



Making a positive difference  
for energy consumers

**Ofgem:**  
Enforcement Overview  
2016/17

# Ofgem: Enforcement Overview 2016/17

## → Foreword

Our vision is a culture where businesses put consumers first and act in line with their obligations. This is required if trust and confidence are to develop in the energy sector. Taking enforcement action, which includes investigating alleged breaches, imposing orders and directions and meaningful penalties<sup>1</sup> where breaches have occurred, is an important tool in building this culture. It incentivises business to put consumers' interests at the heart of their business, acts as a deterrent to poor conduct and ensures redress if consumers are failed.

We are committed to taking enforcement action to achieve these outcomes for consumers. However, it is not the only tool available to us in building a culture of compliance. Indeed, it is also in consumers' interests that we engage with businesses to prevent and resolve promptly less serious issues. We have not included our compliance activity in this report, but have focused on cases where businesses have offered voluntary redress payments to consumers to put right the concerns, known as alternative action.

Our move from prescriptive rules to principles-based regulation in the domestic supply licence lowers the barriers to innovation and places greater onus on energy suppliers to determine how to comply with their obligations and treat consumers fairly. This raises questions about how Ofgem might prioritise enforcement action compared to alternative action and our compliance activities. As such, we committed to revise our Enforcement Guidelines in 2017 to provide further clarity on this matter.

We remain committed to sharing our learnings from our compliance and enforcement action. We published our first lessons learned on face-to-face sales in March 2017 and intend to publish further learnings. We will also hold our fifth Annual Enforcement Conference on 6 September 2017, which will give further opportunities for us to share learnings and discuss our approach to enforcement.

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## ☰ Headlines

- We completed four investigations and four cases involving alternative action<sup>2</sup> this year. The average length of an investigation was 20 months.
- £27,758,000 was, or will be, paid out by licensees because 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)<sup>3</sup>.
- We continue to engage with licensees to help shape our approach to compliance and enforcement. We published our first lessons learned on face-to-face sales in March 2017 and held our fourth Annual Enforcement Conference in September 2016 where we reflected on some of our recent enforcement decisions.
- In order to improve the expertise and transparency in the allocation of voluntary redress payments made by energy companies following an investigation or alternative action, we are procuring an independent service provider for this role. We expect to have made the appointment by midsummer this year.

<sup>1</sup> As per our Chairman's letter of 2014 where we announced our intention to place greater focus on deterrence in our penalties.

<sup>2</sup> Consideration of alternatives to seeking to establish a breach or infringement or other use of our statutory enforcement powers.

<sup>3</sup> 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.

## Context

We published our first annual Enforcement Overview<sup>4</sup> in 2014 as a way to make our enforcement activities more transparent. This is our third Enforcement Overview and it covers the financial year April 2016 to March 2017.

We have powers to open investigations under the regulations on wholesale energy market integrity and transparency (REMIT)<sup>5</sup>, but do not usually report that we have used these powers until a finding of breach is made, so details on REMIT are not included here. We shall be publishing a report later this year about REMIT work undertaken.

## Investigations opened and other enforcement activities

On 31 March 2017, there were seven live cases. Five opened during the relevant period for this report and two ongoing from previous years<sup>6</sup>. Of the seven, there is one Competition Act 1998 case and six 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.

**Table 1 - Cases opened**

Case Opening Date	Company	Allegation
2016 July	<a href="#">SSE</a>	Concerns over arrangements for switching consumers to prepayment meters
2016 July	<a href="#">Extra Energy</a>	Infrequent billing, poor customer service and complaints handling
2016 September	<a href="#">E (Gas and Electricity)</a>	Concerns related to sales and marketing practices
2016 September	<a href="#">Economy Energy</a>	Concerns related to sales and marketing practices
2016 October	<a href="#">Not disclosed</a>	Breach of Competition Act 1998 (Chapter I)

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

<sup>4</sup> <https://www.ofgem.gov.uk/publications-and-updates/enforcement-overview-201415>;  
<https://www.ofgem.gov.uk/publications-and-updates/enforcement-overview-201516>

<sup>5</sup> Electricity and Gas (Market Integrity and Transparency) (Enforcement etc) Regulations 2013

<sup>6</sup> These are an [investigation into British Gas Trading Limited](#) and its compliance with its obligations under the gas and electricity supply licences (Standard Licence Conditions 7A, 7B, 14A and 21B and Complaints Handling Regulations 3(2), 7(1)(a), 7(1)(b)); and an [investigation into Npower's compliance](#) with its obligations under the electricity supply licence (Standard Licence Condition 12).

