

Enforcement Overview

Enforcement Overview 2017 -2018

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Contact: Patrick Ogan

Team: Enforcement Team

Tel: 020 7901 7230

Email: Patrick.Ogan@ofgem.gov.uk

Our overview reports have been an effective tool to show the impact and efficiency of our enforcement work, in line with our enforcement vision that businesses put energy consumers first and act in line with their obligations.

This is the fourth annual Enforcement Overview. It covers the financial year April 2017 to March 2018.

It provides an overview of:

- Investigations opened and other enforcement activities, including compliance action and alternative action
- Completed investigations and performance
- Penalties and other remedial activity (including how consumers have benefitted from the various redress schemes initiated as a result of our activity and key 'lessons learned' which the energy market should consider as part of its compliance scrutiny)
- Our current portfolio and other related work

Foreword

Ofgem: Enforcement Overview 2017-18

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 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 deterrence 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 all our compliance activity in this report, but have focused on cases where businesses have offered voluntary redress payments to consumers to put right these concerns (see below under 'alternative action').

We published new enforcement guidelines in October 2017 to bring greater clarity, consistency and transparency to our enforcement policies and processes, and to reflect changes that we have made to maximise the impact and efficiency of our work.

We remain committed to sharing our learnings from our compliance and enforcement action. During the period covered by this report we have published our first Compliance and Enforcement Report¹; issued a lessons learned publication on software implementation projects²; and we shall hold our sixth Annual Compliance and Enforcement Conference in Autumn 2018 (date to be confirmed), which will give further opportunities for us to share learnings and discuss our approach to compliance and enforcement.

Looking forward to 2018-2019 we have taken a number of steps to improve how we approach enforcement and compliance. The Enforcement function now sits alongside the (Retail) Compliance function at Ofgem and our REMIT investigations function under a single Director for Conduct & Enforcement. We expect this re-organisation will increase the speed at which we are able to take action when compliance problems arise, as well as enable Ofgem to use the full extent of its compliance and enforcement tools more flexibly and efficiently.

We will exercise our functions in line with the Authority's steer to take a robust approach to compliance and enforcement, including the use of order-making powers, where appropriate, to stop bad behaviour from a few companies that is undermining confidence in the energy market.

¹https://www.ofgem.gov.uk/system/files/docs/2017/12/enforcement_and_compliance_6-monthly_report_-_final.pdf

²https://www.ofgem.gov.uk/system/files/docs/2018/02/lessons_learned_on_software_implementation_projects_19_february_2018.pdf

Headlines

- We completed three investigations and four compliance cases involving alternative action³ this year. The average length of an investigation was 18 months.
- £15,161,000 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 to suitable third sector organisations in lieu of financial penalties).⁴
- In August 2017 Ofgem appointed the Energy Savings Trust (EST)⁵ as the independent service provider to distribute redress payments to charities. These payments will fund services such as making homes more energy efficient and providing advice that helps consumers keep on top of their bills. In February 2018 the sum required to trigger the new scheme was hit and EST will award funding for the first round of applications in July 2018.
- We continue to engage with licensees to help shape our approach to compliance and enforcement. We held our fifth annual Enforcement Conference in September 2017⁶, where we reflected on some of our recent enforcement decisions. We looked at billing, complaints handling, and sales and marketing within our lessons learned section.

Context

We published our first annual Enforcement Overview in 2015 as a way to make our enforcement activities more transparent and have published a similar report in each subsequent year.⁷ This is our fourth Enforcement Overview and it covers the financial year April 2017 to March 2018.

We have powers to open investigations under the regulation on wholesale energy market integrity and transparency (REMIT), 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 published a 'Market Briefing' report last year in relation to REMIT⁸ and plan to issue a similar report later this year.

³ Consideration of alternatives to seeking to establish a breach or infringement or other use of our statutory enforcement powers.

⁴ In this document, 'voluntary redress payments' refers to payments to suitable third sector organisations, or to the Energy Savings Trust (Ofgem's appointed independent service provider), 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.

