



OVO Energy  
1 Rivergate  
Temple Quay  
Bristol BS1 6ED

[compliance@ovoenergy.com](mailto:compliance@ovoenergy.com)  
[www.ovoenergy.com](http://www.ovoenergy.com)

To: Megan Pickard  
Submitted by email only to:  
[EGPPconsultation@ofgem.gov.uk](mailto:EGPPconsultation@ofgem.gov.uk)

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## **OVO's response to the Consultation on changes to Ofgem's Enforcement Guidelines and Sectoral Penalty Statement.**

Dear Sir or Madam,

OVO welcomes the opportunity to comment on the proposed changes to Ofgem's Enforcement Guidelines and Sectoral Penalty Statement. We are broadly supportive of the aims of this consultation, particularly in streamlining outcomes for Customers, Ofgem and suppliers. We consider the current drafting of the Sectoral Penalty Statement an important factor in the consistency and transparency of financial penalties.

Following our review of the proposals, we think there are elements that require greater clarity, as well as some areas that do not support the overall intent. We have set out our full response to the consultation in Annex 1. In summary:

- The proposal for speeding up the decision making process by granting an Ofgem Director powers to be a sole decision maker may risk independence, transparency and consistency currently provided by the Enforcement Decision Panel.
- The replacement of aggravating and mitigating factors with principals could create inconsistency across penalties, and could reduce transparency for suppliers and consumers.

We do not agree with the proposal to remove the prescriptive factors in the Sectoral Penalty Statement and have included a more detailed response in the attached Annex 1.

Should you have any questions or would like to discuss our response bilaterally please feel free to contact us at [compliance@ovoenergy.com](mailto:compliance@ovoenergy.com).

Kind regards,

Joshua McNeilly  
**Compliance Manager**

## Annex 1 - Detailed response to consultation questions

### Middle and late settlement windows

#### **Q1: What is your view on the proposal to remove the middle and late settlement windows, and associated settlement discounts?**

OVO acknowledges the primary driver behind removing the middle and late settlement windows is that neither settlement options have been used since their introduction. We ask that Ofgem consider that the removal of these windows could limit suppliers' future options to resolve cases at the earliest opportunity, specifically as cases are likely to become more complex with the introduction of more principles based regulations. We believe that it is likely the middle and late settlement windows will be more viable options in the future.

In addition, the consultation document states in paragraph 2.3 *"The settlement window may be reopened at the Authority's discretion in exceptional circumstances"*. We would welcome further clarification on the circumstances under which Ofgem will extend or reopen settlement windows.

### Decision making in settlement cases

#### **Q2: What are your views on the option of allowing the Director responsible for Enforcement to be a decision maker in settlement cases?**

OVO is concerned that allowing the Director responsible for Enforcement to be a decision maker in settlement cases could jeopardise the requisite independence and objectivity leading to cases being settled. There is a likelihood that this decision will result in an increase of suppliers seeking the optional involvement of the Enforcement Decision Panel and/or the Settlement Committee to ensure an independent decision. This is equally as likely to result in a significant increase in the number of contested cases, resulting in lengthening the settlement process as opposed to the aim of reaching settlement more quickly. Before we can express either support or opposition to this proposal, we require more information, particularly on:

1. Where alternative action will sit in the overall process and;
2. the proposed process for opting to involve the Settlement Committee, and what implications this could have i.e. missing the early settlement window or losing the option to have one opened at Ofgem's discretion.

Additionally, paragraph 3.5 of the consultation document states this change is expected to result in more cases being taken through the settlement process, and we ask that Ofgem clarify on what evidence this expectation has been made.

#### **Q3: In your view, are there any other steps you think we could take to speed up the settlement process, without undermining the evidence - based nature of our decision making?**

OVO is concerned over Ofgem's apparent desire to move away from the current use of alternative action, in pursuit of a stronger deterrent message. Alternative action is an important resolution route for all parties, it leads to quick redress for customers whilst saving resources for Ofgem and suppliers. We do not believe there is any evidence that this direction of travel would lead to better outcomes for consumers.

