

# Ofgem's market oversight experience

## Presentation for NEURC

**Nathan Macwhinnie**  
**Head of Market Intelligence & Oversight**  
**Ofgem**  
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## Agenda

1. Background to REMIT
2. Key elements of REMIT
3. Ofgem's powers
4. GB trading arrangements & types of market abuse
5. Sanctioned penalties
6. Investigation pipeline
  - The pipeline
  - Opening an investigation
  - Where evidence comes from
  - Penalty
7. Some conclusions

## Why REMIT was introduced

- Financial crisis revealed, among other problems, a lack of trust in Market Integrity
- New financial regulation introduced: Market Abuse Regulation (MAR/CS MAD)
- Need to prevent ‘regulatory tourism’ where market abuses move to energy markets because there is a lighter sanction than financial markets. The difference between a energy and financial trades can be very small

## REMIT came into force in 2011

- New, sector specific, comprehensive monitoring regime for wholesale energy markets – including both physical and commodity derivative markets
- Aims at mitigating the risks of market abuse in line with MAR, but also distinct requirements specific to EU gas and power markets

## State of play post EU EXIT

- REMIT retained in UK law by application of the European Union (Withdrawal) Act 2018 and subsequent statutory instrument amended
- All REMIT prohibitions and obligations continue to apply in GB
- Ofgem intends to interpret REMIT with regard to ACER’s non-binding guidance. Review need for GB specific.



**Prohibition of insider trading and of market manipulation**



**Obligation on market participants to register and to publish inside information**

Ofgem has registered over 1,300 market participants



**Ofgem monitors the market using transaction and fundamental data**

Currently collected from GB brokers and exchanges for power and gas



**Obligation on PPATs to report suspicious transactions**

Regular engagement with PPATs



**Ofgem monitors, investigates and enforces against breaches in GB**

Working relationships with ACER, other NRAs and FCA

## The Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations came into force in 2013

- Request information and documents for monitoring purposes (companies must keep records).
- Investigate where circumstances suggest a failure to comply with REMIT
  - Require specific information (e.g. communications, trading data, business documents, training material)
  - Enter premises (warrant)
  - Require attendance at “interview”
  - Skilled persons report
- REMIT criminal sanctions legislation passed in 2015

Ken Lay ex. CEO of Enron:

*"In the final analysis, it doesn't matter what you crazy people [California Energy Regulators]... do, because I got smart guys who can always figure out how to make money."*

# The opportunities for REMIT breaches differ according to the market, and market design

Different types of market participant are in these markets. Different cultures. Different financial incentives. Not all markets are the same

## WHOLESALE MARKETS

Generators, suppliers, and financial players trade with each other

Eg. Layering and spoofing, wash trades, Insider trading on future contracts e.g. plant outages. Algo trading

Eg. Asset outages + insider trading. Improper disclosure of inside information. Capacity hoarding. Price positioning

### Forward trading

- Over-The-Counter (OTC) for gas and power
- ICE Exchange for NBP

Up to five years before delivery...

### Day Ahead

- Power auctions
- OTC

D-1

### Within Day

- Power exchanges
- OCM NBP exchange

Within day

**WM: BALANCING MARKETS**  
National Grid/ESO is in charge

Eg. Submission of misleading power data. Providing false information when TSO procures other balancing services. Off market prices. Capacity hoarding.

