofgem.gov.uk)

## 2. Our enforcement powers

### Section summary

As the heat network sector regulator, we have several roles identifying and responding to conduct in the heat networks markets which may be unlawful, anti-competitive, or otherwise harm consumer interests.

This section explains the legal basis for the main types of enforcement action that we conduct under the legislation covered by these guidelines<sup>1</sup>.

It also describes our enforcement options under the different pieces of legislation. In appropriate cases, instead of or before using our enforcement powers, we may take Alternative Action to try to resolve issues that arise (see paragraphs 5.50 to 5.57).

Ofgem's powers in relation to the matters covered by these guidelines are principally derived from the following legislation:

- The Energy Act 2023
- The Heat Network (Market Framework) (Great Britain) Regulations 2025
- The Utilities Act 2000

### **The Heat Network (Market Framework) (Great Britain) Regulations 2025**

#### Compliance with authorisation conditions and relevant requirements

- 2.1 The Authority's enforcement powers to make a final order, confirm a provisional order, impose a penalty, or make a consumer redress order, cannot be exercised if the Authority is satisfied it would be more appropriate to proceed under the Competition Act.
- 2.2 Under the Regulations, the Authority has powers to ensure that authorised persons comply with authorisation conditions and relevant requirements.
- 2.3 Authorisation conditions are those contained in any authorisation held by an authorised person<sup>20</sup>. Some authorisations contain conditions which require the regulated person to comply with agreements. Breaches of obligations under these agreements may amount to breaches of authorisation conditions. We may

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<sup>20</sup> Authorisation conditions is defined in Regulation 2 of the Regulations.

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take enforcement action in respect of these breaches under the relevant legislation.

- 2.4 Where we see a need to improve consumer protection as the markets we regulate evolve, we can amend or insert conditions into existing authorisations or new authorisations.
- 2.5 Authorisation conditions can be prescriptive or principles-based, and authorisations may contain both. Prescriptive conditions tend to be detailed and specific, identifying how authorised person(s) must achieve a certain outcome. Principles-based conditions have more general requirements, such as ‘to treat customers fairly,’ which places the onus on regulated persons to determine how compliance should be achieved, while also providing more space for innovation.
- 2.6 In these guidelines, “Sectoral cases” refers to cases where obligations or requirements are enforced as breaches of relevant authorisation conditions or requirements. This is distinct from competition cases, for example, which we enforce using our competition powers for a breach of competition law.

## **Provisional orders**

- 2.7 A provisional order may be issued to secure compliance where an authorised person is contravening or is likely to contravene any authorisation condition or relevant requirement and it is considered requisite to act before a final order can be made.
- 2.8 This may include where an authorised person(s) is not taking steps to secure compliance, where behaviour needs to be stopped urgently, or where consumers or other heat network market participants are suffering continuing loss or harm.
- 2.9 A provisional order will cease to have effect at the end of the period specified in the provisional order (which will not exceed twelve months) unless it is confirmed.<sup>21</sup>
- 2.10 Further information on the provisional order process is detailed in paragraphs 7.1 to 7.21.

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<sup>21</sup> Regulation 28 (11) of the Regulations.

## **Final orders and confirmation of provisional orders**

- 2.11 If the Authority is satisfied that an authorised person is contravening or is likely to contravene any authorisation condition or relevant requirement, it may impose a final order where that order is requisite to bring the breach to an end, after following certain procedural requirements.<sup>22</sup>The Authority must give notice that it proposes to make a final order or confirm a provisional order. We call this a consultation. Further information on the provisional order confirmation process is detailed at paragraph 7.12 and on the final order process at paragraphs 7.4 to 7.9.
- 2.12 The Authority need not make a final order or confirm a provisional order if the authorised person has agreed to take, and is taking, appropriate steps to comply, or where it considers that the breach is trivial.
- 2.13 Failure to comply with a confirmed provisional order or a made final order may lead to authorisation revocation.

## **Penalties and redress**

- 2.14 If the Authority is satisfied that an authorised person has contravened or is contravening an authorisation condition or relevant requirement, the Authority may impose a financial penalty, after following certain procedural requirements. A penalty may also be imposed following the making of a provisional or final order (see paragraph 7.21).<sup>23</sup>
- 2.15 The Authority may also, or instead, make a consumer redress order where one or more consumers have suffered loss, damage, or inconvenience because of a contravention of an authorisation condition or relevant requirement, after following certain procedural requirements.
- 2.16 Section 3 details how decisions are made and issued. Further information about penalties and redress can be found in paragraphs 6.55 to 6.61.

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<sup>22</sup> Regulation 28 (1) of the Regulations.

<sup>23</sup> The Authority may not impose a penalty or give a consumer redress order later than the end of five years for the time of the contravention unless before the end of that period the Authority serves a final order or provisional order; serves notice of its proposal to impose a penalty/consumer redress order or serves a request for information under regulation 48(2) of the Regulations. The service of any such notice or order within five years of the contravention or failure preserves the five years prior to that service as a period in which we can impose a penalty.

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- 2.17 If the Authority concludes that the authorised person has not breached any authorisation condition or relevant requirement, the case may be closed.
- 2.18 The Authority may decide to revoke an authorisation under certain circumstances, including where an authorised person fails to comply with a final order, confirmed provisional order or does not pay any financial penalty. The Authority can enforce a final order, provisional order or consumer redress order by civil proceedings. Any outstanding financial penalty (and interest) may be recovered by the Authority as a civil debt.
- 2.19 An outline of the process that we will usually follow in sectoral cases is set out in the appendix A.

## 3. Governance

### Section summary

This section explains the Authority's power to delegate its decision-making powers and describes the Authority's decision-making bodies. It sets out how settlement decisions and final decisions in contested cases are made and issued.

Decisions on breaches, the use of its enforcement powers, and the imposition of penalties or consumer redress payments may be delegated by the Authority to certain employees (of the Authority), who have delegated decision-making powers. The Authority's decision-makers include the Director responsible for Enforcement or a nominated alternative employee of Ofgem at Director level and Enforcement Deputy Directors (in some cases assisted by the Enforcement Oversight Board) the Settlement Committee and the Enforcement Decision Panel (EDP).

### The decision-makers

#### The power to delegate

- 3.1 The Authority is authorised to delegate its decision-making powers to any member or employee of Ofgem, or any committee of Ofgem which consists entirely of members or employees of Ofgem.<sup>24</sup>
- 3.2 For Heat Network Sectoral cases, day-to-day decisions are made by a designated case team under the supervision of the Senior Responsible Officer (SRO), who will be involved as and when necessary.

#### Senior Ofgem employees

- 3.3 The Authority has delegated decision-making authority in relation to certain enforcement matters to the Director responsible for Enforcement (or their nominated alternate) and Deputy Directors for Enforcement including, but not limited to, the decision:
  - a) to issue the settlement mandate;
  - b) to approve and issue the proposed settlement penalty notice;
  - c) to approve any final settlement decision;
  - d) to make a provisional order;

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<sup>24</sup> Paragraphs 9(1) and (3) of Schedule 1 to the Utilities Act 2000.

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- e) to confirm a provisional order;
- f) to make a final order;
- g) to revoke a final order or a confirmed provisional order;
- h) to impose a penalty and its amount (where the imposition of the penalty follows the making of a provisional order, confirmation of a provisional order or the making of a final order);

3.4 In relation to decisions outlined at paragraph 3.6 (e)-(h), the Director (or their nominated alternate), or a Deputy Director for Enforcement shall determine whether any such matters would be appropriate for them to decide having consulted with such parties as they consider appropriate and having regard to such matters as may be relevant depending on the facts and circumstances of the case. If they consider it would not be appropriate for them to decide, they may refer the matter to the EDP.

3.5 The identity of the Director (or their nominated alternate) or the relevant Deputy Director for Enforcement will be provided to the authorised person(s) in writing at the relevant time.

### The Enforcement Oversight Board (EOB)

3.6 The EOB advises the Director with responsibility for enforcement and the Deputy Directors on appropriate matters which are referred to it from time to time. It also provides strategic oversight and governance across our enforcement work. The members of the EOB are usually senior civil servants from across Ofgem. It is usually chaired by the Director with responsibility for enforcement.

### The Enforcement Decision Panel (EDP)

3.7 The EDP consists of a pool of members who are employed specifically for EDP duties and are independent from Ofgem's case teams. One of the EDP members will be appointed as the EDP Chair.

3.8 EDP members have delegated powers to make decisions in accordance with their published Terms of Reference.<sup>25</sup>

3.9 The EDP Secretariat provides administrative and procedural support to the EDP members. This includes the management of correspondence, meetings, case papers and evidence. The EDP Secretariat is separate from Ofgem's case and legal teams. It liaises with the parties on behalf of the EDP.

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<sup>25</sup> [GEMA rules of procedure and committees | Ofgem](#)

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- 3.10 The EDP or its individual members should not be contacted directly by any party or their representatives unless advised to do so by the EDP.
- 3.11 Each time we need to use the EDP for an enforcement decision, a decision-making panel (“the Panel”) of usually three members will be appointed by the EDP Chair. There will be a Panel Chair who will chair the decision-making discussions, and who has the casting vote in the event of a deadlock. In certain cases, the EDP chair may appoint a single EDP member or a panel of two members to take the decision.
- 3.12 The identity of the Panel members will be notified to the parties in writing by the EDP Secretariat.

