

Enforcement and Compliance in a Changing World

Enforcement & Compliance Conference 2017

ofgem

Welcome

Martin Crouch

Senior Partner, Improving Regulation, Ofgem

10:00 Welcome

10:10 Annual update: Lessons from Ofgem's compliance and enforcement activity

11:20 *Refreshments and networking*

11:45 How does Ofgem enforcement compare with other regulated sectors?

12:10 Panel Discussion
Putting consumers first: achieving best practice in the energy sector

13:10 *Lunch*

14:10 Ofgem's future compliance and enforcement approach

14:30 Table discussions: Ofgem's future compliance and enforcement approach

15:10 Closing remarks

15:20 End

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

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..

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

... into similar themes of consumer service related to billing and sales & marketing

Enforcement investigations completed September 2016 - present

Investigation	Decision date	Outcome	Case details / concern
British Gas	2017 July	Alternative action	Failure to pay compensation to customers following missed appointments
British Gas	2017 June	Penalty	Poor billing & customer service
Western Power Distribution	2017 March	Alternative action	Error in charging methodology for network access
British Gas	2017 January	Penalty	Failing to install advanced meters
SSE	2016 November	Commitments	Non-discriminatory access to third party connection providers
OVO	2016 December	Alternative action	Failure to pay compensation to customers following missed appointments
Co-operative energy	2016 October	Alternative action	IT systems causing delays in billing, customer service and complaints handling
E.ON	2016 September	Alternative action	Failure to pay compensation to customers following missed appointments

All alternative action cases resulted in direct compensation and/or payment to charitable organisations.

