

Heat networks regulation: enforcement guidelines and penalty policy consultation (Ofgem)

Response from Propertymark

September 2025

Background

1. Propertymark is the UK's leading professional body of property agents, with over 19,000 members representing over 12,500 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.¹

Consultation- overview

2. Under the Energy Act 2023, the UK Government has introduced new enforcement powers to regulate heat networks across 'Great Britain (England, Scotland and Wales). These powers are set out in the Heat Networks (Market Framework) (Great Britain) Regulations 2025 (the "Regulations"), which will come into force on 27 January 2026.
3. Scotland has its own legislative framework under the Heat Networks (Scotland) Act 2021. While the Energy Act 2023 and the 2025 Regulations apply across Great Britain, certain provisions, particularly around implementation, are tailored to align with devolved Scottish legislation.
4. Ofgem are consulting on their proposed approach to using these enforcement powers, outlined in the 'Heat Networks Enforcement Guidelines' and the 'Heat Networks statement of Policy with respect to Financial Penalties and Consumer Redress Orders'. Ofgem are also seeking views on the use of fixed penalties.

Propertymark Response Summary

5. Propertymark broadly agrees with Ofgem's proposed approach and has made some suggestions which we hope will introduce greater clarity in respect of case closure, the Enforcement Decision Panel, the approach to publicising unresolved cases. Propertymark has also expressed concern that the cost of penalties may ultimately be borne by consumers.

¹ <https://www.propertymark.co.uk/>

Questions

Question 1: Are the enforcement powers, procedures and governance set out clearly in the Heat Network Enforcement Guidelines? If not, please specify which areas need to be clearer and why.

6. Section 2.20 of the guidelines state that 'If the Authority concludes that the regulated person has not breached any relevant condition or requirement, the case may be closed.' In these circumstances, it is unclear what reason would exist for keeping the case open. Propertymark therefore recommends a change in wording from 'the case may be closed' to 'the case must be closed'. If Ofgem can envisage reasonable circumstances where a clear conclusion is reached that a regulated person has committed no breach, but the case ought to remain open, it would be helpful for Ofgem to clarify these circumstances.
7. Section 3.16 explains that the Enforcement Decision Panel (EDP) will 'usually' be made up of three members, appointed by the EDP chair. It goes on to say that there will be a Panel Chair who will have the casting vote in the event of a deadlock. However, the section also explains that in certain cases, the EDP chair may appoint a single EDP member or a panel of two members to take the decision. Propertymark recommends that this section be reviewed, as there is no explanation of the circumstances which would merit a single member, a panel of two members, or a panel of three members with a Panel Chair. Propertymark also suggests that all decisions be made by a panel of three members so that decisions are more robust and less open to challenge. It is unclear what the outcome would be in the event of a split decision on a two member panel.
8. Section 5.25 explains that Ofgem will normally inform the authorised person(s) under investigation that an enforcement case has been opened. However, the guidance then states that 'We may not, for example, where we consider that alerting the authorised person(s) before issuing a formal request for information.' Presumably, the sentence should continue to the effect of 'will hinder Ofgem's ability to investigate' or similar.

Question 2: Is the cross-reference to Ofgem's main Enforcement Guidelines in relation to consumer law and Competition Act cases clear and sufficient? If not, what additional information or clarification would be helpful?

9. The reference to the main Enforcement Guidelines is clear and no additional information is required.

Question 3: Is there anything relevant to the heat network sector that we need to take account of in the approach we have outlined for enforcement? What is this, and where do you think it would change our approach?

10. The Heat Network Enforcement Guidelines appear to Propertymark to take sufficient account of the heat network sector in its approach.

Question 4: Do you have any comments on any other areas of the guidelines?

11. In respect of the approach to making cases public, Ofgem sets out that all cases opened will be published on Ofgem's website as a matter of course, unless this would adversely affect the investigation, consumers or if the case is subject to confidentiality. However, 5.31 says that a statement will 'make it clear that this does not imply that we have yet made any findings about the issues under investigation.' It may be unreasonable to publicise a case before a conclusion is reached as to whether wrongdoing has occurred, and could lead to unfair reputational damage. Ofgem should consider whether the public interest outweighs potential reputational damage in each case. It also seems reasonable that an authorised person about whom a complaint outcome is published should be informed of the publication as an obligation for Ofgem, rather than a courtesy as the guidance currently sets out.

Question 5: Is the process for deciding whether to impose a financial penalty, and how the amount is calculated, clearly presented in the Penalty Policy Statement?

12. The process is clear that a financial penalty is imposed in circumstances in which material detriment has occurred for consumers, and that the level of the penalty should exceed any benefit which the party being fined has received from non-compliance.

Question 6: Is the process for deciding whether to impose a consumer redress order, and how its requirements are determined, clearly presented in the Penalty Policy Statement?

13. The process for consumer redress orders and its requirements are clearly presented.

Question 7: Are there any additional factors specific to heat networks that we should consider when deciding whether to impose a financial penalty and the amount, or a consumer redress order and the requirements?

14. Ofgem should consider whether imposing a financial penalty will ultimately lead to consumer detriment, particularly if the proposed penalty is large. Ultimately, money paid through a penalty is money that could otherwise be used to maintain a heat network or reduce bills for consumers.

Question 8: Are there any specific considerations or alternative approaches that Ofgem should consider when progressing enforcement action against publicly funded bodies?

15. Ultimately, any penalty paid by a publicly funded body is a cost borne by the taxpayer. It may therefore be appropriate to focus on the use of consumer redress orders when dealing with local authority breaches, for example.

Question 9: Do you have any comments on any other areas of the Penalty Policy Statement?

16. Propertymark has no further comments on the Penalty Policy Statement.

Question 10: What types of breaches do you think should be subject to Fixed Penalties in the heat networks sector?

17. Interruptions to customer supply should be compensated at a fixed rate in the same way that Ofgem compensates for energy supply interruptions (£85 if power has been cut off for 48 hours; £45 for every 6 hours afterwards, to a maximum amount of £2,165) through Fixed Penalties. However, given the variability of heat network design, it is preferable that Ofgem works on a case by case basis for setting fines for other breaches. The general approach of a percentage of turnover appears to be the fairest approach.

Question 11: What level of penalty do you think would be appropriate for these types of breaches?

18. As set out above, £85 if the supply has been cut off for 48 hours; £45 for every 6 hours afterwards, to a maximum amount of £2,165, in line with power supply disruption compensation.

Question 12: Are there any risks or unintended consequences Ofgem should consider in applying Fixed Penalties?

19. Section 1.8 notes that 'the Authority expects authorised person [sic] will not seek to recover the costs of financial penalties or consumer redress from their customers. Evidence that an authorised person is recovering these costs from their customers may be seen as an indication that the market is insufficiently competitive.' However, it is unclear what ability Ofgem would have to prevent the cost of financial penalties being recovered through customer billing, or whether this is realistic; if the consumer bills are the revenue stream of the party subject to a fine, it is not clear from where else the money to pay a financial penalty would come from.