Enforcement and Compliance in a Changing World

Enforcement & Compliance Conference 2017
Welcome

Martin Crouch
Senior Partner, Improving Regulation, Ofgem
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<tr>
<th>Time</th>
<th>Session</th>
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<tr>
<td>10:00</td>
<td>Welcome</td>
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<tr>
<td>10:10</td>
<td>Annual update: Lessons from Ofgem’s compliance and enforcement activity</td>
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<td>11:20</td>
<td>Refreshments and networking</td>
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<td>11:45</td>
<td>How does Ofgem enforcement compare with other regulated sectors?</td>
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<tr>
<td>12:10</td>
<td>Panel Discussion&lt;br&gt;Putting consumers first: achieving best practice in the energy sector</td>
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<tr>
<td>13:10</td>
<td>Lunch</td>
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<tr>
<td>14:10</td>
<td>Ofgem’s future compliance and enforcement approach</td>
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<tr>
<td>14:30</td>
<td>Table discussions: Ofgem’s future compliance and enforcement approach</td>
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<td>15:10</td>
<td>Closing remarks</td>
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Annual update: lessons learned from Ofgem’s compliance and enforcement activity

James Waugh
Associate Partner, Enforcement

Dr Stephen Bass
Head of Compliance, Consumers and Competition

Tom Corcut
Head of Market Intelligence and Oversight, Energy Systems
What we will cover

1. Update on enforcement cases
2. Lessons learned from enforcement cases
3. Lessons learned from compliance activity
4. REMIT Investigation activity
5. Questions

Important caveat

These are intended as general ‘learning points’ from our enforcement & compliance work and do not apply to any specific investigation or company.
A number of investigations have been opened in the last year.

<table>
<thead>
<tr>
<th>Investigation</th>
<th>Opening Date</th>
<th>Concern</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Gas</td>
<td>2017 August</td>
<td>Inaccurate T&amp;C provided to customers relating to termination fees</td>
</tr>
<tr>
<td>Not disclosed</td>
<td>2017 August</td>
<td>Abuse of a dominant position</td>
</tr>
<tr>
<td>Not disclosed</td>
<td>2016 October</td>
<td>Anti-competitive agreements and concerted practices</td>
</tr>
<tr>
<td>Economy Energy</td>
<td>2016 September</td>
<td>Sales and marketing practices</td>
</tr>
<tr>
<td>E (Gas and Electricity)</td>
<td>2016 September</td>
<td>Sales and marketing practices</td>
</tr>
<tr>
<td>Extra Energy</td>
<td>2016 July</td>
<td>Infrequent billing, poor customer service and complaints handling</td>
</tr>
<tr>
<td>SSE</td>
<td>2016 July</td>
<td>Arrangements for switching customers to prepayment meters</td>
</tr>
</tbody>
</table>

... into similar themes of consumer service related to billing and sales & marketing
Enforcement investigations completed
September 2016 - present

<table>
<thead>
<tr>
<th>Investigation</th>
<th>Decision date</th>
<th>Outcome</th>
<th>Case details / concern</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Gas</td>
<td>2017 July</td>
<td>Alternative action</td>
<td>Failure to pay compensation to customers following missed appointments</td>
</tr>
<tr>
<td>British Gas</td>
<td>2017 June</td>
<td>Penalty</td>
<td>Poor billing &amp; customer service</td>
</tr>
<tr>
<td>Western Power</td>
<td>2017 March</td>
<td>Alternative action</td>
<td>Error in charging methodology for network access</td>
</tr>
<tr>
<td>Distribution</td>
<td></td>
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<tr>
<td>British Gas</td>
<td>2017 January</td>
<td>Penalty</td>
<td>Failing to install advanced meters</td>
</tr>
<tr>
<td>SSE</td>
<td>2016 November</td>
<td>Commitments</td>
<td>Non-discriminatory access to third party connection providers</td>
</tr>
<tr>
<td>OVO</td>
<td>2016 December</td>
<td>Alternative action</td>
<td>Failure to pay compensation to customers following missed appointments</td>
</tr>
<tr>
<td>Co-operative energy</td>
<td>2016 October</td>
<td>Alternative action</td>
<td>IT systems causing delays in billing, customer service and complaints handling</td>
</tr>
<tr>
<td>E.ON</td>
<td>2016 September</td>
<td>Alternative action</td>
<td>Failure to pay compensation to customers following missed appointments</td>
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All alternative action cases resulted in direct compensation and/or payment to charitable organisations.
Key themes - enforcement practice

