

Consultation Decision

Review of Ofgem's Enforcement Activities - Strategic Vision, Objectives and Decision Makers.

Decision

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Overview:

Ofgem is reviewing its approach to enforcement. This document represents the outcome of the consultation on our Review of Enforcement Activities: Strategic Vision, Objectives and Decision Makers, which was published on 28 March 2013, as part of the second phase of the Enforcement Review. We would like to thank stakeholders for their responses to our consultation which closed on 23 May 2013.

In this document, we summarise and address some of the key points made by stakeholders during the consultation in relation to the areas where we propose to make changes to our enforcement policies and procedures, namely:

- The proposed Vision, Strategic Objectives and Priorities for enforcement
- Decision making in contested cases
- Decision making in settled cases
- Authority's oversight of decision making

Context

We launched our Enforcement Review programme to maximise the impact and efficiency of our enforcement work. In June 2012, we concluded the first phase of the Review, which involved an initial update of our Enforcement Guidelines. Phase two, which involves a deeper look at our enforcement policies and procedures, is currently in progress.

During the first part of phase two we conducted an internal examination of our decision making procedures, and we commissioned KPMG to assist us with this task. The next part of phase two involved obtaining a broad range of views from interested parties on ways in which we can improve the impact and efficiency of our enforcement work, including our approach to penalties and redress. KPMG provided further assistance with this task, conducting a number of stakeholder interviews on our behalf in summer 2013. We held an Enforcement Conference for stakeholders on 26 September 2013 in order to provide feedback on these interviews and the progress of our work on the Enforcement Review to date.

Arising out of this work were our proposals to establish a Vision and Strategic Objectives for enforcement and to review our decision making on enforcement investigations. This was opened to consultation and the responses to the consultation, together with our decisions are set out in this document.

As we enter phase three of the Enforcement Review, we will consult further with stakeholders in relation to prospective revisions to our Enforcement Guidelines and penalty policy. This work is scheduled to finish in 2014. We will consider the views to be provided during these consultations, alongside those already expressed during phase two, to inform the detail and design of our revised Enforcement Guidelines and penalty policy.

Associated documents

- <https://www.ofgem.gov.uk/publications-and-updates/review-of-ofgem%E2%80%99s-enforcement-activities-%E2%80%93-consultation-strategic-vision-objectives-and-decision-makers>
- <https://www.ofgem.gov.uk/publications-and-updates/enforcement-guidelines-complaints-and-investigations>

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Executive Summary

Enforcement plays a key role in helping Ofgem to promote and protect consumers' interests. Our Enforcement Review was launched to examine our enforcement policies and procedures, in order to maximise the efficiency and impact of our enforcement work. This document outlines decisions which are an important step forward in updating our enforcement framework to support these goals. The Vision and Strategic Objectives make clear the focus and objective of our enforcement work, whilst the new arrangements for decision making will provide visible separation between investigation and decision making functions.

This document summarises and addresses the responses to our initial thinking of 28 March 2013, in which we consulted on proposals for our enforcement Vision, Strategic Objectives and Decision Makers.¹ Our initial thinking letter outlined how we might establish a more transparent strategic framework for our enforcement activities and introduced proposals on the following:

- Vision, Objectives and Strategic Priorities;
- decision making in contested cases;
- settlement; and
- the Authority's oversight of decision making.

We asked stakeholders to respond to our initial thinking through a series of specific questions (see Associated Documents, above). We received 16 responses to our consultation, including submissions from a range of industry players and other organisations. The respondents generally welcomed the opportunity to comment and observed that the Enforcement Review was timely and appropriate in the context of the changing regulatory landscape, including the introduction of the Standards of Conduct, REMIT² powers and the proposed consumer redress powers.

Following consideration of the responses, the Authority has decided to adopt the vision set out in our proposals in March 2013: *To achieve a culture where businesses put energy consumers first and act in line with their obligations*. The Authority has also decided to adopt the strategic objectives consulted upon: to deliver credible deterrence across the range of our functions; to ensure visible and meaningful consequences for businesses who fail consumers and who do not comply; and to achieve the greatest positive impact by targeting enforcement resources and powers.

The Authority has also decided to develop annual strategic priorities for Enforcement. In addition, we have decided to proceed with the appointment of an Enforcement Decision Panel (EDP) to decide contested cases on behalf of the Authority. Cases which are suitable for settlement will be considered by a Settlement Committee with a revised constitution incorporating one member of the EDP and one Executive

¹ <https://www.ofgem.gov.uk/ofgem-publications/37557/er-initial-thinking-letter-26-3-13.pdf>

² EU regulation No 1227/2011 on wholesale energy market integrity and transparency.



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member of the Authority. The Authority will retain strategic oversight over both the EDP and Settlement Committees.

At this stage of the Enforcement Review, we are focusing on the high level issues. Some of the detailed points raised by respondents and referred to in this Decision will be considered further within consultations on our revised Enforcement Guidelines and our penalty policy in 2014. The remainder of this document summarises the stakeholder views in relation to the above proposals and sets out our responses in more detail.

1. Stakeholder respondents

List of Respondents

1	British Gas
2	Consumer Futures
3	EDF Energy
4	Electricity North West
5	Energy Networks Association
6	Energy UK
7	E.On
8	Good Energy
9	National Grid
10	Npower
11	Northern Gas Networks
12	Northern Powergrid
13	Scottish Power
14	SSE & Scotia Gas Networks
15	University of East Anglia, Centre for Competition Policy
16	UK Power Networks

2. Vision, Strategic Objectives & Priorities

Chapter Summary

Stakeholders broadly supported our proposals to develop a vision, strategic objectives and strategic priorities for our enforcement work. They queried and challenged our proposals in a number of areas, specifically:

- The meaning of some aspects of the vision, and the regulatory principles behind it;
- the principles behind the objectives, how we intend to engage with stakeholders regarding those objectives and how we will ensure they remain appropriately flexible; and
- balancing flexibility with stability regarding our strategic priorities.

Respondents also noted that we may face obstacles in the form of ensuring transparency and managing these proposals in the light of our proposed consumer redress powers.

For the reasons set out below the Authority has decided to adopt the vision and strategic objectives consulted on, and to develop annual strategic priorities.

Our Proposals

- 2.1. We set out our initial proposals in our letter dated 28 March 2013 (initial thinking letter). We proposed the following Vision and Strategic Objectives for our enforcement work:

To achieve a culture where businesses put energy consumers first and act in line with their obligations.