- 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

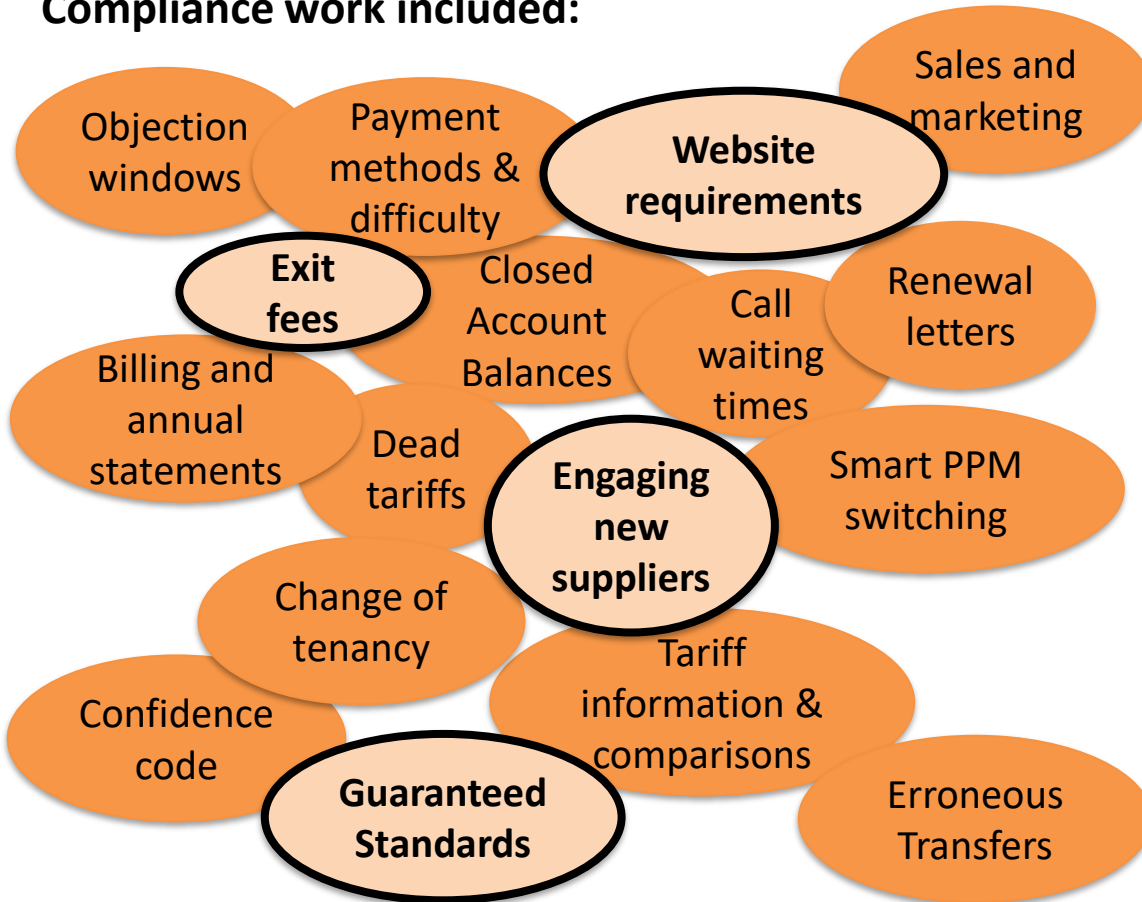
Dr Stephen Bass

Head of Compliance, Consumers and Competition

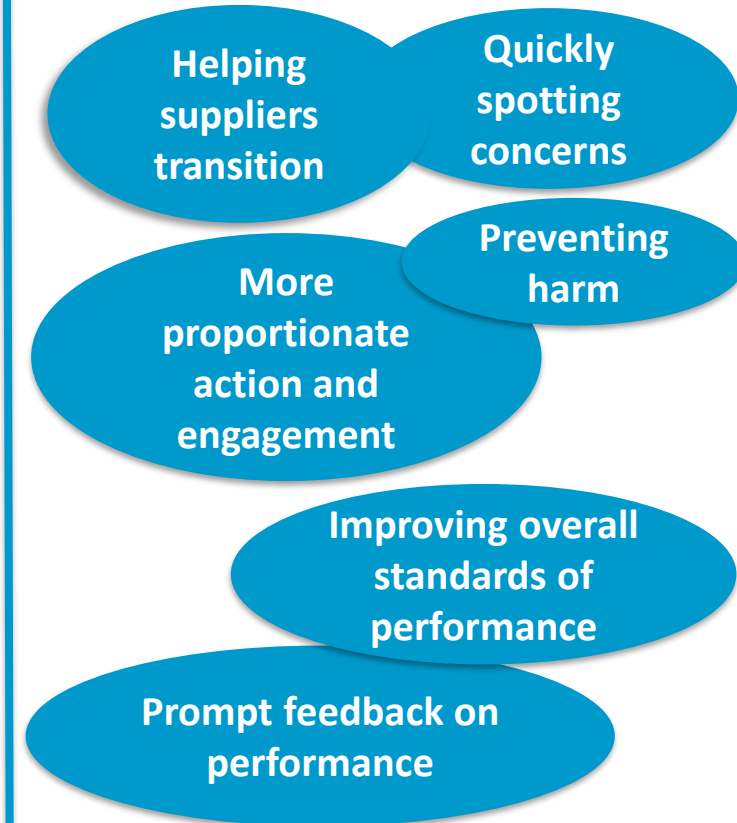
Annual update: lessons learned from Ofgem's
compliance and enforcement activity

We've addressed many issues through compliance this year...

Compliance work included:



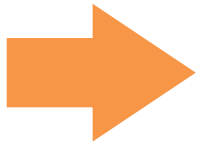
Benefits of this work:



...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)

Your tariff information

About your [Entry 1] tariff

Supplier	[Entry 2]
Tariff name	[Entry 3]
Tariff type	[Entry 4]
Payment method	[Entry 5]
Unit rate	[Entry 6]
Standing charge	[Entry 7]
Tariff ends on	[Entry 8]
Price guaranteed until	[Entry 9]
Exit fees (if you cancel this tariff before the end date)	[Entry 10]
Discounts and additional charges	[Entry 11]
Additional products or services included	[Entry 12]

Website information is a vital customer communication tool and there are mandatory requirements.