In deciding whether to open an investigation, we consider the evidence of breach, the likelihood and seriousness of the harm caused, the conduct of the company and the need to take enforcement action to deter such conduct in future. As such, we consider enforcement action is an important tool (but not the only tool) to promote a culture where businesses put energy consumers first and act in line with their obligations.

Our current investigations contribute to delivering two of Ofgem's five core consumer outcomes: better quality of service and wider benefits for society as a whole, including support for those struggling to pay their bills.

The investigations also broadly align with the enforcement priorities the Authority set for 2016-17, which include:

- 1 Ensuring companies protect and support consumers in vulnerable circumstances;
  - 2 Taking action where a company fails to treat their domestic and microbusiness customers fairly through the Standards of Conduct; and
  - 3 Taking action where company behaviour is likely to stand in the way of consumer choice or trust in the market.
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## Completed investigations and performance

During the year, we completed four investigations<sup>7</sup> and these are summarised below in Table 2.

**Table 2 - Cases closed**

Case Decision Date	Company	Concern	Legal Requirement	Finding	Fine (£)	Direct compensation and/or payment to charitable organisations (£)	Total
2016 June	<a href="#">Scottish Power</a>	Billing, customer service and complaints handling issues	Standard Licence Conditions 25C, 27 of their supply licences; and regulations 3, 4, 5 and 7 of the Complaints Handling Regulations <sup>8</sup>	Finding of breach	£1.00	£18,000,000 (less £1.00)	£18,000,000
2016 June	<a href="#">Not disclosed</a>	Whether some price comparison websites breached competition law in relation to paid online search advertising	Competition Act 1998 (Chapter I)	Transferred to Competition & Markets Authority	-	-	-
2016 November	<a href="#">SSE</a>	Alleged abuse of dominant position in relation to electricity connections	Competition Act 1998 (Chapter II)	The Authority formally accepted binding commitments. No decision on infringement.	-	-	-
2017 January	<a href="#">British Gas</a>	Failure to take all reasonable steps to install advanced meters by the deadline	Standard Licence Condition 12 (of the Electricity Supply Licence)	Finding of breach	£1.00	£4,500,000 (less £1.00)	£4,500,000
							£22,500,000

<sup>7</sup> In addition to the 4 investigations listed here, we also issued a Notice of Intention to impose a financial penalty on [British Gas](#), following an investigation into its compliance with its obligations under the gas and electricity supply licences (Standard Licence Conditions 7A, 7B, 14A and 21B and Complaints Handling Regulations 3(2), 7(1)(a), 7(1)(b)). Table 2 above - cases closed - shows only the cases completed where the final Notice of Decision has been issued.

<sup>8</sup>

The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008

Following our investigations into infrequent billing and poor complaint handling by ScottishPower and failure to take all reasonable steps to install advanced meters by British Gas, the parties accepted the case against them and did not contest the findings or the penalty level.

The investigation into an alleged abuse of dominance by SSE for failing to provide competitors with information to connect to its networks was closed when the party provided commitments to improve its processes for companies connecting to its distribution network.

The remaining investigation used our competition powers to look at whether some price comparison websites had breached competition law in relation to paid online searches. This investigation was transferred to the Competition and Markets Authority on 14 June 2016 and has since been closed.

The average case length of these closed cases was 20 months. Although longer than the 2015/16 year's average length, this is still less time taken to complete cases compared to previous years. The average length of an investigation concluded during the previous five years was about 27 months. The detail is shown below in Table 3.

**Table 3 - Case length**

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
2016	4	9	28	20

## Penalties and other remedial activity

We are committed to making a positive difference for energy consumers and making sure that businesses who fail consumers face the consequences.

Ofgem actively monitors compliance and takes a proportionate approach to compliance and enforcement action. In many instances, we have addressed compliance problems directly with licensees by visiting and talking to them rather than opening enforcement investigations. The licensees took corrective actions to solve problems, swiftly putting things right for consumers and limiting harm in the most effective way.

