



## Enforcing REMIT: a regulatory perspective

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- 1) Ofgem's powers and activities under REMIT**
- 2) Monitoring**
- 3) Investigations**

# *Ofgem's powers and activities under REMIT*

***Since 2013 Ofgem has been monitoring for and investigating potential breaches of the Regulation on Energy Market Integrity and Transparency (REMIT).***

Ofgem's powers are defined in The Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013:

- Record and retain records, including relevant communications
- Request information and documents for monitoring purposes
- Investigate where circumstances suggest a failure to comply with REMIT. In this context we can:
  - Require specific information (e.g. communications, trading data, business documents, training material).
  - Enter premises (warrant)
  - Require attendance at “interview”
  - Skilled persons report

# Ofgem's powers and activities under REMIT

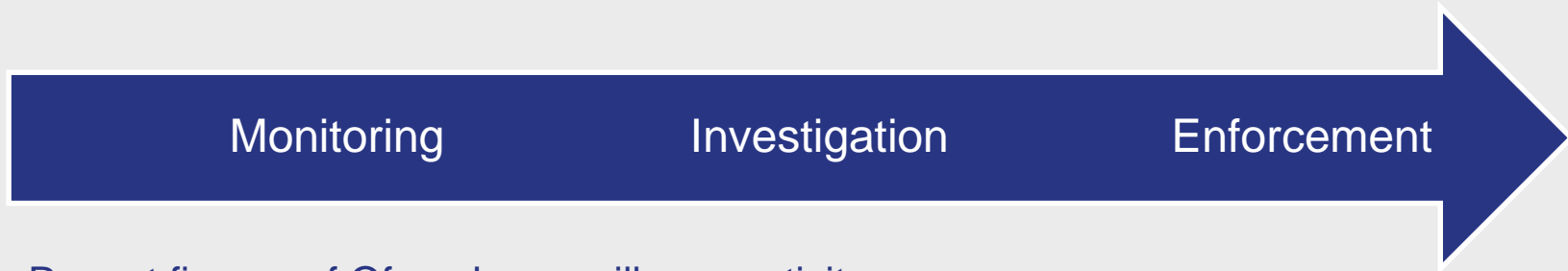


## ***We have criminal powers for REMIT as well as other legislation;***

- REMIT has criminal offences for market manipulation and insider trading. The maximum sentence is up to 2 years in prison.
- Require people to produce evidence – offences if they destroy/alter or conceal
- Ofgem can apply to a Magistrates' court to obtain Search Warrants
  - Criteria applies to exercising force to gain entry but this is an option
- Criminal cases will utilise strict handling records for exhibits, searches and record keeping
- For a Criminal Prosecution, Ofgem will be required to ensure the case could meet CPS full code test – Is there public interest and Sufficient evidence to provide realistic prospect of conviction. Differs in Scotland, Prosecutor there takes decision to prosecute.

# *Ofgem's powers and activities under REMIT*

Ofgem is empowered for three stages:



Recent figures of Ofgem's surveillance activity:

- We have processed 677 alerts, with 469 generated internally, 93 from third parties and 15 being Suspicious Transaction Reports (STRs) by Persons Professionally Arranging Transactions (PPATs).
- We have opened more than 11 investigations since 2013
- 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

## ***Cooperation with other regulators and PPATs***

- Regular workshops with PPATs, questionnaire, ah-hoc meetings and site visits
- To ensure consistency in monitoring and in the application of REMIT, ACER and NRAs cooperate through regular and formal workgroups or through more ad-hoc discussions
- We also share lessons learnt on investigations or on our monitoring work with other NRAs (e.g. on PPATs) and with ACER
- As REMIT is closely linked with the Financial Regulations, we follow closely the main policy developments on MIFID II, MAR and EMIR, and we regularly liaise with the FCA on cases or policy matters