⁵ <https://www.ofgem.gov.uk/publications-and-updates/authority-guidance-allocation-redress-funds>

⁶ <https://www.ofgem.gov.uk/publications-and-updates/ofgem-compliance-and-enforcement-conference-2017>

⁷ <https://www.ofgem.gov.uk/publications-and-updates/enforcement-overview-201415>;
<https://www.ofgem.gov.uk/publications-and-updates/enforcement-overview-201516>;
<https://www.ofgem.gov.uk/publications-and-updates/enforcement-overview-201617>

⁸ <https://www.ofgem.gov.uk/publications-and-updates/remit-market-briefing>

Given the changes to how our enforcement and compliance activities are organised (see above), we are considering the optimum way to publicise our enforcement and compliance outcomes in the future.

Investigations opened and other enforcement activities

On 31 March 2018, there were nine live cases. Five cases opened during the relevant period for this report and four ongoing from previous years.⁹ Of the five cases opened in the past 12 months, there is one Competition Act 1998 case and four cases in which suppliers have 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
2017 July	British Gas	Concerns over charging customers termination fees where they were not applicable, which may have affected switching behaviour.
2017 August	Not disclosed	Breach of Competition Act (Chapter II)
2017 November	SSE	Non-compliance of SLC 31A and 25C (superseded by SLC 0 on 9 October 2017).
2018 February	Ovo	Non-compliance of SLC 31A and 25C (superseded by SLC 0 on 9 October 2017).
2018 March	Iresa	Infrequent billing, poor customer service and complaints handling

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

⁹ An [investigation into whether Economy Energy, E \(Gas and Electricity\) and Dyball Associates](#) have infringed Chapter I, CA 98 with respect to a suspected anti-competitive agreement; an [investigation into Economy Energy's compliance](#) under the gas and electricity supply licences (SLC 25); [an Investigation into Extra Energy Supply Ltd and its compliance](#) with its obligations under the gas and electricity supply licences (SLC 7B, 14, 21B, 25C, 27, 31A) and with the Consumer Complaints Handling Standards Regulations 2008 and an [investigation into Npower's compliance](#) with its obligations under the electricity supply licence (Standard Licence Condition 12).

A full account of the issues we consider when deciding to open an investigation are set out in paragraphs 3.36 to 3.39 of the Enforcement Guidelines¹⁰. However, in summary, when deciding whether to open an investigation, we consider factors including:

- whether opening a case would further our Strategic Objectives;¹¹
- whether we are best placed to act in respect of the breach (other authorities may have concurrent enforcement powers);
- whether we have the power to act;
- the evidence of breach;
- the likelihood of harm being caused to consumers, competition or our ability to regulate effectively;
- the seriousness of the harm caused by the breach;
- the conduct of the relevant regulated person; and
- the need to take enforcement action to deter such conduct in future.

We consider enforcement action to be an important (but not the only tool) to promote a culture where businesses put energy consumers first and act in line with their obligations.

Provisional order issued to Iresa

In March 2018 we issued a provisional order banning Iresa from taking on new customers¹², from increasing existing customers' direct debits, and from asking them for one-off-payments until it resolves customer service issues, as well as requiring Iresa to undertake several improvements to its customer service arrangements in order to meet its obligations under relevant licence conditions. A provisional order is a temporary measure that allows us to make a supplier stop or perform specific activities within a short timescale, where there is a high level of information to suggest it may be breaching its licence, and needs to change its behaviour quickly to prevent further consumer harm.

On 25 June 2018 the Authority decided to confirm without modifications the provisional order issued in March; the Authority being satisfied, at that point in time, that Iresa was continuing to contravene or was likely to contravene certain requirements of the Domestic Standards of Conduct.

¹⁰ https://www.ofgem.gov.uk/system/files/docs/2017/10/enforcement_guidelines_october_2017.pdf

¹¹ Our strategic objectives as set out in paragraph 1.8 of the Enforcement Guidelines and are i) to deliver credible deterrence across the range of our functions ii) to ensure visible and meaningful consequences for businesses who fail consumers and who do not comply iii) to achieve the greatest positive impact by targeting enforcement resources and powers.