- Enforcement under Standards of Conduct continues (BG ‘Slingshot’, Extra)
- Cases beginning to come through under the 2014 Penalties Policy (BG ‘Slingshot’)
- Active Competition Act 1998 enforcement (two cases closed, two cases open)
- Use of alternative action, where appropriate (see preceding slide)
- Getting the basics right around billing, complaints handling, and sales remains as important as ever (see next slide)
Key lessons learned – Getting the basics right

1. Billing (SLC 25C & SLC 21B)
   - Ensure systems and processes are in place to allow bills to be sent on time
   - When implementing new systems, take steps to prevent issues and mitigate risks of disruption
   - Identify and respond to issues quickly, taking appropriate action to resolve

2. Complaints handling (SLC 25C & CHSR)
   - Be easily contactable
   - Identify and record complaints consistently
   - Resolve complaints in a timely and efficient manner
   - Endeavour to gain permission from the customer to close a complaint

3. Sales and marketing activities (SLC 25)
   - Appropriate selection, training, monitoring and auditing of staff
   - Supervision of third party agents to ensure the above
   - Responding quickly when problems occur
   - See also: https://www.ofgem.gov.uk/publications-and-updates/lessons-learned-sales-and-marketing
Compliance

Dr Stephen Bass
Head of Compliance, Consumers and Competition

Annual update: lessons learned from Ofgem’s compliance and enforcement activity
We’ve addressed many issues through compliance this year...

**Compliance work included:**

- Objection windows
- Payment methods & difficulty
- Exit fees
- Closed Account Balances
- Dead tariffs
- Call waiting times
- Tariff information & comparisons
- Change of tenancy
- Confidence code
- Guaranteed Standards

**Engaging new suppliers**

**Website requirements**

- Sales and marketing
- Renewal letters
- Smart PPM switching

**Benefits of this work:**

- Helping suppliers transition
- Quickly spotting concerns
- More proportionate action and engagement
- Preventing harm
- Improving overall standards of performance
- Prompt feedback on performance

...to deliver a proportionate approach and minimise consumer detriment quickly.

We’ll cover four important areas of work today.
We expect that:
- consumers should be able to switch suppliers **reliably and quickly**
- suppliers **do not prevent a switch without good reason**
- Suppliers communicate correctly these fundamental consumer protections

Suppliers cannot charge exit fees for switches within the 49-day ‘switching window’ before a fixed term contract expires. They must contact consumers between 42-49 days before a fixed deal ends.

- New enforcement case on exit fees as well as compliance discussions.
- Misleading information on exit fees could deter customers from switching.
- All customer messaging (incl. in letters and in call centre scripts) must be accurate.

**Being able to exit a fixed term contract fee-free during the Switching Window is a fundamental protection.**
• Some suppliers are not complying fully with website information requirements.

• Ofgem is engaging, particularly with new suppliers, on this.

• Suppliers are least compliant with the following:

1. 31B) Tariff Information Label – should be easily accessible.

2. 11) Complaints handling results

3. 13) Arrangements for site access – missing information on identifying agents

4. 41) Domestic installation code (smart meter)

Website information is a vital customer communication tool and there are mandatory requirements.
Getting fundamental consumer protections right
Guaranteed Standards

Lessons learned
• We remain concerned about communications between suppliers and third party contractors.
• Supplier performance varies – we are concerned about long-term poor performance

Next steps
• Although some suppliers publish information about their performance we are working with Citizens Advice to publish comparative information.
• We will continue our focus on communications between suppliers and third parties.
• We are looking to strengthen the reporting regime.