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

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

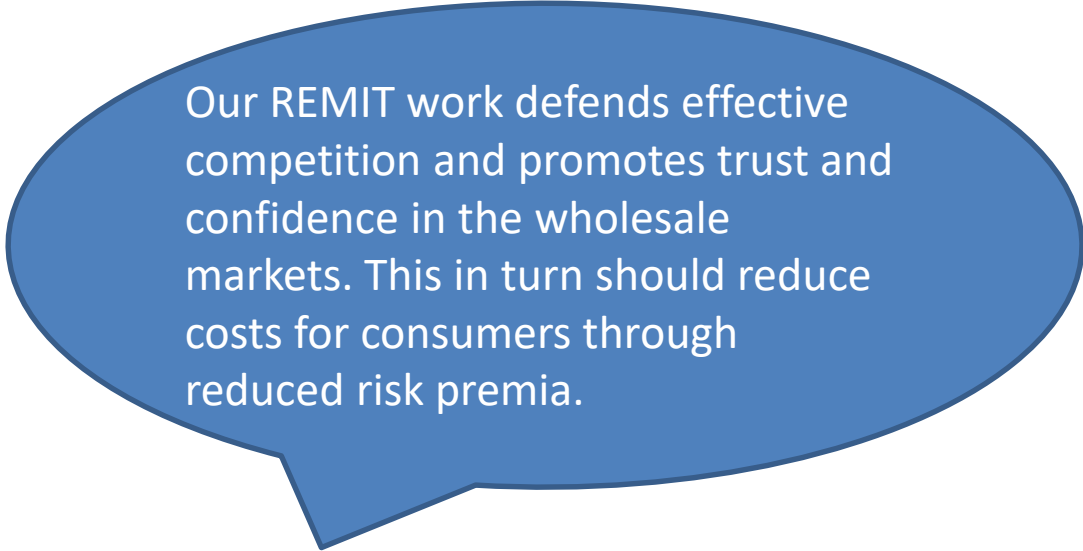
Head of Market Intelligence and Oversight, Energy Systems

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



Our REMIT work defends effective competition and promotes trust and confidence in the wholesale markets. This in turn should reduce costs for consumers through reduced risk premia.



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



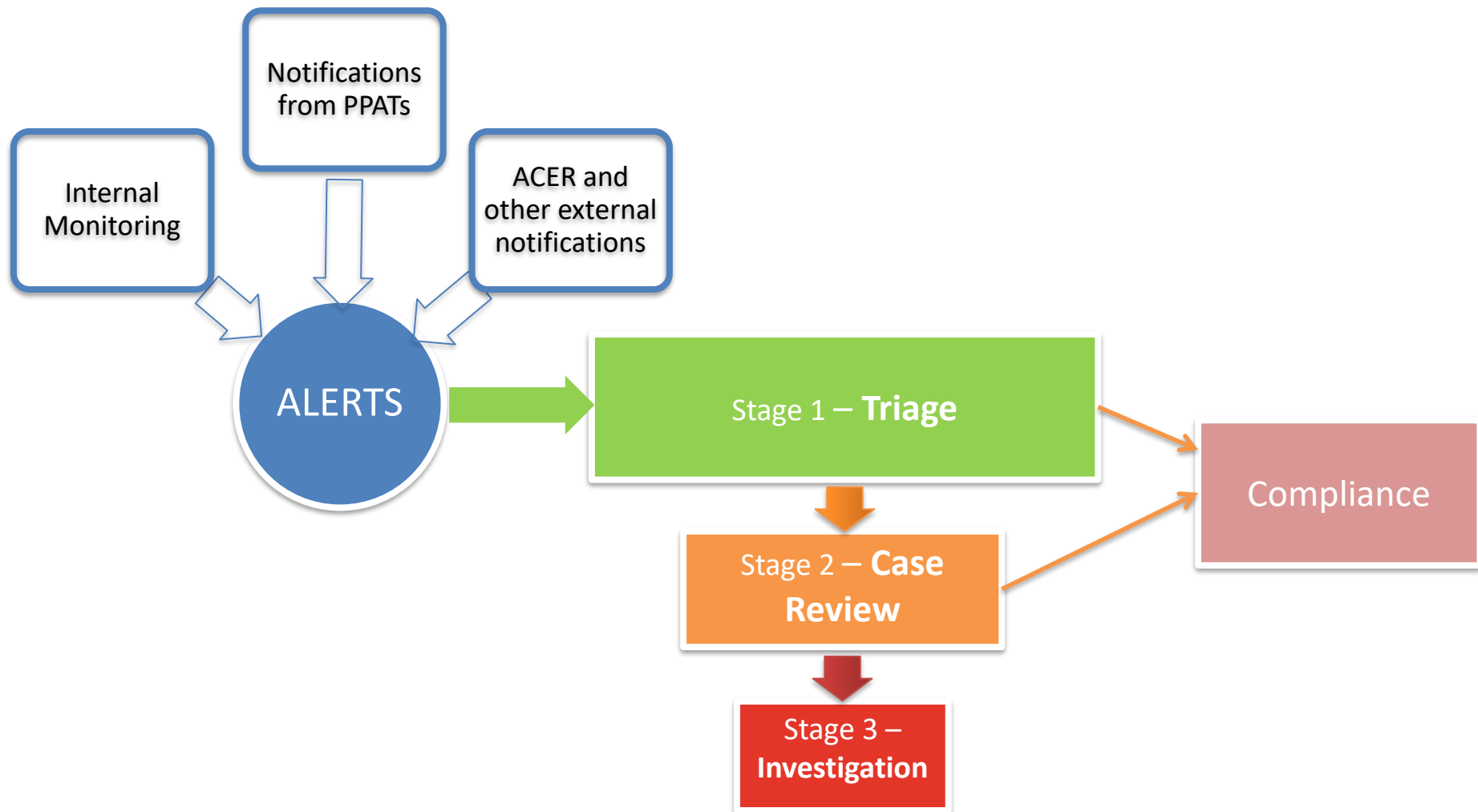
Obligation on firms professionally arranging transactions to report suspicious transactions