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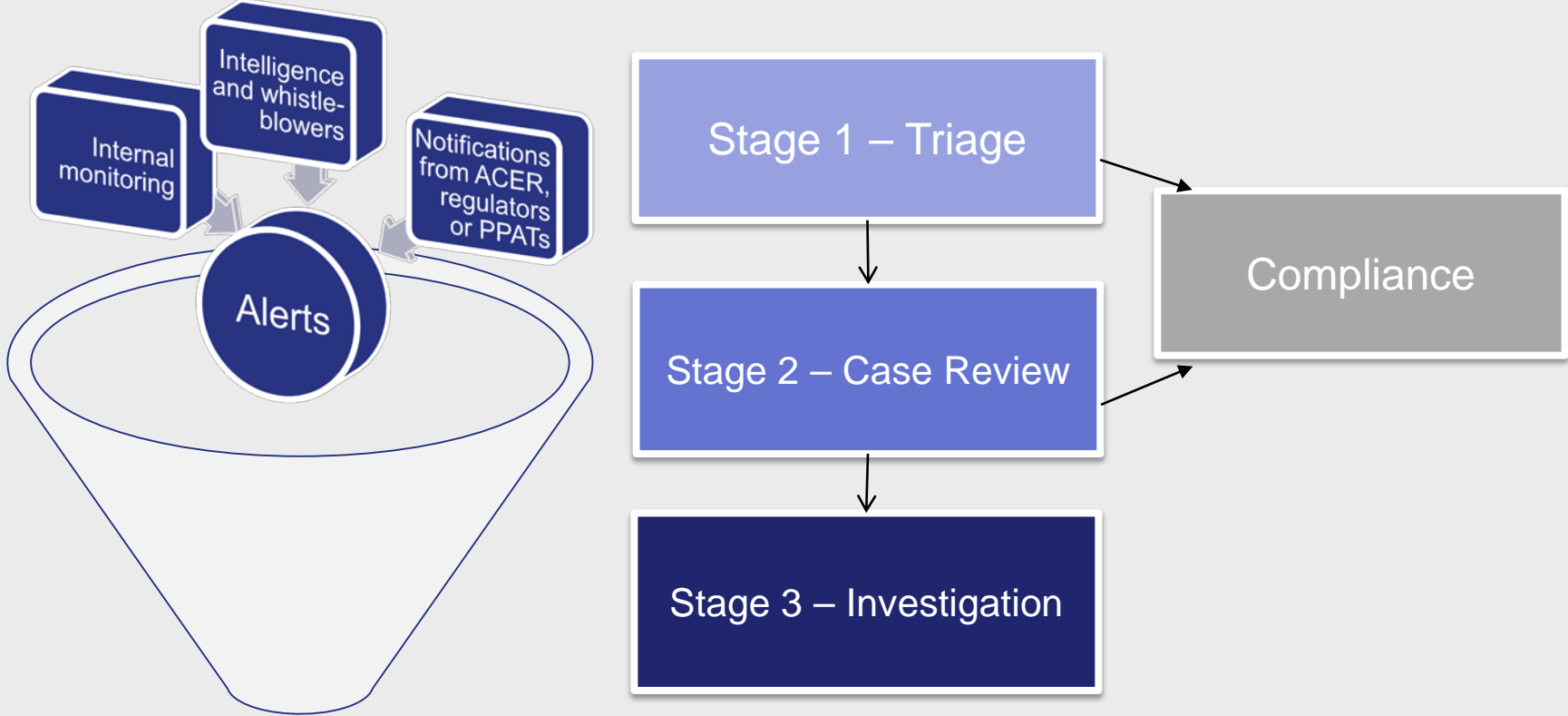
# Ofgem's monitoring process



- Monitoring for understanding (wholesale market indicators, briefings and reports)
- Individual data (Order and Trade) from brokers and exchanges
  
- Surveillance software
- Search publically available information (e.g. inside information platforms, Elexon, PRA reports)
- Analyse trade and order data
- Review information from parties involved
  
- In-depth analysis and formal investigations



# Ofgem's monitoring process



# *Ofgem's monitoring process*

## ***Compliance work and guidance***

Monitoring work has resulted in significant compliance activity and engagement with market participants. As a result we have seen:

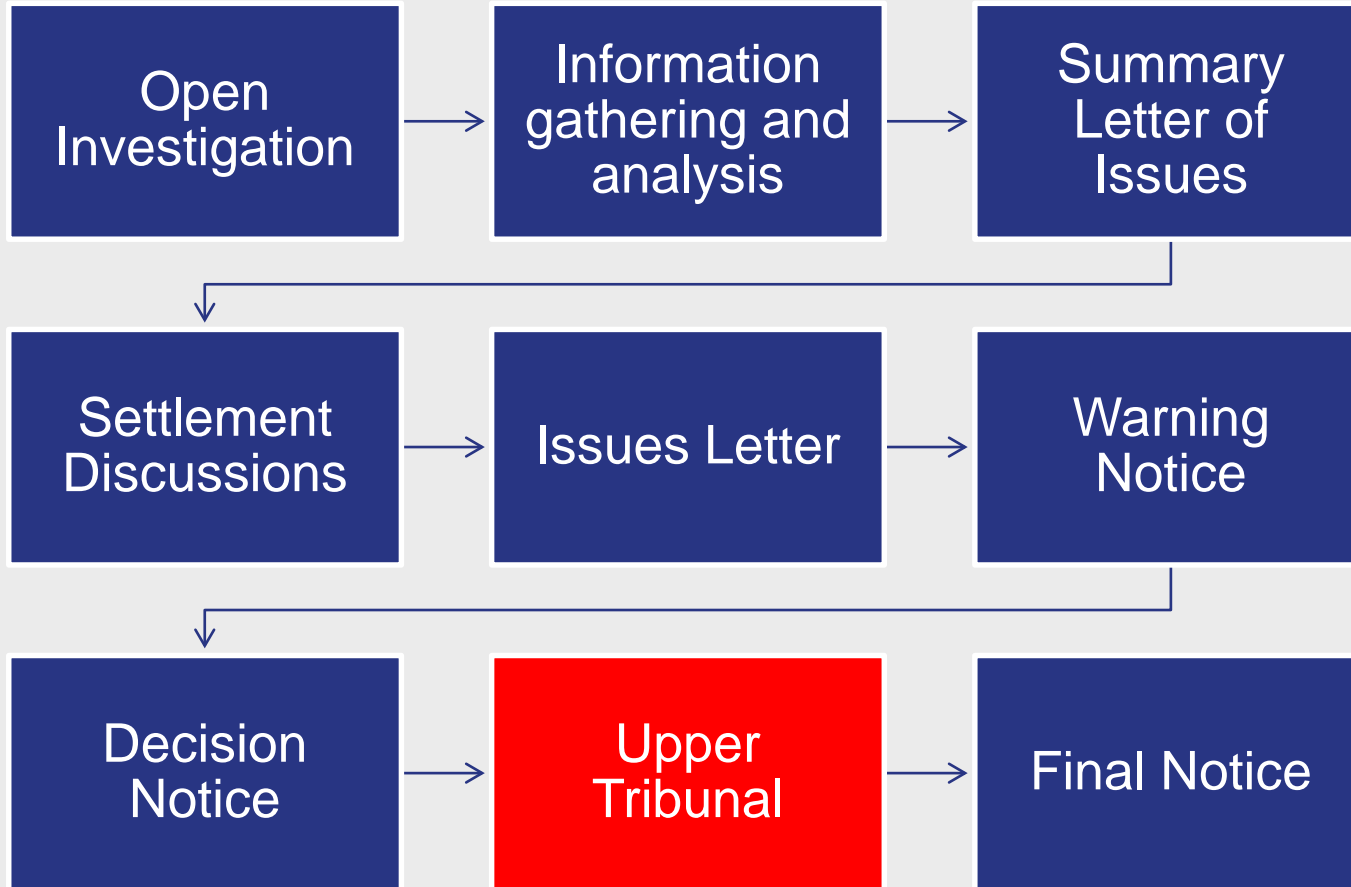
- Significant improvement in the timeliness of publishing outage and other relevant information
- The Implementation of effective controls or processes to identify and prevent unintentional behaviour (for example 'fat-finger' errors which could be considered manipulative in certain circumstances)

Marked difference between gas and electricity. Electricity appears better at publishing information in a timely manner.

Market participants' adherence to REMIT in GB has noticeably improved as a result of our compliance work. We believe this has in itself made the market much more transparent.

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# REMIT investigations



## ***Key points to bear in mind***

### **Conduct the investigation on the basis that the matter is likely to end up before the Upper Tribunal:**

- Develop an accurate and thorough understanding of the matters in issue
- Conduct the investigation robustly
- Be mindful of creating discloseable documents
- Keep good records and logs of steps / decisions taken

***Think critically, be open to challenge and keep under review at all stages !***

# REMIT investigations

## 1. 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
- Test to open an investigation: “circumstances suggesting a breach of REMIT may have occurred”
- Subjects immediately informed, as well as ACER and any other authorities
- Unlike other Ofgem investigations, REMIT investigations are never published on our website

# *REMIT investigations*

## ***2. Information gathering and analysis***

### **Information requests, covering**

- Trading and communication data
- REMIT compliance processes and training material
- Internal procedures and controls