Keeping appointments, fixing faulty meters and reconnecting supplies quickly are not optional extras.
Getting fundamental consumer protections right
Lessons from new supplier engagement

**Staff and IT systems**
Essential to have the right people, processes and IT systems in place from the start

**Sales and marketing**
Sales staff/representatives training and remuneration, as well as senior management oversight are important to get right

**Customer base growth**
Need to have enough call centre staff to handle customer interactions

**Customer communications**
Some are not fully aware of website information requirements

**Reporting**
Lack of understanding of reporting requirements to Ofgem and Citizens Advice

Ofgem will continue engagement with new entrants and increase signposting of key information
Expectations

Engage with us early

Let us know *your plans* for putting things right quickly

Be *responsive* to feedback loops

Put the needs of customers at the heart of your business

We’ll be *proportionate and transparent*

We’ll work to *improve regulatory clarity*

We’ll help you *learn from our compliance activity*

We’ll *improve our engagement* with you and *continue being responsive* to feedback
REMIT

Tom Corcut
Head of Market Intelligence and Oversight, Energy Systems

Annual update: lessons learned from Ofgem’s compliance and enforcement activity
Since 2013 Ofgem has been monitoring for and investigating potential breaches of the Regulation on Energy Market Integrity and Transparency (REMIT).

**Content:**

1. Key elements of REMIT
2. Our monitoring process
3. Monitoring Statistics
4. Investigation activity
5. Investigation into NGET
6. Compliance activity
Key elements of REMIT

Prohibition of insider trading and of market manipulation (market abuse)

Obligation on market participants to register with their competent National Regulatory Agency
- To date, Ofgem has registered over 1,200 market participants

Obligation on market participants to report wholesale energy market transactions to ACER and to publish inside information
- Transactions data held in EU-wide database

Obligation on firms professionally arranging transactions to report suspicious transactions
- Regular engagement with PPATs to ensure compliance with reporting requirements

Ofgem monitors, investigates and enforces against breaches of REMIT in GB
- Close working relationships with ACER, other NRAs and FCA.
REMIT monitoring process

Stage 1 – Triage

Stage 2 – Case Review

Stage 3 – Investigation

Compliance

Notifications from PPATs

ACER and other external notifications

Internal Monitoring

ALERTS
As we have developed our understanding of market abuse and monitoring processes over time we have seen the number of alerts raised internally falling over the years, while maintaining the capability to respond to issues of particular concern.

By reducing false positives we are able to better spend resource on higher quality analysis of events which cause concern.

We have just sublicensed the SMARTS surveillance software which will increase our ability to analyse alerts and increases our ability to raise internal alerts.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of alerts</th>
<th>Internal alerts</th>
<th>STRs from PPATs</th>
<th>Alerts from third parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>74</td>
<td>74</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2014</td>
<td>230</td>
<td>188</td>
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<tr>
<td>2015</td>
<td>163</td>
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<tr>
<td>2016</td>
<td>105</td>
<td>57</td>
<td>8</td>
<td>40</td>
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<tr>
<td>2017 to date</td>
<td>47</td>
<td>14</td>
<td>N/A</td>
<td>33</td>
</tr>
</tbody>
</table>
REMIT Investigation activity

- Investigations opened according to our prioritisation criteria

- Broad coverage of alleged breaches in investigations

- Investigations complex - regime yet to be fully tested and we are learning all the time.

- No formal finding yet.

- But public statement about investigation into NGET

<table>
<thead>
<tr>
<th>Year</th>
<th>Investigations opened</th>
<th>Investigations closed</th>
<th>Total open investigations at year end</th>
</tr>
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<tbody>
<tr>
<td>2013</td>
<td>1 –</td>
<td>1</td>
<td>1</td>
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<tr>
<td>2014</td>
<td>6</td>
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<tr>
<td>2015</td>
<td>3</td>
<td>6</td>
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</tr>
<tr>
<td>2016</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>2017 to date</td>
<td>NA</td>
<td>1</td>
<td>NA</td>
</tr>
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</table>
Investigation into NGET

- In July we published a statement that we opened an investigation into National Grid Electricity Transmission (NGET).