### SO balancing markets

- Balancing Mechanism for NGESO
- Other balancing services by NGESO
- OCM for National Grid gas

Real time

Market players can buy and sell energy how they see fit

BSC/UNC arrangements  
mandatory for licensed parties

# See as far as you can what the trader sees – literally and in terms of incentives

This is what a commodity trader sees (stylised example)

DA	Spec	100**	48.65	48.85	100**	GFI
	CAPI	100	48.65	48.85	25	Spec
	Spec	50	48.5	48.95	50	CAPI
	Preb	75	48.45	50	50	GFI
	Preb	50	48.4	50	50	Preb
BOW	Spec	50	45.75	50	50	Preb
	CAPI	100	45.75	50.1	50	CAPI
	GFI	50	45.5	50.25	50	GFI
	Preb	75	45	50.4	50	Preb
	Preb	50	45	51.4	50	Preb
W/E	Spec	50	45.75	46	75	GFI
	CAPI	100	45.85	46.1	50	preb
	Spec	50	45.75	46.25	50	GFI
	Preb	75	45.4	46.4	50	preb
	Preb	50	46.4	47.4	50	preb
wk6	CAPI	50	50.75	51	50	CAPI
	CAPI	100	48.6	48.85	50	CAPI
	CAPI	50	48.45	48.95	50	CAPI
	CAPI	75	49	50	50	CAPI
	Preb	50	49	50	50	CAPI
BOM	Spec	25	54.75	55	10	Spec
	CAPI	50	48.6	48.85	10	Preb
	Spec	25	48.45	48.95	50	GFI
	Preb	10	49	50	25	Preb
	Preb	10	49	50	10	Preb
Sum 13	Spec	10	48.65	50	10	Spec
				51	10	Preb
Win 13	Spec	10	59.75	60	10	Spec
	CAPI	10	4	48.85	10	CAPI
	GFI	10	48.45	48.95	10	CAPI
	Preb	10	49	50	10	CAPI
	Preb	10	49	50	10	CAPI

- Broker aggregation screen.
- Highest bids, lowest offers
- You can be bid/offered multiple times. Open, recorded lines to all brokers.



## 1. December 2020 – Financial Times

### EDF Energy pays £6m for breach of energy market rules

Ofgem found that UK utility inflated the minimum amount of power one of its plants was able to supply