- 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.



Year	Total number of alerts	Internal alerts	STRs from PPATs	Alerts from third parties
2013	74	74	0	0
2014	230	188	3	39
2015	163	115	4	44
2016	105	57	8	40
2017 to date	47	14	N/A	33

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.

REMIT Investigation activity

Year	Investigations opened	Investigations closed	Total open investigations at year end
2013	1 –	1	1
2014	6	1	5
2015	3	6	2
2016	1	2	1
2017 to date	NA	1	NA

- 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

- 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

- No statutory requirement to establish EDP
- Voluntary act to do so

- Ofgem
- Financial Conduct Authority
- Solicitors Regulation Authority

- ‘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)

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

- 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

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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

**citizens
advice**

Ofgem Enforcement and Compliance Conference

About Citizens Advice

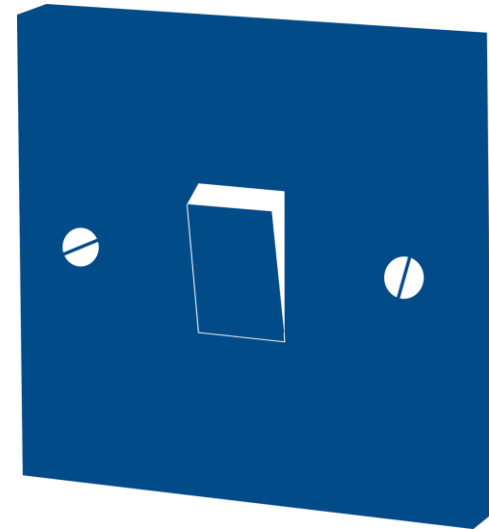
Citizens Advice and Citizens Advice Scotland represent consumers across essential regulated markets. We are the statutory consumer advocate for energy and postal services in Great Britain and for water in Scotland. We use compelling evidence and expert analysis to put consumer interests at the heart 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


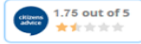

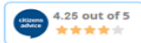

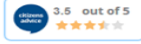





Good practice guides

- [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

Gas and Electricity	Electricity Only	Gas Only					
Tariff Name	Billing	Exit Fee	Personal Projection	Payment by	Savings		
Co-op Fix for Longer April 2018							
	Paperless Billing	£00	£1083.05 per year	£91.00 Monthly Fixed Direct Debit	You will save £116.95 per year		Next steps
Warm Home Discount							
Flow Variable							
	Paperless Billing	no fee	£1089.88 per year	£91.00 Monthly Fixed Direct Debit	You will save £110.12 per year		Next steps
Rate Saver 12m Fixed 1701							
	Paperless Billing	£00	£1096.77 per year	£92.00 Monthly Fixed Direct Debit	You will save £103.23 per year		Next steps
My Green Plus 1 Year Fix Issue 2 Paperless Billing							
	Paperless Billing	no fee	£1098.67 per year	£92.00 Monthly Fixed Direct Debit	You will save £101.33 per year	No rating	Next steps
Planet Fixed Direct							
	Paper & Paperless Billing	£50	£1099.02 per year	£109.90 Monthly Fixed Direct Debit	You will save £100.98 per year	No rating	Next steps
Robin Hood Energy Prime v7							
	Paper Billing	no fee	£1106.89 per year	£93.00 Monthly Fixed Direct Debit	You will save £93.11 per year	No 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