- NGET were publishing de-rated margin data on their website which had been calculated incorrectly - up to 2GW of supply omitted from Margins.

- Deemed this information could be considered false or misleading information.

- Whilst unintentional, intent is not required for a breach of REMIT.

- We found clear evidence of a breach but deemed the materiality to be low; the investigation was closed on administrative priority grounds.

- Intent was raised as a discussion issue by legal observers.
Monitoring s work has resulted in significant compliance activity and engagement with Market participants. As a result we have seen:

- Significant improvement in in the timeliness of publishing outage and other relevant information

- The Implementation of effective controls or processes to identify and prevent unintentional behaviour (for example ‘fat-finger’ errors which could be considered manipulative in certain circumstances.

Marked difference between gas and electricity. Electricity appears better at publishing information in a timely manner.

Market participants’ adherence to REMIT has noticeably improved as a result of our compliance work.

We believe this has in itself made the market much more transparent.
Questions?
Refreshments and networking

Please reconvene at 11:45
Lessons from other regulators

The Enforcement Decisions Panel – Some comparisons with other regulators, a personal view

Andrew Long
Enforcement Decision Panel Member at Ofgem
1. Introduction to the EDP
2. The Pensions Regulator
3. Financial Conduct Authority
4. Ofgem’s EDP
5. ‘Credible deterrence’
6. Key regulatory phrases
7. Record amounts
8. EDP and contested cases
9. Settlement
10. Questions
Established 2014

‘Dedicated specialists’

‘Separation of investigation from decision making’

Contested cases

Settlement committees
• Pensions Act 2004 s9, s10 and Schedule 2

• The Regulator *must* establish a Determinations Panel

• Separation provisions including DP members selected by DP Chair (and can’t be TPR employees)

• Reserved regulatory functions exercisable only by the Panel
• Regulatory Decisions Committee for most key disciplinary decisions (and also authorisation and supervision decisions)

• s395 Financial Services and Markets Act 2000

• Must be by a procedure involving at least one person not directly involved in establishing the evidence

• RDC is voluntary way of complying with s395
Ofgem’s EDP

- No statutory requirement to establish EDP
- Voluntary act to do so
‘Credible deterrence’

- Ofgem
- Financial Conduct Authority
- Solicitors Regulation Authority
Some other key regulatory phrases

- ‘Educate, enable and enforce’ – (The Pensions Regulator)

- ‘Not to punish, but to protect the public interest’ (Financial Reporting Council)

- ‘Punish and/or deter’ (Environment Agency)

- ‘Maintain the reputation of the profession’ (regulators of doctors, dentist, solicitors)
Some record amounts

- £200m+ Financial Conduct Authority
- Pension Regulator funding decisions
- £20m+ Ofwat
- £20m+ Ofcom
- £20m+ Ofgem
- £5m+ Financial Reporting Council
- £100,000+ Solicitors Disciplinary Tribunal
EDP and contested cases

- None so far!
Settlement – other regulators compared to EDP

- FCA experience ‘firms settle, individuals fight’
- FCA RDC no involvement in settlement (but cf past and future)
- TPR Determinations Panel no involvement in settlement
- Ofgem Settlement Committees (two EDP members, one of whom chairs, plus one executive)
- Ofgem Settlement Committees – sets settlement mandate figure, but there must be an admission of breach
- Submissions to the Clarke review for Financial Reporting Council – more structure to settlement along FCA/Ofgem lines?
- Ofgem Settlement Committees – working well/producing settled outcomes
Questions?
Putting consumers first: Achieving best practice in the energy sector