### **Analysis**

- Conduct detailed analysis of trade and order data – recreate the market
- Review relevant correspondence (e.g. listen to calls from and to trading desks)
- Build chronology of events
- Methodology and analysis notes

# *REMIT investigations*

## **Interviews**

- Subject interviews usually under regulatory caution
- Witness interviews
- Detailed planning and preparation required

## **Experts**

- Instruct external expert
- Consult internal experts
- Informal chats with market experts (ensuring confidentiality)

## **Counsel**

- Merits of the case
- Chance of successfully making a finding
- Other similar cases
- Evidential threshold



## 3. Settlement procedure

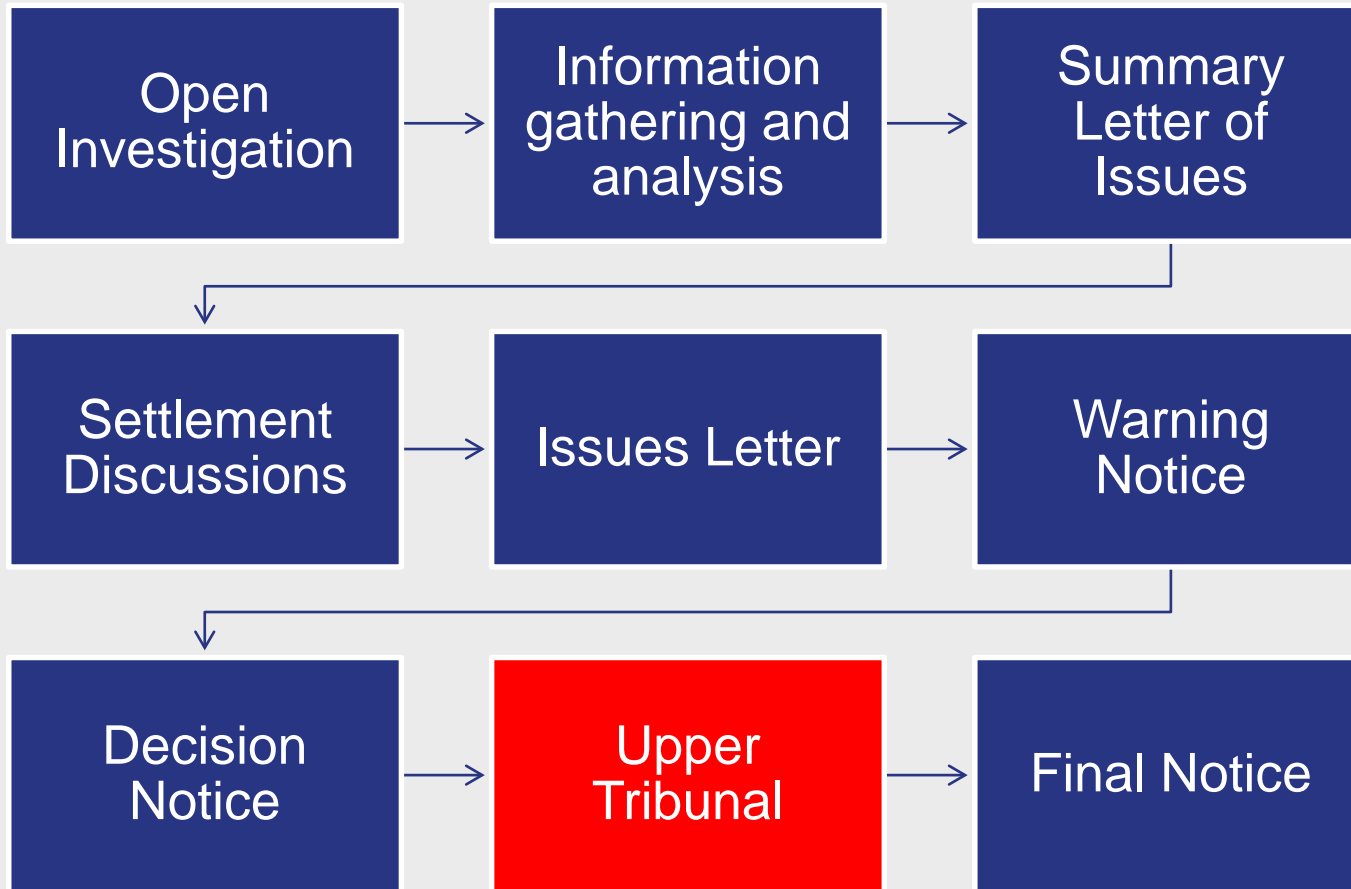
### Summary Statement of Issues Letter (SSIL)

