

Enforcement Conference

Westminster Conference Centre

24th June 2015

ofgem

- 10:00 Welcome
- 10:20 Annual Enforcement Priorities
- 10:45 Enforcement Decision Panel showcase
- 11:15 Standards of Conduct and regulation through principles
- 11:50 REMIT update
- 12:20 Standards of Conduct and Enforcement: discussion topic
- 12:30 Lunch

- 13:10 Breakout discussion 1: Standards of Conduct
- 13:50 Consumer Redress proposal
- 14:00 Breakout discussion 2: Consumer Redress
- 14:15 Discussion summaries
- 14:30 Break
- 15:00 E.ON Compensation Scheme
- 15:30 Networks: Compliance through governance
- 16:00 Recent Enforcement Cases: Learning Points
- 16:20 Closing remarks

Sarah Harrison

Senior Partner, Sustainable Development Division, Ofgem

Enforcement Priorities 2015/16

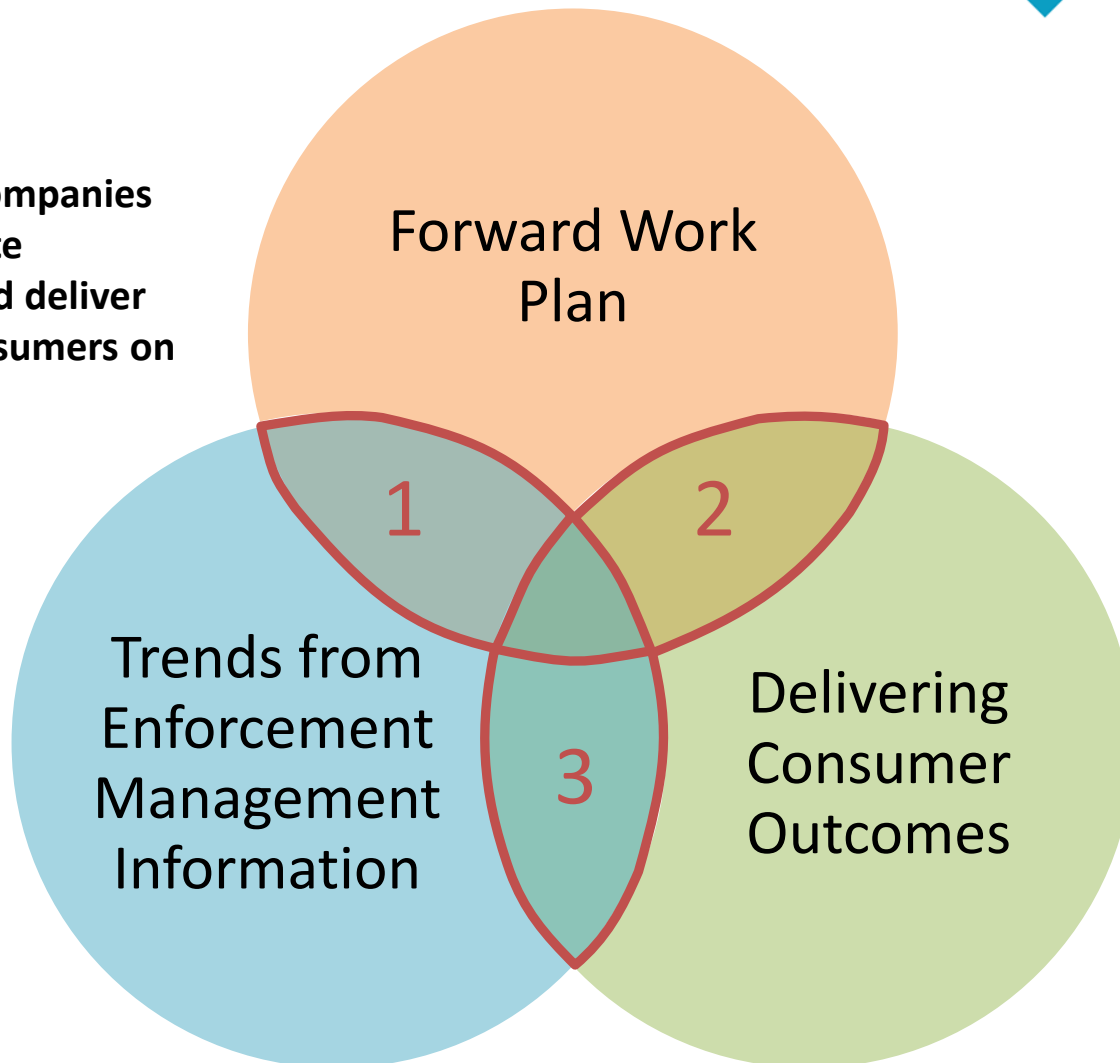
Sarah Harrison

Senior Partner, Sustainable Development Division, Ofgem

- 1) Ensuring companies provide accurate information and deliver benefits to consumers on time
- 2) Taking action where company behaviour is likely to stand in the way of consumer choice or trust in the market
- 3) Taking action where we see evidence of serious shortcomings in a company's culture and attitude towards compliance