¹² <https://www.ofgem.gov.uk/publications-and-updates/iresa-provisional-order>

Completed investigations, consumer outcomes and main 'lessons learned'

During the year, we completed three investigations 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
2017 June	British Gas	Transfer Blocking, Non-Domestic Standards of Conduct and complaints handling	Standard Licence Conditions 7A, 7B, 14, 14A and 21B) and with the Consumer Complaints Handling Standards Regulations 2008	Finding of Breach	£1.00	£ 9,500,000 (less £1)	£ 9,500,000
2017 November	SSE	Sectoral, PPM meters; vulnerable customers; assessing ability to pay	Standard Licence Conditions 25C, 27.1, 28.1, 27.5, 27.6 and 27.8.	No finding of breach, alternative action taken, redress made, press release issued	-	-	-
2018 January	E (Gas & Electricity)	Mis-selling and conducting appropriate background checks on sales agents	Standard Licence Condition 25 and 13	Finding of Breach	£1.00	£260,000 (less £1)	£260,000
							£9,760,000

The BG investigation was in relation to its non-domestic customers.

BG acknowledged that its practices fell short of requirements in relation to practices involving billing, registrations, notification of contract terms, adhering to the Standards of Conduct and complaints handling. BG made significant improvements to its billing and customer registrations processes, and increased its resourcing for customer complaints.

BG expended significant costs to resolve issues with its new billing system and provided compensation to affected customers and at the point we closed the investigation, we were satisfied that BG had significantly recovered its billing performance.

We found that BG did not fully mitigate the risks of disruption before they occurred and agreed that more robust testing and piloting of the system should have been done. We also found that BG should have had sufficient controls in place prior to the implementation to provide early visibility of problems and their root causes, and that it should have had more effective staff training on the registrations process.

This BG investigation formed part of the evidence base for our lessons learned publication on Software Implementation Projects, which identified the following key areas for attention for companies when undergoing business transformation programmes:

- ensuring the IT system has the functionality to comply with the relevant regulatory requirements;
- robust testing of the software;
- adequate staff training on the software;
- sufficient planning; and
- conducting adequate monitoring throughout the implementation phase.

The SSE investigation found evidence that SSE advisors did not routinely offer customers in payment difficulty the option to pay for their energy use by way of deduction at source from social security benefits (Fuel Direct); advisors did not consistently assess in full customer's ability to pay when agreeing debt repayment plans; did not provide customers with clear and comprehensive written details of certain disadvantages of Pre-Payment Meters (PPMs); and wrote to customers in advance of PPM installations promising access to SSE's "cheapest" tariffs (a relatively small number paid more, having had a PPM installed).

Having considered our findings, we decided that this investigation was suitable for alternative action; appropriate due to the short-lived nature of the conduct described above and the relatively limited degree of financial harm that was caused to SSE's customers.

In May 2017, SSE agreed to implement improvement actions to address the concerns we had identified. These measures included: re-training staff on assessing ability to pay and offering customers Fuel Direct; implementing enhanced monitoring arrangements of calls held with customers in payment difficulty; refunding customers who paid more, having had a PPM installed (approximately £9 per customer) and further compensated each customer £20; and offering customers who had switched to a PPM, where appropriate, the option to have a credit meter installed at zero cost.

This case highlights key lessons for suppliers when communicating with customers who are experiencing payment difficulties:

- Suppliers must ensure that they are fully compliant with the rules in relation to customers in payment difficulty and ability to pay. Ofgem has published an open letter¹³ to all domestic suppliers setting out a number of key principles to help suppliers properly and proactively take account of customers' ability to pay. These reflect key considerations Ofgem will look for and take into account, along with other relevant factors, when assessing compliance.

¹³ <https://www.ofgem.gov.uk/ofgem-publications/57399/open-letter-pdf>

- Suppliers must ensure, where applicable, that customers are offered the option to pay for their energy by means of deduction at source from social security benefits.
- Suppliers must ensure that all communications with customers are complete, accurate and not misleading.

The E investigation found that E breached SLCs 25 and 13. We found that its practices fell short of requirements in relation to how sales agents acting on its behalf identified themselves to customers; and that pre-employment checks conducted on representatives were insufficient.