### **Enforcement Settlement Committees (SC)**

- 3.13 An Enforcement Settlement Committee is constituted to decide whether to authorise the use of a settlement procedure in respect of certain investigations and to consider and authorise relevant settlement agreements in relation to relevant alleged contraventions.
- 3.14 The Committee usually comprises three members: two members of the Enforcement Decision Panel (EDP), nominated by the EDP Chair (one of whom will act as Committee Chair), and the Director responsible for enforcement or a Senior Civil Service (SCS) member (or equivalent). All three members must be present for meetings to be quorate, and decisions are made by majority vote. In exceptional circumstances, a quorum of two may be permitted, with the EDP member holding the casting vote in the event of a deadlock. The reason for any such reduced quorum must be recorded and reported in the EDP annual report.
- 3.15 The Committee meets as and when required in relation to specific investigations or settlement proposals. It is authorised by the Authority to make decisions on settlement in respect of the cases referred to it, exercising delegated powers under the relevant legislation and in accordance with its Terms of Reference<sup>26</sup>.

### **Authority strategic oversight**

- 3.16 The Authority will not seek to influence the outcome of matters or change any decision of the EDP, Settlement Committee or other relevant decision makers.

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<sup>26</sup> Settlement Committee Terms of Reference

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- 3.17 The Authority will retain oversight through its annual review of the decisions taken by EDP members. It may, if appropriate refer to the EDP to inform future decisions.

## 4. Information gathering

### Section summary

This section describes the sources of information that are most frequently used and how this information is managed (including confidential information) and assessed to decide whether to open or continue a case and to ensure the process is consistent with the case opening criteria (see paragraphs 5.4 to 5.22).

It will also describe in detail, what enforcement tools are available to us, how we use our enforcement tools in practice and how we would identify and decide whether to investigate a potential breach.

### Information

- 4.1 As part of our enforcement and compliance work, we gather information from various sources, some of which is provided to us and some of which is requested via informal and formal processes.
- 4.2 We have wide-ranging powers to require the provision of information<sup>27</sup>.

### Self-reporting

- 4.3 The standard authorisation conditions for heat networks require authorised parties to be open and cooperative with Ofgem, which includes self-reporting of potential non-compliance with authorisation conditions.<sup>28</sup>
- 4.4 Whilst this requirement, at present, only applies to the authorised person(s), we strongly encourage other relevant parties to promptly and accurately self-report potential breaches that may give rise to material loss, harm, or damage to consumers, the market, or to Ofgem's ability to regulate.
- 4.5 A case may be opened following self-reporting by an authorised party, for example, it has identified an issue when conducting internal compliance checks, showing that it may have breached an authorisation condition, or relevant legislation. Such cases may initially be treated as compliance cases but may be escalated to enforcement cases if the circumstances or seriousness of the breach warrant formal enforcement action.

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<sup>27</sup> These include under Regulations 10 and 48 of the Regulations.

<sup>28</sup> Heat Network Authorisation Condition 10: Open and Co-Operative

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- 4.6 If a potential breach is identified by an authorised person, it should promptly open a dialogue with Ofgem, and provide as much detail as possible about the potential breach (or breaches), what caused it, the loss, harm, or damage that has or may have resulted, and the steps that have been or will be taken (including proposed timings) to remedy the situation.<sup>29</sup> We recognise that the need to self-report promptly might mean authorised persons have not necessarily established the full extent of problems, but that should not prevent prompt and accurate self-reporting of the facts as they stand and taking steps, in a timely manner, to determine the full extent of problems and put things right.
- 4.7 Where potential breaches are brought to Ofgem’s attention as a result of prompt, accurate, and comprehensive self-reporting, particularly where those breaches were unlikely to come to light via other sources, this may be treated as a mitigating factor.<sup>30</sup> Ofgem will take this into account when deciding whether to prioritise enforcement action, or when determining any penalty or redress outcome. In some cases, this may result in Ofgem seeking to resolve the matter via Alternative Action
- 4.8 However Alternative Action may not always be appropriate, for example for serious or repeat breaches in which opening an enforcement case or issuing an enforcement order is likely to be the most appropriate course of action.
- 4.9 Conversely, factors that tend to increase the amount of any financial penalty in heat network sectoral cases include withholding relevant evidence and/or submitting it in a manner that hinders the investigation, and any attempt to conceal all or part of a contravention or failure. Similarly, persistent, and repeated unreasonable conduct or behaviours that delay enforcement action are an aggravating factor to be considered in setting penalties.

## Whistleblowers

- 4.10 Whistleblowing is when a person or business raises a concern about a wrongdoing, risk, or malpractice that they are aware of through their work (for instance, licence breaches such as mis-selling of energy contracts identified by a customer services operative or a sales agent of the business, or poor complaints processes). It is also sometimes described as making a disclosure in the public interest. We invite contact from all parties who may have such information relating to Heat networks. Disclosures made to “blow the whistle”

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<sup>29</sup> Heat Network Authorisation Condition 10: Open and Co-Operative

<sup>30</sup> Heat Network Authorisation Condition 10: Open and Co-Operative

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about concerns regarding potential breaches of relevant regulations or legislation may lead to enforcement and/or compliance action.

- 4.11 To facilitate such disclosures, government has issued whistleblowing guidance applicable to people considering disclosing information, which:<sup>31</sup>
- sets out the circumstances in which disclosure would entitle a person to benefit from the legal protections (against victimisation or unfair dismissal by their employer) offered to whistle-blowers; and
  - details the process that should be followed in dealing with whistle-blowers.
- 4.12 We have also produced our own whistleblowing guidance document, which should be consulted before making a disclosure to us.<sup>32</sup>

### Information gathered via Ofgem’s internal monitoring functions

- 4.13 We have a general duty to monitor the heat network market for the purposes of considering whether any of our functions are exercisable and we may conduct our own initiative investigations to address issues concerning heat network businesses and across the industry on a particular regulatory requirement or industry risk.<sup>33</sup>
- 4.14 We may use monitoring programmes to ensure compliance with a new regulation when it is introduced, for example to help industry understand new requirements, or where we are assessing compliance with an existing regulation/obligation across the industry. Our regular compliance monitoring may also identify an issue that needs to be investigated.
- 4.15 We may adjust our monitoring requirements dependant on market conditions. This could mean increased or decreased reporting in relation to business operations, operational procedures, and financial reporting.
- 4.16 Some authorisation conditions and regulations require relevant parties to send us regular reports on their activities. Breaches may be identified when we analyse the information provided or may arise from a failure to comply with the reporting requirements.

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<sup>31</sup> <https://www.gov.uk/whistleblowing>. The documents include a list of prescribed people and bodies to whom you can blow the whistle. Ofgem is the Gas and Electricity Markets Authority for these purposes.

<sup>32</sup> <https://www.ofgem.gov.uk/ofgem-publications/83570/whistleblowingguidance.pdf>

<sup>33</sup> Regulations 9(1) and 46 of the Regulations.

- 4.17 Where our monitoring work reveals information that suggests it may be appropriate for us to investigate a relevant person, we will use our prioritisation criteria (see paragraphs 5.3 to 5.21) to decide whether to open a case. If we do not open a case, we may, as an alternative, seek to resolve any poor behaviours or conduct through Alternative Action (see paragraphs 5.50 to 5.58), which may result in a voluntary redress payment. Ofgem's heat network compliance team may also take action to resolve poor behaviours or conduct. Such compliance engagement might result in voluntary redress payment and/or compensation for consumers where appropriate.
- 4.18 We will inform businesses when we become aware of a potential breach (or breaches) that warrants referral to the Enforcement team for further consideration.

### Other sources of information

- 4.19 In addition to information and data received through self-reporting, whistleblowing and our market monitoring activity, we may also receive, or seek, information and evidence from third parties such as consumer bodies, industry, individual complaints, or other witnesses, other stakeholders, or from publicly available records.
- 4.20 We may also receive:
- a) information from organisations such as the Citizens Advice Consumer Service (CitA), the Citizens Advice Extra Help Unit (EHU) (which has a remit to support vulnerable consumers), Advice Direct Scotland, Heat Trust and Ombudsman Services about complaints they have received;
  - b) super-complaints from designated consumer bodies about a feature or combination of features that is, or appears to be, significantly harming the interests of consumers; and
  - c) information from other regulators where the evidence suggesting potential breach falls within our jurisdiction.
- 4.21 Whilst we do not deal with individual complaints, they can be a useful source of information. If we receive an individual complaint, we will add the information to our records for intelligence purposes. We analyse this material and keep it under review to help us decide if we need to act. It is therefore helpful if a complaint to us is specific, well-reasoned, clear, and supported by evidence. We will confirm receipt of a complaint in writing and answer consumer concerns where

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appropriate or provide general advice. In general, individual consumer complaints should be directed toward the business in the first instance and then, if the complainant is not satisfied with the outcome, to Ombudsman Services, if applicable.<sup>34</sup>

- 4.22 If we need any further information, we will contact a complainant and tell them what we require. If we do decide to pursue a case or enforcement order, the details will be published on our website (see paragraphs 5.29 to 5.34).
- 4.23 Sometimes, where necessary, we may instruct experts, for example to provide economic analysis.

### Handling Information

- 4.24 Sometimes, where necessary, we may instruct experts, for example to provide economic analysis.
- 4.25 At Ofgem we take the handling of information and privacy very seriously. How we keep it secure is detailed in our Privacy Policy.<sup>35</sup>
- 4.26 If a person or business thinks that any information that they are giving us,<sup>36</sup> or that we have acquired, is commercially sensitive or contains details of an individual's private affairs, and/or that disclosing it might significantly harm the interests of the business or person, they should submit a separate non-confidential version of the information in which any confidential parts are removed. They should also, in an annex clearly marked as confidential, set out why the information that has been removed should be considered confidential. Non-confidential versions of documents should be provided at the same time as the original document or at an alternative time as required by us. If such a version is not provided within the timescale set by us, we will presume that the provider of that information does not wish to continue to claim confidentiality.
- 4.27 We will make our own assessment of whether material should be treated as confidential. We may not agree that the information in question is confidential. This will depend on the circumstances and will be assessed on a case-by-case

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<sup>34</sup> <https://www.ombudsman-services.org/sectors/energy>

<sup>35</sup> <https://www.ofgem.gov.uk/ofgem-privacy-policy>

<sup>36</sup> This includes responses to public consultations and complaints.