Enforcement Priorities 2015/16

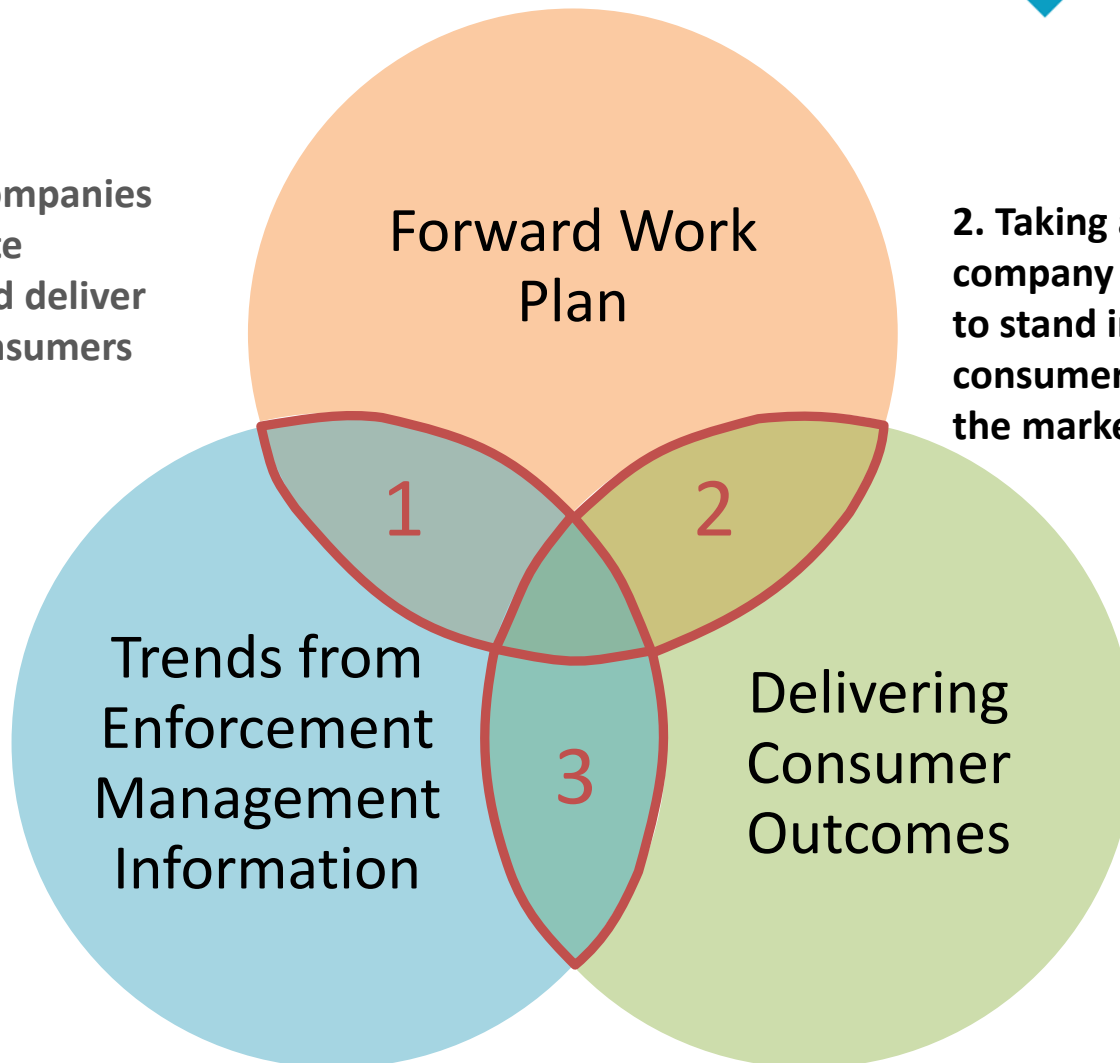
1. Ensuring companies provide accurate information and deliver benefits to consumers on time