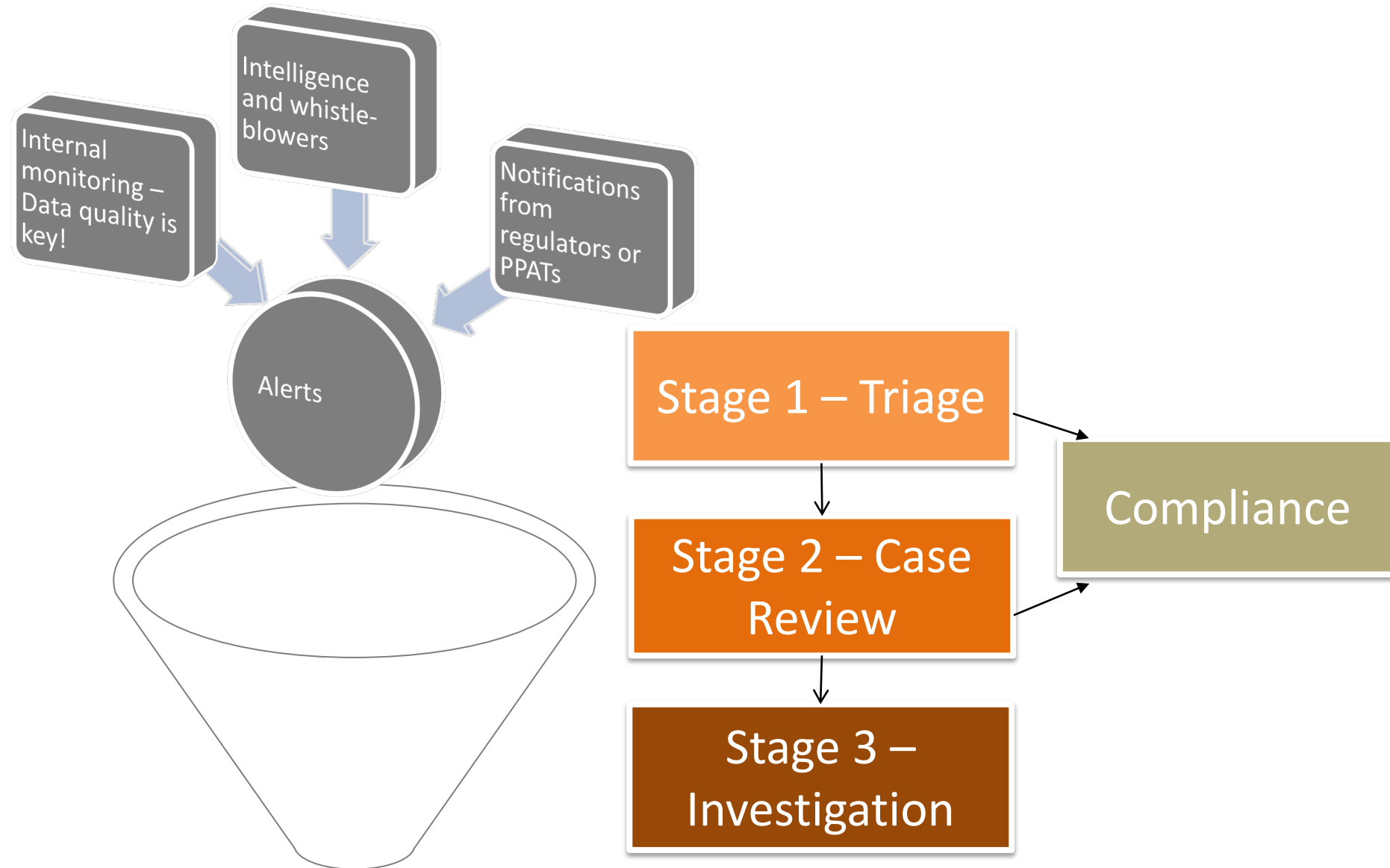
## 2. September 2020 - Guardian

### SSE fined £2m over failure to disclose National Grid deal

**Energy regulator Ofgem said delayed data on Fiddler's Ferry closure affected wholesale market prices**

## 3. April 2020 - Reuters

### BRIEF-UK's Ofgem Requires Intergen To Pay 37 Mln Stg Over Energy Market Abuse



## Opening an investigation

- Investigations opened according to our prioritisation criteria:
  - Level of harm to consumers
  - If there is intent
  - If the conduct is a widespread problem across the market
  - If the behaviour is ongoing
  - The level of gain or loss to parties
- Decision to open lies with the Enforcement Oversight Board
- Test to open an investigation: “circumstances suggesting a breach of REMIT may have occurred”
- Subjects immediately informed
- Unlike other Ofgem investigations, REMIT investigations are never published on our website