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basis. Any request that information is treated as confidential will be considered in accordance with the appropriate legislation.<sup>37</sup>

- 4.28 In all cases, even if a person does not wish for certain information to be disclosed, there may still be circumstances in which its disclosure is required. Information provided, including personal information, may be published, or disclosed in accordance with the access to information regimes (primarily the Data Protection Act 2018, the UK General Data Protection Regulation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004) or to facilitate the exercise of our functions.

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<sup>37</sup> We will comply with section 105 of the Utilities Act 2000 and Part 9 of the Enterprise Act when deciding whether information is confidential and/or whether it should be disclosed. We will also have regard to regulation 12 of the Regulations, as appropriate, in relation to the publication of information and advice. We will also have regard to any relevant data protection requirements such as the Data Protection Act 2018 and the UK General Data Protection Regulation.

## 5. Enforcement Processes

### Section summary

This section describes what enforcement processes are available to us, how we will usually use them in practice and how we would identify and decide whether to investigate a potential breach.

### Initial enquiry phase

- 5.1 We have wide-ranging powers to require the provision of information<sup>38</sup>. Before a decision is taken to open a case, we may seek further information from a complainant or from third parties, such as other stakeholders or competitors and complaints bodies, to inform the decision.
- 5.2 We may also contact the business in question to seek clarification or information to help us assess whether there is sufficient evidence to pursue enforcement action. We can request this information via informal processes or via a formal request for information.<sup>39</sup> Prompt and appropriate responses may speed up the resolution of the issue and may, in some cases, avoid the need to take enforcement action.

### Prioritisation criteria for deciding whether to open (or continue) a case

- 5.3 This section includes non-exhaustive factors that we will normally consider in deciding whether to open (or continue) a case or issue an enforcement order.
- 5.4 We will make decisions on a case-by-case basis, taking account of the specific facts of the matter, the complexity of the issues, our priorities, the legal context, and our available resources.<sup>40</sup>

### Case opening decisions

- 5.5 In determining whether an enforcement case is appropriate, we will have regard to our vision and strategic objectives for enforcement (see paragraphs 1.7-1.14).
- 5.6 When making our assessment we will consider in each case the following criteria:

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<sup>38</sup> These include under Regulations 10 and 48 of the Regulations.

<sup>39</sup> Regulations 48 and 10 of the Regulations.

<sup>40</sup> This is case dependant and the factors listed are those usually considered. Sometimes we may take other considerations into account.

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- 1) Do we have the power to take enforcement action, and are we best placed to act?
- 2) Is it a priority matter for us, due to the apparent seriousness of the potential breach?
- 3) Is it a priority matter for us, due to the apparent behaviours or conduct of the business in question?

5.7 We will consider whether we have the power to take enforcement action and are best placed to act, as set out below. The decision to open a new case or issue an enforcement order can then be taken by considering criteria (2) and/or (3) above (both need not apply). For example, we may open a case to address apparent poor behaviours or conduct even when our assessment suggests that any resulting loss or harm or likely loss or harm is limited. Similarly, we may open a case when we judge the loss or harm or likely loss or harm to be serious even if the business in question has a good compliance history and has put things right.

### Do we have the power to take enforcement action and are we best placed to act?

- 5.8 This means asking whether the alleged behaviour or conduct falls within the scope of the relevant provisions of the legislation, which gives us the power to take enforcement action, and whether the tests set out in the relevant legislation are met. <sup>41</sup>
- 5.9 This means for cases under the Regulations assessing if it appears likely that the behaviour or conduct in question could constitute a breach of any authorisation condition and/or relevant requirement.
- 5.10 Where there is a concurrent power to take enforcement action with another regulator, a decision will be made about who is best placed to act. <sup>42</sup> This prevents a company from facing two separate investigations (and sanctions) by different regulators for the same behaviour. This may result in the case being referred to another regulator for investigation. Equally, sometimes other regulators will refer cases to us.

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<sup>41</sup> Competition Act and consumer law cases are covered in separate guidelines. However, when assessing the resource requirements of a potential case, consideration is given to other current and potential cases under all our enforcement powers.

<sup>42</sup> More information is available, see the [Enforcement Guidelines](#) for more information. See also Regulations 46 and 47 of the Regulations. The Guidelines will be updated in due course to reflect recent updates to our competition and consumer law powers.

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- 5.11 Action may be taken by us where another body is already investigating or taking enforcement action, where the power to act does not derive from concurrent powers (as distinct from the action envisaged in paragraph 5.10).
- 5.12 Whether an additional investigation may be justified will depend on the circumstances of the case. We will take account of the impact of any action already taken, or to be taken by another body, before deciding whether to launch a case into any apparent breach of an authorisation condition and/or relevant requirement also occasioned by the activity.
- 5.13 Provided the issue warrants an investigation under our prioritisation criteria, we are more likely to launch a separate investigation if, for example:
- a) the action being taken by the other body appears not to deal with our concerns fully or does not cover all the matters about which we have concerns;
  - b) a financial penalty or consumer redress order may be merited (which the other body does not have the power to impose);
  - c) separate action should be taken as a deterrent to the business or others.

**Is it a priority matter for us due to the apparent seriousness of the potential breach?**

- 5.14 This means assessing a range of factors including the degree to which the suspected breach has caused, is causing, or is likely to cause harm to consumers (financial or non-financial), to competition or to our ability to regulate effectively. The latter is important for breaches that, if confirmed, would harm our ability to regulate, or could lead to a loss of confidence in the regulator, if businesses do not face meaningful consequences. We will also consider the risks involved in pursuing the case and the potential resources required.
- 5.15 We will also take account of the extent to which the business may have benefitted (financially or otherwise) from the suspected breach/es and the need to deter future poor behaviours or conduct, both by the business in question and others across the market.

**Is it a priority matter for us, due to the apparent conduct of the business in question?**

- 5.16 This means assessing a range of factors to determine whether the business is willing and able to comply with its obligations, or whether it is a business with recurring poor behaviours or conduct.

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- 5.17 Our assessment will include whether the alleged breach is intentional, a sign of negligence, or constitutes a failure to comply with previous undertakings.
- 5.18 For principles-based rules, it will include considering whether a business intent on complying might have acted in the way potentially to be investigated. We will consider the compliance record of the business and any history of similar breaches, including any that in isolation may not have been considered serious enough at the time to justify opening a new case.<sup>43</sup>
- 5.19 We will consider also whether the business self-reported promptly, accurately, and comprehensively, is taking timely action (or has already acted) to put matters right and is willing and able to avoid repeat breaches.<sup>44</sup>We are more likely to open an investigation if the breach is ongoing but may also take enforcement action if the business is no longer in breach.

### Other considerations

- 5.20 The criteria set out above are not exhaustive; we may consider other factors, where relevant, such as the resources we have available at the time.
- 5.21 On occasion, particularly when addressing a concern across the heat network sector, we may decide it is not appropriate to take enforcement action at that stage but instead focus our resources on a relevant policy project to bring about change across the market to reduce the harm.

### Enforcement case process

- 5.22 This section provides a general summary of the procedures we will follow once we have decided to open an enforcement case. It also outlines the investigation powers that we may use, and how to raise procedural issues.
- 5.23 None of the processes in this section apply to the process involved in imposing enforcement orders – see section 7.

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<sup>43</sup> For heat network authorisation this could include an assessment of complaints registered with them, Citizens Advice Consumer Service, the Citizens Advice Extra Help Unit (EHU) (which has a remit to support vulnerable consumers), Advice Direct Scotland, the Heat Trust or the Energy Ombudsman.

<sup>44</sup> Relevant person(s) are obligated under the Heat Network Authorisation Condition to report actions or omissions that give rise to a likelihood of detriment to Domestic Customers. A failure to do so may constitute a contravention of the Authorisation Condition 10, the principle to be open and cooperative.

## Notification that we are opening an enforcement case

- 5.24 If we decide to open an enforcement case, we will normally inform the authorised person(s) under investigation. We may not, for example, where we consider that alerting the authorised person(s) before issuing a formal request for information. In these instances, we will notify the authorised person(s) as soon as it is appropriate to do so.
- 5.25 When notifying an authorised person(s) of the case opening, we will provide an outline of the allegations and the scope of the investigation, usually by a call (telephone, video link or similar technology) followed up with a case initiation letter and any supporting correspondence, including a provisional timeline for the key steps of the investigation and when we expect to give updates on progress. The timeline may change as the case progresses and if so, we will notify the authorised person(s) as soon as possible. The scope of the case may widen if we become aware of other matters requiring investigation and we will notify the authorised person(s) of any relevant information or changes.
- 5.26 We may invite the authorised person(s) for an initial meeting to discuss the nature of the allegations, the timeline and how we intend to proceed. The authorised person(s) may comment on the allegations at this stage (for example, to say that it admits or denies breaches, or cannot say yet), or it may wish to raise other matters.

## Ofgem's timescales for conducting an investigation

- 5.27 We aim to conduct investigations as quickly as possible. The cases that we investigate vary significantly in type, complexity, and size. The provisional timeline provided to the authorised person(s) at the outset of every investigation will be set on a case-by-case basis. It will be updated and communicated appropriately as the case progresses.

## Making cases public and publicity

- 5.28 We believe that making cases public is important to ensure transparency of our work. It also serves to inform consumers about the work that we are doing, helps identify witnesses, and maximises the deterrent effect of enforcement action by encouraging industry compliance.