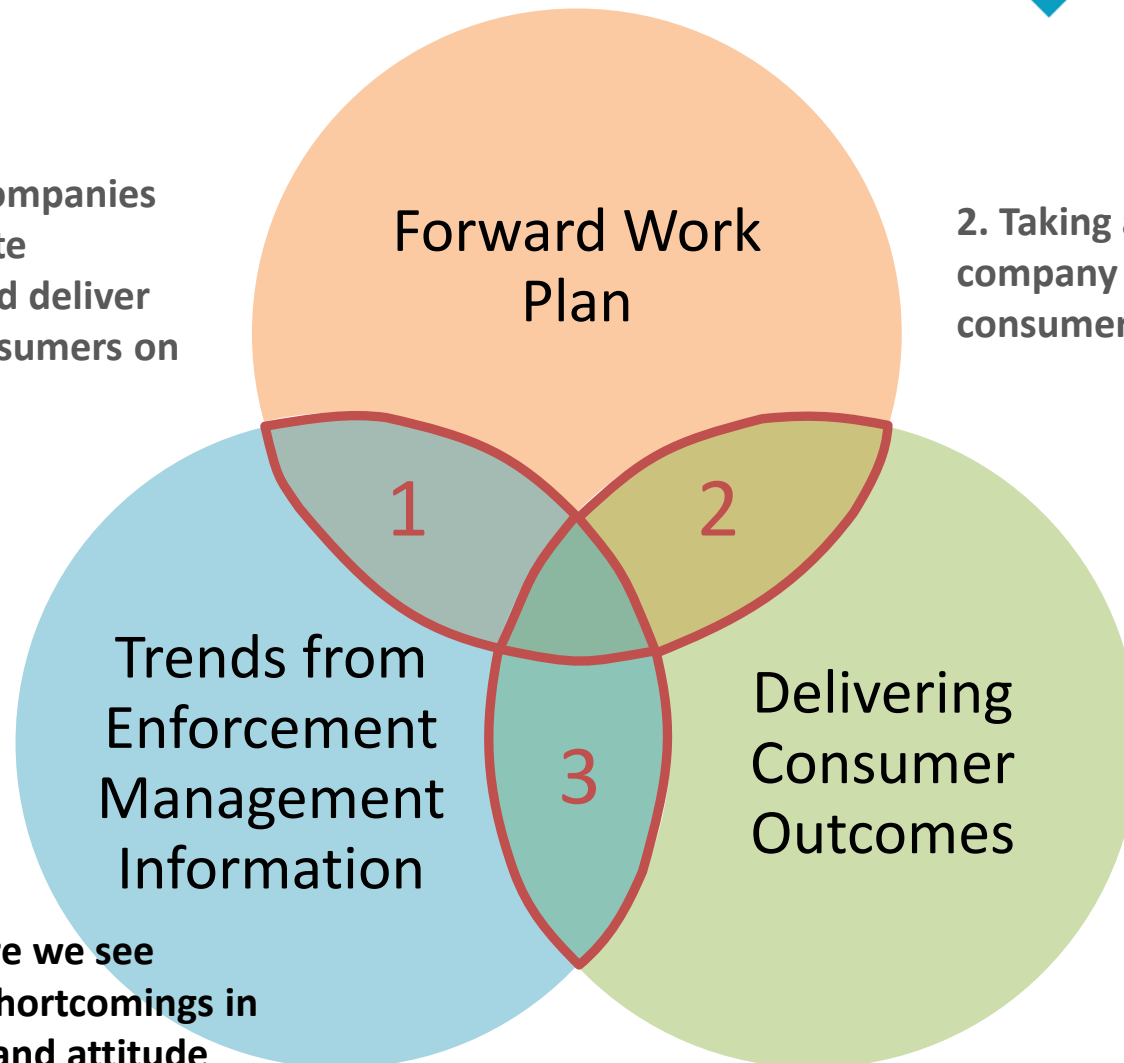
Enforcement Priorities 2015/16

1. Ensuring companies provide accurate information and deliver benefits for consumers on time

2. Taking action where company behaviour is likely to stand in the way of consumer choice or trust in the market



Enforcement Priorities 2015/16



1. Ensuring companies provide accurate information and deliver benefits to consumers on time

2. Taking action where company behaviour dampens consumer choice

3. Taking action where we see evidence of serious shortcomings in a company's culture and attitude towards compliance

Questions

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Enforcement Decision Panel

John Swift QC

Chair of the Enforcement Decision Panel

The Enforcement Review

Objectives

Increase in impact and efficiency

Develop a clear strategic framework for selecting cases

Improve the transparency, proportionality and visible fairness



Change Required

Updated processes

Consistent & strategic governance

Sustainable, visibly independent decision-making.

transparent policy statements & external Guidelines

Relevant processes aligned

Supporting infrastructure

Who we are

John Swift
QC

Chair of the EDP:

Rail Regulator from 1993 to 1998; the Cooperation and Competition panel (now part of Monitor) since 2009; Ofwat Casework committee since October 2014

Amelia
Fletcher

Andrew
Long

Elizabeth
France

Jonathan
May

Robin
Callender
Smith

Trevor
Jones

Who we are

Amelia
Fletcher

Professor of Competition Policy at the University of East Anglia; Non Executive Director at the Financial Conduct Authority; academic advisor to Ofcom; Member of Oxera Economic Council; was Chief Economist at OFT until 2013

Andrew
Long

Member of the FCA's Regulatory Decisions Committee; Chair of the Determinations Panel of the Pensions Regulator; Panel Chair for the Access Disputes Committee (of the regulated rail industry); Deputy District Judge of the High Court and County Court; Judge of the First Tier Tax Tribunal.

Who we are

Elizabeth
France

Chair of the Security Industry Authority; Chair Police Advisory Board (E&W); member British Transport Police Authority, Vice President Aberystwyth University and member General Assembly of Manchester University, former Chief Ombudsman and Chief Executive of the Ombudsman Service Ltd.

Jonathan
May

Executive Director at the OFT until 2010; member of the Competition Act Tribunal; member of the Financial Services Consumer Panel; (until March 2014) a board member of Consumer Futures; DTI - led reviews of energy policy and utility regulation and the Competition White paper and Act and became Executive Director until 2010

Who we are

Robin
Callender
Smith

Professor of Media law at Queen Mary University London; Information Rights Judge and an Immigration Judge; worked as a Barrister since 1977; Chair of the Independent Appeals Board of Phonepay Plus; is the Independent Adjudicator for the Qatar Financial Centre Regulatory Authority

Trevor
Jones

Over 30 years in the Financial Services industry (Barclays, Lloyds); senior roles Risk, Financial Crime, Compliance, Audit and Finance functions; driven Government and Compliance agendas for UK banks.

About us

- EDP members are:
 - Ofgem employees
 - delegated to make decisions on behalf of the Authority when they are part of a Settlement Committee or Contested Panel

What we do

- **Contested Cases:** Decision-making Panels of three EDP members will take decisions—findings of breach, imposition of penalty etc.
- **Settlement:** An EDP member will Chair a Settlement Committee and will take decisions with a member of the Ofgem Executive. Decisions must be unanimous.

Principles of Decision Making

FAIR

ROBUST

ACCURATE

CONSISTENT

ACCOUNTABLE

- Separation from the case team.
- Thorough consideration of the facts and context.
- Attention to detail.
- Level of penalty can stand up to scrutiny.
- Acting on behalf of the Authority with wider accountability to courts and stakeholders.

