

To all stakeholders

12 September 2014

Dear stakeholder

Enforcement Review Implementation: guidelines, priorities, terms of reference

In March we published a letter setting out the conclusions to our Enforcement Review and our plans to implement those conclusions. This included carrying out a consultation on revisions to our Enforcement Guidelines and publishing the first in an annual series of enforcement priorities together with the terms of reference for the new Enforcement Decision Panel. This letter sets out the Authority's position on these matters.

Revised Enforcement Guidelines

The Enforcement Guidelines that we published in March proposed a number of significant changes to the way we work and amongst other things included detail about

- our prioritisation criteria and how we decide whether or not to open or close a case
- our approach to making cases public and publishing timelines for individual cases
- the decision-making process, including new settlement windows
- producing a balanced scorecard of the cases we deal with and
- holding regular enforcement conferences so that useful dialogue with stakeholders can continue beyond the end of the review.

We received 12 responses to our consultation, which we have considered carefully. Today we are publishing the revised Enforcement Guidelines alongside a decision document that enables stakeholders to see how we took their comments into account.

Annual enforcement priorities

Our case prioritisation criteria (see section 3 of the Enforcement Guidelines) are what we consider when deciding whether to open an investigation. They help us to target resources and focus our enforcement work on what matters in light of our principal objective to protect the interests of existing and future consumers.

The criteria are designed to help us realise the Authority's vision for its enforcement activities: that is, to achieve a culture where businesses put energy consumers first and act in line with their obligations. The case prioritisation criteria also help us assess which cases to pursue in order to deliver "credible deterrence" and "meaningful consequences when businesses fail consumers" in line with the Authority's strategic objectives for enforcement.

As a whole, our case prioritisation criteria ensure that we investigate and, where appropriate, take action on the most important issues (for example cases with significant consumer detriment like mis-selling and customer service failings). The criteria also enable us to take on a variety of cases across the range of our powers. This will provide steady delivery of our enforcement activity and ensure that companies and stakeholders are clear that we are ready and willing to take action. Our new consumer redress, REMIT¹ and BPMMR² powers came into effect this year and we are ready to take action here, on potential breaches, as appropriate.

In addition to our permanent prioritisation criteria, we are putting in place annual enforcement priorities. These priorities will help us to focus, for short periods of time, on specific problems that might not otherwise be of specific focus. Picking two key themes to pursue over the coming year means we have a defined lifecycle for our focus on each priority so we can make progress in targeting particular conduct and learn from our work. Through our other criteria, meanwhile, we will retain the flexibility we need to deal with any poor behaviour we identify using our full range of enforcement tools. For 2014-2015, in addition to our permanent prioritisation criteria, which ensure we act on issues presenting potential consumer harm, our annual enforcement priorities will be to:

- 1. Adopt a low tolerance approach to all inaccurate, misreported and late data.**
- 2. Send a strong signal that non-compliance with deadlines is not acceptable.**

These annual enforcement priorities give effect to the themes of the Authority's forward work plan and the projects under them (such as compliance with deadlines, which is relevant to the roll-out of smart meters, and the importance of accurate and reliable information in relation to the environmental schemes we administer on behalf of Government). We chose these two issues because inaccurate data and missed deadlines make it harder for us to hold companies to account when they fail consumers. It is ultimately consumers who feel the impact of poor reporting and missed deadlines because these failings may cover up areas where companies are not delivering the services that consumers are entitled to expect and which, in the case of environmental and consumer schemes, Parliament has placed an obligation on them to provide.

It is with that in mind that we are going to take a tough line on these issues. Consistent with the Chairman's letter in March 2014 about future financial penalties, we are committed to sending a strong deterrence message to companies about any behaviour that harms or could harm consumers. Our additional focus during 2014-15 on these two areas, bolstering our permanent prioritisation criteria, will help us to deliver an energy market where consumers receive the quality of service to which they are entitled.

Enforcement Decision Panel (EDP) – Terms of Reference

Members of the EDP will take decisions in contested cases.³ All members have been appointed by the Authority. We have published the EDP terms of reference today.

¹ Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency.

² Business Protection from Misleading Marketing Regulations.

³ A member of the EDP will also sit on each Settlement Committee, with a member of Ofgem's Executive.

Other enforcement matters

We consulted separately in March on our approach to imposing financial penalties and consumer redress orders. We are considering the responses and expect to publish our decisions on that consultation in the autumn. We are also developing revised REMIT guidance and expect to consult on our proposals later this year.

Yours faithfully

Sarah Harrison
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