Strategic Objectives:

- To deliver credible deterrence across the range of our functions;
- Ensure visible and meaningful consequences for businesses who fail consumers and who do not comply; and
- Achieve the greatest positive impact by targeting enforcement resources and powers.

We proposed to achieve these Objectives by:

- using a range of enforcement tools;
- identifying poor behaviour early and taking action;
- being transparent and fair in the enforcement process and visible in actions taken; and
- learning from everything we do.

We additionally proposed to set annually-reviewed Strategic Enforcement Priorities in keeping with our Corporate Strategy.

2.2. This chapter summarises the stakeholder responses to our proposed Vision and Strategic Objectives, and our proposals to set and review annual Strategic Enforcement Priorities. During this consultation, stakeholders were asked whether they agreed with the proposals; whether they felt it would be helpful to adopt annual priorities; and whether they envisaged obstacles which we might encounter in achieving our Vision and Strategic Objectives. Our responses to the stakeholder views, together with the decisions taken by the Authority are set out below.

Vision

2.3. Respondents were broadly supportive of the Vision and there was general agreement that it is appropriate for the outcome of our enforcement work to be that regulated companies act in the best interests of consumers, and in line with their regulatory obligations.

2.4. A few industry players queried the merits of adopting a separate Vision for Ofgem's enforcement work. One supplier commented that the licence conditions already provide such a framework. A trade association questioned whether the Vision constitutes a departure from Ofgem's general duties and objectives.

2.5. *Enforcement plays a distinct role amid Ofgem's wider regulatory functions, which is the rationale for the proposed distinct enforcement Vision. The proposed Vision is in line with Ofgem's overall vision and objectives and is wholly consistent with our duties as regulator.*

2.6. A supplier was unclear what "putting energy consumers first" means in practice. It added that if the Vision applies to the Standards of Conduct, it should be consistent with treating consumers fairly. One supplier agreed with the first part of the Vision to "put energy consumers first," but it thought that there was an emphasis on that part (as opposed to "acting in line with obligations") and the respondent queried whether that emphasis was correct.

2.7. One stakeholder challenged the latter part of the Vision, "acting in line with obligations." It felt that the Vision implies that we will enforce the obligations we regulate, even where there is no merit in those obligations. Conversely, another

respondent felt the second limb was appropriate since it is our role as energy regulator to ensure that licence conditions are adhered to.

- 2.8. *As outlined in our initial thinking letter, the Vision provides a high-level context and purpose for our enforcement work. The Vision sets out how we want businesses in the market to operate and concentrates on a long term view. It does not in itself impose any obligation on companies.*
- 2.9. *We believe that the two parts of the Vision - putting energy consumers first and acting in line with obligations - are complementary. We believe that 'putting energy consumers first' is clear in context and that it is appropriate for an enforcement vision to include an aim that, as a result of Ofgem's work, businesses will act in line with their obligations.*
- 2.10. There was otherwise a range of nuanced drafting alternatives proposed for the Vision and in particular, one respondent queried whether the Vision should apply to businesses; it proposed that it would be more appropriate to say "licensees".
- 2.11. *We note that if our Vision referred to licensees (and not businesses, as is our current proposition) this would not take account of circumstances where we have powers to take enforcement action against parties which are not licensed by Ofgem³. Therefore, we do not see that it would be appropriate to alter the wording here.*

Regulatory principles

- 2.12. There was a general emphasis by respondents on the inclusion of key regulatory principles in the Vision and Strategic Objectives; namely that enforcement action should be proportionate, transparent and targeted. One respondent added that a decision to investigate should be driven by the seriousness of impact on consumers and materiality of breach.
- 2.13. *We believe it is appropriate for the enforcement Vision to reflect an aim that businesses act in line with their obligations, as this is a core function of our role as sector regulator. In performing this role, we have a duty to ensure that we have regard to Better Regulation principles, such that enforcement action is targeted, consistent and proportionate. In the context of the Enforcement Review, this means, amongst other things, considering how we can provide transparency in our case-handling procedures and guidance on our approach to penalties and redress. It also means continuing to ensure that any procedural requirements and sanctions we impose on parties remain proportionate in all the circumstances of the case.*

³ Licensees are one category of Regulated Person to whom our enforcement powers under sectoral legislation apply. We also have powers to take action against a wider range of parties, for example, in connection with breaches of the Consumer Protection from Unfair Trading Regulations 2008 or in cases of unlicensed supply or activities under the Gas Act 1986 S.5. and Electricity Act 1989 S.4.

This in turn requires our policies to develop responsively to changes in the regulatory landscape and market environment.

2.14. One respondent believed that “putting energy consumers first” was inconsistent with the current regulatory regime as private companies will have a primary duty to their shareholders. The respondent felt that it could be a major obstacle to Ofgem to make companies conform to an alternative objective of putting energy consumers first ahead of making profits. Another supplier felt that the Vision is incompatible with the priorities of companies whose ordinary course of business is to operate physical assets. It was noted that the “*safety and integrity*” of such assets will take priority.

2.15. *The Vision is not itself a regulatory requirement. It articulates how we want businesses to operate in light of Ofgem’s enforcement work. We note that whilst some licensees are primarily operators of structural assets, network licensees have their own legal obligations. Ultimately these obligations also contribute to protecting consumer interests, whether by meeting reasonable demand by allowing fair access to networks, or by maintaining network safety and integrity. In terms of company obligations to shareholders, many successful companies are focussed on delivering what their customers want and need. Putting customers first is not incompatible with ensuring a return for shareholders.*

2.16. One supplier commented that the Vision should specify an output and focus on protecting consumers by identifying and addressing failures by businesses to meet their obligations. It was noted that failures can be minimised by encouraging cultural change within companies and that non-compliance will often arise from a lack of understanding or administrative oversight. A few respondents said it was important to ensure that customers and investors are aware of the consequences of companies failing to meet obligations. One party felt that this required greater transparency of the decision making process.

2.17. *The Vision specifies an appropriate output for our enforcement work by “achieving a culture”. We will work towards this by continuing to enforce obligations against businesses where they fail to comply, which ultimately leads to better outcomes for consumers. In doing so we will have regard, amongst other things, to the proposed consumer redress powers and principles of Better Regulation.*

Strategic Objectives

Principles: deterrence, compliance and competition

2.18. We received a range of comments on our proposed Strategic Objectives. Some stakeholders felt that our Objectives were appropriate and others were comfortable with them at a high-level. A few respondents felt that the Objectives were too deterrence-focused. Two respondents called for compliance-based alternatives and suppliers broadly expressed a need for further engagement with licensees to support ongoing compliance ahead of any formal enforcement activity.

