



Making a positive difference
for energy consumers

Ofgem:
Enforcement Overview
2015/16

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Headlines from 2015/16

- We completed thirteen cases in this financial year. These investigations applied the principles set out in our new Enforcement Guidelines published in September 2014¹. The average length of a case was less than one year.
- Nearly £43 million was or will be paid out by licensees as a result of these cases. Almost all of that money was paid either as compensation to affected consumers, or voluntary redress payments (funding provided directly to suitable third sector organisations in lieu of financial penalties)².
- During the financial year 2015-16, more than 630,000 consumers benefitted from remediation schemes set up with money following seven investigations completed in 2015-16 and twelve investigations completed in 2014-15. Of those customers, around two thirds received a direct compensation payment while the remaining third benefitted from projects set up by charities and other third sector organisations who received voluntary redress payments.
- We have engaged licensees to help shape our approach to compliance and enforcement. We held our third annual Enforcement Conference where we reflected on some of our recent enforcement decisions and looked ahead to what the regulatory and enforcement environment might look like in coming years. This included providing more information on existing enforcement processes, engaging on our approach to compliance and enforcement in the context of our transition to a greater reliance on principle-based rules and discussing our approach to voluntary redress.
- We have actively considered our evolving approach to compliance across the organisation, including how this may need to evolve and adapt to wider regulatory developments.

Context

Last year we published our first annual Enforcement Overview³ as a means of improving transparency around our enforcement activities. This is our second Enforcement Overview and it covers the financial year April 2015 to March 2016.

We have powers to open investigations under the Regulation on wholesale energy market integrity and transparency (REMIT) but do not usually report the fact that we have used these powers until a finding of breach is made, and therefore details on REMIT are not included here.

¹ <https://www.ofgem.gov.uk/ofgem-publications/89753/enforcementguidelines12september2014publishedversion.pdf>

² In this document, 'voluntary redress payments' refers to payments to suitable third sector organisations agreed as part of settlement, which are distinct from compensation schemes or sums of money paid by companies to those directly affected by the breach. Whether or not a voluntary redress payment is agreed, in all cases the company's priority should be to compensate customers adversely affected by the breach.

³ https://www.ofgem.gov.uk/sites/default/files/docs/2015/03/ofgem_enforcement_overview_2014_15_1.pdf

Investigations opened and other enforcement activities

During the year, we opened seven investigations, which are listed in Annex 1.

Our work was directly aligned with our vision for enforcement to achieve a culture where businesses put energy consumers first and act in line with their obligations. It has also contributed to the delivery of Ofgem's five core Consumer Outcomes: lower bills, reduced environmental damage, improved reliability and safety, better quality of service and wider benefits for society as a whole, including support for those struggling to pay their bills.

Our investigations were undertaken in a number of areas across the wider energy market, in line with our sectoral and competition powers.

As part of Ofgem's responsibilities under the Capacity Market Rules, five of our investigations involved determining whether individual generators had submitted false and misleading information in connection with the first full Capacity Auction in December 2014. All five cases were closed during the financial year.

We also used our Competition Powers by opening one investigation looking at whether some price comparison websites have breached competition law in relation to paid online search advertising (this investigation does not affect consumers' ability to use switching sites to get the best energy deal). This investigation was transferred to the Competition and Markets Authority on 14 June 2016.

We opened an investigation into compliance with Standard Licence Conditions (SLCs) 7A, 14, 14A and 21B, which contain safeguards and obligations related to supply to micro business consumers. The scope of this investigation was expanded to consider compliance with (non-domestic) Standards of Conduct (SoC) and the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 in February 2016. This investigation is still open.

Completed investigations and performance

During the year we completed 13 investigations. These are summarised below, with further details provided in Annex 2.

We closed down a Competition Act 1998 case on administrative priority grounds and sent advisory letters to relevant companies in accordance with the Competition and Markets Authority's practice.

We found one or more breaches in nine of our sectoral investigations. In all nine cases the parties involved accepted the case against them and did not contest the findings or the penalty level. These cases spanned issues such as switching, billing, complaint handling, notification of price increases, misselling and requirements under the Capacity Market Rules.

In one of these nine investigations we agreed, for the first time, to an additional voluntary redress payment being due in the circumstance that a supplier remained in likely non-compliance with an ongoing obligation at the end of an investigation⁴.