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- 5.29 In line with our commitment to ensure transparency, we will publish every case that we open on our website,<sup>45</sup> unless this would adversely affect the investigation (for example, where it may prejudice our ability to collect information), harm consumers' interests, or is subject to confidentiality or other considerations.<sup>46</sup> We will consider on a case-by-case basis how best to publicise the opening of a case, bearing in mind our Enforcement vision and strategic objectives.<sup>47</sup> In some cases, we may also decide to make an announcement to the media, which is often in the form of a press release. We will normally inform an authorised person(s) before we publish the opening of a case on our website or make an announcement to the media.
- 5.30 When we publish the opening of a case on our website, we will make it clear that this does not imply that we have yet made any finding(s) about the issues under investigation.
- 5.31 We will generally exclude information from publication only if we consider that failure to do so would harm consumers' interests or might seriously harm the interests of the authorised person(s) under investigation. We will consider these factors when deciding whether to offer anonymity to any authorised person(s) under investigation.
- 5.32 We will publish findings of breach, penalties and/or consumer redress orders in settled and contested cases (subject to any confidentiality and other legal issues) and other relevant matters, and we will usually publish case closures on our website. When a case has been made public on opening, then, if we close it with no finding of breach (for example due to lack of evidence, on the grounds of administrative priorities, or because we are taking Alternative Action), we will also make these details public. We will typically inform an authorised person(s) before we publish the closing of a case on our website or make an announcement to the media
- 5.33 To ensure the transparency of our work, to make clear our expectations, and drive improved behaviour, details of cases resolved via Alternative Action will

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<sup>45</sup> We will consider a case as open for publishing purposes once it has been decided to invest enforcement team resources investigating a case in accordance with our prioritisation criteria.

<sup>46</sup> We will comply with any duties under section 105 of the Utilities Act 2000 and Part 9 of the Enterprise Act in respect of confidential information. Regulation 12 of the Regulations.

<sup>47</sup> See section 1.

normally be made public.<sup>48</sup> We will usually consult the authorised person(s) in advance of publishing any statements relating to Alternative Action.

## Contact with the case team

When we open a case, we will provide the authorised person(s) under investigation, and any relevant third parties, with contact details of the person/s who will be the main point/s of contact at Ofgem during the investigation, including the SRO. Any specific queries should be addressed to the Ofgem contacts via the agreed method of contact.

<sup>49</sup>

- 5.34 We will comply with our duties in respect of confidential information (see section 4) when providing updates.

## Requests for information

- 5.35 As mentioned in section 4 we will use a range of powers to collect the information and evidence which we need to progress a case.
- 5.36 Requests for information are a key part of our evidence gathering process and it may be necessary to issue several requests for information during an investigation. Each such request will set out the specific information required and how we want the information to be submitted, which may include specific templates to be completed. It will set out the deadline for submission, as well as the offences and/or sanctions that may apply, if the recipient does not comply.
- 5.37 We will set the length of any deadline based on the complexity of the issues raised and the breadth, type and amount of information required. We will give what we consider, in the circumstances, to be a reasonable amount of time for response.
- 5.38 We may share drafts of the request with the authorised person(s) to give them an opportunity to comment on the scope or form of the request (for instance, whether the data or documentation is available in the form requested), and whether there is any practical issue with the deadline. After considering any comments and making any amendments we consider necessary, we will issue the finalised request for information.

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<sup>48</sup> Alternative action outcomes may also be concluded via Ofgem's retail compliance team function; however, this will not be the result of a formally opened investigation.

<sup>49</sup> Regulation 3 and Schedule 1 of the Regulations allow Ofgem to serve notices and documents by electronic means, by post or by personal delivery.

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- 5.39 Any problems understanding a request for information or queries about the scope of it should be raised promptly with the Ofgem contact(s). Representations about the deadline should be made to the contact in writing to the relevant email address, as soon as possible, and should clearly lay out the reasons for the request. Authorised person(s) should not wait until just before the deadline to request more time. We will aim to deal with all requests promptly and reasonably and on a case-by-case basis.
- 5.40 Delays in the provision of information can have an impact on overall timescales for the investigation or enforcement order. We expect stakeholders to respond within deadlines to the notices served upon them. Failure to cooperate fully with reasonable requests from the case team will be taken very seriously, in line with the appropriate statement of policy on penalties or consumer redress orders.
- 5.41 Failure to fully comply with notices to produce documents or information or if a person provides false or misleading information may amount to a criminal offence and will be taken seriously.<sup>50</sup>
- 5.42 In heat network sectoral cases the Authority may apply to the court for an order requiring any default in complying with a notice to be made good (and costs).<sup>51</sup>
- 5.43 The failure to respond appropriately to a request for information may also contravene an authorisation condition, which may be enforced as a heat network sectoral contravention and result in the imposition of an additional penalty or enforcement order.

### Site visits

- 5.44 We may also gather information by conducting a site visit. A visit may be made, either at the request of the Authorised person(s) or Ofgem, if we think that this might help to clarify matters or is appropriate for some other reason. Any site visit should be arranged through the Ofgem contact/s. If appropriate, we will suggest that relevant members of the Ofgem case team attend a site visit to the authorised person(s) premises.
- 5.45 Prior to any visit, we will often provide correspondence which will detail what information we require and discussion points.

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<sup>50</sup> If a person fails to produce required documents or information; or alters, suppresses or destroys such documents, they may be guilty of a criminal offence and liable on conviction to a fine (Regulations 61 and 62 of the Regulations).

<sup>51</sup> Regulation 48 (6) of the Regulations.

## Inspection Powers

5.46 The Authority also has powers of inspection<sup>52</sup>. These powers allow authorised officers<sup>53</sup> to conduct inspections for the purpose of:

- verifying compliance with the requirements of the Regulations or any other relevant requirement or any relevant condition, or
- assessing or gathering evidence of potential or alleged failures to comply with the requirements of the Regulations or any other relevant requirement or any relevant condition.

This includes any necessary follow-up activity for either purpose set out above.

The main inspection powers include (but are not limited to):

- Entering the premises of an authorised person (except premises used wholly or mainly as a private dwelling) at any reasonable time, if the authorised officer has reasonable grounds to believe that entry is necessary or helpful for the inspection.
- Examining, printing, copying, or removing any relevant document, information, material, or equipment.
- Requiring that relevant materials, documents, information, or equipment are left undisturbed and not disposed of, altered, or rendered inaccessible for as long as necessary for the inspection.
- Requiring the authorised person to provide access to premises, documents, information, materials, equipment, and relevant persons, and to co-operate with the authorised officer.
- Conducting, or directing the authorised person to conduct, tests on any equipment.
- Taking any other action that the authorised officer considers appropriate and reasonably required for the purposes of the inspection.  
Requiring assistance, information, or explanations from any person on the premises relevant to the inspection.

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<sup>52</sup> Regulation 49 and Schedule 2 of the Regulations.

<sup>53</sup> An authorised officer is a person authorised by the Authority to exercise the inspection powers set out in Schedule 2 of the Regulations on behalf of the Authority and in accordance with the terms of the authorisation.

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These powers will be exercised where necessary and in accordance with the terms of the authorisation and applicable procedural safeguards <sup>54</sup>including:

- Proof of identity: An authorised officer must produce proof of their identity if requested by anyone present at the premises.
- Security of removed items: Any material, document, information, or equipment removed during an inspection must be kept secure from unauthorised access, interference, or physical damage, with appropriate and proportionate measures taken.
- Notice of removal: Where practicable, the authorised officer must provide a notice giving sufficient particulars of any document, material, or equipment removed so that it can be identified, along with details of any procedures for handling or returning the items.

Further detail on these powers is set out in Regulation 49 and Schedule 2 of the Regulations.

### Meetings

5.47 Meetings with an authorised person(s) under investigation may be held as part of information or evidence-gathering or be used to provide updates on the progress of the case. If we think a meeting is needed, we will make the arrangements with the authorised person(s) and confirm who, from Ofgem, will attend. We may also request that particular people attend from the authorised person(s), such as those with knowledge of specific matters or with the authority to speak for the authorised person(s). The authorised person(s) and the case team may use this time to manage procedural or substantive issues, raise concerns, for example in advance of the settlement phase (case direction meeting), or to discuss settlement terms (see section 6).

### Raising procedural issues

5.48 For sectoral cases, if an authorised person(s) wishes to raise any procedural issues, these should be raised with the main point of contact in the first instance, or the SRO should the authorised person(s) consider it appropriate.

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<sup>54</sup> Our inspectors will have regard to the Code of Practice on Powers of Entry (Home Office – December 2014) where appropriate when exercising any functions to which the Code of Practice relates. “Home Office Code of Practice Powers of Entry” – [Home-Office-Code-of-Practice-Powers-of-Entry-2015.pdf](#)

## **Alternative Action**

5.49 In certain circumstances, Alternative Action may be used to bring the authorised person(s) into compliance and remedy the consequences of any non-compliance. In deciding whether Alternative Action is appropriate we will have regard to our prioritisation criteria for opening an investigation, where appropriate (see paragraphs 5.3 to 5.21). Alternative Action can be used in lieu of opening an investigation into a potential breach, as part of closing a formal investigation, or during an investigation to address ongoing concerns.

5.50 Prior to deciding on enforcement action, we will enter dialogue or correspondence with the responsible parties about the potentially harmful or unlawful conduct, and/or poor behaviours, including whether they have done anything, or plan to do to anything, to put things right.