- 2.19. Two respondents felt that the Objective to deliver credible deterrence implied choosing harsher penalties. One supplier questioned the clarity of this Objective, believing deterrence “across the range of our functions” to mean a deterrent within Ofgem itself. A large supplier compared this with the Financial Conduct Authority’s (FCA) credible deterrence objective which it believed did not transfer to our regulatory work. The respondent observed that the FCA investigates criminal offences, including insider trading and market abuse.
- 2.20. Several licensees called for the use of alternatives to sanctions, including written warnings, education and published advice on compliance requirements. Some respondents stressed the importance of this as they felt there is ambiguity in some licence conditions. Some respondents were also concerned about this in view of the coming into force of the Standards of Conduct.
- 2.21. *Credible deterrence is a central part of any enforcement regime, disincentivising behaviours which contravene regulatory obligations and cause consumer harm. It would be insufficient to focus only on bringing companies into compliance: to be effective, enforcement must not only be corrective, but seek to deter future non-compliant behaviours. The range of Ofgem’s enforcement functions will increase as a result of the changing regulatory landscape and new powers coming into force. Deterrence will remain an objective across all enforcement functions. Where it is appropriate to apply penalties, a proportionate approach will be taken in line with a revised penalty policy, to be consulted upon in 2014.*
- 2.22. *In terms of the FCA’s investigatory functions and credible deterrence objective, we also investigate regulatory requirements to which can attach criminal liability, such as supplying without a licence, and under our new REMIT powers we will cover market manipulation and insider trading for which criminal penalties are envisaged⁴. The Authority has therefore decided that ‘credible deterrence’ is an appropriate objective for enforcement activity.*
- 2.23. *We have taken account of the general call for a greater compliance-based approach to our work, together with concerns about subjective interpretation of the Standards of Conduct (SOC) and some licence conditions. Ofgem is aware of these concerns and is considering ways to address these on an on-going basis. We have published definitions on terms of the SOC licence condition on our website along with other guidance material. We are also engaging with industry to help build their understanding of obligations. However, responsibility for compliance with regulatory obligations must ultimately rest with businesses.*
- 2.24. There were several proposed revisions to the wording of the Strategic Objectives, including more substantive proposals: one supplier strongly encouraged that we

⁴ ‘The Government wants to see strong sanctions against those who manipulate energy markets and will consult on criminal penalties, such as those already in place in financial markets, for such actions’. [Annual Energy Statement October 2013 p.8]

adopt an Objective to promote competition; several respondents proposed a more compliance-driven Objective; a trade association proposed Objectives for the promotion of investment, market entry and growth; and three other stakeholders suggested that we adopt Strategic Objectives relating to confidence in the market for new entrants, investors and consumers.

2.25. We have a statutory duty to protect consumers, where appropriate, by promoting effective competition and we consider it is unnecessary to repeat this Ofgem-wide objective in our specific enforcement objectives. Similarly, aims such as the promotion of investment, market entry and growth are also encompassed within Ofgem's wider objectives. Overall, these are in the interests of protecting consumers, falling squarely within our remit as energy regulator, and are not required to be separately expressed in our enforcement Strategic Objectives

Engagement and consistency

2.26. A few respondents sought further details, in particular the criteria which we will apply to determine the range of planned enforcement tools. One supplier wished to be consulted on the latter point.

2.27. We will consult on our revised Enforcement Guidelines in 2014 and this will give stakeholders the opportunity to comment on the proposed range of enforcement tools.

2.28. Two suppliers expressed concern about the media implications of "visible and meaningful consequences" and "positive impact." One of those respondents perceived that breaches in the public eye might be treated more harshly. Two suppliers stressed that there should be consistent application of the Objectives between regulated companies. A distinction was drawn by respondents between the value of publishing Enforcement Orders and notices at the end of a case, which was broadly supported, and publicising the commencement of investigations. The latter was viewed to be less effective as a deterrent, with concerns raised around the presumption of guilt in the minds of the public while the case is under investigation.

2.29. We will be consulting upon our approach to publicising cases in our draft revised Enforcement Guidelines in 2014, and will also consult on the factors which affect a decision to impose a penalty in 2014 as part of a revised statement on financial penalties. Our current position is that we would normally expect to publicise the fact that we are launching an investigation but there will be circumstances when that might not be appropriate, for example, with regard to REMIT cases involving allegations of market manipulation or insider dealing.

2.30. Our Strategic Objectives will underpin our Enforcement Guidelines, prioritisation criteria for opening cases and penalty policy. We are bound to apply these consistently in our investigations and will continue to do so when applying our Strategic Objectives.

- 2.31. One stakeholder suggested that we extend “learning from everything we do” to learning “across the industry” in order to better understand the behaviour which is likely to lead to enforcement action.
- 2.32. *We are currently considering options for better stakeholder engagement which includes making our recent stakeholder conference⁵ a repeat event. This will potentially support business culture change, increase transparency and provide lessons learned to aid future compliance. In turn, this will give us the opportunity to “learn across the industry” and hear the regulatory issues which matter to industry players. However we do not think it is necessary to change our proposed objective to highlight one specific area of our learning.*

Timeliness and flexibility

- 2.33. A few respondents considered that previous investigations have been lengthy or cumbersome. It was suggested that the Enforcement Review should consider more timely investigations, which one supplier stressed is a key omission of the proposed Strategic Objectives and Priorities.
- 2.34. *Our motivation for the Enforcement Review - to increase the impact and efficiency of our enforcement work - includes giving appropriate consideration to the timeliness of our investigations. We are currently conducting a project to review our enforcement process to deliver more standardised, streamlined investigations. The outcomes from this will be reflected in the revised Enforcement Guidelines to be consulted upon in 2014. This work also considers how to implement more flexible engagement with companies under investigation.*
- 2.35. Another supplier believed that the Objectives require greater clarity within the text and that they lack flexibility in relation to sanctions. The respondent added that the phrase “businesses who fail consumers” is too subjective to be an enforcement objective.
- 2.36. *The Strategic Objectives serve as broadly defined goals that help to convert our Enforcement Vision into more specific plans. We disagree that they lack flexibility in relation to sanctions as there are no constraints stated in the Objectives. We consider that the measure of “businesses who fail consumers” is not too subjective; this Objective must be read in full so in conjunction with “and do not comply.” and articulates a need to take appropriate action when we see actions that are inconsistent with regulatory obligations.*

Strategic Priorities

⁵ <https://www.ofgem.gov.uk/publications-and-updates/enforcement-review-conference-%E2%80%93-consultation-exercise>

