

To: Regulation Directors/Managers

*Promoting choice and
value for all customers*

Direct Dial: 020 7901 7291
Email: maxine.frerk@ofgem.gov.uk

4 October 2004

Dear Sir/Madam,

Ofgem decision regarding publication of decisions to investigate alleged contraventions of any relevant condition or requirement, including licence conditions, consumer protection legislation and the Competition Act 1998

In July 2003, Ofgem issued a consultation 'Making markets work for consumers: Ofgem's approach to securing compliance with supply licence obligations and consumer protection legislation'.

One of the matters subject to consultation in that document was the question of whether Ofgem should publicise decisions to investigate potential licence breaches formally at the outset of each such investigation. Although the consultation title referred to 'supply licence obligations', the text indicated that publication of decisions to investigate formally would apply also to alleged contraventions of any relevant condition or requirement (including licence conditions), consumer protection legislation and the Competition Act 1998.

The July consultation included:

'In the interests of transparency Ofgem proposes to provide, on its website, a summary of the formal investigations into breach of licence conditions that it is undertaking. This information ... would be available freely and would include a summary of the allegations or complaints that are the basis of the investigations. However it would not include publication of an investigation:

- *of general market phenomena;*
- *if to do so might prejudice that or a related investigation;*
- *if to do so could have an impact on security of supply; or*
- *it in any way conflicted with the Authority's statutory duties.*

The identity of a complainant would not be publicised unless the complainant had requested such publicity or, in exceptional cases, where it was in the interests of consumers more widely. Where possible the information would include an indication of the progress of the investigation. However, it should be noted that a formal investigation can take many months to complete. Ofgem would not provide any further comments on cases under investigation beyond the information published. Competition Act investigations would also be included.'

Responses to the July 2003 consultation elicited a wide range of views. Some companies expressed concerns about potential harm to their reputation and consumer confidence, were Ofgem to publicise decisions to investigate. Other respondents suggested consumers would feel more confident in the knowledge that apparent failure to comply with obligations was investigated and acted upon where appropriate.

Ofgem considers that publicising decisions to investigate, as set out above, will satisfy Ofgem's duty introduced by the Energy Act in relation to transparency and help elicit information from those who may be able to assist with Ofgem's enquiries. Ofgem will, of course, consider in every individual case its statutory obligations and whether publicising the fact that an investigation is in progress is appropriate.

This will apply to all formal investigations commenced after the date of this letter. Ofgem will consider on a case-by-case basis whether ongoing investigations commenced before this letter should also be included on its website.

The July consultation also proposed 'supply compliance priorities' including:

- *securing compliance with obligations or arrangements which provide for security of supply and the safety of consumers;*
- *securing compliance with obligations or arrangements which facilitate the engagement of consumers with the market; and*
- *securing compliance with obligations that protect individuals who are disabled or chronically sick; individuals of pensionable age; individuals with low incomes; and individuals residing in rural areas.*

Responses to the consultation were broadly supportive of these priorities which have been applied in practice since the consultation. Ofgem confirms that it will continue to apply these priorities in considering supply compliance issues.

I am copying this letter to energywatch.



Maxine Frerk
Director Enforcement and
Consumer & Fuel Poverty Policy