### Alternative action

We also decided not to open an investigation in four cases where alternative action was progressed and secured remedies, including redress. These are summarised in Table 4 below.

**Table 4 - Alternative actions closed**

Case Decision Date	Company	Concern	Direct compensation and/or payment to charitable organisations (£)	Total
2016 September	<a href="#">E.ON</a>	Failure to pay compensation to customers following missed appointments, as required by the Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015	£3,100,000	£3,100,000
2016 October	<a href="#">Co-operative Energy</a>	New IT systems causing issues around frequency of billing, customer service and complaints handling	£1,800,000	£1,800,000
2016 December	<a href="#">OVO</a>	Failure to pay compensation to customers following missed appointments, as required by the Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015	£58,000	£58,000
2017 March	<a href="#">Western Power Distribution</a>	Error in charging methodology for network access (Extra High Voltage Distribution Charging Methodology - EDCM)	£300,000	£300,000
				£5,258,000

Through the enforcement cases and alternative action concluded in 2016-17, we have secured £27,758,000 from licensees. Almost all of that money has been or will be paid either as compensation to affected consumers, or voluntary redress payments to charitable organisations<sup>9</sup>.

Of the £27,758,000 total, £18,000,000 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 £9,758,000 took the form of payments to charities or other third sector organisations in lieu of financial penalties. These were paid to bodies such as the Carbon Trust to help businesses save energy, and to customer-facing charities including National Energy Action and Energy Action Scotland, working in partnership with Macmillan Cancer Support and with projects like 'Heat Heroes'; and the charity Step Change which helps indebted consumers. The detail is set out in Table 5 below.

<sup>9</sup> Settlement agreements typically feature a nominal penalty of £1 for each regulated person under investigation going to HM Treasury's Consolidated Fund, and a larger voluntary payment package comprising compensation paid to affected consumers and/or redress payments allocated to suitable recipients to deliver targeted benefits to energy consumers.

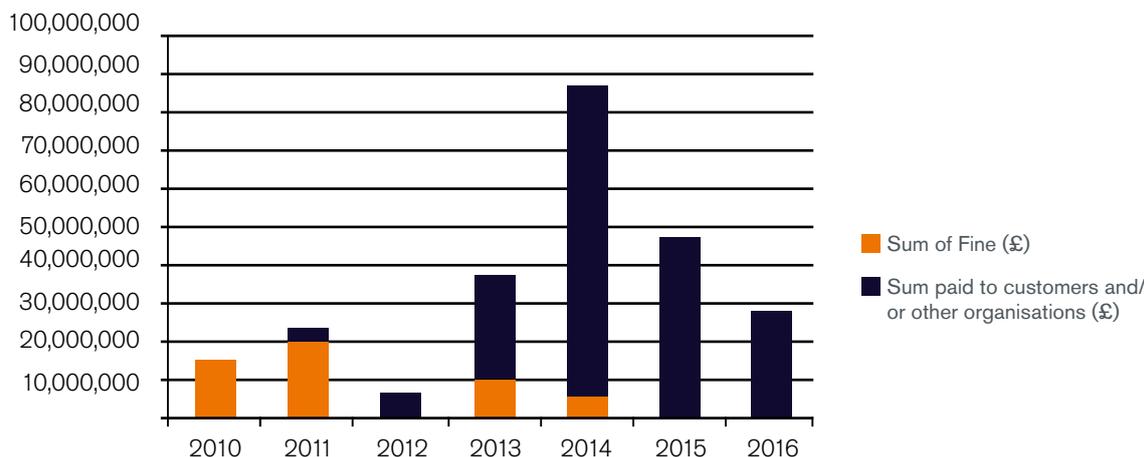
**Table 5 - Compensation to customers and redress to charitable organisations**

