



Lessons Learned

From enforcement and compliance
activity - sales and marketing

Introduction

Our vision for our enforcement and compliance work is to achieve a culture where businesses put energy consumers first and act in line with their obligations.

Sales and marketing is an area in which energy suppliers have historically encountered problems, to the extent that Ofgem has intervened by using its enforcement powers.

The purpose of this document is to highlight the lessons learned from enforcement and compliance activity in relation to sales and marketing.¹ Two specific areas of sales and marketing in which we have taken action are regarding issues with the conduct of sales staff and representatives working on behalf of suppliers, and issues relating to ineffective management oversight. Ultimately, responsibility to comply with licence conditions and other relevant requirements (such as the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008) rests with individual energy companies. We want to assist suppliers in their understanding of past issues which have occurred when engaging in direct selling, and which have sometimes led to negative outcomes for consumers.

We consider that these lessons will continue to be important as we move towards greater use of principles-based rules. By taking a consumer-focused and diligent approach to sales and marketing, we believe suppliers can build trust and confidence in the retail market for all GB energy consumers.

8 March 2017

¹ This lessons learned document covers issues raised in previous enforcement investigations as well as where we have taken compliance action (“alternative action”) to resolve areas of non-compliance. Please see our [Enforcement Guidelines](#) for more information on how we prioritise enforcement action.

Sales staff and representatives

Our enforcement and compliance activities have highlighted that the training of sales staff and representatives is a very important area for suppliers to get right.

In many of the past enforcement investigations relating to sales and marketing (for further information on specific cases, please see the **'References'** section of this document) it was found that the clarity and accuracy of communications by sales staff and representatives engaged in direct selling was inadequate - especially communications around savings comparisons, including both accurate estimates of savings, and of total annual charges. These comparisons are very important because they allow consumers to make well-informed switching decisions. If these comparisons are inaccurate, there is a risk that consumers will be misled as to the costs of their new energy supply should they switch.

In addition, past enforcement activity demonstrates that we have stepped in where suppliers' sales agents were not being clear as to the genuine purpose of their calling at consumers' homes, and where they were not identifying themselves clearly during sales interactions with consumers. We have also acted where the evidence showed sales staff and representatives were deploying high pressure sales tactics, and in cases where the principal terms of the contract were not properly conveyed to consumers during a sale. We consider it very important in sales interactions that the customer has a clear understanding of whether or not they will actually make a saving - based on their personal circumstances - compared to the cost of their current energy supply.

Findings have also been made in enforcement investigations in relation to payment methods, for example regarding failures to provide correct information to customers on how direct debit levels would be calculated and reviewed, and when direct debit discounts would become payable. These are further examples of why clear and accurate communications with customers are essential.

It is important to note that there is a requirement to keep records (for a minimum of 2 years) of information provided during face-to-face² sales and marketing activities, where it results in a sale.

² Please note that in our statutory consultation [Enabling consumers to make informed choices](#) published on 30 January 2017, regarding sales and marketing, it was proposed that this requirement is also extended to telesales.

Oversight

We consider senior management oversight (including at Board-level) to be another key area in relation to sales and marketing, as underlined by our past enforcement and compliance activities.

In many of our sales and marketing investigations, the senior management of the supplier was found to have failed to take all reasonable steps in one or more areas of its training, monitoring, auditing and management arrangements. Issues in relation to the oversight of sales and marketing practices have included:

- **Failures in the selection, monitoring and supervision of third party agents** – suppliers are held accountable for the actions of third party agents acting on their behalf, and past enforcement and compliance activity has highlighted shortcomings in the oversight of third parties;
- **Inadequate responses when problems occurred, including slow responses** – licensees have sometimes been too slow in identifying and correcting problems arising from their sales and marketing activities;
- **Poor auditing practices, or inadequate responses to audit findings** – poor auditing processes have led to problems not being picked up early and a greater risk of energy being mis-sold to customers, which meant that systemic problems took longer to come to light; and
- **Ineffective training for sales staff and representatives** – we have seen evidence of inappropriate and insufficient training of sales representatives.

Another important area is the remuneration of sales representatives and third parties, where investigations have demonstrated that sales agents' incentives frameworks may increase the risk of non-compliance, e.g. if based solely on volume of sales.

Suppliers have also run into difficulties due to growth in their customer base (especially where this has been rapid growth), where some suppliers haven't had enough call centre staff to handle customer interactions.

Our interactions with suppliers have shown that effective leadership involves firstly setting up a culture of treating customers fairly, and then ensuring that appropriate monitoring, supervision and training are pushed down through middle management and embedded throughout the company.

