



Oil & Gas
Authority

Enquiry Guidance

The OGA's guidance on the handling of Enquiries.

Version 1, May 2019

The document can be found on the OGA's website: www.ogauthority.co.uk/media/5758/oga-enquiry-guidance-may-2019.pdf

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Scope and purpose of this guidance

1. Background and context

- 1.1 The Infrastructure Act 2015, which amended the Petroleum Act 1998, established in law the principal objective of maximising economic recovery of UK offshore petroleum ('MER UK') and required the production of one or more strategies for enabling the principal objective to be met.
- 1.2 The Maximising Economic Recovery Strategy for the UK ('the Strategy') was published on 18 March 2016. Its Central Obligation states that '[r]elevant persons must ... take the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath ... UK waters'.
- 1.3 The Central Obligation is binding on relevant persons¹ including the Oil and Gas Authority (OGA) and, to assist with its effective delivery, the Strategy also sets out a number of Supporting Obligations, Required Actions and Behaviours. These expand on how the Central Obligation applies in particular circumstances and specify the actions and behaviours to be adopted by relevant persons when carrying out activities in the UK continental shelf ('UKCS').
- 1.4 The Strategy also contains several Safeguards; the Central and Supporting Obligations, Required Actions and Behaviours should be read subject to those Safeguards.
- 1.5 The Energy Act 2016 ('the 2016 Act') established the powers of the OGA. These powers relate to matters such as meetings, information and samples, dispute resolution and sanctions. The targeted use of these powers means among other things that the OGA can act where relevant persons are not complying with a petroleum-related requirement².
- 1.6 In addition, the OGA has a range of powers as set out in licence model clauses and under third party access to infrastructure ('TPA') powers. For the purposes of this guidance, the powers relating to TPA, dispute resolution and sanctions, are collectively known as the 'OGA Powers'.
- 1.7 This guidance sets out the process the OGA will normally adopt when carrying out an enquiry ('Enquiry') (as set out in section 3 of this document). This guidance also includes the process for handling disputes where the OGA decides to intervene on its own initiative under its TPA and Non-Binding Dispute Resolution ('DR') powers. In the instances where relevant persons³ wish to refer a dispute to the OGA for resolution, then they should consult the following OGA guidelines:
- For referral of an Infrastructure Access Dispute to the OGA [click here](#)
 - In order to seek a non-binding opinion from the OGA to resolve a dispute, [click here](#)
- Figure 1 below sets this out in further detail**
- 1.8 The OGA will apply this guidance flexibly. This means that the OGA will have regard to the guidance when carrying out an Enquiry, but when the facts of a particular matter reasonably justify it, the OGA may adopt a different approach. Should the OGA choose to adopt an approach different from those outlined in this guidance, the reasons for this will be explained to the parties.
- 1.9 In determining the outcome of an Enquiry, the OGA intends to adopt the following principles:
- The OGA's procedures should be fair and proportionate; and
 - The OGA should be transparent subject to commercial confidentiality considerations
- 1.10 The OGA considers that greater transparency of the investigations and disputes that it pursues will support the principal objective referred to in paragraph 1.1 above.

¹ As defined in <https://www.ogauthority.co.uk/media/3229/mer-uk-strategy.pdf>

² Petroleum-related requirements are defined in s.42(3) of the 2016 Act as:

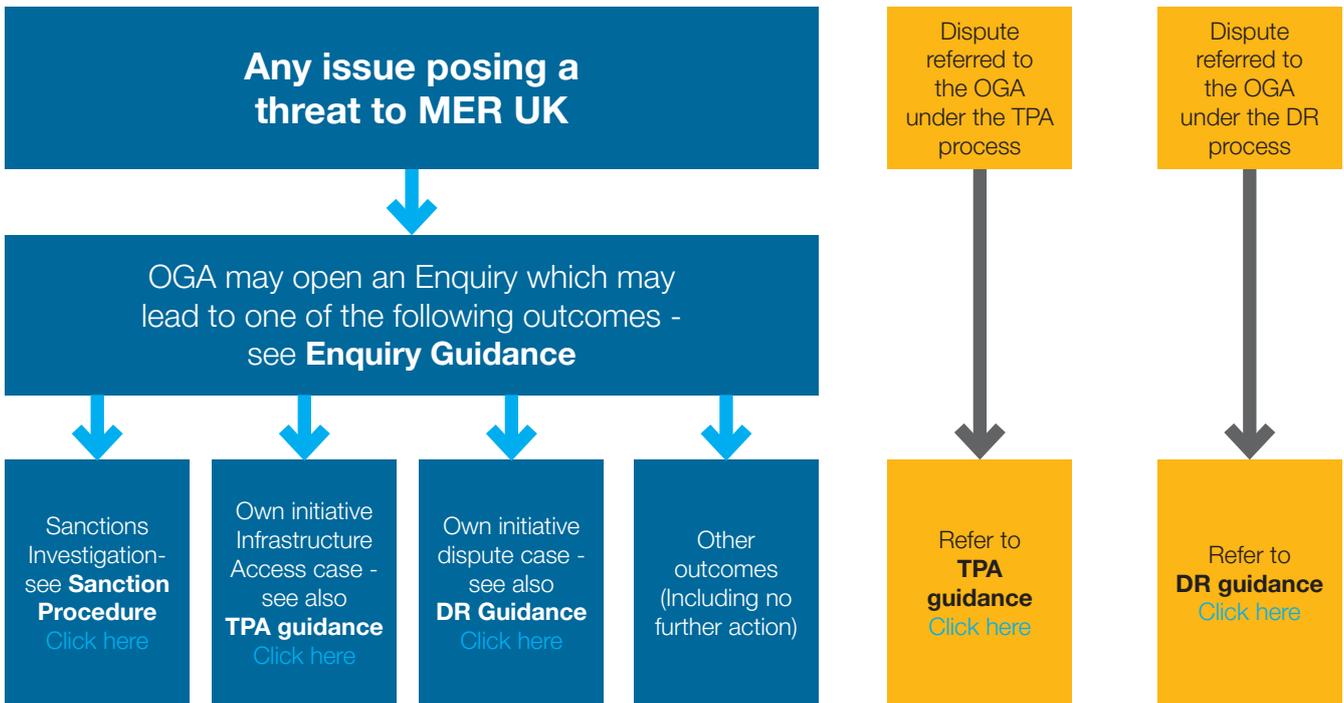
i. A duty imposed under section 9C of the Petroleum Act 1998 to act in accordance with the current strategy or strategies produced under section 9A(2) of that Act for enabling the principal objective to be met,
 ii. a term or condition of an offshore licence, or
 iii. a requirement imposed on a person by or under a provision of this Act which, by virtue of the provision, is sanctionable in accordance with this Chapter.

³ As defined in <https://www.ogauthority.co.uk/media/3229/mer-uk-strategy.pdf>

Status of this guidance

- 1.11 This guidance is not a substitute for any regulation or law and is not legal advice. It does not have any binding legal effect.
- 1.12 This guidance will be kept under review and will be revised as appropriate in the light of further experience and developing law and practice, and any change to the OGA's powers and responsibilities. If the OGA changes this guidance in a material way, it will publish a revised document.

Figure 1



How to use this guidance

2. Enquiries and how they fit in with the OGA's work

- 2.1 The OGA's Operations Directorate carries out structured, tiered stewardship reviews as part of its 'business as usual' operations⁴. Where an issue arises that requires the OGA's attention, this will usually be dealt with initially through this stewardship process.
- 2.2 Where an issue may have a MER UK impact and has not been resolved by stewardship, active facilitation⁵ may be required. This marks the start of the OGA's measured escalation process, illustrated in Figure 2.
- 2.3 When the OGA considers the failure to progress an issue may potentially have an adverse impact on MER UK or more generally be non-compliant with a petroleum-related requirement, the level of facilitation increases. The move to enhanced facilitation will usually be announced in a letter from the OGA Director of Operations to the relevant parties. Enhanced facilitation⁶ is timebound to ensure the issue receives the appropriate focus and attention from the parties involved, within a clear timeframe.
- 2.4 The first three stages in the escalation process – stewardship, facilitation and enhanced facilitation – are all dealt with by the OGA's Operations Directorate. The OGA expects that, in most cases, an issue is likely to be resolved through the facilitation or enhanced facilitation processes.
- 2.5 Where an issue has not been satisfactorily resolved by stewardship, facilitation or enhanced facilitation, then it is likely to be reclassified as a case for further examination by the OGA's disputes and sanctions team ('D&S team') within the OGA's Regulation Directorate.
- 2.6 At this point an Enquiry may be opened by the D&S team. The Enquiry process is intended to act as a filter to enable the OGA to assess the most appropriate course of action, taking into consideration the full range of regulatory powers it has available. The primary intention of the Enquiry is to assess, with an open mind, the most appropriate form of regulatory intervention to achieve a satisfactory outcome. Enquiries will not automatically result in the application of any particular formal procedure and no assumptions will be made with regard to the outcome.
- 2.7 The Enquiry process is intended to be transparent and open, and information will be published where it is deemed appropriate (subject to regard to confidentiality, see paragraph 4.6 below). Section 7 sets out the OGA's transparency and publication procedures in relation to its Enquiries and Investigations, including the extent to which it may disclose the identity of the parties involved.
- 2.8 An Enquiry may result in a variety of outcomes, for example a Sanctions Investigation, commitments in lieu of further action, agreeing a compliance plan, an area plan, mediation, own initiative use of our TPA or DR powers⁷, or no further action – see section 6 of this guidance below.
- 2.9 It should be noted, however, that the OGA may on occasion proceed directly to an Investigation without first carrying out an Enquiry, for example when the circumstances require it in order to prevent significant and/or irreversible damage to MER UK.