# Investigation pipeline – evidence

## Comms. between suspected company and brokers/plant stations/others

- Emails
- Instant messages
- Phone calls
- Text messages

## Interviews

- Plant engineers
- Traders
- Compliance officers
- Senior managers

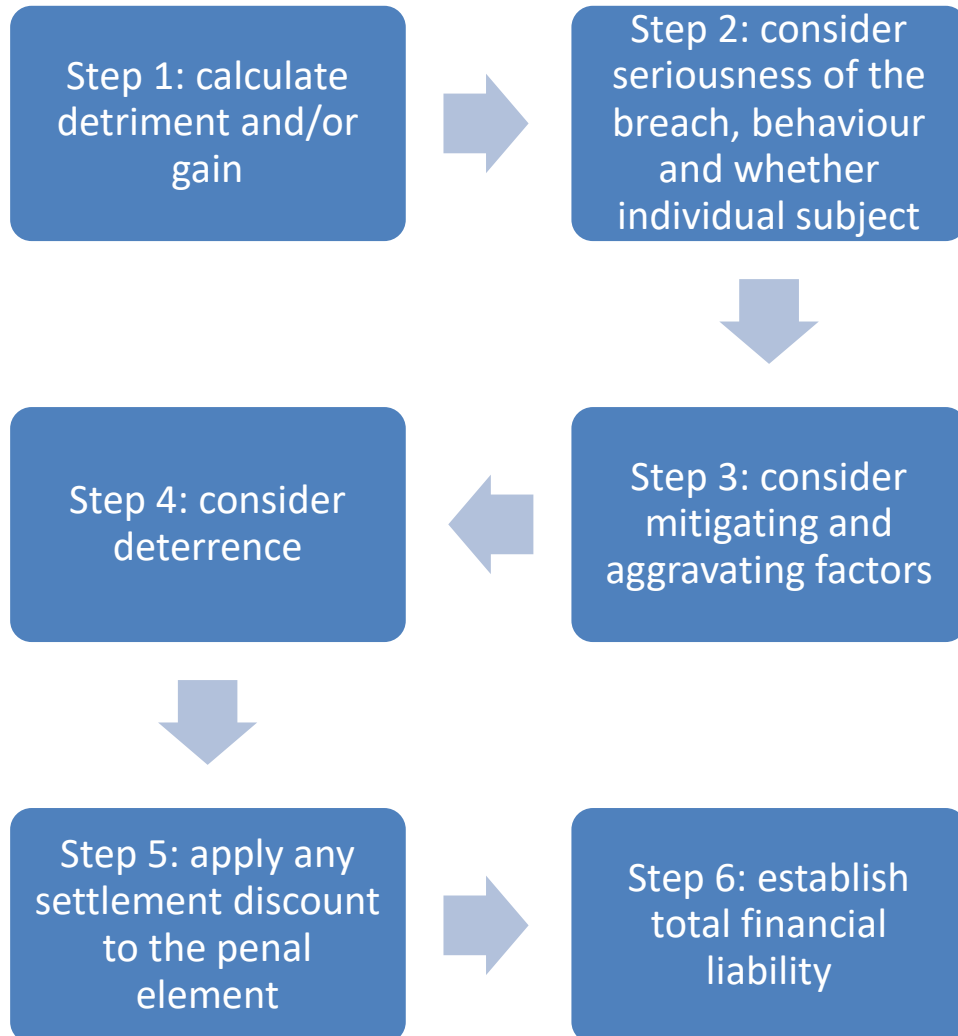
## Witness evidence from other market participants or experts

- Formal witness statement
- Decision logs
- Market expert statements

## Analysis of data

- Detailed analysis of internal transaction database for orders/trades.
- Physical plant/pipeline data
- Data Requests for Information from TSOs
- Positions/trading books.

## Process for calculating the total financial liability



Final penalty comprised of:

- Financial penalty
- Restitution order
- Statement of non-compliance

The Authority considers:

- the seriousness of the suspected breach, including duration and frequency
- the behaviour and previous compliance history of the person
- any published guidance

For financial penalty and/or restitution, consists of two elements:

1. Removal of detriment and /or gain
2. Penal element

1. Prioritise establishing your deterrence 'shadow'. Show that you can hold companies/traders to account. It took us a while to go from having the powers 'on the books' to a finding of a REMIT breach. There is a virtuous circle – get better at investigations and companies knowing in an investigation that you can see it through.
2. Many many market participants are frustrated at poor behaviour, and low levels of market integrity. It isn't regulator vs market.
3. Data quality and analytics are transforming our potential to 'see' the market and prioritise enforcement interventions. High levels of good quality data is of huge value.

Thank you for listening!

**Our core purpose is to ensure that all consumers can get good value and service from the energy market. In support of this we favour market solutions where practical, incentive regulation for monopolies and an approach that seeks to enable innovation and beneficial change whilst protecting consumers.**

**We will ensure that Ofgem will operate as an efficient organisation, driven by skilled and empowered staff, that will act quickly, predictably and effectively in the consumer interest, based on independent and transparent insight into consumers' experiences and the operation of energy systems and markets.**