Chair: Pamela Taylor
Partner, Enforcement and Compliance, Ofgem

Jo Upward
Vice President, The Institute of Customer Service

Gillian Cooper
Head of Retail Energy Markets, Citizens Advice

Patrick New
Managing Director of Retail, Ecotricity
Jo Upward
Vice President, The Institute of Customer Service

Putting consumers first: Achieving best practice in the energy sector
Gillian Cooper
Head of Retail Energy Markets, Citizens Advice

Putting consumers first: Achieving best practice in the energy sector
Putting consumers first: achieving best practice in the energy sector
About Citizens Advice

Citizens Advice and Citizens Advice Scotland represent consumers across essential regulated markets. We are the statutory consumer advocate for energy and postal services in Great Britain and for water in Scotland. We use compelling evidence and expert analysis to put consumer interests at the heart of policy-making and market behaviour. We have a number of responsibilities, including unique powers to require private and public bodies to disclose information.

We tackle issues that matter to consumers, working with people and a range of different organisations to champion creative solutions that make a difference to consumers’ lives.
How we work: our role in the energy sector

The Citizens Advice service:

- Provides energy consumers with accessible advice and specialist support through our core channels of web, telephone and face to face
- Publishes information enabling energy consumers to make decisions about their supply and access additional support services
- Advocates on behalf of energy consumers to ensure regulation reflects how they actually think and behave
Good practice guides

- [Supporting consumers with restricted meters](#) (July 2017)
- [Smart support: support for vulnerable consumers in the smart meter rollout](#) (March 2017)
- [How energy suppliers can signpost and refer vulnerable consumers to the right source of help](#) (January 2017)
- [Staying connected - helping and supporting consumers who have self disconnected](#) (April 2016)
Citizens Advice star rating

Our consultation on plans to expand and enhance the star rating closes on 8 September.

Q2 2017-18 release is scheduled for publication on 19 September.
Case study: keeping in touch

60% open after 6pm and 57% open on Saturdays

41% offer ringbacks

19% offer webchat

Percentage of suppliers on the Citizens Advice comparison tool using social media:

- Facebook: 75%
- Twitter: 75%
- LinkedIn: 25%
- YouTube: 25%
- Google+: 15%
- Instagram: 5%
Case study: consumer focussed complaints handling process

- Respects my individual needs
- Process that is easy to access and navigate
- Company representatives empowered to resolve problems
Case study: supporting consumers in vulnerable situations

- Providing temporary credit for PPM users
- Building effective referral relationships
- Developing a holistic approach
Conclusions

- Wider challenges facing the industry aren’t going away anytime soon
- Developing consumer centric policies and processes must be a priority for new entrants and existing suppliers
- There’s a lot of good practice out there which companies can learn from
Patrick New
Managing Director of Retail, Ecotricity

Putting consumers first: Achieving best practice in the energy sector
What are the opportunities and challenges for those operating in the energy sector?

Patrick New,
Managing Director, Retail
Patrick’s Top Ten Tips
1

We’re all individuals
Energy – what could possibly be more interesting?
Technology – friend or foe?
Vulnerability – it could be you
Communication – it’s a 2 way thing
The Smart game changer
Keep it Simple
Being brilliant isn’t easy
9

Don’t just measure it – do something!
10

Value your values

ecotricity
Questions for the panel
Lunch

Please reconvene at 14:10
Ofgem’s future compliance and enforcement approach

Pamela Taylor
Partner, Enforcement

Anthony Pygram
Partner, Consumers and Competition
Ofgem’s future compliance and enforcement approach

Pamela Taylor
Partner, Enforcement

Anthony Pygram
Partner, Consumers and Competition
During this session we will present:

1. Our vision and guiding principles for enforcement and retail market compliance
2. Changes to our approach to compliance in the retail market
3. Expectations on self-reporting when companies become aware that something has gone wrong
4. Our streamlined new approach for prioritising enforcement cases and when alternative action might be appropriate
5. How we organise ourselves to deliver the new approach
6. Questions for discussion
Our vision & objectives remain the same but we have updated our approach.