For the first time, we concluded an investigation under Ofgem's principles-based domestic Standards of Conduct, which require suppliers to treat domestic customers fairly. We also concluded an investigation under Ofgem's non-domestic Standards of Conduct, which require suppliers to treat micro-business customers fairly when they are billing, contracting with and switching them.

We concluded three investigations into small suppliers. A case looked at Spark's practices in relation to objections, transfers of customers, refunds, billing and complaints handling. Another case related to Economy Energy's compliance with the relevant requirements regarding contractual terms, notification of price increases and marketing of energy to domestic customers. The third case investigated Utilita's compliance with licence obligations in relation to transfer blocking.

We also completed an investigation into E.ON's compliance with SLC 23.6, which applies to unilateral disadvantageous variations of contract (including price increases), and SLC 24.3 which relates to termination fees.

Finally, we completed five investigations in connection with the Capacity Market Rules. In two cases we completed the investigation with a finding of breach, while in the remaining three cases the companies provided information which confirmed that there was no breach.

In addition to all these investigations, we also continued monitoring a provisional order issued to Economy Energy in the previous financial year. In June 2015 we concluded that the remaining provisions were no longer required for the purpose of securing compliance and we revoked the order. The provisional order is no longer in place.

The average length of a case was less than one year. This is partly due to the nature of completed cases but also represents a significant efficiency improvement to our enforcement action (the average length of an investigation concluded during the previous five years was about 27 months).

Financial Year	No. of cases completed	Case length in months		
		Shortest	Longest	Average
2010	2	17	61	39
2011	14	4	30	16
2012	4	17	41	25
2013	7	23	55	34
2014	13	3	51	24
2015	13	3	22	11

⁴ We investigated E.ON's performance during the advanced meter roll out. The investigation secured a voluntary redress payment to a third party in lieu of a financial penalty (less a nominal financial penalty) from the supplier for failing to install advanced meters on time. However, because licensees have an ongoing obligation not to supply electricity to any relevant premises other than through an advanced meter, the supplier also agreed to make a further payment if it failed to achieve an interim target.

Penalties and other remedial activity

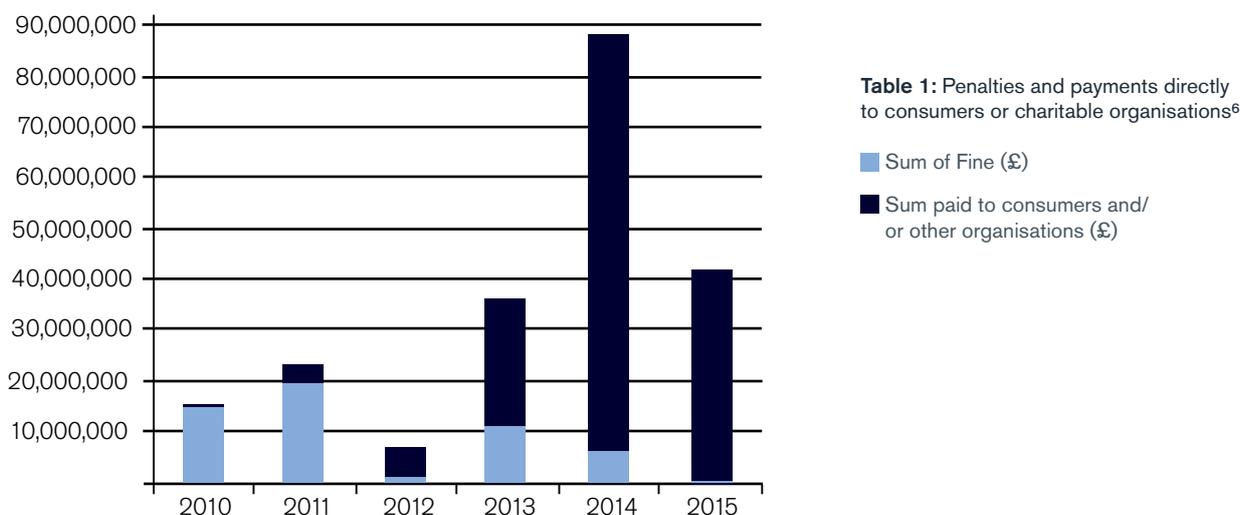
We are committed to making a positive difference for energy consumers and ensuring meaningful consequences for businesses that fail consumers and do not comply with their licence and other legal obligations.