What we use to inform our decisions

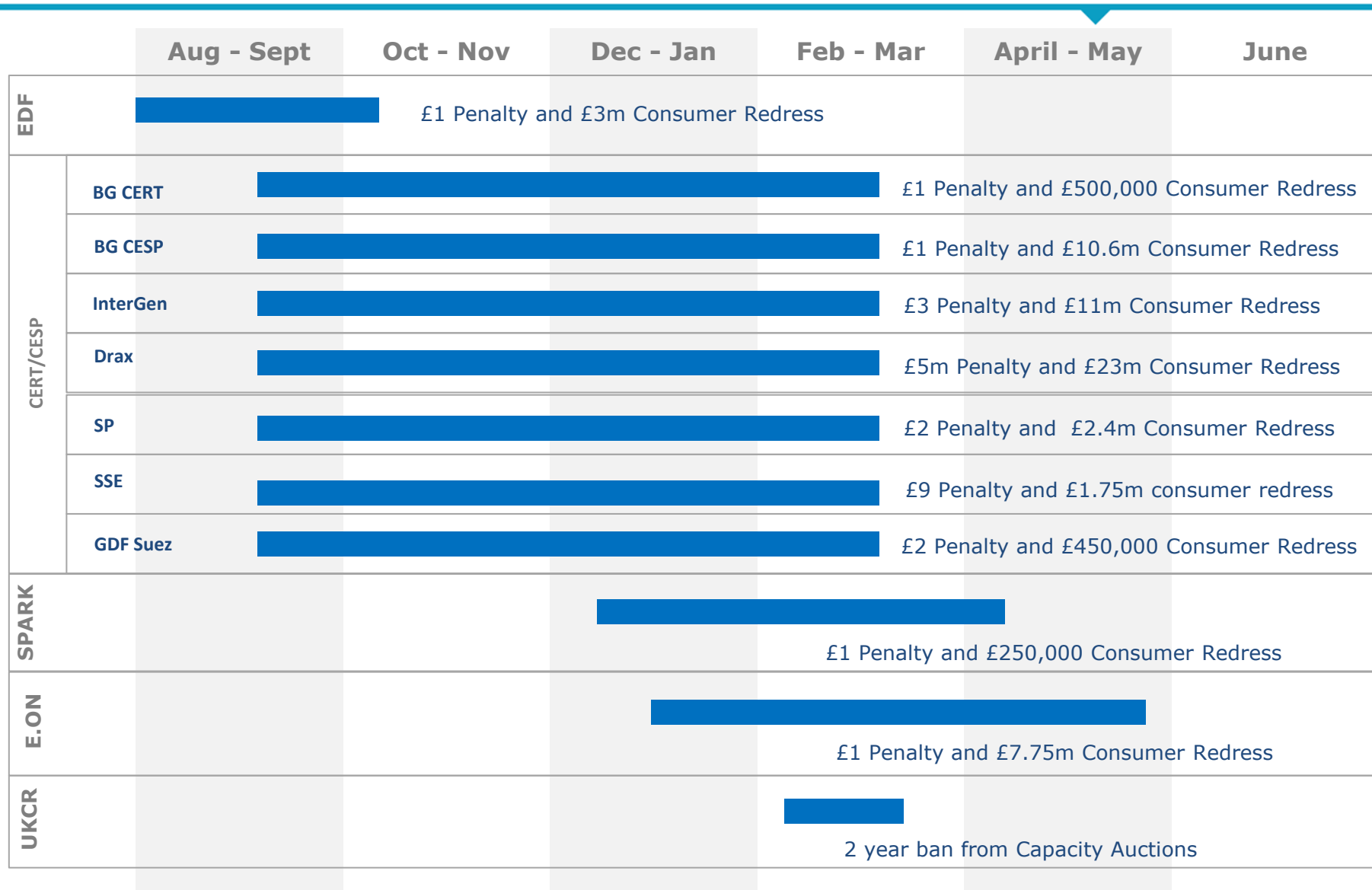
Not exhaustive

Statutory Provisions

- Electricity Act 1989
- Gas Act 1986
- Utilities Act 2000
- Energy Act 2013
- Competition Act 1998
- REMIT Regulations
- Standard Licence Conditions
- Complaints handling regulations 2008

Guidelines and policies

- Enforcement Guidelines
- Penalties policy 2003
- Penalties policy 2014



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Standards of Conduct & regulation through principles

11:15: Standards of Conduct and beyond – Neil Barnes (Ofgem)

11:30: Standards of Conduct: Findings from the 2014 Challenge Panel – Adam Scorer (CAB)

11:50: REMIT update

12:20: Standards of Conduct and Enforcement: discussion topic – Anthony Pygram (Ofgem)

“Over time we hope to rely more on general standards of conduct rather than detailed rules about what companies can and cannot do.”

(Our Strategy, December 2014)

We want a regulatory framework that:

- Targets positive outcomes and provides effective protection for consumers
- Provides an incentive for company leaders to take responsibility for ensuring good standards of service and conduct
- Is flexible and durable to cope with developments in the market
- Fosters more competition and innovation
- Focuses our enforcement activity to help deliver credible deterrence, greatest impact and visible/meaningful consequences for businesses of failure to comply

Standards of Conduct & regulation through principles

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REMIT

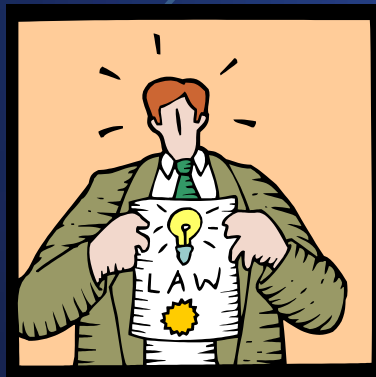
(Regulation on wholesale energy market integrity and transparency)

