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**To:** [Glover, David](#)  
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**Subject:** Official - sensitive: Dossier of under-enforcement by Ofgem  
**Date:** 28 February 2017 22:47:22  
**Attachments:** [Official sensitive - Dossier Ofgem enforcement.docx](#)

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Dave,

In discussion with Andrew today it was decided to draw up a dossier of the strongest handful of cases that show poor enforcement practices by Ofgem. Andrew wants this material for a further call and possible face-to-face meeting with Dermott Nolan.

A number of examples were briefly mentioned in our meeting, and I've had a first go at fleshing out a few bullet points for some of these (see attachment), albeit without the supporting evidence at hand.

I've marked this as official sensitive given the specifics of cases we will be entering into – I think we will have to name them as we want to draw them out very specifically to the attention of Ofgem's senior management as high-profile examples of poor enforcement.

Could you:

- Check the facts on what I've put together – I just worked from the discussions today and it might not capture any nuances in the picture;
- Get any underlying evidence we have on these cases – Andrew will want to satisfy himself that they are strong enough to push Ofgem on; and
- See if you can fill out dossier a bit more both in terms of any additions you think should be included, and more detail especially in the blank headers.

If others could also chip in (I know Martin had more to give on the potato chipping example, but I didn't catch the name of that case) if they have good examples or further details/corrections in the ones already listed, that would also be helpful.

I'll catch up with you after tomorrow morning's hearing.

Thanks for this,

Jonathan

## Speaking note and summary of key cases for a Permanent Secretary/ Chief Executive level discussion of Ofgem's enforcement approach

### Background

- There is a public perception that Ofgem's enforcement of the scheme has been lax
- E.g. comments from Hansard during Ofgem's evidence session criticising enforcement approach
- Comments from Connor Murphy in Assembly debate on 2017 Regulations that Ofgem's evidence had been a 'low point'.
- Mention at the supplier open day (public forum) that Ofgem has avoided turning applicants away from the scheme at the start, and now the issues are surfacing at point of inspection (across UK – not just NI scheme)
- Some of the criticism is unfounded, and as you know, DfE has refuted allegations that Ofgem leaked to the Nolan Show a full list of the scheme participants' names and details.
- That said, the Department does have serious concerns about the level and quality of Ofgem's enforcement activity, and about its results.
- The Department's view is that this is a broad, cultural issue related to a reluctance to make the most use of the available enforcement options, rather than a series of isolated cases. However, a number of individual cases are discussed below to highlight DfE's concerns.

### 1. SB case

- This is a PWC category 4 case- domestic use is the obvious purpose of the installation and evidence of any alternative purpose is lacking
- It appears a clear breach of the stated intentions of the scheme, and a strong test-case for this type of breach
- The Department has specifically, and repeatedly, asked Ofgem to take appropriate action in this case. Specifically, the Department has made clear that this sort of breach should lead to expulsion from the scheme.
- The ongoing inaction by Ofgem in this case is seriously undermining public confidence in the scheme's enforcement.
- What were originally whistleblower allegations have been made public in the NI Assembly and subsequently in the Irish News, Belfast Telegraph and Newsletter. Delay in the face of this risks appearing like assent.

### 2. Enniskillen fire case

- This event took place on 11 January [DN check 10/11] and there has yet to be any enforcement activity.
- The eight boilers (and 14t of woodchip) were destroyed by the fire that burned down the shed.
- The Department would have expected: an immediate notice of suspension of payments under the scheme; the timely launch of an investigation, given the risk-profile of the installations and allegations made in respect of the undertaking; and a physical presence/inspection within at most one week of the events.

### 3. Dormant Companies

- Rapidly after getting the list of participants' names and installation details, the Nolan Show interrogated aspects of the data.
- Although a number of the conclusions they came to were erroneous due to a lack of expertise/understanding, some of the simple checks they conducted throw a poor light on Ofgem's enforcement.
- In particular, the fact that the Nolan Show quickly identified that many of the beneficiaries were listed as dormant companies was embarrassing, given that this information can easily be cross-checked in the public domain, and this appears not to have been done by Ofgem.
- In addition, the Nolan Show identified the theoretical Eligible Heat Output limits of different sized-boilers running at 100%. There does not appear to be any audit/ check that no installations have generated and been paid for over 100% of their maximum EHO. If this is theoretically possible, a control should be put in place to prevent such payments.

### 4. PWC Categories 2, 3, and 4, more broadly

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### 5. The potato chipping photographs example

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