5.51 We may pursue one or more of the following Alternative Actions with the authorised person(s) in question:

- a) agree a period and a specified format of reporting, either to ensure that behaviour is not repeated or to show that they have taken certain action/s to address the issue/s;
- b) request that they engage independent auditors or other appropriately skilled persons to conduct a review focused on a particular area of concern;
- c) accept non-statutory undertakings or assurances to ensure future compliance with a particular obligation; and
- d) agree other voluntary action, such as the implementation of specified remedial or improvement actions and/or making voluntary/redress payments to affected consumers, other appropriate parties or to the Ofgem voluntary redress fund.<sup>55</sup>

5.52 We would expect an authorised person(s) to engage fully and proactively in securing a successful resolution of our concerns through Alternative Action.

### **Alternative Action outcome**

5.53 We would expect an authorised person(s) to engage fully and proactively in securing a successful resolution of our concerns through Alternative Action.

5.54 In making the decision to resolve the case by Alternative Action, the relevant decision-maker will follow the criteria listed in paragraphs 5.3 to 5.21.

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<sup>55</sup> We have appointed an expert independent third party to manage the allocation of voluntary redress payments from authorised parties to charitable organisations.

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- 5.55 If the decision-maker decides that Alternative Action is sufficient to deal with the poor behaviours or conduct, they will need to be satisfied that the action will fully address our concerns.
- 5.56 If we obtain satisfactory non-statutory undertakings/assurances or other agreed action from an authorised person(s), this will usually result in the case being closed. In some cases, there may be a period of compliance monitoring after case closure (see paragraphs 8.8 to 8.13). Failure to comply with non-statutory undertakings/assurances or any other agreed action could lead to formal enforcement action, and we would take a more serious view of any breach found to have occurred in breach of undertakings or assurances given.
- 5.57 If we consider that a case is not suitable to be resolved without the use of our statutory enforcement powers, Alternative Action may still settle the case. Further details are provided in section 7.

### **Statutory demands**

- 5.58 If an authorised person(s) has an outstanding balance to pay in relation to a regulatory obligation Ofgem can issue a statutory demand to obtain payment.<sup>56</sup> If the authorised person(s) does not pay the outstanding balance within 21 days, steps may be taken to revoke the authorised person(s) authorisation.

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<sup>56</sup> In terms of section 123(1)(a) of the Insolvency Act 1986, a company is deemed unable to pay its debts where the creditor to whom a sum exceeding £750 is owed has demanded that sum in accordance with section 123(1)(a) and the company has failed to pay it for 3 weeks. Where an energy business owes the Authority such a sum, the Authority may decide to demand payment in accordance with section 123(1)(a) – this is called a statutory demand.

## 6. Settling or contesting a case

### Section summary

This section describes our procedures for settling or contesting Sectoral cases.

We reserve the right to depart from the procedures set out in this section. An authorised person(s) has no “right” to the processes set out in this section and we may decide to resolve enforcement action in a different manner, depending on the circumstances of a case or behaviour at issue. If our strategic enforcement objectives are better met by adopting a different approach, we may depart from the general approach to settlement and contest set out in these guidelines. Examples of where we may depart from the general approach include, but are not limited to, following the making of a final order or confirming of a provisional order (see section 7 below), or following failure to provide information to the Authority in the format requested in accordance with any relevant authorisation conditions in the heat network’s authorisation. In such cases, the case team will generally write to the authorised person(s) setting out the process that will be followed.

### Heat network Sectoral Cases

#### Settling heat network sectoral cases

- 6.1 If we consider that a case is not suitable to be resolved without the use of our statutory enforcement powers, Alternative Action may still settle the case. Further details are provided in section 7.
- 6.2 To settle a case, an authorised person(s) under investigation must be prepared to admit to the breaches that have occurred. The settlement will lead to a formal finding of breach. The authorised person(s) must agree with this finding and to any penalty imposed and/or consumer redress order.<sup>57</sup>
- 6.3 The authorised person(s) will also be expected to agree not to challenge or appeal any finding of breach, penalty or consumer redress order that is agreed to as part of the settlement. We will not enter into partial settlements with authorised person(s).
- 6.4 Settlement is a voluntary process. There is no obligation on authorised person(s) to enter into settlement discussions or to settle. Any decision to settle should be

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<sup>57</sup> Regulations 31 and 37 of the Regulations

## Guidance Heat Network Enforcement Guidelines

based on a full awareness of the requirements of settlement (described above) and the consequences of settling, including that a finding of breach will be made.

- 6.5 This settlement process is distinct from the resolution of a case by, for example, the acceptance of undertakings or other agreed action.
- 6.6 It is important to appreciate that settlement in the regulatory context is different from the settlement of a commercial dispute. An Ofgem settlement is a regulatory decision taken by us, the terms of which are accepted by the authorised person(s) under investigation. In Heat Networks Sectoral cases, we will have regard to our principal objective and general duties when agreeing the terms<sup>58</sup>. We must also have regard to our obligations to consult on proposed penalties and consumer redress orders.
- 6.7 It is also important to note that settling does not reduce the seriousness of any breach. It may, however, result in a lower penalty than would be imposed if the matters were contested, and the case will be dealt with more quickly.
- 6.8 Authorised person(s) should consider whether to obtain legal or other advice before settling a case. The fact that we have settled a case with an authorised person(s) does not prevent us from taking future action if further breaches occur, or if actions agreed by the business to reach settlement are not conducted.
- 6.9 Authorised person(s) may ask to enter settlement discussions and whilst we will engage positively with an authorised person(s) that indicates a willingness to enter into early settlement discussions, in many cases it may not be possible to start such discussions until we have sufficient information to assess the nature and extent of the breaches and the loss or harm caused. To speed up our investigations, we may ask the authorised person(s) to cooperate with us by providing information in the meantime.
- 6.10 We will expect authorised person(s) to take appropriate steps to secure compliance irrespective of the stage at which the case is at. Similarly, in suitable cases we will also expect satisfactory arrangements for consumer redress to be put in place. The fact that an authorised person(s) has not completed such steps will not be a bar to settlement discussions taking place, so long as the authorised person(s) has shown a real commitment to resolve the outstanding

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<sup>58</sup> Regulations 6 and 7 of the Regulations.

issues. If actions are agreed and not conducted, enforcement action may be undertaken.

### **Summary Statement of Initial Findings**

- 6.11 In most cases where an investigation has been opened, once we have concluded our assessment of the evidence, we will serve the authorised person(s) with a Summary Statement of Initial Findings (SSIF).
- 6.12 The SSIF will set out the breaches that we consider have been committed and/or that may be ongoing, our conclusions about the detriment and/or gain, and other appropriate matters.
- 6.13 We will allow a reasonable period (normally 21 days for standard cases and 7 to 14 days for more straightforward cases) for written representations in response to the SSIF. We may also offer the authorised person(s) an opportunity to make oral representations on it to the case team at an optional case direction meeting, for example, if the nature of breaches is complex.
- 6.14 The purpose of these steps is not to negotiate but is for us to understand the authorised person(s)'s position on the SSIF, so that we can take it into account when making a recommendation to the Settlement Committee. Late submission of written representations may affect our ability to reach a settlement agreement during the settlement window.

### **The settlement framework**

- 6.15 Settlement results in cases being resolved more quickly and saves resources for both the authorised person(s) and Ofgem. It may also result in consumers obtaining compensation or redress earlier than would otherwise be the case.
- 6.16 In recognition of the benefits of settlement, we may offer a discount in line with our statement of policy on penalties/redress.<sup>59</sup>
- 6.17 The Authority has provided for one settlement window, as follows:

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<sup>59</sup> <https://www.ofgem.gov.uk/energy-regulation/how-we-regulate/compliance-and-enforcement/enforcement>

## Settlement window

- **Thirty percent discount:** <sup>60</sup> This will usually be the only offer of discount available, and settlement must be achieved within the settlement window to receive it. However, we may consider offering a discount outside of the settlement window in exceptional circumstances.
- **The settlement window opens when the settlement mandate, draft penalty notice and/or redress order and press notice (if relevant) are provided to the authorised person(s).**
- **The settlement window closes on expiry of a reasonable period (usually 28 days) which will be notified to the authorised person(s) when the above documents are provided.** The settlement window may be reopened at the Authority's discretion in exceptional circumstances, however, if the settlement window is reopened there is no guarantee that a settlement discount will remain available.

## Settlement decisions

6.18 There are two decision-making options for settling heat network Sectoral cases:

- a) the formation of and decision by a Settlement Committee;<sup>61</sup> or
- b) the Director responsible for Enforcement (or a nominated alternative employee of Ofgem at that level) or a Deputy Director from Enforcement makes the settlement decisions for the case.

## The Settlement Committee

6.19 A Settlement Committee may be established for a Sectoral case which is considered suitable for settling via this route. Settlement Committees are one of the decision-makers who consider whether to authorise settlement agreements in respect of alleged contraventions. Our Settlement Committee Terms of Reference have been published on the Ofgem website.<sup>62</sup>

## Settlement documents and discussions

6.20 The case team will request a settlement mandate from either a Settlement Committee, or from the appointed Director or Deputy Director. If approved, the authorised person(s) will then be provided with a draft settlement agreement,

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<sup>60</sup> <https://www.ofgem.gov.uk/energy-regulation/how-we-regulate/compliance-and-enforcement/enforcement>

<sup>61</sup> The Settlement Committee includes one member of Ofgem staff at Senior Civil Service level or equivalent.

<sup>62</sup> [Our leadership | Ofgem](#)

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draft penalty notice and/or draft consumer redress order, and a draft press notice. The authorised person(s) will be notified at this point that the settlement window has opened, and the date when the settlement window will close.