Stability and flexibility

- 2.37. Many respondents said that annually-reviewed Strategic Priorities would increase the stability and predictability of Ofgem's enforcement work, while providing a degree of flexibility to address developing areas of concern, changing behaviours, and the evolving needs of consumers. One respondent stressed that the Priorities should not prevent us responding to needs as they arise throughout the year. Two respondents asked if we would close an investigation part-way through in circumstances where it no longer satisfied the current year's priorities. It was observed that other regulators have taken this approach.
- 2.38. Another supplier agreed with the need for annual review, but expressed concern that changing priorities too regularly might compromise regulatory stability. Two other respondents suggested that changing priorities will incur costs for companies and might lead to uncertainty and inconsistency. Other queries included the practical effects of changing priorities, how this will impact on enforcement activities at the point of change, and how we will protect against consumer harm on a day to day basis.
- 2.39. *The Strategic Priorities will form part of our prioritisation criteria when we are considering potential cases. The other prioritisation criteria set out in our Enforcement Guidelines will continue to provide us with the flexibility we need in responding to issues of concern, whether they fall within or beyond the annual Strategic Priorities.*
- 2.40. *An annual review of the Strategic Priorities will assist us in protecting against consumer harm by enabling us to target the most current and widespread issues which cause consumer detriment and tackling these in our enforcement casework. In terms of the practical implications of reviewing these Priorities annually and how this will impact on enforcement activities at the point of change, cases are in any event kept under review and are measured against all the prioritisation criteria. It is likely that there will continue to be cases which are closed where appropriate, but it is unlikely that such case closures will solely be due to the change in annual Strategic Priorities.*
- 2.41. *The Strategic Priorities will only reflect existing regulatory obligations. Any changes arising from our annual review will not impose additional requirements. Companies need to comply with all of their obligations, not just those the regulator is looking at. There should therefore be no cost-associated risks to regulated companies by virtue of Ofgem reviewing its enforcement priorities.*
- 2.42. A few respondents asked to be consulted on the annual Strategic Priorities. One supplier sought clarity as to whether it is only instances of regulatory non-compliance that will fit within the annual Strategic Priorities, or whether other cases will be included too.

2.43. *We acknowledge stakeholder requests to consult on our annual Strategic Priorities. However, we believe it would be inappropriate for us to consult with regulated companies on which areas of the relevant obligations we should focus our investigations. The enforcement priorities will be derived from Ofgem's wider priorities, arising out of our published Corporate Strategy. The Strategic Enforcement Priorities will therefore reflect how our wider priorities apply in the enforcement context. Stakeholders will already have the opportunity to respond to our Corporate Strategy consultations and as such the Authority has decided not to hold additional consultations on its enforcement priorities. The Strategic Priorities will be relevant across the full range of our enforcement activities.*

Transparency

2.44. In addition to the challenges raised above, the respondents broadly perceived that the main obstacle to us achieving our Vision and Strategic Objectives was in stakeholder understanding and interpretation of obligations. Some respondents commented that changing business cultures will take time and will prove to be a challenge to Ofgem's enforcement approach. One supplier believed that the key to achieving these was in the practical application of strategy and tools to deliver policy objectives. Transparent processes and constructive engagement with the industry were reiterated as being central to the success of our proposed approach to enforcement.

2.45. *The Enforcement Review incorporates the review and development of our enforcement process and this includes mechanisms for promoting transparency. Outcomes from this review process will include published revised Enforcement Guidelines and Penalty Policy, which will be consulted upon in 2014. We are taking into consideration the requests for more constructive stakeholder engagement and this was initiated at our September 2013 Enforcement Conference.*

New powers for Ofgem

2.46. One supplier felt that we might encounter obstacles to achieving our Vision and Objectives when acquiring new consumer redress powers, as there will be a greater expectation for early compensation and we will subsequently experience a tension between timely conclusion of our investigations and the quality of outcomes.

2.47. *Our enforcement process ensures robust, evidence-based investigations and decision making and this will continue with the advent of additional powers. When the proposed consumer redress powers come into force, we will also continue to select and progress cases in accordance with the prioritisation criteria set out in the Enforcement Guidelines and our Strategic Priorities.*

Conclusion

- 2.48. For the reasons set out above, the Authority has decided to adopt the proposed Vision and Strategic Objectives set out in paragraph 2.1, and it has decided not to include any additional Strategic Objectives.
- 2.49. The Authority has decided it will publish Strategic Enforcement Priorities. It will not consult on them as the Priorities will be derived from our Corporate Strategy. Stakeholders will still be invited to respond to our annual Corporate Strategy consultations.
- 2.50. Ofgem is taking into consideration the requests for more compliance-driven approaches and working on better ways of engaging with the industry further to our September stakeholder conference. However, this is being considered separately from the Enforcement Review.

3. Decision making in contested cases

Chapter Summary

The majority of stakeholders supported our proposals for contested cases to be decided upon by members of an Enforcement Decision Panel supported by a Secretariat which is separate from the case team. They queried and challenged our proposals in a number of areas, namely:

- the ability of the Enforcement Decision Panel to take decisions;
- the roles, responsibilities and interaction of the Authority, the Secretariat and the Panel; and
- the more detailed particulars of our proposals.

Respondents offered many of their own detailed propositions as to how the Enforcement Decision Panel (EDP) and Secretariat could work in practice. Terms of reference, and material the EDP will have regard to, will be drafted in the more detailed stages of our work.

The Authority has decided to appoint an Enforcement Decision Panel, supported by a Secretariat. EDP members will be Authority employees and possess an appropriate range of expertise to decide contested cases.

Our Proposals

- 3.1. Our initial thinking letter proposed arrangements to allow investigations to be decided by dedicated specialists, with visible separation between the investigation and decision making functions. In brief, our proposals were to establish an Enforcement Decision Panel (EDP), made up of people with relevant experience and backgrounds. Members of the EDP would take decisions on cases, having regard to any guidance set by the Authority.
- 3.2. We proposed that that EDP would have a Chair and be supported by an Enforcement Decision Secretariat (the Secretariat) – a new unit within Ofgem which would be separate to the existing enforcement case teams. The Secretariat would support the EDP on administrative and legal issues.
- 3.3. This chapter summarises the stakeholder responses to our proposals for decision making in contested cases. During the consultation, stakeholders were asked whether they agreed with the proposals for an Enforcement Decision Panel and a Secretariat. Our responses to the stakeholder views, together with the decisions taken, are set out below.

