

To licensees, consumers and their representatives, and other interested parties

Promoting choice and value for all customers

Ref. no.: 180/11

16 December 2011

Dear Stakeholder,

Consultation - [Ofgem's Draft Enforcement Guidelines on Complaints and Investigations \("the Enforcement Guidelines"\)](#)

We are consulting on [revisions to our Enforcement Guidelines](#), which set out our policies and procedures for enforcing sectoral, competition and consumer protection legislation. We committed to do this in our Corporate Strategy and Plan 2011-16.

The [Enforcement Guidelines](#) were published on 28 September 2007. Since then some of our procedures have evolved as our practical experience of using our powers has increased. There are also a number of wider developments taking place that are likely to have implications for the way in which we carry out our enforcement work, for example, proposed changes to the consumer and competition landscapes. Also, enforcement is receiving increasing emphasis within Ofgem's work. In our March 2011 Retail Market Review, we made public our intention to take a tougher stance on enforcement, for the benefit of consumers and with the aim of increasing competition amongst suppliers. In addition to the emphasis on our enforcement role, we have significantly increased the amount of enforcement work we do. This is therefore a timely opportunity to review our approach to enforcement.

The review process will be completed in two parts. The first part involves consulting on proposed updates to the Enforcement Guidelines that include expanded or new coverage on areas such as early resolution, consumer protection and provisional orders. The second part is a wholesale review of our approach to enforcement. It will take a fundamental look at procedures and policy, with a view to maximising the impact and efficiency of enforcement work.

The purpose of this letter is therefore twofold:

- to consult on the initial revisions proposed in part one of the review process; and
- to Call for Evidence for part two of the review process. This enables us to obtain views from stakeholders. These views will feed into the wholesale review prior to a further consultation once proposals have been developed.

The updates proposed in the attached [draft revised Guidelines](#) include:

- **Early resolution:** we recently piloted a procedure whereby we work with a company under investigation to bring their case to an early resolution. The aim of settlement is to reach agreement on the nature and extent of breaches, the likely level of penalty and proposals for reparation. Settlement results in a reduction of the

penalty imposed and we may agree other terms with the company as part of settlement. An advantage of settlement is that it avoids the resources necessary, both for the company concerned and for Ofgem, to pursue the case to its final stages. However, not all cases will be suitable for early resolution. Each case is considered in the light of its individual circumstances (see paragraphs 4.26–4.33 of the [draft revised Enforcement Guidelines](#)).

- **Provisional orders:** in light of our experience over the past four years, we have updated the guidelines to provide more information on the circumstances in which we are likely to make a provisional order (see paragraphs 4.18–4.21 of the [draft revised Enforcement Guidelines](#)).
- **Consumer protection legislation:** we have added some further information and a flowchart to outline our general approach to investigating cases as a designated enforcer under Part 8 of the Enterprise Act 2002, including information about the Consumer Protection from Unfair Trading Regulations 2008. This will help stakeholders better understand the process involved and when we might enforce consumer protection legislation (see paragraphs 1.27 and 4.55–4.65 of the [draft revised Enforcement Guidelines](#)).
- **Criteria for opening an investigation:** we have explained our criteria on prioritising cases to give more information about how we assess whether to pursue an investigation. This will help stakeholders better understand why we decide to open some investigations and not others (see chapter 3 of the [draft revised Enforcement Guidelines](#)).
- **Making a complaint:** we have made changes to explain the process for consumers who wish to make an individual complaint about their energy supplier or network provider. This will help inform stakeholders, particularly consumers, on how they can deal with a complaint and the role Ofgem has in that process (see chapter 2 of the [draft revised Enforcement Guidelines](#)).
- **Oral representations and decision making:** we have updated the information we provide in these sections. This is to provide more information on how decisions are made and who makes them and to expand on the role of oral representations within an enforcement case (see paragraphs 4.37–4.40 and 4.41–4.46 of the [draft revised Enforcement Guidelines](#) respectively).

We welcome comments from stakeholders. **Specifically, we ask for comments on these guidelines and in relation to the changes proposed to them. Please give reasons for your answer, giving examples where possible.** Following review of the comments received, we will publish a revised version of the Guidelines in April 2012. Cases opened before the publication of the revised Guidelines will be completed under the current procedures.

In addition, **Annex 1** to this letter provides a summary of the areas we will be considering as part of our wider review in part two of the review process. It acts as a Call for Evidence in these areas. Comments received in response to this Call for Evidence will help shape our future Enforcement approach. We will consult on the proposed future approach towards the end of 2012.

We would be grateful to receive all responses to this consultation letter by 28 February 2012. Please email responses to enforcementguidelines@ofgem.gov.uk or send them to our office (address at the bottom of the page).

We may publish responses on our website. If you consider that information you provide should be treated in confidence, please provide the reasons for this when submitting your response. Even where information is marked as confidential, there may be circumstances in which its disclosure is required. Information provided, including personal information, may

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be subject to publication or disclosure in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 and the Data Protection Act 1998).

If you have any queries about this letter, please contact Anna Stacey, Senior Manager, Competition and Enforcement on 020 7901 7000 or email her at the above address.

We look forward to hearing from you.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Megan Forbes'.

Megan Forbes
Legal and Enforcement Partner, Sustainable Development

Annex 1

Call for Evidence

We are carrying out a wider review of the Enforcement Guidelines and our general enforcement approach. We would therefore welcome stakeholders' comments on our enforcement approach. This will help inform the in depth review we will carry out during 2012.

We expect that the review will examine the following key areas:

- comments received from stakeholders in response to the Retail Market Review and this consultation;
- the likely impact of proposed changes to the landscape for consumer and competition policy;
- the enforcement approaches of other regulators;
- our enforcement objectives and how these sit with our wider statutory duties;
- options for swifter enforcement action or quicker investigations;
- our communications with consumers regarding our enforcement activities and scope of powers;
- ensuring the best use of our resources; and
- alternative methods of regulation, for example placing greater emphasis on compliance work.

We are particularly interested to hear from stakeholders regarding their experiences of Ofgem's enforcement approach, including:

- any particular comments or concerns you have encountered with our current approach. Please provide supporting evidence and indicate a) why you considered there was good practice, or a problem or issue in the circumstances and b) any changes which you believe would address any perceived problem;
- your views on whether the Enforcement Guidelines are helpful for consumers and any improvements that could be made to make them more accessible (for consumers and Consumer Groups especially).