- 6.21 Settlement discussions will be conducted through a method which is suitable for both parties.<sup>63</sup> Settlement discussions will take place on a “without prejudice” basis. This means that if discussions break down, neither party can rely on admissions or statements made during the settlement discussions in any subsequent contested case, unless otherwise agreed.<sup>64</sup>
- 6.22 The aim of discussions will be to agree the terms of the settlement including the wording of any penalty notice and/or consumer redress order and to provide an opportunity for the authorised person(s) to comment on the draft press notice.<sup>65</sup> We may also agree other terms with the authorised person(s) as part of a settlement.<sup>66</sup>
- 6.23 If an authorised person(s) wishes to take advantage of the settlement discount, it will have the duration of the settlement window, notified to it, to sign and agree a settlement agreement. This agreement is subject to the settlement processes set out in this section and there will be no extension to the deadline that we set, except in exceptional circumstances.
- 6.24 In Sectoral cases, if after settlement discussions an agreement cannot be reached between the authorised person(s) and the case team on the settlement mandate (for example because new material has come to light during the

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<sup>63</sup> This may include letter, email, face to face discussion, telephone or video link or similar technology.

<sup>64</sup> If for any reason a company that has entered into settlement discussions chooses to reveal to the Panel (or other relevant decision-maker) dealing with the contested case any of the detail of the settlement discussions, we reserve the right, similarly, to reveal information (including any admissions) that were made during those discussions if we consider that it is appropriate to do so.

<sup>65</sup> This means that (unlike in contested cases) we will seek to reach agreement with the company on the wording that will appear in the penalty notice/consumer redress order. There will be an exchange of press notices and an opportunity for the parties to comment on the content before they are published. The final decision as to what we publish will be made by us.

<sup>66</sup> For example, other terms of settlement may include the possibility of paying a sum of money in lieu of (or in addition to) a financial penalty, to appropriate charities, trusts or organisations for specific activities. We have published guidance which provides information on the current process and the set of principles involved in allocating voluntary redress payments in this respect. This guidance is available at <https://www.ofgem.gov.uk/publications-and-updates/open-letter-guidance-allocation-voluntaryredress-payments> for further information.

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discussions), the case team may, in exceptional circumstances, go back to the settlement decision-maker to seek a revised mandate.

- 6.25 If a settlement is agreed within the terms of the mandate given by the settlement decision-maker, the authorised person(s) will have to sign a settlement agreement. The settlement decision will be made, and the decision and penalty notice and/or consumer redress order will be published in accordance with the regulatory requirements<sup>67</sup> for the purposes of public consultation. Following the close of the consultation, any representations will be considered.
- 6.26 If, having received representations or objections, the settlement decision-maker proposes to vary the level of a penalty or the amount of consumer redress ordered from that originally proposed, the consultation process must be repeated.
- 6.27 The authorised person(s)'s agreement as part of the settlement to waive its right to challenge or appeal against the finding of breach, penalty or a consumer redress order (see paragraph 6.3) will fall away if the proposed variation to the penalty and/or the consumer redress order is outside the scope of their original settlement agreement.
- 6.28 If a settlement cannot be reached, the case will move to the contested route. The relevant decision-maker(s) involved during the settlement phase cannot generally be involved in consideration of the same case as part of the contested route.

### Contested Sectoral cases: The Statement of Case

- 6.29 If a case is not settled or the authorised person(s) does not want to settle the case, we will serve a Statement of Case (“the STOC”), which sets out our findings and the case alleged against the authorised person(s). The STOC will be accompanied by an evidence bundle of documents to support our findings and the other relevant content within the STOC. The STOC may be substantially different from the SSIF. New breaches may be added, and different reasons relied on. We may also request further information from the authorised person(s) before drafting the STOC.
- 6.30 We will usually write to the authorised person(s) to advise that the STOC is being drafted and to provide an updated timeline for the case.

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<sup>67</sup> The settlement decision will be made, and the decision and penalty notice and/or consumer redress order will be published in accordance with the Regulations.

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- 6.31 When the STOC is ready we will serve it on the authorised person(s) and notify them of the deadline for any written representations.
- 6.32 The authorised person(s)'s written representations will be invited on the STOC, and we may invite the authorised person(s) to attend a case direction meeting for discussions to take place. We will also disclose any relevant documents (see paragraphs 6.34 to 6.36).
- 6.33 If the case is to be contested, we will inform the EDP secretariat so that a Panel can be selected to deal with the case.<sup>68</sup>

### Disclosure

- 6.34 Along with the STOC, we will disclose a list of all the documents that we intend to rely on. Many of them are likely to be documents that the authorised person(s) already provided to us during the investigation. However, we will produce copies of any other documents on which we rely that are reasonably requested by the authorised person(s), subject to any legal restrictions on disclosure, including questions of confidentiality and privilege.<sup>69</sup>
- 6.35 In some cases, we may rely on information contained in confidential documents. In these cases, our disclosure list will note the reference number/name of the documents where full disclosure is not possible. It may be necessary to limit the description of the documents themselves. We will explain the alternative arrangements, which will allow the recipient to review the evidence on which we rely. Typically, this will mean that confidential material will be removed so that confidence is maintained. Other arrangements may sometimes be required, for example, a confidentiality ring.
- 6.36 We will also disclose, by list, documents in the knowledge or possession of the case team or the relevant policy team, which might undermine the case advanced in the STOC. Again, we will note the reference number/names of those documents where full disclosure is not possible and the alternative arrangements that will be made. Privileged documents may be listed by class and will not be disclosed.

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<sup>68</sup> The decision-making structure is described in section 3.

<sup>69</sup> Material may be redacted where appropriate.

## Written representations and related matters

- 6.37 Making written representations in response to the STOC is the authorised person(s)'s opportunity to provide further information, including any challenge, in relation to the case made against it. The authorised person(s) should submit any evidence it has to support its representations. There is no obligation to submit a response, but authorised person(s) should note that there are restrictions on introducing new material in any subsequent oral hearing (see paragraph 6.45).
- 6.38 We will usually allow 28 days for a business to respond to a STOC, however, more or less time may be allowed depending on the case.
- 6.39 Once we have received any written representations and supporting evidence from the authorised person(s), we will review the material and our case. This may lead to us deciding that issues raised may no longer be of concern and we may close the case or withdraw from parts of it. It may lead to us making further requests for information to the authorised person(s) or replying to the authorised person(s)'s representations.
- 6.40 If there is a material change in the nature of the breaches in the light of the written representations, we may prepare a Supplementary or Revised STOC. The authorised person(s) will be given an opportunity to respond in writing to the new document. We will usually allow a further 28 days for this but may shorten or extend the time if it appears reasonable to do so in a particular case.
- 6.41 If there are difficulties in meeting any deadline, a request for an extension should be made in writing by email to the Ofgem contact(s) (or in urgent cases by telephone and email or via a video link or similar technology). We will deal with such requests as described in paragraph 5.40.
- 6.42 If an authorised person(s) has not requested the opportunity to make oral representations to the Panel and the case is to be decided by consideration of the written representations only, the EDP Secretariat will issue a notice to the authorised person(s) informing it of the relevant deadlines.
- 6.43 Once the written representations to the STOC have been received, it will be decided whether a supplementary STOC is required. Once all written representations (STOC/supplementary STOC) have been received the case will be passed over to the Panel. All future deadlines and arrangements will be made via the EDP Secretariat and will no longer be the responsibility of the case team.

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- 6.44 Having reviewed the written representations and considered whether the authorised person(s) has requested the opportunity to make oral representations, the EDP will determine whether it wants to hear oral representations from the parties. The EDP secretariat will tell the parties whether there will be a hearing, and it is for the authorised party to decide if it wants to make any representations.
- 6.45 Where oral representations are made, neither Ofgem nor the company will be permitted to introduce new material in oral representations save in exceptional circumstances or where the Panel requests additional material. If a party wishes to introduce new material, notice must be given to any other party, and the permission of the Panel should be sought before it is introduced. No evidence can be introduced after the hearing other than at the request of the Panel (or other relevant decision-maker(s)).

### The decision: Contested Sectoral cases

- 6.46 When making decisions, the EDP will consider all the relevant available information presented to it.
- 6.47 If the EDP is satisfied that an authorised person(s) has contravened or is in contravention of an authorisation condition or relevant requirement, a notice will be published on our website setting out the decision that:
- a breach has occurred (or is ongoing) and that it has been decided to impose a financial penalty and/or consumer redress order; and/or
  - a breach has occurred, and it is not intended to propose a financial penalty and/or consumer redress order.
- 6.48 If the Panel concludes that the authorised person(s) has not committed any breach, the authorised person(s) will be informed of the case closure, and a statement will normally be published on our website (see paragraph 5.33).

### Financial penalty or consumer redress order in heat network Sectoral cases

- 6.49 In deciding whether to impose a penalty and/or make a consumer redress order, the relevant decision maker will have regard to the Authority's penalties and

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redress policy statement.<sup>70</sup> The amount in each case (combined if both are imposed) in respect of a contravention must not exceed 10 per cent of the authorised person(s)'s turnover or £1 million, whatever is higher.<sup>71</sup>

- 6.50 Under a consumer redress order, the Authority may require an authorised person to take necessary action to remedy the consequences of the contravention or prevent a contravention of the same or similar kind being repeated. The decision maker might order:<sup>72</sup>
- the payment of compensation to affected consumers (i.e. those consumers that have suffered loss, harm, or damage, or been caused inconvenience, because of the contravention);
  - the preparation and/or distribution of a written statement setting out the contravention and its consequences;
  - the variation or termination of contracts with affected consumers;
  - some other remedial action as considered necessary.
- 6.51 If proposing a penalty and/or a consumer redress order, a notice<sup>73</sup> setting out relevant details will be served on the authorised person (and in the case of a consumer redress order, on each affected consumer, or published in such a manner to bring it to their attention)<sup>74</sup> and published in line with regulatory requirements.<sup>75</sup> The notice will include the time (not less than 21 days) for representations or objections to the proposed penalty or consumer redress order.
- 6.52 If both a penalty and consumer redress order are proposed, the decision maker may serve a joint notice.
- 6.53 Following the close of the consultation period, the relevant decision maker will consider any representations or objections, which are duly made and not withdrawn, and decide whether to exercise the Authority's powers to impose, vary or withdraw the proposed penalty and/or consumer redress order.