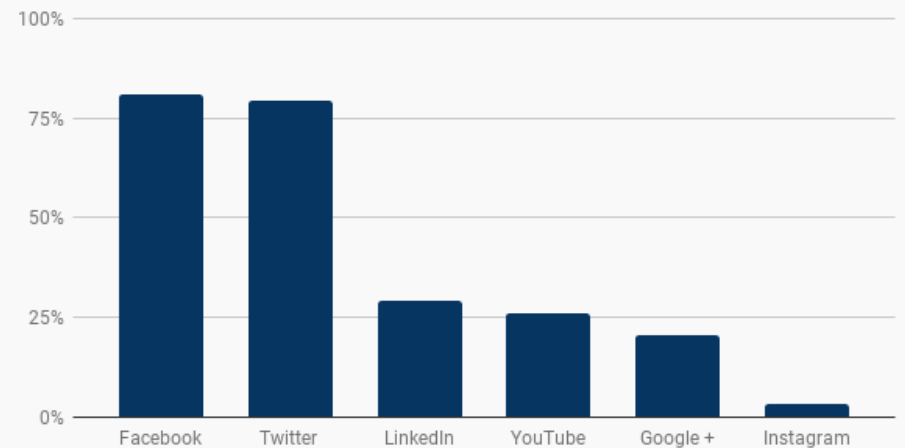


41% offer
ringbacks



19% offer
webchat

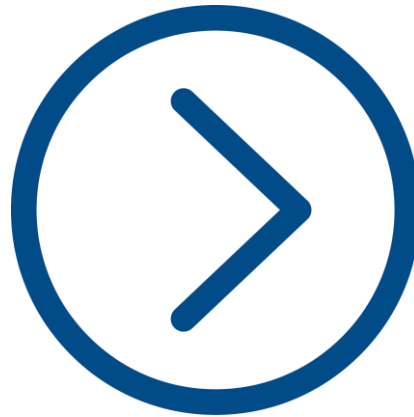
Percentage of suppliers on the Citizens Advice comparison tool using social media



Case study: consumer focussed complaints handling process



Respects my individual needs

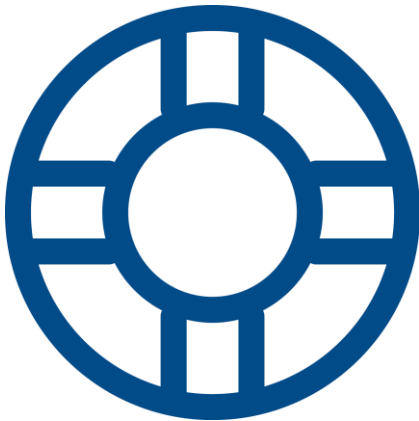


Process that is easy to access and navigate

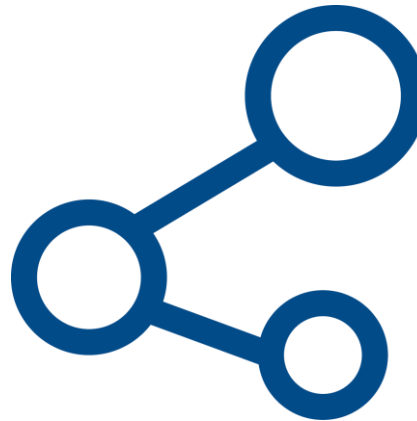


Company representatives empowered to resolve problems

Case study: supporting consumers in vulnerable situations



Providing temporary credit for PPM users



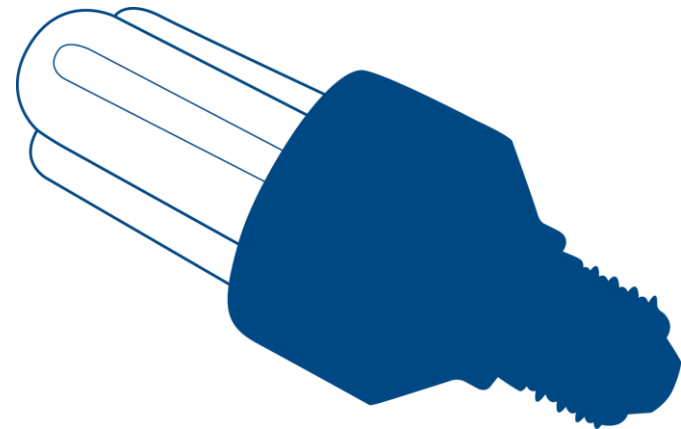
Building effective referral relationships



