

Ofgem's role in REMIT

Overview of Ofgem's monitoring, compliance and investigations
work

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ofgem



Guidance



Monitoring



Investigations



Enforcement



Compliance



Guidance from ACER

- Guidance to NRAs, including examples of prohibited activity under REMIT
- Annual report on ACER's activities under REMIT
- Both available on www.acer.europa.eu

Guidance from us

- July 2014 open letter on inside information
- Ongoing programme of work includes issuing future guidance on compliance with REMIT

Compliance guidance

- Advice or guidance we issue to individual market participants
- We expect you to take it into account and make changes to your processes where appropriate



Monitoring



What might we do?

- If you are a PPAT and already retaining communications data, require you to keep it for longer
- If you are a market participant, require you to retain information
- If you are a PPAT or a market participant, require you to provide us with information and/or documents
- On a voluntary basis, ask you to send or tell us something

And then?

- Explain it away or deal with it: undertake compliance work or investigate



Investigations

When can we investigate?

- When we have circumstances suggesting a failure to comply with Articles 3, 4, 5 and 15 of REMIT, a failure to retain communications data or a potential offence
- Regime being extended to Articles 8 and 9

When will we investigate?

- When the statutory threshold is met
- When the matter meets our priority criteria: includes seriousness of potential breach, strength of evidence, impact or action and the best use of our resources

How do we decide to investigate?

- Decision taken by the Enforcement Oversight Board

We can investigate – and penalise – legal or natural persons, and they don't have to be market participants



Investigations

Unless it may, in our opinion, frustrate the investigation, we will...

Tell the person(s) under investigation



Set out the matter(s) under investigation



Tell you what we need from you

**We may also approach you as a witness if you hold information
that may relate to a matter under investigation**



Investigations

Information and Documents

- Power to require the production of information and/or documents
- You must tell us where, to the best of your knowledge, they are if you don't have them

Summon and Hear

- Power to require a person to attend a meeting and answer questions

Provide a “skilled person” report

- Power to appoint a person to produce the report, or to require you to appoint a person to produce the report
- Either way, we approve the person
- Either way, you must provide reasonable assistance

Apply for a warrant

- Where we have grounds to require information or documents but we have grounds to think you won't give them to us or might destroy them
- We apply to a JP and, if successful, we turn up at your premises

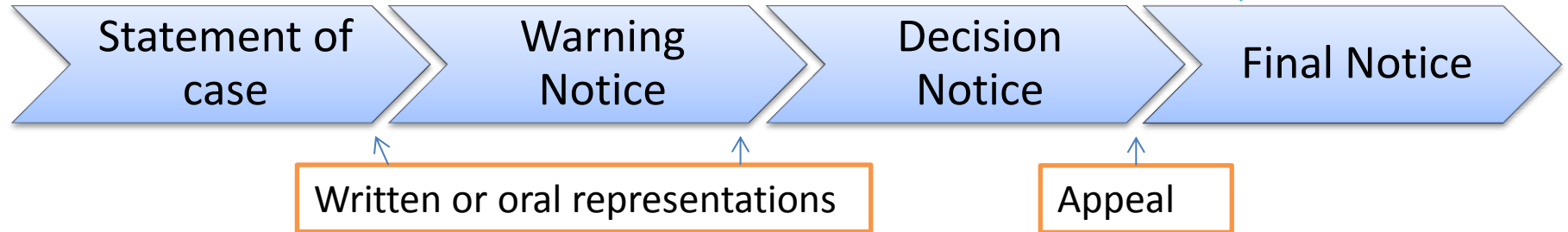


On the off-chance we investigate any of you, you might want to note the following points:

- We may investigate more than one person and more than one incident in the same investigation.
- We may not always use our powers to obtain evidence; it will depend on the circumstances.
- We may take your co-operation (or lack thereof) into account when determining any penalty.
- If you fail to comply with a notice from us we can apply for you to be held in contempt of court.
- **It is a criminal offence to:**
 - **conceal, falsify, destroy or dispose of information or documents that you know or ought to know may be relevant to an investigation**
 - **send us information that you know or ought to know are misleading in a material particular**



Enforcement



What can the Enforcement Decision Panel decide?

- Restitution
- Statement of non-compliance
- Potentially unlimited penalty

Settlement is possible, at our discretion



What do I mean by 'compliance'?

- Reducing the risk of market abuse isn't just about taking action after something happens
- We want to promote effective compliance systems and controls amongst market participants, brokers and exchanges

Who is responsible for compliance?

- Market participants, PPATs, others who may have access to inside information
- Not our team or Ofgem more widely

So what is our role in compliance?

- Introduction and maintenance of robust compliance processes should contribute to our objectives of protecting and improving integrity and transparency in the market
- Our role is to make market participants, PPATs and others aware of what they should be doing in this area



What are we doing?

- Talking to PPATs about STRs – see next presentation
- Talking to market participants where we become aware of an issue that needs addressing

When will we carry out compliance work?

- Any scenario where a breach of REMIT could be possible, including where we think it might be a risk in the future
- Issues that may not have been a breach this time but in different circumstances could be.

What can you expect?

- Open letters or other published guidance
- Company or individual-specific feedback on practices and our expectations
- Phone calls, letters or a more detailed examination of processes

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Our priority is to protect and to make a positive difference for all energy consumers. We work to promote value for money, security of supply and sustainability for present and future generations. We do this through the supervision and development of markets, regulation and the delivery of government schemes.

We work effectively with, but independently of, government, the energy industry and other stakeholders. We do so within a legal framework determined by the UK government and the European Union.