

EDP Annual Report 2017-18

Annual Report

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Contents

1. Chairman's Foreward	3
2. About the EDP	3
3. EDP Case work in 2017-18	4
4. EDP Quarterly meetings	4
Appendix – EDP Members' Biographies	6

EDP Annual Report

1 Chairman's Foreword

- 1.1 The past year has seen a reduction in the number of cases that have required the attention of the Enforcement Decision Panel (EDP). This is due to the sequencing of cases being managed by the Enforcement Team. However, the EDP understands that Ofgem has a busy enforcement pipeline and expects to make significantly more decisions in the next 12 months than in the previous 12 months.
- 1.2 As detailed in section three, one case that the EDP has been involved with was completed during the 2017/18 period. As such, the report is shorter than in previous years.
- 1.3 The EDP has continued to meet on a quarterly basis throughout the year. The objectives of the meetings are to discuss lessons learned and to be briefed by Ofgem senior management of policies that are relevant to the panel's decision making.

2 About the EDP

- 2.1 The EDP has been in place since June 2014 to take Enforcement Decisions on behalf of the Gas and Electricity Markets Authority (GEMA).
- 2.2 The scope of the EDP includes enforcing breaches under the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002, the Business Protection from Misleading Marketing Regulations 2008, the Consumer Rights Act 2015 and the European wide Regulation on Energy Market Integrity and Transparency (REMIT).
- 2.3 The EDP is involved in decision making in three main ways:
 - Contest Panels.** If a case is contested by the party under investigation three members of the EDP will be selected by the Chair of the EDP to take the decision on liability and any penalty.
 - Settlement Committees.** Two members of the EDP work alongside a member of the Ofgem Executive team (anyone who is at Partner level or above) to take decisions in Settlement Cases. The role of the SC is to give a settlement mandate to the Investigating team which is then offered to the party or parties under investigation. If a penalty is involved, it is discounted if the party settles the case.
 - Criminal cases.** The Chair of the EDP, or any legally qualified member can take a decision on whether or not to commence a criminal prosecution.
- 2.4 In this reporting period, the EDP was chaired by John Swift QC. Other panel members were Amelia Fletcher, Andrew Long, Elizabeth France, Stuart McIntosh and Trevor Jones. More information about each panel member can be found in the Annex.

2.5 Members of the EDP Secretariat were Wendy Watson, Stella Denny and Georgina Hunt.

2.6 The EDP is directly accountable to GEMA. The Chair of the EDP meets the Chair of GEMA regularly throughout each year, while the EDP annual report is presented by EDP members to a formal GEMA meeting once a year. GEMA does not get involved in individual case decisions.

3 EDP Casework in 2017/18

Casework overview

3.1 The EDP members have been involved in one Ofgem case this year.

Case	Settlement outcome	Contested outcome
E Power	Settled at £260k – case closed.	n/a

Table 1

3.2 Chair of Settlement Committee – John Swift, EDP member of Settlement Committee – Trevor Jones, Authority appointed member of Settlement Committee – Cathryn Scott.

3.3 The Committee granted a settlement mandate which was a total payment of £260k and asked the team to negotiate up to the full amount (minus £1 penalty) to be paid in consumer redress. This went to Ofgem’s new Voluntary Redress Fund. The money will go to charity, including to help vulnerable energy consumers.

3.4 The Penalty notice for this case can be found on the Ofgem website¹.

Comparison to previous years

3.5 The number of decisions this year is far fewer than in previous years, primarily due to the sequencing of cases.

Year	No. Settlement decisions	No. Contested decisions	Total Penalty and Redress
2017/18	1	0	260,000
2016/17	2	0	14,000,000
2015/16	8	0	52,790,000
2014/15	11	0	65,700,001

4 EDP Quarterly meetings

4.1 The EDP meets quarterly to discuss a range of policy and enforcement issues and to discuss lessons learned from closed cases. The EDP also receives updates relating to generic organisational issues. These are valuable sessions to the EDP members who appreciate the

¹ https://www.ofgem.gov.uk/system/files/docs/2018/01/notice_of_decision_to_impose_a_financial_penalty_on_e_gas_and_electricity_ltd_15_january_2018.pdf

involvement of Senior Ofgem staff and the opportunity to discuss and learn about policy issues affecting the organisation.

- 4.2** One topic discussed was transparency. The EDP discussed what parties are told about the Settlement Committee meeting, the level of detail in penalty notices and how to handle third party submissions on draft penalty notices. The general steer from the EDP to Enforcement was that there should be as much transparency as possible.

Annex – EDP Members’ Biographies

The EDP members bring a wide pool of expertise and experience covering the law, economics, public administration, financial services, ombudsmen services and also have direct experience of enforcement decision making at other regulators including Ofwat, the FCA and the Pensions Regulator.

Here is more information about each of them:

John Swift QC – Chair of the EDP

John Swift QC has combined private practice with public sector regulation over the whole of his professional career. He has appeared as Leading Counsel, for regulators and the private sector, in several of the key cases in the UK and EU in which Courts have tested the legality of decisions of regulators, such as the Competition Commission and the European Commission.