Ofgem actively monitors compliance and takes a proportionate approach to compliance and enforcement action. Where appropriate, we have engaged licensees to address compliance issues through site visits and compliance conversations rather than opening full enforcement cases. This work resulted in a variety of corrective actions, which ensured that licensees remedied potential issues, swiftly putting things right for consumers in the most effective manner and limiting consumer harm.

Through the cases settled in 2015-16, we have secured nearly £43 million from licensees. Almost all of that money was paid either as compensation to affected consumers, or voluntary redress payments to charitable organisations (along with nominal penalties totalling £15⁵). An additional amount of £3 million was secured through alternative action.

Of this £46 million, £26.4 million was or will be made available to compensate directly affected customers (and former customers). Any unclaimed consumer compensation was or will be paid to charitable organisations. The remaining £19.3 million took the form of payments to charities or other third sector organisations in lieu of financial penalties. These were paid to entities such as Citizens Advice Scotland, Citizens Advice England and Wales (includes funding for Citizens Advice Bureau programmes such as Energy Best Deal Extra and Energy Best Deal Extra Prepayment meter project), the Carbon Trust, StepChange and Business Debtline.

In recent years we have increasingly entered into such agreements with suppliers and other regulated persons when settling enforcement investigations. During the four years from 2010-11 to 2013-14, compensation paid directly to affected consumers and voluntary redress payments to third sector organisations in lieu of financial penalties was on average 43.7% of the total penalty value. In 2014-15 the figure rose to 93.2% and this year we effectively secured 100%.



⁵ Settlement agreements typically feature a nominal penalty of £1 for each regulated person under investigation going to the HM Treasury's Consolidated Fund, and a larger redress package comprising compensation paid to affected consumers and/or voluntary payments allocated to suitable recipients to deliver targeted benefits to energy consumers.

⁶ The table refers to financial years and it also includes payments made following alternative action.

Through our focus on direct compensation to impacted consumers we aim to put consumers first by ensuring, where possible, that regulated persons under investigation pay money back to those directly affected by any wrongdoing. Any unclaimed compensation is paid to suitable charitable organisations. We expect all such recipients to use the funds to deliver one or more projects to benefit energy consumers, especially vulnerable consumers.

During the financial year 2015-16, more than 630,000 consumers benefitted from remediation schemes set up with money following seven investigations completed⁷ in 2015-16 (Annex 2) and twelve investigations completed in 2014-15⁸. Of these consumers, about 400,000 have received direct compensation, while more than 200,000 domestic consumers and around 2,500 businesses have benefitted from projects set up by charitable organisations using funding secured through our voluntary consumer redress arrangements.

Charitable projects funded through voluntary redress payments included the delivery of energy efficiency measures for microbusinesses or homes of vulnerable householders, which helped reduce consumption, carbon emissions and the size of energy bills. Through these projects, charities and other third sector organisations also set up programmes to advise domestic consumers and small businesses on energy issues. An example of this support was a charity targeting vulnerable consumers via one-to-one sessions or via campaigns to better inform them about their rights or how to take control of their energy usage.

We monitor these projects to ensure that they deliver the agreed aims set out in the project proposals.

Where appropriate, voluntary payments to charitable organisations have also formed a part of our alternative action work. Perhaps most notably, Ofgem used alternative action to secure a payment of £3 million from National Grid to the fuel poverty charity National Energy Action, because National Grid had failed to meet its target for repairing non-urgent gas escapes on its gas distribution networks.

In July 2015, another piece of alternative action work resulted in us securing free energy for over 1,000 directly affected customers. The customers received free energy until the supplier involved had fully implemented Energy Ombudsman remedies that had previously been agreed for those customers.

Many consumers also benefitted from non-financial remedies following our enforcement work. For example, the investigations we concluded this year into suppliers' switching practice contributed to improving the suppliers' processes and ensuring legitimate switching requests were not prevented.

⁷ We consider a case completed with the publication of the notice of decision to impose a final penalty.

⁸ More details of the investigations closed in financial year 2014-15 can be found in the Enforcement Overview 2014-15 https://www.ofgem.gov.uk/sites/default/files/docs/2015/03/ofgem_enforcement_overview_2014_15_1.pdf

Enforcement priorities, current portfolio and other work

In June 2015 the Authority adopted the following enforcement priorities for 2015-16, with a view to targeting our action where it is needed most. These priorities were:

- 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.

All of the cases we opened during 2015-2016 related to one or more of these priorities.