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



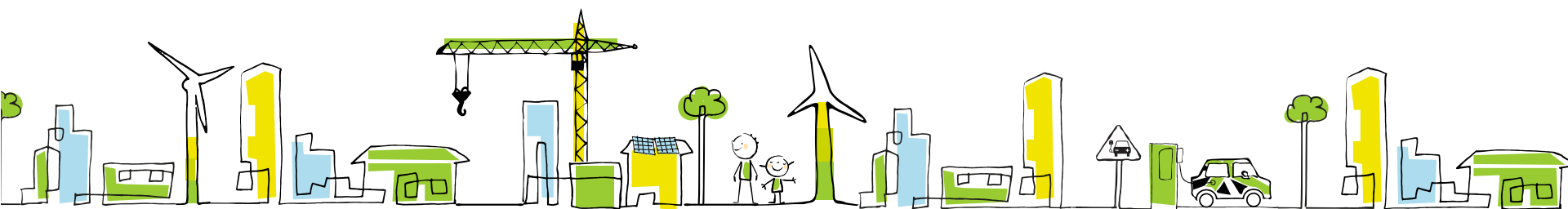


Gillian Cooper
6 September 2017

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



2

Energy – what could possibly be more interesting?



3

Technology – friend
or foe?



4

Vulnerability – it
could be you



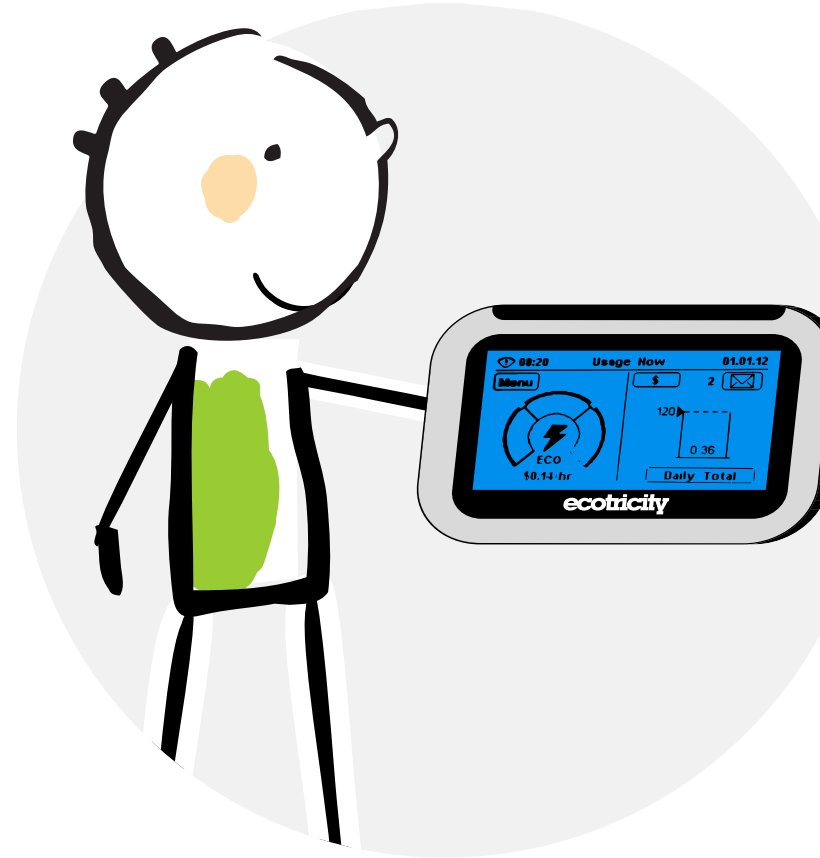
5

Communication –
it's a 2 way thing





The Smart game changer



ecotricity

7

Keep it Simple



8

Being brilliant isn't
easy





Don't just measure
it – do something!