From 1993 to 1998 he was Rail Regulator, appointed under the controversial Railways Act to promote the interests of passengers in a new and complex network of relations between train companies. From 2009 to 2016 he was a member of the NHS Cooperation and Competition Panel and then adviser to NHS Improvement (formerly Monitor) established to promote the interests of patients for NHS funded services and an independent member of Ofwat’s Case Work Committee since 2014. In February 2017 he was appointed to the Pension Regulator’s Determination Panel, which makes decisions relating to pension law breaches and uses its powers upon application or to address problems arising within the scheme.

His background is that of a stevedoring family in Liverpool, with his further education at Oxford University and the School of Advanced International Studies, Bologna. He lives in South Oxfordshire, where he is also a Parish Councillor.

Amelia Fletcher

Amelia Fletcher is Professor of Competition Policy at the Centre for Competition Policy at the University of East Anglia and a Non-Executive Director at the Competition and Markets Authority, the Financial Conduct Authority and the Payment Systems Regulator. She is also a policy advisor to Which? and a member of the Oxera Economic Council..

Amelia has extensive experience in competition and consumer policy. She was Chief Economist at the Office of Fair Trading (OFT) between 2001 and 2013, where she also lead the OFT’s Mergers and Competition Policy teams, as well as acting as a case Decision Maker. Before this, she was an economic consultant at Frontier Economics (1999-2001) and London Economics (1993-1999).

She has a DPhil and MPhil in economics from Nuffield College, Oxford. She is a member of the Council of the Royal Economic Society and of the European Commission’s Economic Advisory

Group on Competition Policy. In 2014 she was awarded an OBE for services to competition and consumer economics.

Elizabeth France

Elizabeth France is Chair of the Security Industry Authority, Chair of the Police Advisory Board for England and Wales, a member of the British Transport Police Authority, Pro-Chancellor of Aberystwyth University, and Deputy Chair of the FCA's Regulatory Decisions Committee and the PSR's Enforcement Decisions Committee.

Until 31 March 2014 Elizabeth was Chair of the Office for Legal Complaints. From 2002 to 2009 she was Chief Ombudsman and Chief Executive of the Ombudsman Service Ltd., which provided the Telecommunications Ombudsman Service (Otelco), the Energy Ombudsman Service and the Surveyors Ombudsman Service. She was a Non-Executive Director of the Serious Organised Crime Agency from 2005-2010.

Elizabeth began her career in the Home Office, became the Data Protection Registrar in September 1994 and Information Commissioner in January 2001.

She has been awarded honorary doctorates by the Universities of De Montfort, Loughborough and Bradford and is a Fellow of Aberystwyth University. In June 2002 she was awarded a CBE for services to data protection.

Trevor Jones

Trevor Jones has gained over 30 years' experience in the Financial Services industry at businesses including Barclays Bank and Lloyds Banking Group. He has held a number of senior roles including the leadership of Risk, Financial Crime, Compliance, Audit and Finance functions, as well as shaping the business by driving the Governance and Compliance agendas for UK banks.

He has held a number of positions on Boards and chairing committees tasked with shaping compliance for large financial institutions. Having seen the regulatory landscape change over his career, he founded a consulting service specialising in the provision of compliance and risk advice to banking and insurance companies. He lectures on compliance. Trevor works for the Bank of London & Middle East as Money Laundering Reporting Officer.

Andrew Long

Andrew Long is an experienced regulatory decision maker and judge.

He previously chaired the Regulatory Decisions Committee of the Financial Conduct Authority and now chairs the Determinations Panel of the Pensions Regulator. He is also a Panel Chair for the Access Disputes Committee (of the regulated rail industry)

He was a Deputy District Judge of the High Court and County Court for fifteen years and has been a Judge of the First Tier Tax Tribunal since 2009. He was formerly a Board member of the Solicitors Regulation Authority where he chaired one of its principal committees. He has written extensively on regulatory law, including part of a major textbook on financial services regulation. His main career was as a partner at Pinsent Masons solicitors, where he led the financial services regulation practice.

Stuart McIntosh

Stuart McIntosh is a member of the FCA's and the PSR's Competition Decision Committees, a member of the PSR's Enforcement Decisions Committee, a senior adviser to KPMG's Economics and Regulatory Practice (on issues in the Communications Sector), and a member of the ManSat Advisory Board.

Between 2008 and 2014 Stuart was Group Director, Competition, at Ofcom, the UK Communications Regulator, and an executive member of the Ofcom Board. Stuart was responsible for Ofcom's work relating to the economic regulation of the telecommunications, broadcasting and postal sectors in the UK, dispute resolution (between companies in the communications sector) as well as Ofcom's work under the Competition Act.

Prior to Ofcom, Stuart held senior executive or partner positions in several major organisations including IBM, PricewaterhouseCoopers and British Telecom. Stuart began his career as a member of the UK Government Economic Service. Stuart holds a BSc and an MSc in Economics, both taken at the London School of Economics.