Constitution of the EDP

- 3.4. The majority of respondents supported the proposal for an EDP and supporting Secretariat, in order to create visible impartiality and separation of decision making functions from the case team. Some respondents said that a specialist secretariat would help with the management of enforcement cases. One supplier expressed concern that uncontested cases were excluded from this model, commenting that the Vision and approach to transparency should be applied consistently in all cases, including those where settlement is reached.
- 3.5. Two respondents raised questions about the legal validity of a separate decision making body. They suggested that the EDP should include at least one member of the Authority. It was also suggested that the proposals to delegate decision making powers would require changes to the Authority's Rules of Procedure.
- 3.6. One supplier requested further clarity on the criteria for constituting a decision making panel to decide on cases, and the interaction between the panel and companies under investigation. The respondent added that decisions should be steered by the merits of the case, must be proportionate, and any financial penalty should not be influenced by our annual Strategic Priorities.
- 3.7. *Members of the EDP will be employees of the Authority and will be delegated certain enforcement functions. The Authority has the power to amend its Rules of Procedure in order to delegate these functions.*
- 3.8. *We have given due consideration to the merits of having a single channel for all cases, both contested and uncontested. This is set out in detail in **Decision making for settlement**, below.*
- 3.9. *Any penalty which the EDP imposes will be made in accordance with our published penalty policy. We will be consulting separately on our penalty policy in 2014. The procedures for the interaction between the EDP and companies under investigation will be set out in our revised Enforcement Guidelines to be consulted on in 2014.*

Expertise and delivery

- 3.10. The proposed mix of EDP expertise was broadly welcomed. It was suggested that the constitution of the Panel should be balanced with industry knowledge and several stakeholders proposed that membership should include an energy expert. Two respondents also suggested that panellists be required to complete a publicly available register, setting out their backgrounds and interests.
- 3.11. Several stakeholders stated that it is important that the Panel be flexible to meet in a timely way to aid the delivery of a timely enforcement process.

- 3.12. *We intend to appoint a minimum of 5 panel members for a period of between two and five years. All members will be employed by the Authority in order that decision making functions can be delegated to them. In appointing Members, the Authority will seek an appropriate mix of skills, experience and expertise to cover the range of cases the Panels will hear. One member will be appointed as the Chair. The number of Panel members appointed will take account of the need to constitute Panels with appropriate skills to hear cases as soon as needed.*
- 3.13. *The Authority is not required to complete a public register of interests so we do not expect that members of the Panel should be required to do so. We currently have safeguards in place to ensure the avoidance of conflicts of interest: all staff are required to declare relevant shareholdings, financial and non-financial conflicts of interest, and must act with impartiality in accordance with the Civil Service Code. Before cases are decided, the names of presiding panel members will be disclosed to the company under investigation, in order that any relevant concerns can be raised.*
- 3.14. Some stakeholders felt that panellists should be selected according to their relevant experience on the issues being investigated in any particular case. Several respondents sought criteria on Panel selections, with one also seeking details about the appointment of the Chair. It was proposed that we consider an arrangement whereby the Chair could be tasked with a “standing role” in order to deal with any procedural issues which a company might raise during the course of the investigation (it was suggested that it may not be desirable for procedural issues to be handled by the Secretariat, but that this should be done by way of an interlocutory application to the Enforcement Decision Panel).
- 3.15. *Central to our Enforcement Review, we are taking a closer look at our enforcement processes with the aim of establishing a more streamlined procedure for handling investigations, and this includes the role and functions of the proposed Enforcement Decision Panel. The Enterprise and Regulatory Reform Act 2013 envisages a Procedural Adjudicator for investigations under the Competition Act 1998. This is reflected in the draft Competition and Markets Authority Competition Act 1998 Rules which, alongside draft procedural guidance, are currently under consultation.⁶ We will need to reflect on our proposals in light of the final form of the CMA Rules which will be made following the outcome of that consultation.*

Guidance and Terms of Reference

- 3.16. One supplier queried the scope of the EDP in terms of ensuring that investigations are conducted in accordance with the Enforcement Guidelines. Another supplier

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243700/1-guidance-on-cma-investigation-procedures-in-ca98-cases-consultation.pdf (see rule 8) The final form of such Rules will be binding on Ofgem when undertaking CA 98 investigations in the future.

questioned how the Panel will apply our proposed “credible deterrence” Strategic Objective when making enforcement decisions.

- 3.17. It was suggested that terms of reference should provide greater efficiency and effectiveness in the work across Ofgem, and should require independence and impartiality of the Panel and Secretariat. One supplier added that decisions should be based on robust evidence and not subject to strategic or political interference.
- 3.18. *A central objective of delegating decision making functions to the EDP is to increase the impact and efficiency of our enforcement work. The role of the Panel is to take decisions on cases, not to oversee the end-to-end process, which is an executive function. The EDP will make decisions independent of the case team. Decisions will be evidence-based and free from political interference, as they are today. They will have regard to guidance provided by the Authority, including relevant issues such as deterrence which will be covered in our penalty policy to be consulted on in 2014.*
- 3.19. Another respondent sought clarification on the meaning of “having regard to” in respect of any relevant decision-making guidance issued by the Authority. It added that the EDP should not have the option to consider the Authority’s guidance and later make a decision which is contrary to it.
- 3.20. *This will depend on the suite of documents available to the EDP. The Panel must act in accordance with the Enforcement Guidelines and penalty policy and when making decisions, the Panel should take into consideration the strategic priorities. “Having regard to” any relevant Authority guidance should be accorded its ordinary meaning, such that the Panel considers this in line with its responsibilities as a decision maker.*

The Secretariat

- 3.21. One supplier suggested that the role of the Secretariat be outsourced to a code administrator to further emphasise the separation between investigative and decision making functions. Conversely, another supplier expressed concern about the degree of separation between the Secretariat and other Ofgem divisions, as the Secretariat will require specialist knowledge and expertise in order to properly complement the EDP’s expertise and reach a sound decision.
- 3.22. Two respondents stressed the importance of clearly defined roles and remits for the EDP and Secretariat, in order to avoid communication problems arising during investigations.
- 3.23. *The structure, governance and employment arrangements for the Secretariat are one element of the overall design for these proposals currently being developed. During development we will take into consideration the stakeholder views regarding roles, responsibilities and interaction of the Enforcement Decision Panel and*

Secretariat, together with the Secretariat's engagement with other Ofgem divisions. We do not believe it is necessary to outsource the Secretariat function in order to provide advice and support to the Panel that is independent of case teams.