Philippa Pickford

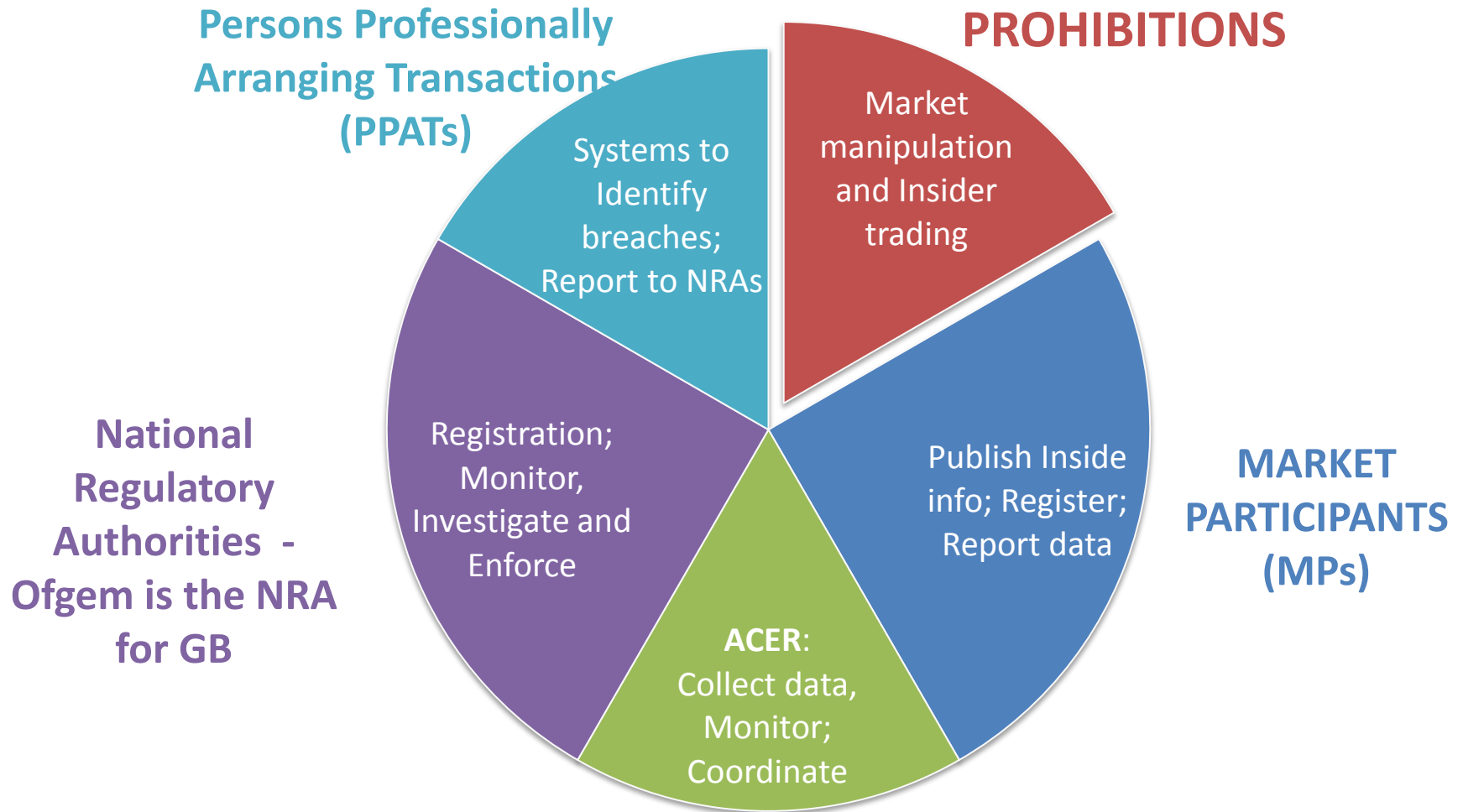
Associate Partner, Wholesale Market Performance, Ofgem

Trust and Confidence in European wholesale energy markets

Regulators



Firms and
individuals



Reporting all contracts traded on organised market places starts on **7 October**
MP's trading on organised market places **must register before 7 October**

ACER has primary responsibility for monitoring trades. Given the importance of wholesale market integrity, **we took a decision to actively monitor the GB market**

- REMIT embeds cooperation with ACER, other NRAs in the EU, and other GB/UK Regulators



Discussions with NRAs and ACER:

- Consistent interpretation of regulation
- Consistent guidance
- Data protection and security

We are actively using our REMIT powers to monitor, investigate & enforce

MONITORING

- “Regulated Persons”* must retain relevant telephone calls & electronic communications for **up to 6 months (subject to extension)**.
- Power to request information and documents for monitoring purposes.

INVESTIGATION

- Require information
- Enter premises (warrant)
- Require attendance at “interview”
- Skilled persons report

Threshold: “circumstances suggesting”

OUTCOMES

- Injunction;
- Court-ordered restitution;
- Ofgem-ordered restitution;
- Censure; and
- **Unlimited penalty.**

DECISION MAKING

- Notice

* Regulated person covers all market participants in REMIT, and also persons professionally arranging transactions

- We have recently published revised REMIT-specific guidelines on penalties and procedures.

Recently received criminal powers for breaches of market manipulation and insider trading.

- We will be consulting on our prosecution policy soon



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

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

When can we investigate?

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

When will we investigate?

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

How do we decide to investigate?

- Decision taken by the Enforcement Oversight Board

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

We do not normally publicise that we have opened an investigation:

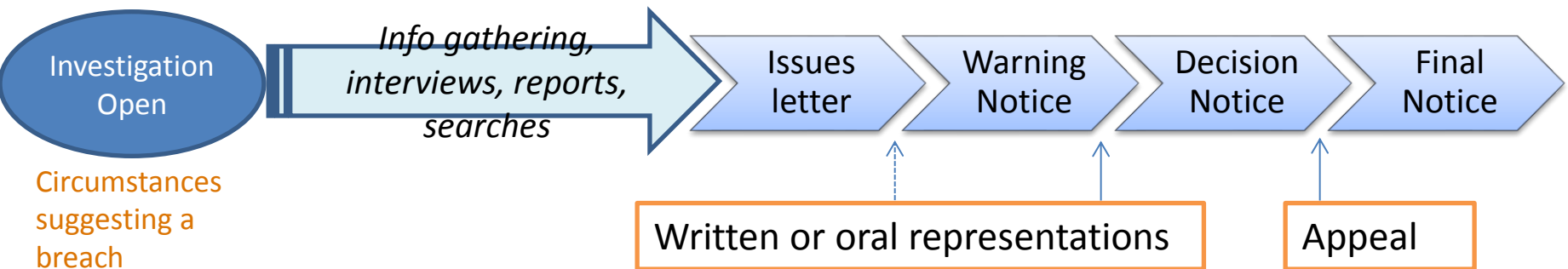
- “circumstances suggesting that a breach of REMIT has occurred” is a relatively low hurdle and as such might result in a relatively large number of cases being opened and closed without there being a case to answer, giving a misleading impression of the integrity of the market and participants in it
- Opportunities to destroy evidence
- High expectation of working with other regulators – do not wish to risk prejudicing or frustrating their investigations.