Engagement with Ofgem

- Inform Ofgem at the earliest opportunity when compliance issues arise
- Provide Ofgem with an action plan which sets out how you will resolve the issue and put things right quickly for consumers, including paying any compensation or redress which may be due

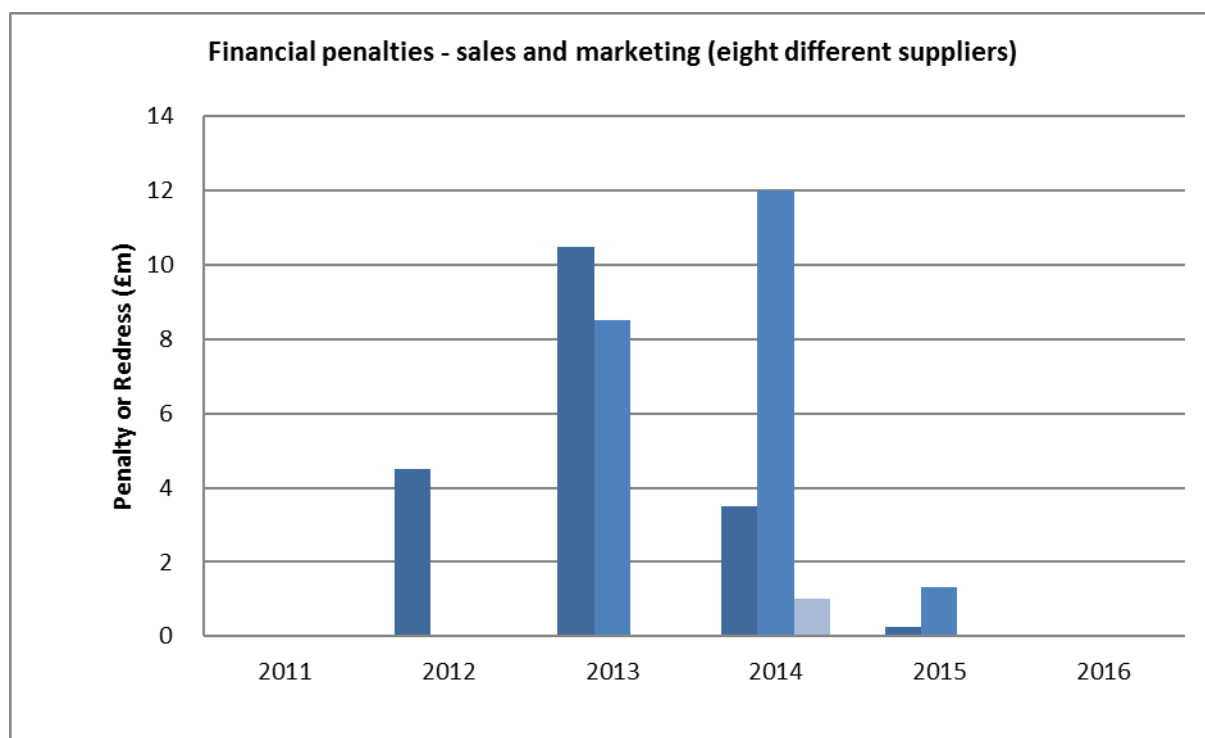
We welcome early engagement and interaction with our licensees, and expect those suppliers who have not been treating customers fairly to proactively assure us that they are addressing the weaknesses in their current approach. We will be pursuing improvements in those that do not.

Our preference is to engage with suppliers successfully at an early stage, rather than to see issues escalate. By coming to us early and working constructively with Ofgem, suppliers can put things right for consumers as quickly as possible.

Ofgem places high importance on suppliers self-reporting compliance issues to us, and we will continue to act proportionately in our approach to enforcement.

Past investigations/cases – financial penalties

Chart 1: Financial penalties relating to eight separate sales and marketing investigations/cases, 2011-2016



This chart relates to outcomes where either the Authority made a finding in relation to sales and marketing, or the company acknowledged that it had mis-sold and agreed to make a redress payment. Details of Ofgem enforcement investigations can be found on the Ofgem website (via the 'Investigations' web-page).³

Alternative action

One past case of mis-selling resulted in an outcome of alternative action. In this matter, the supplier involved self-reported its issues to Ofgem, and undertook an internal investigation to identify its sales representatives who were at fault. The supplier maintained close engagement with Ofgem and took appropriate action swiftly, including identifying affected customers and paying them compensation.

³ Link: <https://www.ofgem.gov.uk/investigations>.

References

Date	Company	Link
May 2012	EDF	Ofgem investigation page
May 2013	SSE	Ofgem investigation page
December 2013	ScottishPower	Ofgem investigation page
February 2014	npower	Ofgem investigation page
July 2014	E.ON	Ofgem investigation page
July 2014	British Gas	Ofgem press release
December 2015	Economy Energy	Ofgem investigation page
December 2015	BES	Ofgem investigation page