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<sup>70</sup> <https://www.ofgem.gov.uk/energy-regulation/how-we-regulate/compliance-and-enforcement/enforcement>

<sup>71</sup> Regulation 45 of the Regulations.

<sup>72</sup> Regulation 38 of the Regulations.

<sup>73</sup> There are certain time limits on the imposition of penalties (Regulation 33 of the Regulations) and for making consumer redress orders (Regulation 41 of Regulations).

<sup>74</sup> Regulation 39(5) of the Regulations.

<sup>75</sup> Regulations 31(14) and 39(5) of the Regulations.

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- 6.54 Before varying any proposal, a further notice to this effect must be given<sup>76</sup> for consultation, and any further representations or objections with respect to the variation must be considered.
- 6.55 Notice of the final decision and the period for compliance (minimum 42 days for payment of a penalty, minimum seven days for compliance with the requirements of a consumer redress order) will be published and served on the authorised person.<sup>77</sup>

### **Appeals**

- 6.56 Where an authorised person is aggrieved by the imposition of a penalty, the amount, the date for payment and/or by the making of a consumer redress order, or any requirement imposed by the order, the authorised person may make an application to the court.<sup>78</sup> The application must be made within 42 days of service/notice of the decision.<sup>79</sup>

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<sup>76</sup> Regulations 31(10) and 39(3) of the Regulations

<sup>77</sup> Regulations 31(12) and 37(5) of the Regulations.

<sup>78</sup> Regulations 35 and 43 of the Regulations.

<sup>79</sup> Regulations 35(2) and 43(2) of the Regulations.

## 7. Enforcement orders

### Provisional and Final Orders

7.1 The Authority has the power to make provisional or final orders or confirm a provisional order to bring an authorised person into compliance with authorisation conditions or relevant requirements. This section sets out the process we would usually use in deciding whether to make these orders and in making them.

#### Final orders

7.2 The Authority may make a final order if the Authority is satisfied that an authorised person is contravening or is likely to contravene an authorisation condition or relevant requirement and where that order is requisite to bring the breach/es to an end, after following certain procedural requirements.<sup>80</sup>

#### Provisional orders

7.3 The Authority may make a provisional order, if it appears to the Authority an authorised person is contravening or is likely to contravene any authorisation condition or relevant requirement and where that order is requisite to bring the breach/es to an end. A provisional order may be considered necessary to require an authorised person to take action to improve poor behaviours or conduct and therefore bring it into compliance with its obligations to prevent existing or future loss or harm that might arise before a final order can be made.

#### Making a final order

7.4 The Authority will decide whether to issue a Notice of Proposal to make a final order and will publish that Notice of Proposal for consultation. Once published, the consultation must be live for not less than 21 days.<sup>81</sup> During this period, representations can be made by the company concerned, industry and the public. Once the Notice of Proposal consultation period has ended, the Authority will make the decision as to whether the final order should be made.

7.5 The Authority may modify (i.e. make changes to) a final order by consulting as set out at paragraph 2.11 or with the consent of the authorised person that the order relates to.<sup>82</sup> Where the Authority decides that it may wish to modify a final order after receiving representations or objections to its notice, it may therefore then

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<sup>80</sup> Regulation 28 of the Regulations

<sup>81</sup> Regulation 29 of the Regulations

<sup>82</sup> Regulation 29(3) of the Regulations

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need to give notice about those modifications. The authorised person and any third party can make representations or objections with respect to the proposed modifications.

- 7.6 If the Authority does not make a final order, a notice of decision not to make the order will be published, explaining the reasons.
- 7.7 Following the making of a final order, the Authority will send a copy of the order to the authorised person and publish the order in an appropriate manner to ensure it is brought to the attention of persons likely to be affected.
- 7.8 Once the final order has been made, there is an opportunity for the authorised person(s) to appeal the decision to make the order. The appeal window is open for 42 days. When the appeal window closes, the authorised person(s) may be issued with a notice notifying it of its failure to comply with a final order.
- 7.9 If the authorised person(s) has not rectified the issues within twelve months of the notice of the failure to comply with a final order, the Authority may issue a final 30-day notice detailing that the outcome may be authorisation revocation<sup>83</sup>. The Authority may revoke an authorised person(s) authorisation following the end of the 30-day notice period. The decision-maker for both the notice notifying the authorised person(s) of its failure to comply with an order and the 30-day notice is a senior Ofgem employee.

### Making a provisional order

- 7.10 The recommendation to make a provisional order will be submitted to the appropriate decision-maker who will decide on next steps.
- 7.11 If the recommendation is approved, the provisional order will be served on the authorised person(s) and published on the Ofgem website in an appropriate manner to ensure it is brought to the attention of persons likely to be affected.
- 7.12 A provisional order will cease to have effect after twelve months unless it is confirmed before the end of that period. The process for confirming a provisional order, and any subsequent actions, are the same as those set out in paragraphs

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<sup>83</sup> The 30-day notice period can be shortened if both parties agree. Revocation may be full (removal of the entire authorisation) or partial (revoking only specific authorised activities or parts of the authorisation). Other grounds for revocation exist, including non-payment of a penalty and non-compliance with a consumer redress order (Authorisation condition 15(c)(ii) and (iii)).

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7.4 to 7.6. The Authority may also decide to revoke a provisional order before it expires.

- 7.13 A provisional order can be confirmed (with or without modifications to it) before it ceases to have effect if the Authority is satisfied that the regulated person is contravening or likely to contravene a relevant condition or requirement and where a provisional order is requisite to bring the regulated person into compliance with its obligations. If a provisional order is confirmed it does not cease to have effect after twelve months but instead continues to have effect until revoked.
- 7.14 The Authority can revoke a provisional order at any time, and it will cease to have effect from the date on which it is revoked.

### **Revocation of a final order or confirmed provisional order**

- 7.15 The Authority may revoke a final order, or a confirmed provisional order, where there is evidence to show that the authorised person(s) is no longer in breach of its obligations or likely to be in breach of these or that the order is no longer requisite to secure compliance.
- 7.16 If there are grounds to revoke the order, the case team will make a recommendation to the relevant decision maker, who will decide whether to publish a Notice of Proposal to revoke the final order or confirmed provisional order. This consultation will be published and provides a period of no less than 28 days for representations or objections to be made.
- 7.17 Once the Notice of Proposal consultation period ends, representations will be considered by the case team and the relevant decision maker. If the decision maker decides that the order is to be revoked, they will authorise a revocation notice.
- 7.18 The authorised person(s) will be notified of the outcome, and the details will be published on the Ofgem website.

### **Court proceedings**

- 7.19 If necessary, we may apply to the courts to enforce compliance with an enforcement order. This can be done at any stage of the process.

## Appeals

- 7.20 A regulated person may appeal in relation to a final or provisional order on the grounds that the making or confirmation of the order was not within the powers conferred on the Authority, or the procedural requirements of the Regulations have not been complied with. It has a period of 42 days from the date on which a copy of the order was served on it to make that application.

## Final orders and provisional orders: penalties

- 7.21 The Authority cannot impose a penalty or give a consumer redress order for a contravention more than five years after the date of that contravention. However, this five-year limit does not apply if, before the expiration of this period, a final or provisional order, a notice of proposal to impose a penalty or make a consumer redress order in relation to the contravention<sup>84</sup> or a notice requiring the authorised person to produce specified documents or information<sup>85</sup> is served on the authorised person.<sup>86</sup>
- 7.22 In some circumstances the Authority may depart from the general approach to enforcement set out in these guidelines in terms of paragraph 1.12 above. This means that the Authority may not follow the processes detailed in these guidelines other than those required under statute. Therefore, for example, the Authority may not issue a SSIF, and/or STOC and may not be able to provide any opportunity for settlement. In these circumstances, if the Authority considers it appropriate to do so, it may also depart from these guidelines in relation to any related breach, even where the order does not relate directly to that breach.

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<sup>84</sup> Under Regulations 38(1) or 39(1) of the Regulations.

<sup>85</sup> Under Regulation 48(2) of the Regulations.

<sup>86</sup> Regulations 33 and 41 of the Regulations.

## 8. Closing cases

- 8.1 Open cases will be kept under review and may be closed at any stage. A case may be closed, for example, where:
- a) it is concluded that there is no relevant breach; or
  - b) the authorised person(s) under investigation has made commitments, or given assurances, undertakings, or has taken other action (including in the context of Alternative Action) to ensure that poor behaviours or conduct have ceased, and relevant matters have been appropriately addressed, and we do not consider further action to be appropriate; or
  - c) we have obtained a court order to secure compliance; or
  - d) a case has been settled or contested and a decision made or approved by the decision maker and the information published externally where appropriate; or
  - e) we have reviewed it against our prioritisation criteria and concluded that the case should be closed on the grounds of administrative priorities.

### Publicity

- 8.2 We will usually make our enforcement action outcomes public on our website (as set out in paragraph 5.33), however there may be occasions where this is not appropriate. We may also decide to make a statement to the media (usually a press release) or issue an update to the subscribed followers of the Ofgem website.
- 8.3 Once our enforcement outcomes are made public, we may have follow-up discussions with the media, where appropriate.

## Compliance monitoring

### General compliance monitoring

- 8.4 Once our enforcement outcomes are made public, we may have follow-up discussions with the media, where appropriate.
- 8.5 Ofgem has a dedicated heat networks compliance team. The team's remit covers a wide range of compliance activities, including, managing compliance engagement with heat networks through to resolution (which can result in compensation or voluntary redress payments) and data and information monitoring.