10

Value your values



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

Achieved
by

New Compliance Approach

1 Proactively
monitoring and
engaging with
companies

Effective Enforcement

2 By streamlining
case
prioritisation
criteria



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)

BENEFITS

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 ***

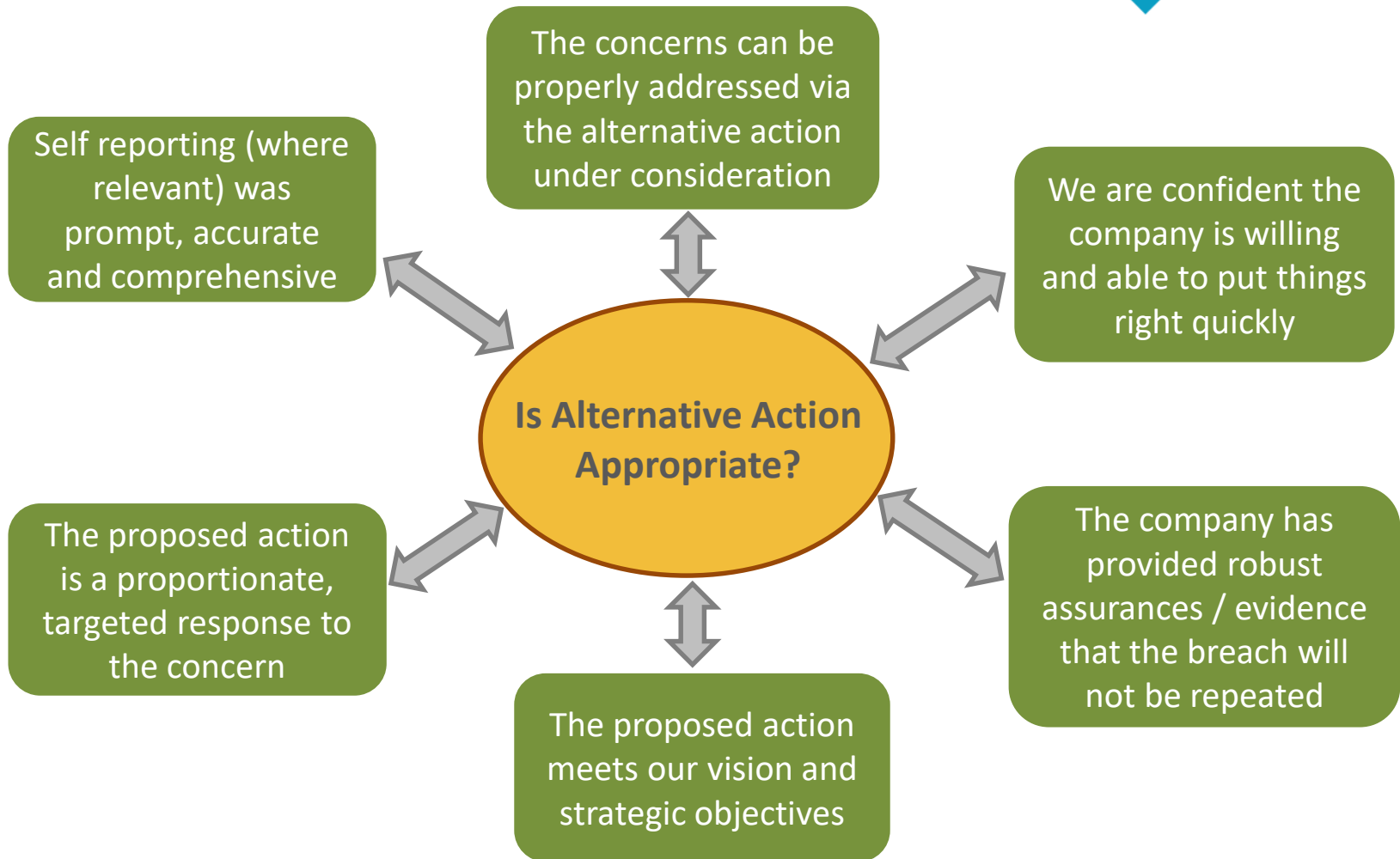
compliance enforcement

* 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...