**Vision**

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

**& Strategic Objectives**

1. Enforcement action delivers credible deterrence to businesses.
2. Businesses face meaningful consequences for failing consumers.
3. Achieve the greatest impact by targeting our enforcement resources.

**New Compliance Approach**

1. Proactively monitoring and engaging with companies.

**Effective Enforcement**

2. By streamlining case prioritisation criteria.
Our compliance approach

What has changed?

1. Closer engagement with Citizens Advice and the Ombudsman
2. Strengthened supplier engagement
3. Focus on prioritising work based on harm to good consumer outcomes.
4. Increased efforts to be more transparent on our compliance activity

‘Key lessons’ bulletin

Will focus on:
key lessons from compliance activity

E.g. publicising issues that are high detriment; involve multiple suppliers; lack of clear guidance and we consider guidance is necessary.
We expect companies to self-report when things go wrong...

Self-reporting should be prompt, accurate and comprehensive with plans to put things right.

Putting things right means compliance and compensating consumers for any harm caused (not just financial).

May result in sectoral case not being prioritised. Not appropriate if the breach is potentially serious.

An important mitigating factor when determining penalty for any investigations that are opened.

...and put things right quickly, such conduct will be taken into account.
A number of actions can be taken to ensure compliance...

**Approach**

- Compliance Alert
- Enhanced Engagement
- Enhanced Monitoring
- Require undertakings
- Case Opening

**Purpose**

- To request company to review an issue & address it *
- Company receives greater scrutiny via engagement channels
- Note to company requiring monitoring / independent audit
- Request company commits to certain actions** by deadlines
- Notify company of our intention to open an enforcement investigation***

* Does not preclude taking action if issue reoccurs  
**Actions could include putting things right incl. consumer redress  
*** Undertakings may be accepted as part of investigation for ongoing breach

...in addition or as an alternative to opening an investigation.
Alternative action may only address concerns satisfactorily if...

- Self reporting (where relevant) was prompt, accurate and comprehensive.
- The proposed action is a proportionate, targeted response to the concern.
- The concerns can be properly addressed via the alternative action under consideration.
- The company has provided robust assurances / evidence that the breach will not be repeated.
- We are confident the company is willing and able to put things right quickly.
- The proposed action meets our vision and strategic objectives.

... the action is consistent with our vision and strategic objectives.
A streamlined approach to prioritise case opening

Revised Enforcement Guidelines set out our approach...

Do we have the power to take action and are we best placed to act?

Is it a priority matter for us due to the apparent seriousness of the potential breach?

Is it a priority matter for us, due to the conduct of the company in question?

both need not apply

YES   OR   YES

Case Opening

...to be more transparent on how we will meet our strategic objectives
Setting ourselves up to deliver compliance and enforcement

Enforcement Oversight Board (EOB)

- Comprises SCS from across Ofgem
- Decides whether or not to open a case & on payments (beyond direct compensation) in alternative action
- Monitors case progress

ENFORCEMENT TEAM

- Responsible for all investigations (except REMIT)

REMIT CASE TEAM

Domestic Consumers - Compliance

Non-Domestic Consumers - Compliance

Other teams responsible for compliance across Ofgem (incl. E-serve)

Direct interface Referrals Regular background reports
1. Our objectives are to ensure that enforcement is a credible deterrence, companies face meaningful consequences for failing consumers and that our enforcement action delivers greatest impact by being effectively targeted. What should be Ofgem’s objectives?

2. What are the pros and cons of companies self-reporting potential non-compliance? What should Ofgem’s objectives and approach be to self-reporting?

3. We believe our plans to streamline case opening decision making will enable us to meet our objectives and act more quickly. What are your views and what criteria should Ofgem be using to prioritise cases?

4. We would like to be more transparent. One way is to publish more on our compliance work. What would you find useful to know about, and what are the benefits and challenges?
FEEDBACK AND Q&A
Closing Remarks

Martin Crouch
Senior Partner, Improving Regulation, Ofgem