OFGEM RECENT TRENDS IN ENFORCEMENT

Dr Maribel Canto-Lopez
New Enforcement Trends - Ofgem

- Setting the Context
- Before 2010
- The Review 2010-2014
- Enforcement Overview 2014-15
- Enforcement Guidelines
- New Enforcement Trends
To regulate well the Gas and Electricity Markets Ofgem needs a good Enforcement Policy that will deliver:
- Redress and remedies to consumers
- Deterrence and punishment to companies

Ofgem looks at conduct by companies that are:
1. Unlawful: **Companies breaching licence conditions**: ‘sectorial cases’
2. Anti-competitive
3. Harm the interest of consumers

**Context reduced to the first group - Sectorial cases**: Breaches regarding compliance with conditions and requirements as defined in the Gas Act 1986 and the Electricity Act 1989 (the Electricity Act). [Other type of obligations: eg. from the Standards of Conduct (SOC), warm home discount…]
Before 2010

- Earlier guides and consultation documents (starting in 2001); first document in which procedures and policies for enforcement were all put together was published in 2007.

- Priorities of enforcement not specified (seriousness and impact on consumers)

- No statement of vision
The Enforcement Review: 2010-2014

• Ofgem had a major review considering Enforcement policies & practices:
  – Need for more clarity and transparency
  – Assessment of their efficiency and impact

• The enforcement overview started in 2010. The overview has unfolded on different phases of consultations and has been open to all parties (energy companies, consumers and their representatives) it looked at:
  – the procedures in existence and some proposed changes to enforcement
  – their approach to penalties and redress.
  – the update of the Enforcement Guidelines and penalty policy.
After the Enforcement Review:

• The Enforcement Overview 2014-15 (The first one) : this will now we published annually (Ofgem will account for their Enforcement work).

• New Enforcement Guidelines (2014)

• New Vision:
  – ‘Our vision is to achieve a culture where businesses put energy consumers first and act in line with their obligations’
After the Enforcement Review:

• New bodies:
  – Settlement Committees: not standing committees; (if penalty is less than £100,000 case handle by Senior Ofgem employee)
  – Enforcement Decision Panel (EDP): to decide contested cases. Helped by the Enforcement Decision Secretariat (carry out investigations).
  – Enforcement Oversight Board (EOB): to provide strategic governance and oversight to the enforcement work, it also recommends the annual priorities

• Enforcement Priorities (September 2014):
  – Adopt a low tolerance approach to all inaccurate, misreported and late data.
  – Send a strong signal that non-compliance with deadlines is not acceptable.
Enforcement Data since 2010

Total fines and redress payments since 2010

More money and more redress

Investigations and enforcement data (Ofgem https://www.ofgem.gov.uk/investigations/investigations-and-enforcement-data)
New Enforcement Trends

- Substantial increase on level of penalties (after 1 June 2014): helps deterrence.
- The new powers to order redress to consumers
- The introduction of settlements windows (for non-contested cases)
  - Early settlement window (greatest discount, opens when penalty notice and/or redress order are served on the company, close date also told then)
  - Middle settlement window (medium discount, opens after the early settlement window has closed, company told date of deadline for written representations and closure of middle settlement window)
  - Late settlement window (smallest discount, opens after the middle settlement window has closed, closes on a date notified to the company by the EDP Secretariat)
New Enforcement Trends

• Before settlement – possibility of Alternative action: instead of opening a case or once opened before finding a breach. [ case of SSEPD paid £750,000 to Scottish Hydro Electric Community Trust ]

• In ‘sectorial cases’, settlement generally always considered.

• Companies can not be forced to entered into a settlement. Settlement in this regulatory context does not include negotiation. Reduces the penalty and time, no seriousness of the breach.
New Enforcement Trends: Cases

- In CESP and CERT cases payments were made to charities:
  - British Gas, (March 2015) Missed Deadline CESP, £11M Redress (-£1 fine) paid to the British Gas Energy Trust BGET to fund projects.
  - British Gas, (March 2015) Missed Deadline CERT, £1/2 M Redress (-£1 fine) to BGET

- Case payment to charities in the context of breach of the Consumer Complaints Handling Standard Regulation CHSR,
  - EDF, (October 2014) Complaints Handling, £3M, (+£1 fine)
New Enforcement Trends: Conclusions

• Cases are not contested – they are settled and redress is provided: this not solely about deterrence!

• Redress has increased in 2014-15 is a 92,5 % (to vulnerable consumers).

• Open letter (14 December 2015) on allocation of voluntary redress payments. Considering further mechanisms to improve transparency and confidence on payment allocation (2016).