⁴ <https://www.ogauthority.co.uk/media/3985/stewardship-review.pdf>

⁵ Facilitation is used where an issue requires further involvement from the Operations Directorate.

⁶ Enhanced facilitation is required when the OGA considers the failure to progress an issue poses a potential adverse impact on MER UK, and the level of facilitation therefore increases.

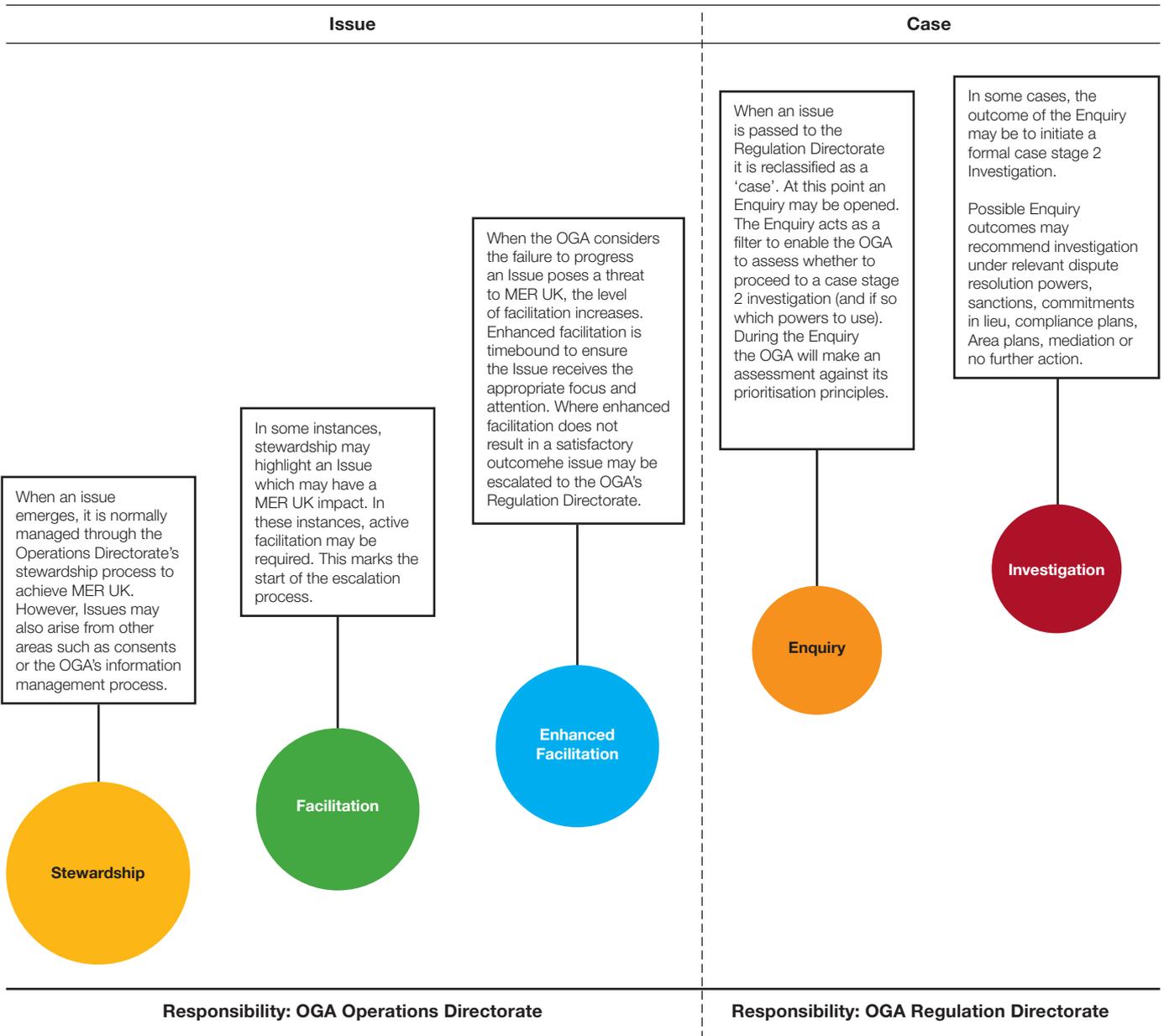
⁷ Depending on the type of dispute, the OGA will follow either its dispute resolution guidance or its guidance on disputes over third party access to upstream oil and gas infrastructure for all such cases. Reference for such should therefore be made to the relevant guidance.