E implemented a number of changes during the course of the investigation. These included changes to sales scripts, changes to uniform and branded materials, re-training and changes to its recruitment process

E made alterations to its recruitment and employment practices and Disclosure and Barring Service (DBS) checks were introduced for new and existing sales agents; additionally E introduced an obligation for sales agents to notify E of any subsequent convictions.

The E investigation was further evidence of the issue we highlighted in our lessons learned publication on Sales and Marketing (published in March 2017) around sales agents not identifying themselves clearly during sales interactions with consumers¹⁴. The investigation also highlights the importance of having proper background checks in place for sales staff.

Past enforcement activity demonstrates that we have stepped in where suppliers' sales agents were not being clear as to the genuine purpose of their calling at consumers' homes, and where they were not identifying themselves clearly during sales interactions with consumers.

The average case length of these closed cases was 18 months. This is slightly shorter in comparison to 2016/17, when average case length was 20 months. The detail is shown below in Table 3 on the next page.

¹⁴https://www.ofgem.gov.uk/system/files/docs/2017/03/lessons_learned_from_enforcement_and_compliance_activity_-_sales_and_marketing_1.pdf

Table 3: length of investigations

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
2017	3	16	21	18

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 concerned took corrective actions to solve the identified problems, swiftly putting things right for consumers and limiting harm in the most effective way.

Alternative action

We decided not to open an investigation in a number of cases where alternative action was progressed and secured remedies, including redress. This is summarised in Table 4 on the next page.

Table 4: compliance cases closed without opening a formal enforcement investigation

Case decision date	Company	Concern	Direct compensation and/or payment to charitable organisations (£)
2017 July	British Gas	BG failed to pay compensation to customers following missed appointments, as required by the Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015	£1,100,000
2017 September	SSE	SSE failed to comply with Supplier Licence Condition 22D (SLC 22D), that, when suppliers remove a tariff from the market, they must migrate customers onto fixed term or evergreen tariffs within 49 days.	£670,000 ¹⁵
2017 December	E.ON	E.ON wrongly told customers whose contract was due to end that they would incur exit fees if they switched supplier during the last 49 days of a contract (the 'switching window').	£21,000
2017 December	Utilita	Utilita refunded £3.61 million after it failed to implement correctly price cuts to within the level of the new prepayment meter safeguard tariff for some of its smart meter customers.	£3,610,000
Total			£5,401,000

Through the enforcement cases and alternative action concluded in 2017-18, we have secured £15,161,000 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.¹⁶

Of the £15,161,000, £13,651,000¹⁷ 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 £1,510,000 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 Money Advice

¹⁵ The £670,000 paid by SSE in relation to this case is made up of £190,000 direct compensation to customers who suffered detriment caused by breach of SLC22D; £475,000 in goodwill gesture payments to customers who did not suffer any financial detriment; and £5,000 paid to customers on an ad hoc basis via an additional assistance fund.

¹⁶ 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 redress package comprising compensation paid to affected consumers and/or voluntary payments allocated to suitable recipients to deliver targeted benefits to energy consumers.

¹⁷ This is an indicative figure at present, this may change as the value of the uncashed cheques has not been finalised

Trust to help businesses deal with energy debt, and to the independent service provider, EST who administer the Voluntary Redress Fund. The detail is set out in Table 5 below.

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	Totals (£)
2017 June	British Gas	Investigation	£8,250,000	£ 1,250,000	Money Advice Trust	£9,500,000
2017 July	British Gas	Alternative action	£1,100,000	£0.00	N/A	£1,100,000
2018 January	E (Gas & Electricity)	Investigation	£0.00	£260,000	Voluntary Redress Fund (administered by the Energy Saving Trust)	£260,000
November 2017	SSE	Investigation	-	-	-	-
2017 September	SSE	Alternative action	£670,000	-	-	£670,000
2017 November	E.ON	Alternative action	£21,000	-	-	£21,000
2017 December	Utilita	Alternative action	£3,610,000	-	-	£3,610,000
Totals			£13,651,000	£1,510,000		£15,161,000

During the four years from 2010 to 2014, 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 over the last three years we secured close to 100%.¹⁸

Penalties and payments directly to consumers or charitable organisations

By focusing on direct compensation to affected consumers, 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.