Style and structure

- 3.24 There were a few propositions from stakeholders that we adopt a court-style approach. A trade association suggested that this would allow for the examination of both parties' cases before reaching a decision. It added that the case team's submission should first be reviewed by a lawyer who is not part of the case team, noting that this occurs in the FCA's model for decision making. One supplier suggested that the Panel be made up of lay persons and advised by the Secretariat, in the style of a magistrates' court; adding that the decision should be reached on the evidence of the company and any third parties. Another supplier noted that companies under investigation do not have access to pre-trial reviews that would otherwise be available to companies engaged in court proceedings.
- 3.25. *In contested cases now, the case team and the party under investigation submit their cases to the Committee, which can ask questions of either side to understand the cases and reach an informed decision. This is a fair and balanced way of reaching decisions in enforcement cases and we are not minded to change this.*

Further observations

- 3.26. Two respondents queried the justification of the proposed model for decision making, querying whether the costs might be greater than the current model or outweigh the benefits which the changes are expected to bring. One of the parties also questioned what evidence was available to suggest the existing panel had not performed as expected.
- 3.27. *With the increased volumes of enforcement work seen in recent years (and in view of the additional powers recently granted or expected, and no strong likelihood of a reduction in case volumes), our proposals for decision making would provide for a readily available, standing panel of experts, from which a Panel can be appointed. The allocation of a Secretariat function to support the Panel creates further visible separation between the case team and decision-makers. Moreover, a key objective of establishing the Panel is to aid a more streamlined and timely enforcement process. By creating a pool of panellists, this will help to ensure availability and flexibility of decision-makers to deliver timely decisions. The costs of implementing the proposed new model will not form part of our later consultations. As always, we are mindful to ensure value for money.*
- 3.28. The same respondent queried the available appeal routes for companies, and a few respondents called for merits-based appeals.
- 3.29. *The consultation did not cover the matter of appeals. Grounds for appeal remain as set out in the Enforcement Guidelines.*

3.30 Several respondents, including suppliers and industry bodies, requested further detail about the composition of the Panel and Secretariat, their procedures and terms of reference. There were calls for further details outlining how the process would be used; the interaction of powers and functions between the Panel and Authority; and the roles, workflows and salaries of Panel and Secretariat members. A few respondents said that this further information, together with any guidance provided to the Panel, should be made publicly available.

3.31 *We will be developing further our enforcement processes, including processes involving the Panel, and will be consulting on these in 2014. We remain mindful of the need to ensure value for money in the implementation of proposals.*

Conclusion

3.32. The Authority has decided to appoint an Enforcement Decision Panel, supported by a Secretariat. EDP members will be employed by the Authority and possess an appropriate range of expertise to decide contested cases.

3.34. Terms of reference and material the EDP will have regard to will be drafted in the more detailed stages of our work.

4. Decision making for settlement

Chapter Summary

Stakeholders were generally encouraged by the opportunity for early resolution. A few questioned the need for separate contested and uncontested case routes. Stakeholders also questioned and made suggestions on our proposals in the following areas:

- settlements falling under the current delegation threshold;
- clarity around the Enforcement Oversight Board; and
- penalties in settlements.

Some respondents made detailed, stylistic propositions which we will consider in the more detailed next phase of our work on the Enforcement Review.

In line with responses, a Settlement Committee will continue to make decisions regarding settlement cases. The Committee's constitution will be amended to include one executive member of the Authority, and one member of the Enforcement Decision Panel.

Our Proposals

- 4.1 Our initial thinking letter set out our proposals for decision making in settlement cases, where there is an opportunity for early resolution by agreement with the party under investigation. We indicated that settlement is likely to result in a reduction in the penalty imposed.
- 4.2 In brief, we proposed to continue the arrangements whereby a Settlement Committee is comprised of one executive member and one non-executive member of the Authority, constituted as and when required to take decisions on settlements. We proposed that cases above a delegation threshold – currently £100,000 – would be decided by the Settlement Committee, and settlements below the threshold would be decided by a Senior Partner.
- 4.3. During the consultation, we asked stakeholders for their views on our proposals for decision making for settled cases, including consideration of the existing Settlement Committee role, and delegation of cases to a Senior Partner where appropriate. The key stakeholder views, together with our responses and decisions taken by the Authority are set out below.

A role for the Enforcement Decision Panel

- 4.4. There was general support from stakeholders for the opportunity for early resolution, without the need for contested enforcement and more lengthy investigations.
- 4.5. One supplier strongly agreed with the Enforcement Decision Panel for contested cases, but suggested that Panel members be used for both contested and settled cases. Several other respondents felt there is merit in the EDP deciding all cases and it was unclear to two of the respondents why there is a need for a separate route/Committee for settled and contested cases. One supplier noted that a single route to the EDP would provide consistency to the "*basis of negotiations*" - although it did nevertheless agree that members of the Settlement and Enforcement Committees cannot sit on both panels for the same case, where settlement discussions break down.
- 4.6. One respondent questioned the rationale for granting greater independence to the Panel in contested cases, by way of delegated powers to the EDP, than is proposed for settlement. This stakeholder also enquired about the incentives on parties to settle and whether such incentives are desirable.
- 4.7. *Settlement cases from their very nature stem from an agreement between the parties, and where there is an admission of liability by the company an in-depth investigation by the decision-makers into whether a breach has been committed is not required. The focus of deliberation is on whether the proposed settlement is, in the round, an appropriate response to the admitted breaches. As we set out in our initial thinking letter, settlement is likely to result in a reduction in the penalty imposed. These considerations will form part of our penalty policy which will be consulted on in 2014.*
- 4.8. *We believe it is important to maintain a clear separation between the panel which hears contested cases and that which hears settlement cases, and we must preserve visible separation, enable without prejudice discussions, and prevent bottlenecks at the EDP. We have decided to maintain the Settlement Committee but to amend its composition.*
- 4.9. *The Authority has therefore decided to appoint one member of the EDP to each Settlement Committee, with one Executive member of the Authority. We believe this strikes an appropriate balance, using specialist decision making expertise alongside executive expertise relevant to considering the merits of settlement. The inclusion of an EDP member who will have exposure to unrelated contested cases will distribute the panel's experience evenly across settled and contested processes - promoting consistent decision making across all cases.*

4.10. *The member of the EDP selected would be prevented from hearing a contested case if they have previously sat on a Settlement Committee for the same investigation. In situations where settlement negotiations break down, only panel members with no prior exposure to the case can be appointed to hear the contested case.*

Delegation

4.11. Two respondents felt that the present £100k delegation threshold to a Senior Partner is too low and should be increased to £1m. Another respondent felt that £100k was a suitable threshold for one person to decide the settlement of an investigation. One supplier felt that it was unclear why there should be a different route for matters below a certain penalty threshold.