- Sets out breaches and our thinking on detriment / gain
- Puts our case at its highest (as supported by evidence)
- Sets out our position (does not pre-empt their possible responses)
- Post-SSIL meeting with subjects – settlement discussions on a “without prejudice” basis

### **Outcomes:**

1. Settlement is reached: settlement agreement and discount on penalty
2. Settlement cannot be reached: contested route
3. Investigation closed on administrative priority grounds / finding of no breach

# REMIT investigations



# *REMIT investigations*

## Penalties

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

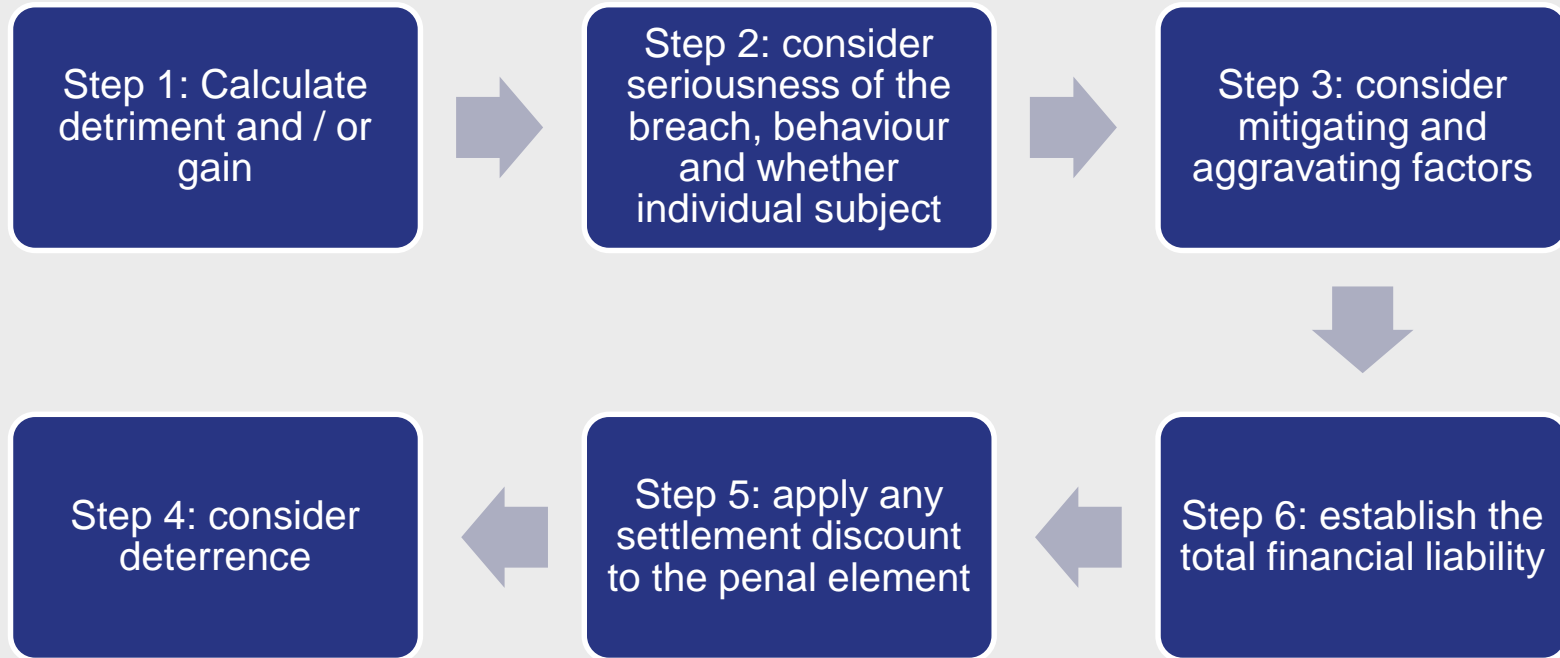
The Authority will consider the full circumstances of each case, for example:

- the seriousness of the suspected breach, including duration and frequency
- the behaviour and previous compliance history of the person
- any published guidance
- any action taken by the Authority or other regulatory authorities

For financial penalty and / or restitution, the total payable amount consists of two elements:

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

## Process for calculating the total financial liability of the person in breach



## ***Investigation into NGET for publishing incorrect market information***

- 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

*Thank you for your attention*

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