The charitable project funded through voluntary redress payments this year resulted from the British Gas investigation where the company agreed to make a payment to

¹⁸ 100%, minus the nominal penalties of £1 levied against licensees when they have agreed to make voluntary redress payments.

the Money Advice Trust (which provides the Business Debtline service¹⁹). The payments to Business Debtline will be used to provide debt advice services to business customers who are experiencing difficulties in paying their energy bills.

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.²⁰ We have selected Energy Savings Trust (EST) as an independent service provider to administer the Voluntary Redress Fund. EST will decide the allocation of voluntary redress money that delivers positive long-term benefits to energy consumers.

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 February 2018, we published our second 'lessons learned' document based on our experiences dealing with cases involving software implementation projects.²¹ (This followed our first such document published in March 2017, during the previous reporting period, based on our experience of issues with face-to-face energy selling.)

In December 2017 we published our first Compliance and Enforcement Report.²² It is primarily intended for suppliers, to help them learn from our work, better understand their obligations, and for us to highlight upcoming changes. It is our intention to produce these updates on a regular basis.

We also held our fifth annual Compliance and Enforcement Conference in September 2017²³ where we presented on 'lessons learned' for energy companies from some of our recent enforcement decisions. In particular, getting the basics right with supplier billing practices. We discussed how we will prioritise investigations in our revised Enforcement Guidelines²⁴, 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 achieving better outcomes for consumers in the energy sector in a discussion led by Citizens Advice.

¹⁹ <http://www.moneyadvicetrust.org/services/Pages/Business-Debtline.aspx>

²⁰ <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.

²¹ <https://www.ofgem.gov.uk/publications-and-updates/lessons-learned-software-implementation-projects>

²² <https://www.ofgem.gov.uk/publications-and-updates/retail-enforcement-and-compliance-report>

²³ <https://www.ofgem.gov.uk/publications-and-updates/ofgem-compliance-and-enforcement-conference-2017>

²⁴ Review of the enforcement function to develop a clear strategic framework for prioritising cases and improve efficiency, transparency and fairness of our activities.

In October 2017 we updated our Enforcement Guidelines²⁵ to reflect a number of changes including:

- streamlining of the criteria to decide when to open an investigation and use our enforcement powers;
- clarification of our expectations regarding companies self-reporting potential non-compliance with licences;
- ancillary changes to reflect the fact that enforcing the Standards of Conduct is no longer a new practice and to reflect our updated practices in relation to competition law investigations.

This year also saw us remove some of the prescriptive requirements in the domestic supply licence and place greater reliance on ‘principles-based’ rules, rules such as the requirement to treat consumers fairly required 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. This enables us to focus our enforcement efforts increasingly where positive customer outcomes are not being met. Suppliers should continue to think about what good outcomes for their customers look like, and ensure their internal processes allow them to demonstrate that their actions intend to achieve these outcomes.

In August 2017, following a consultation exercise, we confirmed our decision to make amendments to the “fairness test” and all “reasonable steps” threshold within the domestic and non-domestic Standards of Conduct, so they have a sharper focus on consumer outcomes. For the domestic Standards of Conduct only, we have also added two new broad principles that require suppliers to enable consumers to make informed choices about their energy supply and to have special regard for consumers in vulnerable situations. These changes came into effect in October 2017.

We published our decision in April 2017 to amend the sales and marketing licence condition (SLC25). Specifically, we replaced six pages of detailed rules with five binding ‘Informed Choices’ principles – overarching enforceable requirements that explain the experience that we expect suppliers to deliver for their domestic customers.

Under these new principles, suppliers must make sure that:

- The structure, terms and conditions of their tariffs are clear and easily comprehensible;
- Their tariffs are easily distinguishable from each other;
- They put in place information, services and/or tools to enable consumers to easily compare and select tariffs that suit their characteristics and/or preferences;
- They do not mislead or use inappropriate tactics, including high pressure sales techniques, when selling or marketing to consumers;
- They only recommend tariffs which are appropriate to that consumer’s characteristics and preferences.

²⁵ <https://www.ofgem.gov.uk/publications-and-updates/enforcement-guidelines>

These five binding principles require suppliers to focus on really considering what customers need to make an informed choice about their energy supply. These changes came into effect in June 2017.

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.

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