Key points to Note:

- 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**

See the REMIT Procedural Guidelines and REMIT Penalties Statement for further information

The process is slightly different to Ofgem's other procedures:



What can the Enforcement Decision Panel decide? Again, slightly different:

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

Settlement is possible, at our discretion

We are keen to build relationships and develop good two way communication

What are we doing?

- Building awareness through stakeholder meetings, conferences, web, email alerts, etc
- Talking to PPATs about STRs
- 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 (Note: Need for consistency across Europe, so joint workings on a number of areas – ACER coordination role)
- Company or individual-specific feedback on practices and our expectations
- Phone calls, letters or a more detailed examination of processes

Inside Information

- July 2014 published an Inside information letter: Some reminders eg Timely and Effective publication
 - Report without delay: ACER guidance – within 1 hour **at latest**
 - We expect the best available information at the time to be published
 - We expect a public history of REMIT notifications to be kept
- Improvements have been made but more remains to be done
- We support use of the available platforms



Processes to comply with inside information disclosure and prohibition of insider trading and prohibition of market manipulation

Processes?
Training?
Checks?

To what extent do people in your company know and understand what could be breaches of REMIT?

- We advise having robust written procedures in place to avoid misuse of information
- We would consider the application of these policies and severity of the breach when considering penalties

*REMIT market participants **are required to register** with the national regulatory authority (NRA) in the European member state where they are established or resident or, if they are not established or resident in the European Union, in a member state where they are active.*

Ofgem is using ACER's CEREMP system for Registration.

- There is support for users:
 - Manual on our website
 - Frequently asked questions published in Q&A document
 - Dedicated phone line and email for Registration queries:
REMIT.Registration@Ofgem.gov.uk.

Don't leave it to the last minute to register!!



- Further information on REMIT page of Ofgem website:
<https://www.ofgem.gov.uk/electricity/wholesale-market/european-market/remit>

Please do not hesitate to get in touch with us via **REMIT@ofgem.gov.uk**

Reporting Issues

Email: market.conduct@ofgem.gov.uk

Registration

- Guidance manual for registering and frequently asked questions on Ofgem website:
<https://www.ofgem.gov.uk/>
- For more information on REMIT registration, please contact the team via:
REMIT.Registration@Ofgem.gov.uk
- If you have issues or problems with the registration process, you can also call us on:
0300 003 1514

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Standards of Conduct and Enforcement: Discussion Topic

Anthony Pygram

Partner, Enforcement and Competition Policy, Ofgem

- Standards of Conduct have different enforcement challenges to prescriptive licence conditions
- We want to build a dialogue between ourselves and industry
- It is good policy practice to look ahead to how we might enforce

Standards of Conduct and Enforcement: Discussion Topic

Scenario:

- You are the marketing team for a medium sized electricity supplier
- You have been instructed by the Board to expand your customer base by 30,000 in the next 6 months. You have £1 million budget

You must:

- Develop 2 proposals: 1) with consideration to **SLC 25** and 2) with consideration to the **Standards of Conduct SLC 25C**
- Identify areas of regulatory risk where you have concerns about enforcement action
- Establish what you would like from the regulator in order to mitigate those concerns
- Consider the impact on consumers in your approach
- Compare, contrast and make links between the two approaches

40 minutes

Lunch
Conference resumes at 13:05

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40 minutes

Consumer Redress: A Proposal

James Waugh

Head of Enforcement and Competition Casework, Ofgem

Purpose of this presentation

- To present an option for improving the design of redress packages in lieu of a financial penalty
- To gather your feedback (via roundtable discussion)

Background: Our objectives

- First aim is to provide compensation to consumers directly affected by the breach
- Any redress packages in lieu of penalties should match redress to harm – eg proximity between charity & harm
- Maximise impact of our enforcement activity
- In support of key objectives
 - Protecting the interests of energy consumers
 - Enforcement Vision
 - Consumer Vulnerability Strategy

Background: Recent developments

- Implementation of new Enforcement Guidelines, which implemented an early settlement window of 28 days
- Implementation of a new statement on penalties with formal consumer redress powers
- The amount of penalty and redress packages agreed during settlement has increased in number and value

What do we want to achieve?

Adapt our process regarding redress payments to ensure the optimal distribution of redress monies