4.12. One supplier was concerned that settlement decisions can be made by two Ofgem officials (in the case of a Settlement Committee) or, a single Senior Partner (where the penalty sits below the £100k threshold). It was stressed that £100k is a high value to a smaller supplier and the respondent was of the view that to ensure "balanced oversight" of a settlement decision falling below the threshold, the choice should be available to the party under investigation to go to the Enforcement Decision Panel.

4.13. *In the event that we propose to change the threshold below which decisions are taken by a Senior Partner, we will consult on this proposal.*

Oversight

4.14. One stakeholder proposed that the Authority should have oversight of settlements before they are confirmed in order to avoid cases being reopened, and therefore providing greater certainty and encouragement for companies to settle.

4.15 One supplier requested clarity on the relationship between an Enforcement Oversight Board (EOB) and the Authority. Another requested clarity on the role and constitution of the EOB, believing it to be unclear whether the Board has a role beyond settlement oversight. On this point, it was proposed by another supplier to rename the EOB the "Settlement Oversight Board" believing that its role would be limited as such.

4.16. One supplier proposed that companies under investigation should be copied in on all communications between the case team and the EOB/Settlement Committee. The respondent requested clarity on the influencing factors when determining the suitability of a case for settlement. It also added that Settlement Committee members should be available to meet, as and when required, according to the needs of a case.

- 4.17. *The Authority will have sight of settlement decisions in its periodic review of settlement decisions taken. However, the Authority will not give views on uncontested cases before settlement is reached.*
- 4.18. *The details of enforcement oversight within Ofgem, including overseeing the portfolio of cases and steering on strategic developments is being considered in the wider context of our enforcement procedures. These procedures, including those for settlement cases, will be covered in our Enforcement Guidelines which will be consulted on in 2014.*
- 4.19. *Many of the papers that are sent to the Settlement Committee will already have been seen and agreed by the company under investigation, for example the terms of the proposed settlement agreement and any draft notice of intention to impose a financial penalty. Consideration will be given to the procedural aspects of settlement when revising Enforcement Guidelines under consultation in 2014.*
- 4.20. A few respondents emphasised the importance of all settlement negotiations taking place on a without prejudice basis, and specifically that concessions made during settlement negotiations should not be admissible in the subsequent contested case if negotiations fail.
- 4.21. *We note that settlement negotiations are already conducted on a without prejudice basis in the current regime, and this will continue to be the case with the new model.*
- 4.22. One respondent felt that there was little change from the existing settlement arrangements and supported the proposals. It did note that flexibility and good communication between the parties is integral to any successful settlement process.

Penalties in settlement cases

- 4.23. A small number of respondents felt that the benefits of the settlement process, including any available reduction in penalties and shorter timeframes should be known to the company under investigation from the outset. It was observed by one respondent that this is provided for in the current FCA model.
- 4.24. There were general calls for further information on the settlement process, including participating roles, clearly documented procedures and timeframes for settlement and the penalty notice. Some responses sought for this to be included in the Enforcement Guidelines for transparency. One stakeholder said that terms of reference for the Enforcement Oversight Board should be available to interested parties.

- 4.25. *We are currently reviewing our approach to the imposition of financial penalties in contested and settled cases. In 2014 we expect to consult on a revised penalty policy and revised Enforcement Guidelines, taking account of considerations around processes, roles and any relevant terms of reference.*
- 4.26. Several respondents suggested that penalties agreed during settlement should not be open to consultation. Where an agreed penalty can be overturned by consultation or rejected by the Committee, this was perceived as a risk to the settlement process, uncertain, and discouraging for companies to negotiate settlement in the first place. One response called for legislative change, noting that the FCA does not consult on settlement. Two other respondents viewed consultation on penalties as a "serious barrier to settlement" and an "impediment for licensees." In order to circumvent our requirement to consult on penalties, a large energy company suggested that we might consider the view that an agreement to pay a penalty does not constitute the imposition of a financial penalty in accordance with section 30A Gas Act 1986.
- 4.27. *We have a statutory duty imposed under the Gas and Electricity Acts⁷, to consult on the proposed amount of penalty, and we will therefore continue to consult on future penalties arising out of contested and settled cases as required. Furthermore, we see consultation as an important part of the process; it gives transparency to our agreements with regulated companies and ensures that third party evidence can be presented. Parties considering whether to settle a case are fully aware of the consultation requirement and can factor this condition into their decision making.*
- 4.28. An organisation repeated concerns which it raised in a previous consultation response, namely that the severity of the breach is reflected in the penalty and that there is a balance between early resolution and appropriate penalty. The respondent added that it is essential that the company is obliged to provide evidence on how it has addressed the issues which are the subject of investigation and any harm caused by the breach, including consumer detriment. It also expressed that attempts to reach an early resolution must not be viewed as a simple means of securing a low penalty.
- 4.29. *We agree in principle that the severity of the breach should be a factor reflected in any penalty imposed in settled as well as contested cases. We will be consulting on a revised penalty policy in 2014 and will consider, in preparing for this consultation, what should be said about the impact of settlement on penalty.*

Conclusion

- 4.30. The Authority has decided that the Settlement Committee will be comprised of one member of the Enforcement Decision Panel and one Executive member of the Authority.

⁷ The Gas Act 1986, S.30A. The Electricity Act 1989, S.27A.



4.31. Further details of our settlement proposals, the Enforcement Oversight Board and any revised penalty policy will be available for consultation in 2014.

5. Authority Oversight

Chapter Summary

Stakeholders were generally comfortable with the Authority having oversight of decision making panels. Some respondents queried the extent to which the Authority could intervene in live cases and two others challenged its ability to delegate to the EDP. There were general questions about the details of the Authority's decision making guidance to the EDP and its annual reviews.

For the reasons set out below, the Authority has decided that it will provide strategic oversight in respect of contested cases and settlement. The EDP and Settlement Committee will have regard to published material produced by the Authority when taking decisions, and the Authority will review enforcement decisions on an annual basis, for the purposes of assessing performance and consistency and informing future developments.

In this chapter, we set out the power which permits Authority delegation, and how the Authority proposes to handle its reviews. Ultimately, further guidance will be made available, following consultation in 2014.