As at 1 April 2016 there were six live cases: two Competition Act 1998 cases and four sectoral cases in which suppliers allegedly breached supply licence conditions, including the domestic and non-domestic Standards of Conduct, and the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008.

We have been considering whether there are changes that could improve our enforcement tools and ensure they remain effective for securing compliance now and in future. We engaged with DECC on its December 2015 consultation on proposed changes to a range of our enforcement powers.

We have also actively considered our evolving approach to compliance across the organisation. We are working to ensure that our forward approach to compliance continues to be fit-for-purpose in securing positive consumer outcomes across the markets we regulate. In the supply market, our approach to compliance is being considered as part of Ofgem's wider project on the future of retail market regulation, in which we're looking at how to rely more on principles than on detailed rules to regulate the domestic retail supply market⁹.

We published our Guidance on the allocation of voluntary redress payments explaining the current process involved in allocating these payments to suitable charities, trusts and other third sector organisations. We are currently consulting on options to improve our process for allocating voluntary redress payments to make sure that these payments deliver maximum benefit for Great Britain's energy consumers¹⁰.

We like to give stakeholders the opportunity to help shape our enforcement and compliance work. As part of our commitment to sharing good practice to help companies understand their obligations, we held our third annual Enforcement Conference in July 2015. Energy suppliers, network companies, consumer groups and wholesale energy market participants all attended, and we reflected on some of our recent enforcement decisions, considered what we could learn from them, and discussed changes to the regulatory and enforcement environment that might be expected in coming years. We also gathered stakeholder views on policy projects which will have a great impact on our approach to compliance and enforcement activity. Engaging with our stakeholders is crucial in developing and implementing our forward approach.

⁹ https://www.ofgem.gov.uk/sites/default/files/docs/the_future_of_retail_market_regulation.pdf

¹⁰ <https://www.ofgem.gov.uk/publications-and-updates/allocation-voluntary-redress-payments-context-enforcement-cases>.

We will host our next annual Enforcement Conference in September 2016. The event will present lessons learned from our compliance work and enforcement investigations conducted during the last financial year. We will also discuss compliance and enforcement within the context of our work on the future of retail market regulation.

Annex 1 – Cases opened

Case Opening Date	Company	Case Type
2015 May	Alkane Energy UK	Capacity Market Rules
2015 May	GF Power Peaking	Capacity Market Rules
2015 May	Power Balancing Services	Capacity Market Rules
2015 May	BAdret	Capacity Market Rules
2015 May	Berangere	Capacity Market Rules
2015 October	Not Released	Competition Act (Chapter I)
2015 October	British Gas Trading Limited	Transfer blocking, SoC, complaints handling

Please note that the opening of an investigation does not imply that we made any finding(s) about non-compliance.

Annex 2 - Cases closed

Case Decision Date	Company	Case Type	Finding	Fine (£)	Direct compensation and/or payment to charitable organisations (£)	Total
2015 April	Spark Energy	Complaints handling and switching practices	Finding of breach	£1	£ 249,999	£250,000
2015 May	E.ON	Incorrect billing	Finding of breach	£1	£7,749,999	£7,750,000
2015 August	GF Power Peaking	Capacity Market Rules	No breach found	-	-	-
2015 August	Power Balancing Services	Capacity Market Rules	No breach found	-	-	-
2015 November	Utilita Energy	Transfer blocking	Finding of breach	£1	£599,999	£560,000
2015 November	Alkane Energy UK	Capacity Market Rules	No breach found	-	-	-
2015 December	Adret	Capacity Market Rules	Finding of breach	-	-	-
2015 December	Berangere	Capacity Market Rules	Finding of breach	-	-	-
2015 December	Economy Energy	Misselling	Finding of breach	£1	£249,999	£250,000
2015 December	E.ON	Missed deadlines	Finding of breach	£2	£6,999,998	£7,000,000
2015 December	BES	Contract terms, SoC, complaints handling	Finding of breach	£2	£1,317,377	£1,317,379 ¹¹
2015 January	npower	Billing, SoC, Complaints handling	Finding of breach	£7	£25,999,993	£26,000,000
2015	Not released	Competition Act (Chapter 1)	Closed on administrative priority grounds.	-	-	-

¹¹ This is an updated figure following a review of the compensation payments by BES. Consequently, this figure is different to the figure stated in the initial Penalty Notice.

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