Disputes

- 2.10 Part of the OGA's work involves the handling of disputes, whether they be specific disputes relating to TPA or more general disputes where the OGA can give non-binding recommendations, and whether they be a reference to the OGA by the parties concerned under Part 2, Section 2 of the 2016 Act or an application to the OGA by the parties concerned under Chapter 3 of the Energy Act 2011, or whether they are opened on the OGA's own initiative.
- 2.11 If a dispute has been referred to the OGA under s.82 of the EA 2011 or s.20 of the EA 2016, reference should be made to the guidance on disputes over third party access to upstream oil and gas infrastructure ('TPA Guidance') or dispute resolution guidance ('DR Guidance') respectively. For all other issues parties should consult this Enquiry document for guidance on the Enquiry phase of a case.
- 2.12 If the outcome of an Enquiry is for the OGA to use its dispute resolution powers⁸ (either TPA or non-binding dispute resolution) on its own initiative then the OGA will explain in writing to all relevant parties which process it will follow under the appropriate guidance.

⁸ https://www.ogauthority.co.uk/media/5753/oga_dispute_resolutions-guidance.pdf
https://www.ogauthority.co.uk/media/5755/oga_guidance_disputes-over-third-party-access-to-upstream-infrastructure.pdf

Figure 2: OGA’s Measured Escalation



3. The Enquiry stage within the OGA's process for use of formal powers

3.1 In addition to this Enquiry guidance, the OGA has published four other key pieces of guidance which support its use of powers. These are:

- DR Guidance⁹;
- TPA Guidance¹⁰;
- sanction procedure¹¹; and
- OGA guidance on financial penalties¹².

3.2 The casework processes across our guidance documents (except for the OGA guidance on financial penalties) sets out four broad stages of a case, reflecting the requirements of the relevant legislation and/or the published OGA procedure.

3.3 These stages are:

- Stage 1 (Enquiry) - Establishing an applicable dispute or failure that could require further consideration; deciding on the most appropriate way to take the matter forward
- Stage 2(a) (Investigate) - Gathering further information, evaluating and analysing, assessing the strength of evidence, talking to the parties, building options and developing recommendations
- Stage 2(b) (Draft decision/ recommendation) - Preparing a draft notice/recommendation or 'minded to' letter to share with relevant parties
- Stage 2(c) (Final decision/ recommendation) - Consideration of comments received on the draft, preparation of final notice or recommendation followed by a formal decision.

3.4 Figure 3 below outlines the OGA's process in relation to each of its formal powers. The Enquiry process enables the OGA to investigate an issue effectively and move to a resolution consistent with the OGA's objectives, a resolution which may or may not rely upon formal intervention, dependent on the circumstances.

