

# Consumer Futures

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Anna Stacey

By email: [enforcementguidelines@ofgem.gov.uk](mailto:enforcementguidelines@ofgem.gov.uk)

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Dear Anna

## **Consumer Futures response to the review of Ofgem's enforcement activities – consultation on strategic vision, objectives and decision makers**

Consumer Futures welcomes the opportunity to respond to this consultation. Our response is not confidential and can be published on your website.

We believe Ofgem's review is very timely, given the proposed changes due to be put in place through the Retail Market Review (RMR), as the binding Standards of Conduct represent a new and positive approach for this sector.

We (when we were Consumer Focus) were one of the organisations interviewed by KPMG as part of its review of Ofgem's existing strategy, and found the interview process very useful. We look forward to participating in the planned summer conference to discuss the results of KPMG's report.

Finally, as discussed in our response to Ofgem's March 2012 consultation,<sup>1</sup> we would like to have a more detailed discussion with Ofgem about avoiding duplication of effort between our organisations. This would also provide clarity for market participants when they have worked with Consumer Futures to address issues of detriment that we have identified. The need to revise the Memorandum of Understanding between our organisations may represent an opportunity to discuss these issues in more detail. Alternatively we would welcome a discussion following the presentation of the KPMG report.

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<sup>1</sup> <http://bit.ly/10mt5Hn>

### **London**

Victoria House  
Southampton Row  
London  
WC1B 4AD  
Tel: 020 7799 7900

### **Glasgow**

Royal Exchange House  
100 Queen Street  
Glasgow  
G1 3DN  
Tel: 0141 226 5261

### **Cardiff**

Portcullis House  
21 Cowbridge Road East  
Cardiff  
CF11 9AD  
Tel: 029 2078 7100

### **Belfast**

Elizabeth House  
116 Holywood Road  
Belfast  
BT4 1NY  
Tel: 028 9067 4833

### Response to questions

**Q1. Do you agree that this is the right Vision for Ofgem's enforcement work? Please provide us with any comments you have on the Vision.**

Consumer Futures agrees with Ofgem's proposed vision.

As Ofgem is aware, we were supportive of its bids for new consumer redress powers via the Energy Bill<sup>2</sup> as well as new enforcement powers under the Business Protection from Misleading Marketing Regulations 2008.<sup>3</sup>

Our main concerns with Ofgem's enforcement work would be to ensure that the obligations are made clear, that the severity of the actions taken is reflective of the breach and acts as a deterrent to suppliers' behaviour and that Ofgem has a co-ordinated approach to its enforcement work.

It also crucial that any investigations are completed in a timely fashion. Some of Ofgem's current investigations were opened in 2010 or 2011 and have still not reached a resolution.

Furthermore, we think that Ofgem must place greater emphasis on monitoring licensees' compliance with the regulations rather than focusing its efforts on investigating potential breaches. For example, the smart meter rollout is a multi billion pound infrastructure programme and its success and the ability to achieve the cost benefits identified in the Impact Assessment, are heavily dependent on consumer acceptance. Ofgem has already put in place new consumer protections associated with the smart meter rollout. Companies' compliance with these new regulations must be closely monitored. If Ofgem is only able to intervene after a breach has occurred, it could have a material impact on consumer confidence in the overall programme.

**Q2. Do you agree with Ofgem's proposed Strategic Objectives, and principles for achieving them, and do you think it would be helpful to adopt annual strategic priorities? Please explain the reasons for your answer and any aspects which you think we should consider.**

Consumer Futures supports the three Strategic Objectives. We consider it essential that any enforcement action taken against a company for a breach of the licence conditions/obligations etc, should result in a penalty which is a significant deterrent. It should not be cheaper to pay a fine than it would be to do things right in the first place.

It would be useful to see more details on how the annual strategic priorities would be agreed, what criteria would be used, and whether Ofgem will consult externally. Or will the priorities be agreed internally?