... the action is consistent with our vision and strategic objectives

A streamlined approach to prioritise case opening

Revised Enforcement Guidelines set out our approach...

both need not apply

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

YES

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?

YES

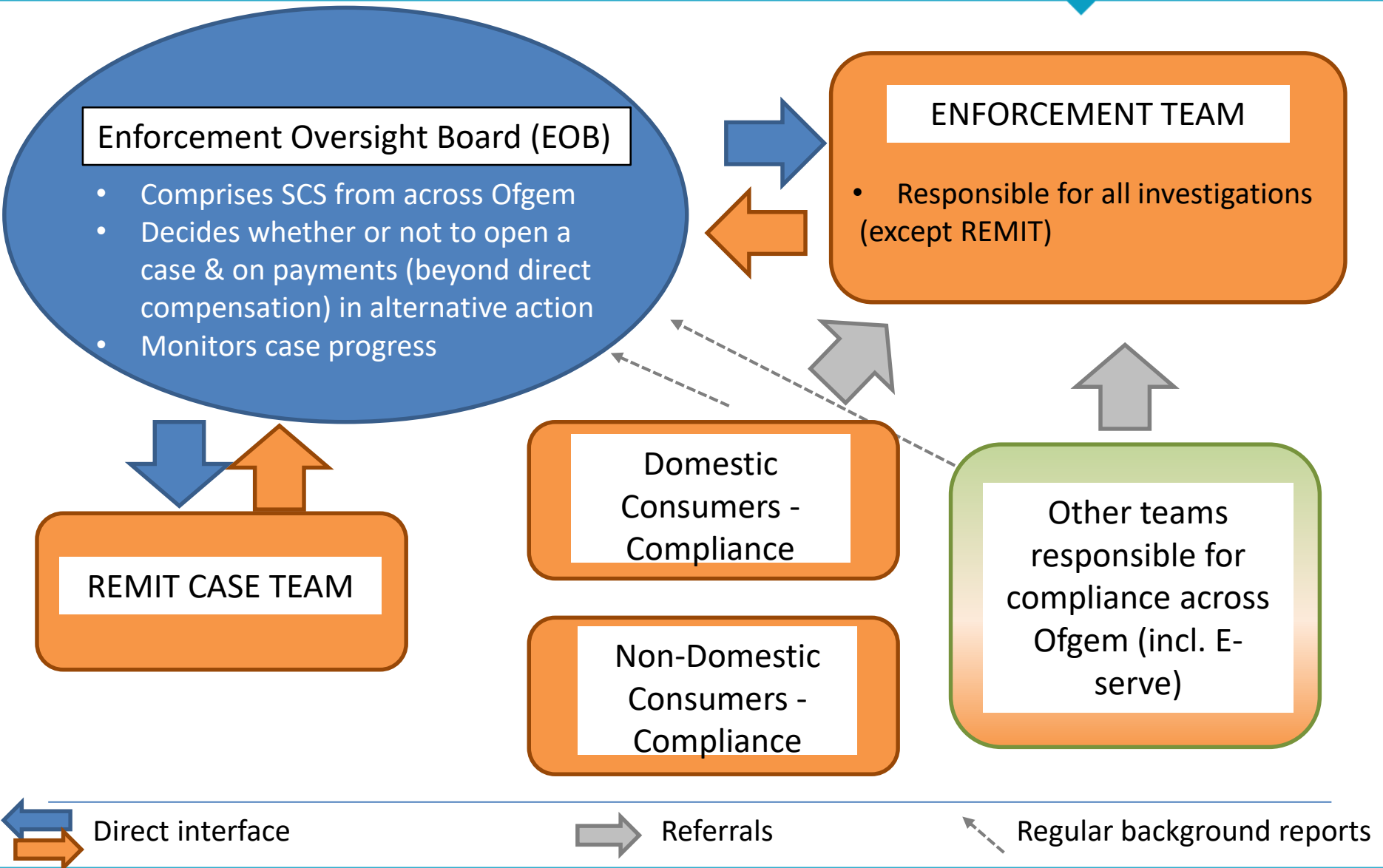
OR

YES

Case
Opening

...to be more transparent on how we will meet our strategic objectives

Setting ourselves up to deliver compliance and enforcement



Workshop session – questions to discuss and feedback

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