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- 8.6 Following compliance action to put right poor behaviours or conduct from authorised persons, we will often publicise the results of our action and the positive outcomes for consumers.
- 8.7 Compliance and enforcement action, despite their similarities, are different. Formal enforcement action will be taken by the Enforcement team and will follow the processes and procedures set out in these guidelines.

### Compliance monitoring following enforcement action

- 8.8 Where we have taken enforcement action or secured undertakings or other agreements that adequately resolve the issues, we will close the case.
- 8.9 In some cases, we may decide to put the authorised person(s) under investigation into a “compliance phase.”
- 8.10 This means its behaviour will be monitored to ensure that:
- a) there are no further concerning behaviours;
  - b) it complies with any undertakings or commitments; and/or
  - c) it implements any agreements made with us (for example by making a redress payment, paying compensation to affected consumers, or ceasing poor behaviours).
- 8.11 The length of the compliance phase will depend on the circumstances of the case, and the specific monitoring required.
- 8.12 Similar compliance monitoring steps may be agreed with the authorised person(s) in question following Alternative Action.
- 8.13 It will be decided at the time of the case closing, which is the most appropriate case team to manage the agreed compliance actions. It will be either the Enforcement team or the Compliance team.

### Lessons learnt

- 8.14 After closing a case we will routinely conduct an evaluation to assess what went well and what could be improved in future.
- 8.15 We will usually share the “lessons learnt” with our colleagues throughout Ofgem, and sometimes externally, so that we can build on the learning.

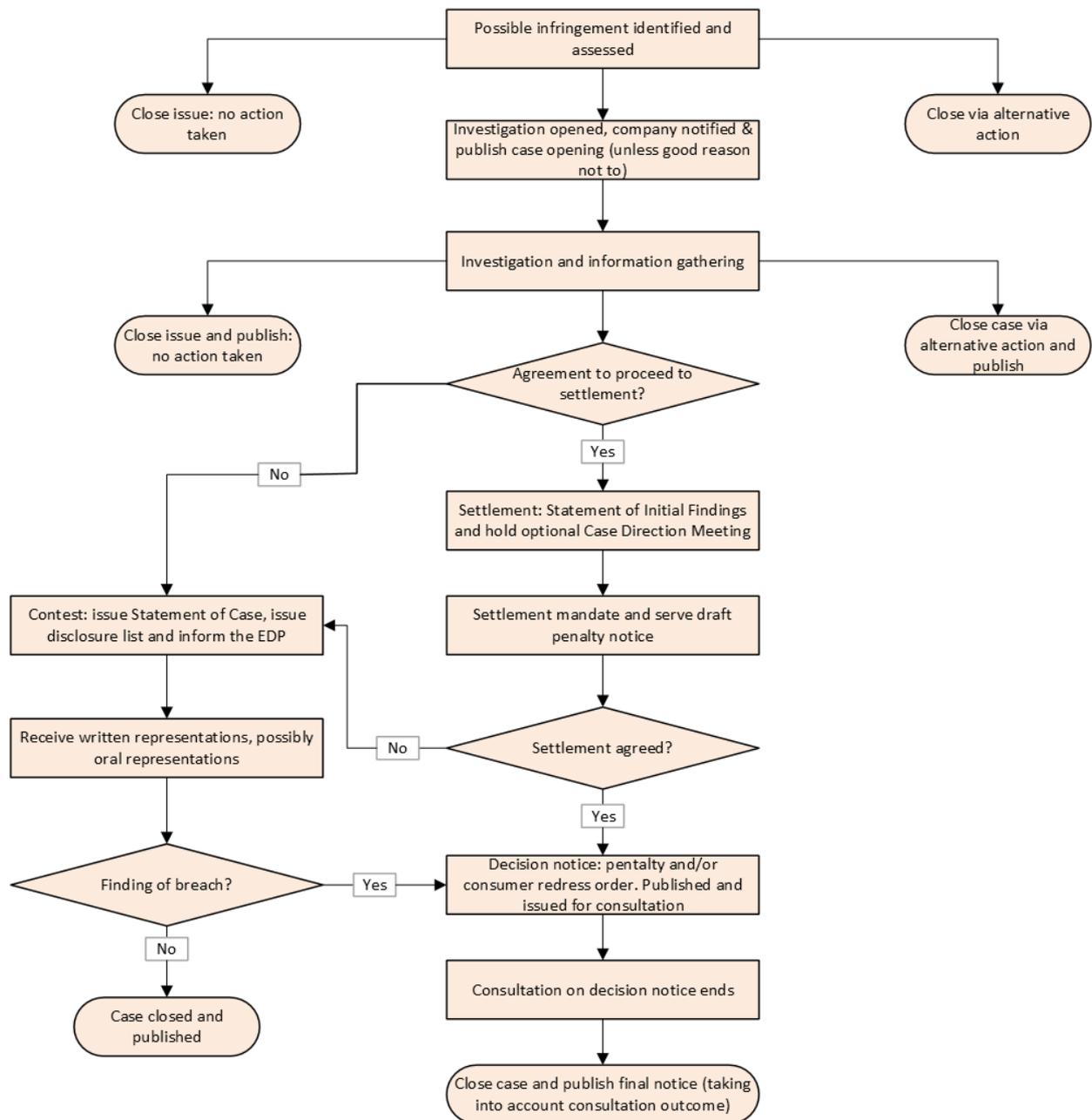
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- 8.16 In some cases, we may also request feedback from others involved in the case (for example, authorised person(s) under investigation, other Sectoral regulators or third parties) and use it to inform our future enforcement work.

## 9. Appendices: Process Flowcharts

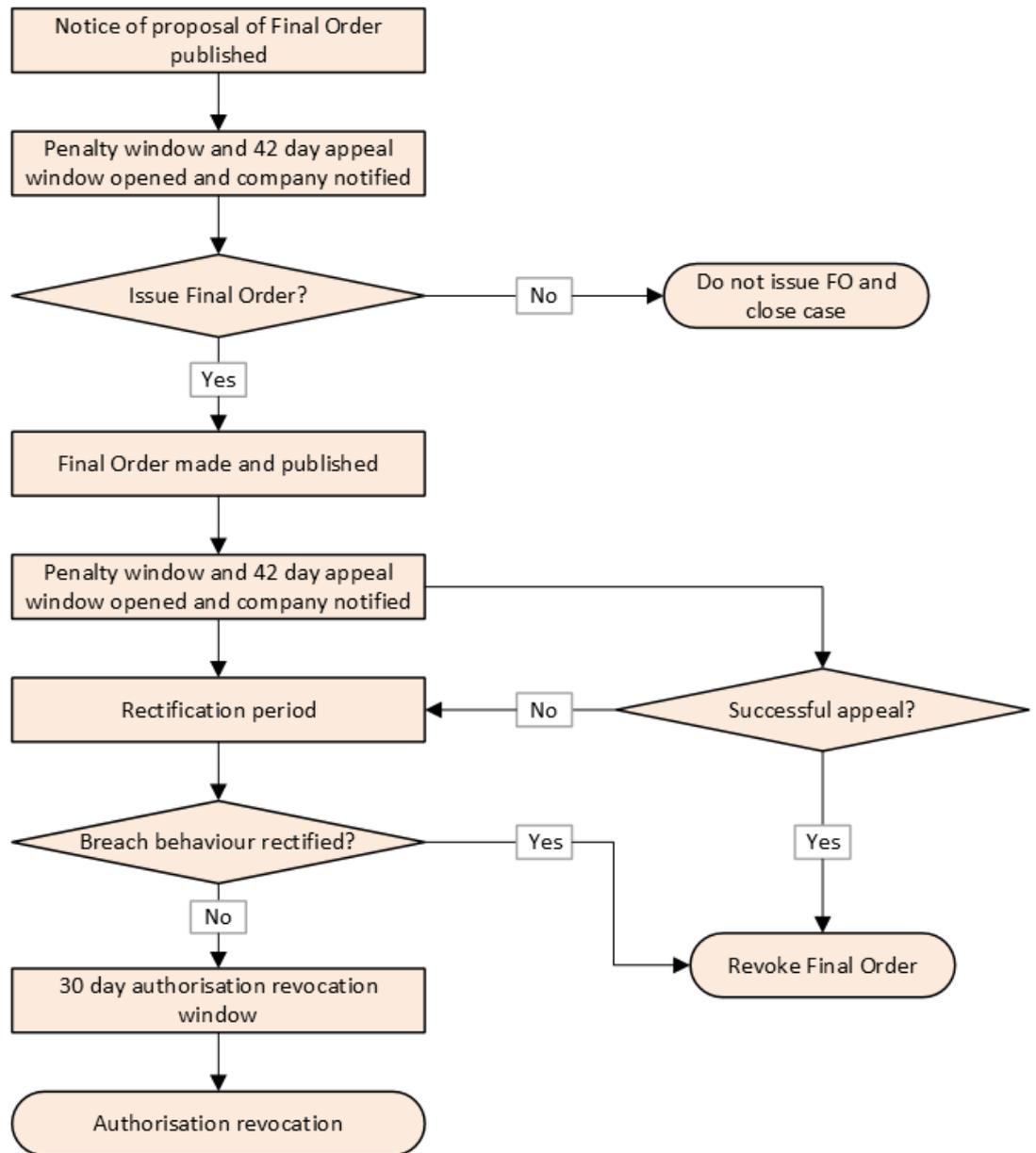
### Flowchart 1: Heat Network Case Process

Flowchart 1: Heat Network Case Process



## Flowchart 2: Final Order Process

### Flowchart 2: Final Order Process



## Flowchart 3: Provisional Order Process

### Flowchart 3: Provisional Order Process

