

Enforcement Decision Panel (EDP) - Annual Report 2015-16

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Overview:

This report summarises the activity of the second year of the Enforcement Decision Panel which was established in June 2014 to take enforcement decisions on behalf of the Gas and Electricity Markets Authority.



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Executive Summary

The EDP has had a productive year, covering numerous enforcement cases and contributing to discussions on policy developments.

EDP members, working alongside Ofgem Senior Partners on Settlement Committees, have made decisions in 8 cases, resulting in a total penalty and voluntary consumer redress payments of £52,790,000 being made.

The EDP has widened the potential scope of its work, most notably through the agreement for the EDP to take enforcement decisions under the Competition Act 1998 for the Civil Aviation Authority.

1. About the EDP

- 1.1. This is the second annual report from the EDP. In the reporting period 2015/16, the EDP was chaired by John Swift QC and the other members were Amelia Fletcher, Andrew Long, Elizabeth France, Jonathan May, Robin Callender Smith, Trevor Jones and Stuart McIntosh
- 1.2. The EDP Secretariat was headed by Wendy Watson and assisted by Alison Lee.
- 1.3. The EDP members would like to pay tribute to their colleague Jonathan May who passed away in May. Jonathan had a highly distinguished career, making a great contribution in a number of senior positions across the public sector. We are grateful to have known him and to have benefitted from his positive and tangible contribution to the EDP.
- 1.4. Stuart McIntosh was appointed to the EDP in December 2015.
- 1.5. There have been two changes since last year to the scope of the EDP's role:
 - The Chair of the EDP, or any legally qualified member, acting alone is now responsible for the decision whether or not to proceed with a criminal prosecution. This power has not yet been used.
 - The EDP has been authorised to take enforcement decisions on behalf of the Civil Aviation Authority for any competition cases. This came into force on 22 April 2016.
- 1.6. The Chair of the EDP met the Chair of the Gas and Electricity Market's Authority ("the Authority") several times over the year.
- 1.7. This annual report is required as part of the EDP terms of reference as part of the EDPs accountability to the Authority. The report was discussed with the Authority on 23 June 2016.

2. EDP Case work

Overview

2.1. The EDP has been involved in 8 cases in 2015-16¹. Table 1 gives an overview of the nature of the cases and what follows is a precis of the cases in this year.

Case	Outcome
EE	Settlement: Finding of Breach; £250,000
Utilita	Settlement: Finding of Breach; £560,000
BES	Settlement: Finding of Breach; £980,000
E.ON AMR	Settlement Finding of Breach; £7million (+further £7m if fail to deliver specific targets)
Adret	Settlement: Finding of Breach.
Berangere	Settlement: Finding of Breach; A two year disqualification from participating in capacity auctions was imposed on G15MAT which is the relevant generating unit owned by Berangere.
npower SAP	Settlement: Finding of Breach; £26million
ScottishPower	Settlement: Finding of Breach; £18million

Economy Energy - Misselling

- 2.2. Chair of Settlement Committee – Andrew Long, Authority appointed member of Settlement Committee – Andrew Wright, Committee Assist – Jonathan May.
- 2.3. The Committee granted a settlement mandate which was a total payment of £250,000 and asked the team to negotiate up to the full amount (minus £1 penalty) to be paid in consumer redress. This was paid to the Citizens Advice Energy Best Deal Extra Prepayment Meter project.

¹ The cases included are ones in which the EDP involvement has taken place during this financial year and therefore differ slightly to the list of cases on [the Enforcement Overview 2015/16](#) document which considers the whole lifecycle of a case.

Utilita - Transfer blocking

- 2.4. Chair of Settlement Committee – Amelia Fletcher, Authority appointed member of Settlement Committee – Rachel Fletcher.
- 2.5. The Committee granted a settlement mandate which was a total payment of £560,000 and asked the team to negotiate up to the full amount (less £1 penalty) to be paid in consumer redress, with up to £110,000 to go directly to customers affected and the remaining amount to be paid to the charity StepChange.

BES – Contract terms, SoC, complaints handling

- 2.6. Chair of Settlement Committee – Trevor Jones, Authority appointed member of Settlement Committee – Rachel Fletcher.
- 2.7. The Committee granted a settlement mandate which was a total payment of £980,000² and asked the team to negotiate up to the full amount (less £2 penalty) to be paid in consumer redress. Of this, £311,000 was to be paid in compensation to customers directly affected and the rest to be paid to the charity The Money Advice Trust / Business Debtline to provide debt advice to business customers experiencing difficulties paying their energy bills.

E.ON - Advanced meter roll-out missed deadlines

- 2.8. Chair of Settlement Committee – Elizabeth France, Authority appointed member of Settlement Committee – Rachel Fletcher.
- 2.9. The Committee granted a settlement mandate which was a total payment of £7 million and asked the team to negotiate up to the full amount (less £2 penalty) to be paid in consumer redress. This consumer redress payment went to the Carbon Trust to fund delivery of energy saving audits, energy savings advice and installation of energy efficiency measures to help SMEs save energy. Furthermore, a condition of settlement was that E.ON would pay a further £7 million if it did not achieve an installation target for its outstanding meter points by 2 November 2016.

Berangere and Adret – Capacity Market Rules

- 2.10. Chair of Settlement Committee – Robin Callender Smith, Authority appointed member of Settlement Committee – Andrew Wright

² This figure was subsequently increased to £1,317,379 following a review of compensation payments by BES.

- 2.11. A two year disqualification from participating in capacity auctions was imposed on G15MAT which is the relevant generating unit owned by Berangere.

Npower - Billing, SoC, complaints handling

- 2.12. Chair of Settlement Committee – John Swift, Authority appointed member of Settlement Committee – Rachel Fletcher.
- 2.13. The Committee granted a settlement mandate which was a total payment of £26 million.
- 2.14. The Committee asked the team to negotiate up to the full amount (less £7 penalty) to be paid in consumer redress. This was to go to customers directly affected by the npower companies' failings, and to charitable organisations for the benefit of domestic energy consumers. This redress must be paid to customers by 30 June 2016 and to charitable organisations by 31 July 2016.
- 2.15. Furthermore, the npower companies agreed to meet targets on billing and complaints handling by 30 June 2016. If they fail to achieve these targets, the npower companies will stop all proactive domestic selling until they do so.

Scottish Power - Billing, SoC, complaints handling

- 2.16. Chair of Settlement Committee – John Swift, Authority appointed member of Settlement Committee – Rachel Fletcher, Committee Assist – Stuart McIntosh.
- 2.17. The Committee granted a settlement mandate which was a total payment of £18 million.
- 2.18. Money is being allocated to some vulnerable ScottishPower customers directly affected. The remaining sum of not less than £3million will go to charity.

3. EDP policy work

- 3.1. Members of the EDP have again shared their expertise on some policy issues and have participated in other Ofgem work.
- 3.2. John Swift presented at the Enforcement Conference in June 2015. He gave an overview of the work of the EDP and their approach to decision making and then participated in a question and answer session.
- 3.3. Members of the EDP discussed principles based regulation with a specific focus on enforcement implications which fed into Ofgem's consultation published in December 2015.