⁹https://www.ogauthority.co.uk/media/5753/oga_dispute_resolutions-guidance.pdf

¹⁰https://www.ogauthority.co.uk/media/5755/oga_guidance_disputes-over-third-party-access-to-upstream-infrastructure.pdf

¹¹https://www.ogauthority.co.uk/media/5754/oga_sanction_procedure.pdf

¹² The Sanction Procedure is supported by guidance on the level of financial penalty. <https://www.ogauthority.co.uk/media/3488/420387-oga-financial-penalty-guidance-28.pdf>

Figure 3

Formal Power	Case Stage 1 – Enquiry	Case Stage 2(a) – Investigate	Case Stage 2(b) – Draft decision / recommendation	Case Stage 2(c) – Final decision / recommendation
Sanction – s42-60 of the 2016 Act	<p>Enquiry Process</p> <p>To decide whether there is sufficient initial evidence to merit a full (stage 2) Investigation and if it is a priority issue for the OGA (Refer to Enquiry Guidance)</p>	<p>Investigation (Refer to Sanction Procedure)</p>	<p>Draft Sanction Warning Notice or other outcome</p>	<p>Sanction Warning Notice or other outcome</p>
<p>Infrastructure Access – s82 Energy Act 2011 ('EA 2011') (Application)</p>	<p>Decide to 'Reject/Adjourn/Consider further' and whether there is an applicable dispute (Immediately refer to TPA Guidance)</p>	<p>Consideration (Refer to TPA Guidance)</p>	<p>'Minded to' letter/draft notice</p>	<p>Notice or other outcome</p>
<p>Infrastructure Access – s83 EA 2011 (OGA acting on own initiative)</p>	<p>Enquiry to determine whether to proceed on own initiative (Refer to Enquiry Guidance)</p>	<p>Consideration (Refer to TPA Guidance)</p>	<p>Early view of draft recommendation</p>	<p>Recommendation</p>
<p>Non-binding dispute resolution – s20 of the 2016 Act (Referral)</p>	<p>Decide to 'Reject/Adjourn/Accept' (Immediately refer to DR Guidance)</p>	<p>Consideration (Refer to DR Guidance)</p>	<p>Early view of draft recommendation</p>	<p>Recommendation</p>
<p>Non-binding dispute resolution – s22 of the 2016 Act (OGA acting on own initiative)</p>	<p>Enquiry to determine whether to proceed on own initiative (Refer to Enquiry Guidance)</p>	<p>Consideration (Refer to DR Guidance)</p>	<p>Early view of draft recommendation</p>	<p>Recommendation</p>

Enquiry process

4. Enquiry process

4.1 This section of the guidance sets out the general process which will normally be followed by the OGA in carrying out an Enquiry.

Initiation of Enquiry

4.2 Where the OGA considers that an issue has not been satisfactorily resolved by stewardship, facilitation or enhanced facilitation, then it is likely to progress the matter to the Regulation Directorate, usually reclassifying the issue as a case, the first stage of which will generally be an Enquiry.

4.3 If an Enquiry is commenced the OGA will appoint a case officer and will notify the relevant party or parties in writing that it has opened an Enquiry into the matter.

4.4 The case officer will assess the evidence and background information and consider next steps.

Requests for additional material

4.5 The case officer may deem it appropriate to gather additional material to enhance the OGA's understanding of the issue involved in the case and enable it to reach a properly informed view on the action to be taken. Such additional material may include:

- Further information from the party or parties involved;
- Views on the matter from the party or parties involved; and/or
- Technical or other information from relevant third parties.

4.6 Where information is sought from relevant third parties, due regard will be had to the confidentiality of the matter and the OGA will consult with the parties to the Enquiry before revealing any relevant information that may conflict with this confidentiality. When the information is provided, the OGA would expect it to be accompanied with a statement that sets out clearly any information over which confidentiality is being claimed, the reasons for such claim together with a redacted version of the information.

4.7 The OGA intends that during an Enquiry any request for additional material or views will generally be undertaken informally, without recourse to the OGA's formal information gathering powers. Parties will, however, be expected to co-operate positively with the OGA.

4.8 The OGA may ask for additional material or views to be provided in writing, in a meeting with the OGA, or both. The request will specify the information or views required and give details of where, when and how they must be provided.

4.9 The OGA may send out more than one request for information to the same party during the course of an Enquiry. For example, the OGA may ask for additional information after considering material submitted in response to an earlier request.

4.10 Where the OGA sends out a request, the OGA will also set out a deadline by which the additional material or views must be received. The deadline will depend on the nature and the amount of information that the OGA has requested. The OGA expects recipients to comply fully with any information request within the given deadline.

4.11 As a Public Authority, the OGA is subject to requests to disclose information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Note, disclosure may be subject to exemptions under these Acts.