There is also a strong deterrent effect from the requirement for suppliers to admit fault and Ofgem's publication of the decision note to their website, which is often picked up by the media. In light of the proposed change, OVO seeks clarification on where alternative action would fit in the broader enforcement process?

## **Penalty and redress options following a final order or confirmed provisional order**

**Q4: Do you have any comments on the updated guidance on Provisional and Final Orders in section 7 of the guidelines?**

OVO is supportive of the move to align the guidance with the process, on the understanding that the legislation underpinning the use of Orders has not changed.

**Q5: Is there any other information on Provisional or Final Orders you would find helpful to be in the Guidelines?**

OVO do not have any suggestions or comments at this stage.

## **General guidance revisions**

**Q6: Do you have any comments on any areas of the revised guidelines?**

OVO is concerned by the introduction of an enforcement objective aimed at enabling competition and innovation. Such an objective would be entirely at odds with the requirements of all licenced suppliers to comply with the same regulations, and the expectation suppliers have to be subject to the same consequences for non-compliance. The implication of this objective is that a supplier may receive different settlement outcomes depending on their likelihood to leave the market or their contribution (or likely contribution) to innovation in the market itself. An objective to enable competition and innovation serves to undermine the confidence that suppliers currently have in receiving a fair outcome.

OVO also requests that Ofgem share both the Enforcement Guidelines and the Sectoral Penalty Statement with tracked changes for review.

## **Sectoral Penalty Statement**

**Q7: What are your views on the changes to the Sectoral Penalty Statement?**

OVO believes the current drafting of the Sectoral Penalty Statement is an important mechanism in the market, leading to consistent and transparent application of prescriptive rules for the enforcement of financial penalties. It serves two distinct purposes for suppliers, the first is that suppliers are able to adequately communicate and apportion risk categorisation through the organisation, itself an important part of a governance structure. The second is the prescriptive nature of the statement which gives consistency and transparency to the application of enforcement penalties, specifically the calculation of financial penalties.

### Removal of Mitigating & Aggravating Factors

Principles-based regulation serves an important purpose in the energy industry, particularly by discouraging suppliers from setting a minimum benchmark of compliance and encouraging the pursuit of positive outcomes for the consumers. OVO strongly refutes the notion that this benefit will be applicable to *prescriptive* mitigating and aggravating factors. These are important considerations for the calculation of a financial penalty, and as such these should remain prescriptive and quantifiable to ensure fairness, consistency and transparency in the calculation of those financial penalties. We request that greater clarity is given as to how Ofgem intends to maintain fair and consistent outcomes, should the principles-based approach be implemented, given they're designed to be open to interpretation?

### Calculations of Gain and Detriment in Financial Penalties

OVO are generally supportive of the aim to streamline the process and lead to quicker outcomes. However, we do not support the claim that, as the calculation of supplier gain and/or customer detriment is complex and time-consuming, it should be replaced with a qualitative approach as part of the assessment of seriousness.

The calculation of gain and/or detriment is a fundamental part of a proper and legitimate enforcement process, resulting in redress to consumers that is proportionate and appropriate to any

detriment incurred as the direct result of a breach. A qualitative assessment of gain or detriment that is supported by principles is not conducive to a consistent and fair calculation of financial penalties. Moreover, the outcome of this would mean suppliers are not able to dispute the validity of Ofgem's calculations due to the fact the prescriptive elements and requirements to calculate have been removed.

Overall, the proposed changes to the Enforcement Guidelines and the Sectoral Penalty statement are significant reforms, many of which lack the clarity or justification to allow OVO and other regulated parties to make informed decisions. As mentioned in this response, OVO requests Ofgem share the full documents with tracked changes and allow adequate time to review.