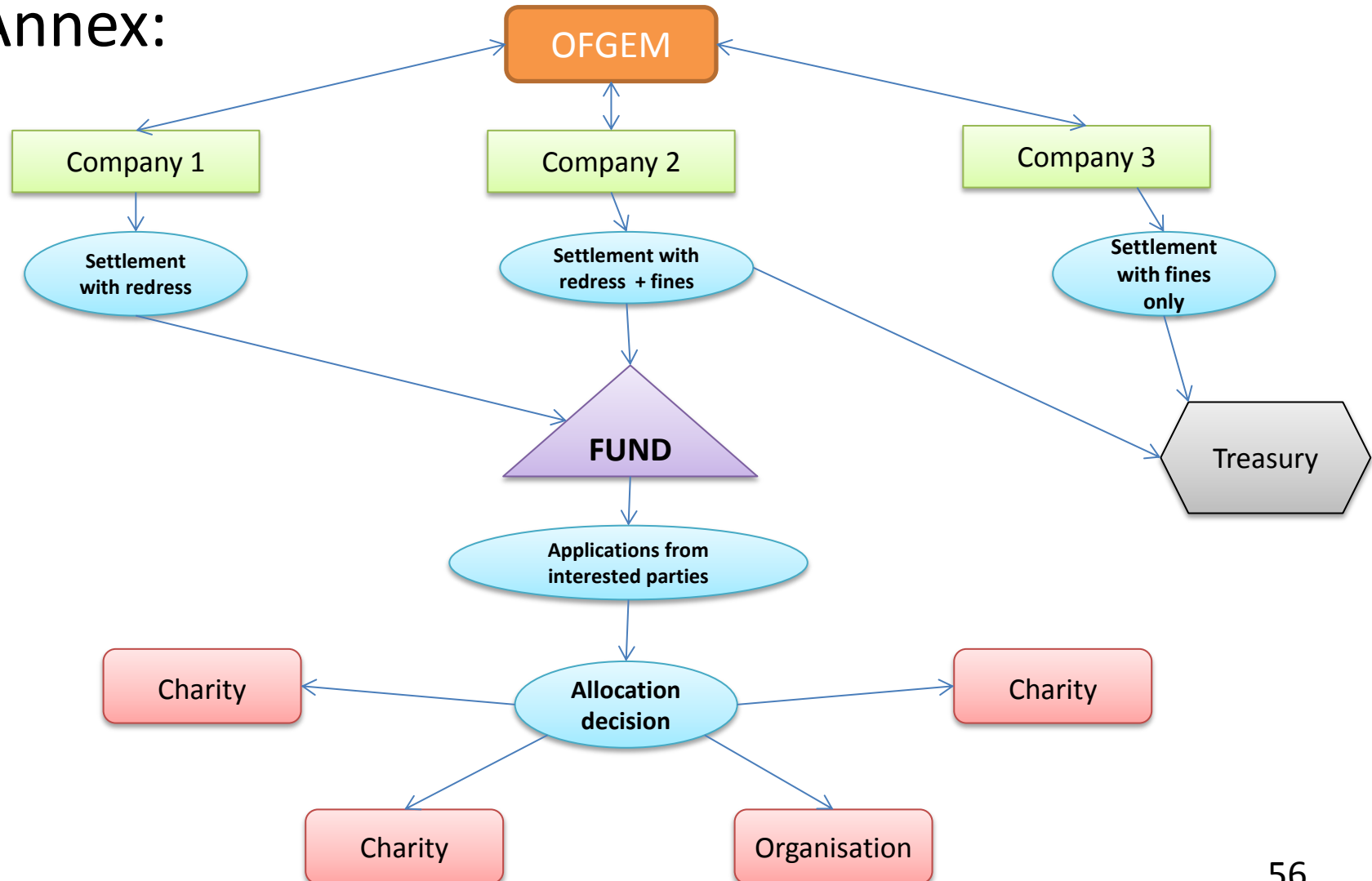
Options we have considered:

- Issuing guidance but leave responsibility to companies to identify suitable redress packages.
- Ofgem becoming the sole owner of any allocation decisions.
- **Externalising the administration and allocation of redress money to a specialised fund (our preferred option to explore further).**

Main expected benefits

- Focusing Ofgem and companies' resources on the settlement process
- Greater transparency as to beneficiary organisations
- Match consumer need to redress monies as effectively as possible

Annex:



Feedback

- Is this a good idea?
- What risks & opportunities do you see?

15 minutes

Discussion Summaries

Break

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Compliance through governance

Ian Rowson

Associate Partner, Regulatory Finance and Compliance, Ofgem

- Aim: harness developments in UK corporate governance reporting
 - Price controlled networks already have requirement to report on corporate governance
 - To date, Ofgem has provided little guidance on what this means
- UK Corporate Governance Code: 'Role of the Board' principle includes

"The board should set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met."
- Proposed regulatory corporate governance principles
 - *"The board is encouraged to recognise the obligations the company has under its licence. The board is also encouraged to recognise that the longer term success of the company as a licensee depends on effective engagement with, and maintaining the shared interest of a wide range of other stake holders - including consumers and the regulator."*
 - *The board's report on its review of the company's risk management and internal control systems should cover its controls over compliance with its licence obligations.*
 - *The board should satisfy itself that the terms of reference for the main role and responsibilities of the audit committee that the board relies on for oversight of the company's risk management and internal control systems, which may be a committee of a holding company's board, covers the company's controls over compliance with its licence obligations."*

- Consultation on new RIIO accounts for network operators (NWOs)
 - We are anticipating high levels of interest
- RIIO accounts include three primary statements, including a Statement of Regulatory Corporate Governance
- NWOs will report on their governance in light of the principles that emerge from Ofgem's consultation process
 - Explain how they ensure they comply (culturally, organisationally, internal controls)
- RIIO accounts will be addressed to shareholders, with a focus on the investor community – important stakeholders for the boards
- We're expecting investor community will welcome greater transparency in governance
- Should highlight forward-thinking NWOs and encourage others

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Recent Enforcement Cases: Learning Points

Anthony Pygram

Partner, Enforcement and Competition Policy, Ofgem

Meeting deadlines

- In March, we closed 7 investigations into compliance with the environmental obligations of CERT and CESP ¹
- Highlights the importance of meeting deadlines for consumers
- Where we see significant financial gain, we will pursue an overall penalty that can be expected to be larger than the sum of that gain
- The financial sanctions demonstrate our interest in consumer redress packages (£5m fines and £49.7m redress) ²
- We will impose interest payments on a financial penalty if the deadline for paying it is missed ³

¹ [https://www.ofgem.gov.uk/investigations?keyword=&im_vid_2=&ds_created\[min\]=2015-03-01&ds_created\[max\]=2015-03-26&sm_t5a_status=23](https://www.ofgem.gov.uk/investigations?keyword=&im_vid_2=&ds_created[min]=2015-03-01&ds_created[max]=2015-03-26&sm_t5a_status=23)

² <https://www.ofgem.gov.uk/investigations/investigations-and-enforcement-data#c-c17080823253939303>

³ <https://www.ofgem.gov.uk/publications-and-updates/notice-decision-impose-financial-penalty-bg-following-investigation-compliance-obligations-non-domestic-customer-transfer-blocking-and-renewals>
And <https://www.ofgem.gov.uk/publications-and-updates/investigation-reporting-npower-limited-electricity-supply-data-under-renewables-obligation-and-feed-tariff-scheme-notice-decision>