4.12 Section 7 sets out the OGA's transparency and publication procedures in relation to its Enquiries and Investigations, including the extent to which it may disclose the identity of the parties involved.

5. Prioritisation within an Enquiry

- 5.1 Once all relevant information has been gathered, the OGA will determine a preferred course of action
- 5.2 The OGA will generally aim to determine the outcome of an Enquiry with a preferred course of action within six weeks of opening the Enquiry. The OGA notes that it may take longer to enquire into novel or complex matters or matters where information has taken longer to be provided.
- 5.3 In determining the preferred course of action, the OGA will, amongst other considerations, have regard to the criteria listed below.¹³

Power to act

- 5.4 The OGA will consider the basis on which to act. This will require reference to all relevant pieces of legislation, including the 2016 Act. Prior to investigating, the OGA will consider:
 - Whether the OGA has discretion over whether to act or not?
 - Is there an urgency to act now?

Failure to comply with petroleum-related requirements

- 5.5 For a sanctions case, the OGA will examine whether there is sufficient initial evidence that there has been a failure to comply with a petroleum-related requirement (for example, potential non-compliance with the MER UK strategy) and whether a full Investigation under the OGA's sanctions powers is merited or whether it is better to use other regulatory levers /powers (whether formal or informal) at the OGA's disposal. The OGA notes that the evidential threshold for commencing its Investigations is low.

Prioritisation criteria: Impact on MER UK

- 5.6 The OGA will take into consideration the potential impact on MER UK of any preferred course of action. The OGA will include the following factors in its assessment of the potential impact. These are illustrative and not an exhaustive list:
 - Value of barrels of oil (or equivalent) at risk:
 - Whether the preferred course of action changes in a positive way the future behaviour of the parties involved; and
 - Whether the risk to MER UK is immediate and whether that risk is direct.

Prioritisation criteria: Strategic significance for the OGA

- 5.7 The OGA may also take into consideration the strategic significance of any preferred course of action. The OGA will generally include the following factors¹⁴ in its assessment of the strategic significance:
 - Would the preferred course of action establish a material principle or precedent?
 - What is the significance of the failure or suspected failure to comply with the objectives of the MER UK Strategy?
 - What is the risk the issue raises to any OGA priorities, as set out in the OGA's annual report, its corporate plan or in any OGA publication?
 - Will the case influence industry behaviours?

Prioritisation criteria: OGA time and cost

- 5.8 The OGA will take into consideration the likely time and cost of implementation of any preferred course of action, weighed against the likely benefits. The OGA will generally consider the following factors¹⁵ in relation to time and cost:
 - What cost will the proposed course of action impose on the OGA (including the opportunity cost of not progressing other important cases/projects)?
 - Is the potential cost proportionate to the proposed course of action?
 - Are there adequate resources to carry out the action in a timely manner?
 - What are the comparative benefits to MER UK of using those resources in other ways?

Prioritisation criteria: Likelihood of success

- 5.9 The OGA may also take into consideration the likelihood of success of any preferred course of action. The OGA does not, however, intend to put too much weight on this factor, as it may only be possible to determine 'success' as any subsequent investigation progresses.

^{13, 14, 15} These are illustrative and not an exhaustive list.

6. Possible outcomes of an Enquiry

- 6.1 Having considered the criteria listed in the previous section, the OGA will determine its preferred course of action, which may be one or more of the following possible outcomes listed below.

Dispute resolution

- 6.2 As stated previously, where the Enquiry relates to a dispute (either infrastructure access¹⁶ or non-binding dispute resolution¹⁷), the OGA is likely to handle the matter in accordance with its usual procedure.
- 6.3 Generally, when an issue is considered to be a dispute, the OGA will look to establish the scope of the dispute. For example, for a dispute that has been brought to the OGA, the OGA will undertake a 'reject, adjourn or accept/consider further' assessment¹⁸ as part of the Enquiry process. In addition to this, as part of the dispute process, the OGA may set timescales for parties to resolve a dispute and if a dispute is considered to be significant, the OGA may publish this on its website.
- 6.4 For more information, reference should be made to the OGA's separate DR Guidance and TPA guidance.