Date matter concluded	Company	Investigation or alternative action	Compensation to directly affected customers (£)	Redress payment to charitable organisation (£)	Name of charitable organisation	Total (£)
2016 June	Scottish Power	Investigation	15,000,000	3,000,000	National Energy Action and Energy Action Scotland (including McMillan)	18,000,000
2016 September	E.ON	Alternative action	1,200,000	1,900,000	National Energy Action (including Heat Heroes)	3,100,000
2016 October	Co-Op Energy	Alternative action	1,800,000	N/A	-	1,800,000
2016 December	OVO	Alternative action	-	58,000	Step Change	58,000
2017 January	British Gas	Investigation	-	4,500,000	The Carbon Trust	4,500,000
2017 March	Western Power Distribution	Alternative action	-	300,000	The Centre for Sustainable Energy and the Energy Savings Trust	300,000
<b>Total</b>			<b>18,000,000</b>	<b>9,758,000</b>		<b>27,758,000</b>

During the four years from 2010 to 2014, compensation paid directly to affected customers 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 over the last two years we secured close to 100%<sup>10</sup>. The detail is shown in the graph below (Table 6).

<sup>10</sup> 100%, minus the nominal penalties of £1 levied against licensees when they have agreed to make voluntary redress payments.

**Table 6- Penalties and payments directly to customers or charitable organisations<sup>11</sup>**



By focusing on direct compensation to affected customers, we ensure, if we can, that those 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.

Charitable projects funded through voluntary redress payments included delivering energy efficiency measures for businesses or homes of vulnerable householders, which helped reduce consumption, carbon emissions and the size of energy bills. Charities and other third sector organisations also set up programmes to advise domestic consumers and businesses on energy matters. For example, a charity targeted vulnerable consumers via both one-to-one sessions and more general campaigns to inform them about their rights and how to take control of their energy usage.

We monitor these projects to ensure that they deliver the agreed aims.

We published our guidance on the allocation of voluntary redress payments explaining the current process for allocating them to suitable charities, trusts and other third sector organisations<sup>12</sup>. After consulting on options to promote greater transparency and expertise in allocating voluntary redress payments to charities, we are in the process of procuring an independent service provider to allocate and administer future voluntary redress payments. The service provider will decide the allocation of voluntary redress money that delivers positive long-term benefits to energy consumers. We will announce the service provider we have appointed by midsummer.

<sup>11</sup> The table refers to financial years and it includes payments made following alternative action.

<sup>12</sup> <https://www.ofgem.gov.uk/publications-and-updates/open-letter-guidance-allocation-voluntary-redress-payments>. As explained in the guidance, '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.



## Updating the regulatory framework and our approach to enforcement

We continue to develop our approach to ensure that compliance and enforcement continues to be fit-for-purpose and proportionate in securing positive consumer outcomes across the markets we regulate.

An important part of this is sharing the lessons from our compliance exercises and enforcement investigations to help companies understand what we expect. As such, in March 2017, we published our first 'lessons learned' document based on our experience of issues with face-to-face energy selling.

We also held our fourth annual Enforcement Conference in September 2016 where we presented on 'lessons learned' for energy companies from some of our recent enforcement decisions. In particular, we focused on Ofgem's Standards of Conduct, fair treatment and effective communication with customers and the importance of getting the basics right. We discussed the changes resulting from the enforcement review<sup>13</sup>, and information on the workings of settlement committees. We gathered stakeholder views on our current work and approach to compliance and future retail regulation. We also looked at improving regulation for vulnerable consumers in a discussion led by Citizens Advice.

This year also saw us remove some of the prescriptive requirements in the domestic supply licence and place greater reliance on 'principles-based' rules, such as the requirement to treat consumers fairly as set out in the Standards of Conduct. This move is designed to facilitate innovation and improve protection for consumers in an evolving market by placing a greater onus on suppliers to deliver positive consumer outcomes.

We published our decision in April 2017 to amend the sales and marketing licence condition (SLC 25) and introduce five new principles in this area. We also consulted on revising the Standards of Conduct in June 2017, which proposed a new vulnerability principle and the removal of the requirement for us to prove that a company failed to take 'all reasonable steps' in order to establish a breach of the consumer principles. We are currently reviewing the next phase of licence conditions relating to customer communications.

We will continue to adapt our methods and interventions, including alternative actions. We will also continue to work with BEIS on improving our enforcement tools to ensure they remain effective in securing compliance.

<sup>13</sup> Review of the enforcement function to develop a clear strategic framework for prioritising cases and improve efficiency, transparency and fairness of our activities.

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