Minimising harm to consumers

- Where we see a risk of continued harm to consumers, we will request rapid improvements to put things right and minimise detriment
- This could include requiring the party involved to produce an action plan, and accompanying timeline, that outlines how this will be achieved
- In the cases of the Christmas storms in 2013, we secured an additional £3.3 million from SSE and UKPN after we found that customers could have been reconnected quicker and better updated on what was happening ¹
- In the CERT/CESP cases, we expected the obligations to be concluded as efficiently as possible, despite the deadline having already passed ²
- We set public targets for Npower and Scottish Power in order to improve customer service. In the case of Scottish Power, one target was missed and a sales ban was put in place ³

¹ <https://www.ofgem.gov.uk/publications-and-updates/sse-and-ukpn-pay-out-%C2%A38-million-following-christmas-storms>

² [https://www.ofgem.gov.uk/investigations?keyword=&im_vid_2=&ds_created\[min\]=2015-03-01&ds_created\[max\]=2015-03-26&sm_t5a_status=23](https://www.ofgem.gov.uk/investigations?keyword=&im_vid_2=&ds_created[min]=2015-03-01&ds_created[max]=2015-03-26&sm_t5a_status=23)

³ <https://www.ofgem.gov.uk/publications-and-updates/scottishpower-accepts-sales-ban-after-failing-ofgem-s-customer-service-target>

And <https://www.ofgem.gov.uk/press-releases/ofgem-set-targets-achieve-first-step-npower-customer-service-improvements>

Importance of providing accurate information

- It is crucial to submit full and accurate information both to Ofgem and other bodies
- Our new procedures have shown that swift cooperation can result in a quick resolution ¹
- A lack of collaboration may be treated as an aggravating factor and may be relevant to the level of penalty and/or what action we consider necessary to resolve the issue
- We will take action should we retrospectively find inaccurate information has been submitted ² for example, in relation to capacity market auctions

¹ <https://www.ofgem.gov.uk/publications-and-updates/notice-decision-whether-uk-capacity-reserve-limited-ukcr-complied-requirements-rule-5-13-1b-capacity-market-rules>

² <https://www.ofgem.gov.uk/publications-and-updates/scottishpower-accepts-sales-ban-after-failing-ofgem-s-customer-service-target>

And <https://www.ofgem.gov.uk/publications-and-updates/ofgem-opens-investigations-five-generators-compliance-capacity-market-rules>

Information Requests

- It is essential that responses to Information Requests are clearly presented and indexed
- We expect responses to Information Requests to meet their deadlines and provide an accurate and complete response to the questions asked
- We require a clarity of communication so that all correspondence is understandable, it is not just about meeting deadlines and being timely. This avoids drawing out the process
- Do not withhold or redact information on the assumption that it is irrelevant to the information request

Participating in a regulated market

- Licence conditions and market obligations apply to everyone
- Even if you are a new or smaller participant in the market, you are not exempt from the regulations and need to comply ¹
- Fair competition, consumer confidence and consumer willingness to switch must not be undermined by licence contraventions
- We are prepared to hold senior management accountable for their role in any non-compliance, whether through direct involvement or through not allocating sufficient resources to deal with the issue ²

¹ <https://www.ofgem.gov.uk/publications-and-updates/investigation-spark-energys-compliance-its-gas-and-electricity-supply-licences-and-gas-and-electricity-consumer-complaints-handling-standards-regulations-2008>

And <https://www.ofgem.gov.uk/publications-and-updates/investigation-uk-capacity-reserve-limited-s-compliance-rule-5-13-1b-capacity-market-rules>

² See 5.17 <https://www.ofgem.gov.uk/ofgem-publications/93404/noticeofintentiontoimposeafinancialpenaltyonspark16february2015-pdf>

Resolution without an investigation

- In addition to the public decisions we have published, there have been a number of informal cases where compliance has been achieved without opening an investigation
- SSE made a voluntary redress payment after it admitted breaching Transmission Constraint Licence Conditions and it was not necessary to take further action ¹
- There have been other instances where compliance has been secured through dialogue with companies, without opening a case

¹ <https://www.ofgem.gov.uk/publications-and-updates/sse-pay-100000-energy-action-scotland-over-constraint-payments>

Competition in the market

- New concurrency arrangements are working well and we have now opened two cases under the Competition Act 1998 ¹
- We are monitoring competition in the market and we will take action if necessary
- It is important to note that our powers are not limited to licensed suppliers

¹ <https://www.ofgem.gov.uk/publications-and-updates/investigation-whether-sse-has-infringed-requirements-chapter-ii-competition-act-1998-and-or-article-102-treaty-functioning-european-union-respect-points-connection>
And <https://www.ofgem.gov.uk/publications-and-updates/investigation-under-chapter-i-competition-act-1998-and-or-article-101-treaty-functioning-european-union>

Repeat breaches

- Where a company has breached a licence condition before, and perhaps have been warned or even subject to previous enforcement action, they can expect a substantially larger financial penalty ¹
- Companies should be learning from the decisions we are making against other industry participants
- The Chairman's letter is being applied to behaviour that has come to our attention on or after 1 June 2014 and will see an increase in financial penalties than has been typically imposed
- In cases of repeat breaches, we will take a keen interest in the involvement of Senior Managers – this is made explicit in our new penalties statement ²

¹ <https://www.ofgem.gov.uk/publications-and-updates/investigation-e-s-compliance-its-obligations-under-gas-and-electricity-supply-licences-standard-licence-conditions-23-6-and-24-3>

And <https://www.ofgem.gov.uk/publications-and-updates/notice-decision-impose-financial-penalty-following-investigation-compliance-edf-energy-gas-and-electricity-consumer-complaints-handling-standards-regulations-2008>

² <https://www.ofgem.gov.uk/ofgem-publications/92395/financialpenaltiesandconsumerredresspolicystatement6november2014-pdf>

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- 16:20 Closing remarks**

Closing Remarks

Sarah Harrison

Senior Partner, Sustainable Development Division, Ofgem

Ofgem is the Office of Gas and Electricity Markets.

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.