Our Proposals

- 5.1. Our initial thinking letter set out proposals for the Authority to have strategic oversight of decision making for both contested and settled cases. We proposed that the Authority would provide decision making guidance to the Enforcement Decision Panel (EDP) and those taking decisions in settlement cases. This guidance would set out the Authority's policies on issues such as standards of compliance expected, settlement, deterrence and any other relevant matters. The guidance would be published and may form part of the Enforcement Guidelines and penalty policy.
- 5.2. During the consultation, stakeholders were asked for their views on the Authority's oversight of decision making. The key stakeholder views, together with our responses, are summarised in this chapter.

The Authority's oversight

- 5.3. There was broad agreement with the proposed Authority oversight of the EDP, to ensure coordination, consistency and fairness. One supplier stressed that oversight should also ensure a timely decision.
- 5.4. Several stakeholders requested that the Authority decision making guidance be published and subject to consultation, and suggested it should form part of Ofgem's

Enforcement Guidelines. Another felt that the guidance should be amended where necessary, following periodic case reviews. There were a few calls for clarity on the scope of "oversight", the Authority's functions and any action it can take in its oversight role.

- 5.5. *We agree that timeliness is important to the investigation and decision making process and, as noted in our initial thinking letter on 28 March 2013, efficiency is a catalyst for this review of the way we conduct our enforcement work.*
- 5.6. *In 2014 we intend to consult on revised Enforcement Guidelines and a revised statement of policy on penalties. At this time, there will be an opportunity for stakeholders to consider and respond to further details of the proposed actions which can be taken by the Authority, and its relationship with the EDP. We will publish guidance made available to the EDP.*
- 5.7. A number of challenges were made to Authority's oversight of, and detachment from, the EDP. One respondent asked how this detachment meets the statutory requirement that the Authority must be satisfied that a licensee has contravened, or is contravening the relevant legislation. The same respondent questioned whether the Authority can undertake not to influence live investigations. A separate respondent challenged the legality of the Authority's commitment not to revisit cases which are decided by the EDP.
- 5.8. Several respondents sought assurance that the Authority would not seek to influence ongoing investigations. However, one supplier felt that the Authority would need to intervene in cases where, for example, the Panel was acting unlawfully. The respondent also queried how the Authority will handle a case in its periodic review, which it finds was decided incorrectly by the EDP. Other respondents suggested that the Panel could be overridden when its work was not in line with the Strategic Objectives.
- 5.9. *The Authority will delegate the decision making power to the EDP as employees of the Authority. Therefore, the decision on whether or not a company has committed a breach will be taken by the Enforcement Decision Panel, on behalf of the Authority. In performing those functions on the Authority's behalf, the Panel must satisfy itself as to whether or not the company has contravened, or is contravening the relevant provision.*
- 5.10. *Section 1 of, and Schedule 1 to, the Utilities Act 2000 establish the Authority and the procedures relating to it. Paragraph 9 of the Schedule, under the heading of "Performance of Functions", sets out the power to delegate. This enables anything authorised or required to be done by the Authority, to be done by an employee of the Authority who is authorised for that purpose.*

- 5.12. One respondent suggested that the Authority's reviews should ensure that investigations are conducted proportionately and in line with strategic priorities. The respondent observed that the FCA might reconsider whether a case should continue, where its concerns have changed significantly during the course of the investigation.
- 5.13. *On an annual basis the Authority will review in the round decisions taken by the EDP. The Authority will not give renewed consideration to each individual case. Such an approach would create uncertainty and undermine the enforcement framework for decisions to be made by the EDP.*
- 5.14. *With regard to whether cases should be continued, we reiterate our comments in Chapter 2, that we, and accordingly the EDP, are duty bound to adhere to principles of Better Regulation and therefore our case-handling and decision making procedures must be proportionate.*

Conclusion

- 5.15. The Authority will provide strategic oversight in respect of contested cases and settlement as proposed in the initial thinking letter. The EDP and Settlement Committee will have regard to published material produced by the Authority when taking decisions.
- 5.16. Schedule 1 to the Utilities Act 2000 grants power to the Authority to delegate its functions and members of the EDP will be Authority employees.
- 5.17. The Authority does not intend to intervene in the decision making in ongoing investigations. If, during its annual review, the Authority believes that the EDP requires further decision making guidance, this will be provided. The Authority also intends to review the operation of the EDP after there has been sufficient operation in practice, to see if any changes to the framework are needed.

6. Further comments

- 6.1. The responses contained many additional observations, comments and further recommendations which were beyond the scope of this consultation. Broadly, these included a range of good practice and compliance orientated propositions; calls for clearer licence conditions; concerns about principles-based regulation and some suggested areas of expansion for the Enforcement Review. There were also some specific comments and recommendations regarding publicity around opening investigations and cross-divisional working in Ofgem.
- 6.2. We will take into consideration the further views presented by stakeholders as part of implementing the Enforcement Review, including consultation on the revised Enforcement Guidelines and statement of policy on penalties in 2014. We will in addition take these views into consideration as and when it is appropriate and relevant to other projects and initiatives.

Appendices

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Appendix 1 - Glossary

C

[Competition Act 1998](#)

The Act prohibits anti-competitive agreements and the abuse of a dominant position. Under the Act, Ofgem has the power to investigate alleged breaches of the Act and can take enforcement action, such as ordering that offending agreements or conduct be stopped, and imposing financial penalties.

[Competition Commission \(CC\)](#)

The CC is an independent public body which conducts in-depth inquiries into mergers, markets and the regulation of major regulated industries.

E

[Enterprise and Regulatory Reform Act 2013](#)

The Act makes significant reforms to the competition regime in the UK, including through establishing the Competition and Markets Authority (CMA). It received Royal Assent on 24 April 2013, with the majority of the provisions relating to competition coming into force on 1 October 2013 and 1 April 2014 when the CMA will take on the competition functions of the OFT and Competition Commission.

R

[REMIT - The EU regulation on wholesale energy market integrity and transparency](#)

EU regulation No 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency (REMIT). REMIT is aimed at preventing market abuse in wholesale energy markets. The Department of Energy & Climate Change (DECC) is in the process of granting Ofgem the necessary investigatory and enforcement powers to ensure the requirements of REMIT are applied and to provide for a penalties regime for sanctioning of breaches.

S

[Standards of Conduct \(SOC\)](#)

The SOC are supply licence obligations enforceable by Ofgem which require energy suppliers to treat consumers fairly. Suppliers must be honest, transparent and professional in their manner and ensure that any information given to consumers is easy to understand. They will have to ensure they are easily contactable, and act promptly and courteously to put things right. Suppliers will have to publish statements each year clearly showing what actions they are taking to treat consumers fairly.

Appendix 2 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

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