Sanctions Investigation

- 6.5 The OGA may conclude that there is sufficient initial evidence which merits a full Investigation into a potential failure to comply with a petroleum-related requirement. In such cases, the OGA is likely to handle the matter in accordance with its sanction procedure¹⁹.
- 6.6 For more information, reference should be made to the OGA's separate guidance document, Sanction Procedure, which is the OGA's statement of the procedure it proposes to follow in relation to enforcement decisions - Energy Act 2016, part 2, chapter 5.

Commitments in lieu of further action

- 6.7 Parties subject to an Enquiry may offer the OGA commitments in lieu. The commitments in lieu

would need to be devised and proposed by the parties and would need to meet the OGA's MER UK concerns.

- 6.8 Upon receipt of an offer of commitments in lieu from one or more of the parties involved (for example, a proposed amendment to a licence by Deed), the OGA may conclude that it is appropriate either to accept or to reject the proposed commitments in lieu prior to finalising the outcome of the Enquiry. Such proposed commitments in lieu will vary in nature, but in all cases the intention should be to provide a clear and comprehensive solution to the OGA's concerns.

Compliance plans

- 6.9 Where the party confirms in writing that it has failed to comply with a petroleum-related requirement, the OGA may request one or more of the parties to compile, submit and implement a compliance plan. The compliance plan should assist the business in finding an effective means of ensuring compliance with its regulatory obligations. The OGA expects businesses to adhere to their own compliance plans and may initiate an Enquiry in the event of further instances of non-compliance.

Area Plans

- 6.10 The OGA may require one or more of the parties to compile an Area Plan which would describe how economic recovery of oil and gas should be maximised in a particular geographical area of the UKCS, based on the analysis of evidence.
- 6.11 For more information reference should be made to the OGA's separate guidance document 'Guidance on the development and use of area plans.'²⁰

¹⁶https://www.ogauthority.co.uk/media/5755/oga_guidance_disputes-over-third-party-access-to-upstream-infrastructure.pdf

¹⁷https://www.ogauthority.co.uk/media/5753/oga_dispute_resolutions-guidance.pdf

¹⁸As defined in the OGA's DR Guidance paragraph 32 and TPA guidance paragraph 29.

¹⁹https://www.ogauthority.co.uk/media/5754/oga_sanction_procedure_r.pdf

²⁰<https://www.ogauthority.co.uk/media/3987/area-plans-external-guidance.pdf>

Mediation

- 6.12 The OGA may conclude as part of its consideration of a dispute that it is necessary to require the parties to undertake mediation, overseen either by a separate team within the OGA or by an independent mediation facilitator paid for by each of the parties.
- 6.13 Where this mediation process is adopted as a preferred solution by the OGA, the parties will be expected to co-operate positively with the OGA or the independent mediation facilitator.

No further action

- 6.14 The OGA may conclude that there is no further action to be taken. This may happen where, for example, during the OGA's Enquiry the parties have taken material steps to resolve the matter such that no further action is necessary.
- 6.15 If the OGA decides not to progress a matter following a prioritisation assessment, it may send letters to the parties advising among other things that although the OGA is not currently minded to pursue the matter at this stage (effectively suspending the Enquiry) it may do so in future if the OGA receives further evidence or if its prioritisation assessment changes.

Other course of action

- 6.16 The OGA notes that any action recommended by the Enquiry process may not solely result in the use of the actions listed above and, should an alternative course of action be deemed more appropriate, the OGA reserves the right to pursue that option.

Transparency and publication

7. Transparency and publication

- 7.1 The OGA does not intend to publicise the launch of an Enquiry. However, once the Enquiry process is completed, the OGA will write to the relevant parties notifying them of the outcome and of any action to be undertaken and the OGA may publish the outcome of that Enquiry.
- 7.2 Publication at that stage may include a summary of the nature of the Enquiry, the OGA's Enquiry conclusions and any action that the OGA has decided should be undertaken.
- 7.3 Where the outcome of the Enquiry is for the OGA to launch an Investigation, the OGA will publish brief details of the existence of that Investigation. The OGA does not generally intend to name the parties who are the subject of the Investigation at that stage, unless the OGA considers it would be in the public interest to do so.
- 7.4 Where the Enquiry concerns a third-party infrastructure dispute or a non-binding dispute, however, the OGA may publish brief details of the scope of that dispute and the OGA may also name the relevant parties to the dispute, if the OGA considers that such disclosure would be in the public interest.

Contact

- 7.5 If you would like to discuss the Enquiry procedure further, please contact disputesandsanctions@ogauthority.co.uk