While we, and other bodies, will continue to monitor the effectiveness of the energy marketplace and refer cases where this appears appropriate, we would expect the first line of defence in identifying and tackling problems to be Ofgem. We do not

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<sup>2</sup> <http://bit.ly/16aC4Qr>

<sup>3</sup> <http://bit.ly/13MZxDF>

doubt that market monitoring processes exist, but you should be aware that, to many stakeholders, they are largely invisible. We consider that highly visible market monitoring has, in its own right, a dissuasive effect on poor practice.

In order to inform its monitoring regime, we think there may be value in Ofgem maintaining and publishing a risk register and, in those areas that it identifies as high risk, to more actively demonstrate how it is monitoring the market. For example, persistent sales conduct problems since market opening suggests that supplier sales activities should be regarded as high risk, and would merit visible public monitoring. Likewise, while many of the best performing suppliers come from the competitive fringe, we have seen several recent examples of new entrants experiencing severe teething problems that have had a knock-on effect on standards of service. This may suggest that increased 'hand-holding', and monitoring, of new entrants may be merited.

We would also see value in clarifying how the enforcement arrangements will work in a smart goods' world. It seems possible that the lines of sectoral and product regulation may become increasingly blurred in the coming years. For example, a consumer may find themselves with smart household goods that are regulated by the Office of Fair Trading (Competition and Markets Authority), that are controlled over communication assets regulated by Ofcom, by an energy supplier regulated by Ofgem. We think there is a risk that market issues could emerge where it is not wholly clear which regulator is the lead. It would be useful to understand whether there are appropriate agreements or memoranda of understanding in place to ensure there are no gaps in consumer protection.

### **Q3. What obstacles do you consider that Ofgem may encounter in achieving its Vision and Strategic Objectives?**

One of the obstacles might be that the deterrent is not credible and that the penalty does not reflect the severity of the breach. We welcome Ofgem's objective to ensure visible and meaningful consequences for licensees who fail consumers and do not comply with their obligations. When an enforcement decision is being made, we consider that companies must demonstrate that they have been successful in addressing the problems caused by the breach and successfully addressed the consumer detriment.

Ofgem proposes to identify poor behaviour early and take action. While we support attempts to reach an early resolution, this must not be seen as an easy option to negotiating a lower penalty, and as mentioned above checks must be made to ensure breaches and detriments to consumers have been addressed.

Another obstacle might be suppliers not being clear of their obligations, particularly as changes are made to the scope of enforcement, such as the new Standards of Conduct and new powers such as REMIT and licence changes taking place via the RMR. We welcome the establishment of strategic enforcement priorities that are reviewed annually as well as the decision-making guidance and hope that this will make enforcement work more transparent. It will be important that the changes are clearly communicated to the industry.

We note that Ofgem does not intend to produce detailed guidance for suppliers about the new Standards of Conduct or other changes being put in place under the RMR. While we accept that it is the responsibility of licensees to ensure compliance

with the licence conditions, many of the new requirements are complex and/or represent a new approach for the energy sector. In the supply market, a number of new domestic suppliers have recently launched and it is unclear whether these new suppliers have sufficient understanding of the wide range of obligations the licences place upon them. For instance, many new suppliers are unaware of the need to establish a relationship with Consumer Futures and its Extra Help Unit.

In 2008, Consumer Futures' predecessor bodies urged Ofgem to publish guidance about the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 and impose an audit regime to ensure companies were complying with the new regulations in a consistent manner. Ofgem did not agree. Investigations into all the major suppliers' compliance with the regulations were launched in late 2010, with penalties imposed on British Gas and npower, while the investigation into EDF Energy remains open after a number of years. Furthermore, inconsistencies remain amongst the industry about the interpretation of key aspects of the regulations such as the logging of repeat or resolved complaints. We intend to write to you separately about this matter.

**Q4. Do you agree with the proposals for an Enforcement Decision Panel and secretariat to take decisions in contested enforcement cases? Please explain the reasons for your answer.**

Yes. Consumer Futures welcomes the further clarity that Ofgem has provided in the decision-making for contested cases. We support the establishment of the Enforcement Decision Panel and the addition of the new dedicated team of specialists as well as the new emphasis on the separation between the investigation and decision making functions. We note that the specialists will come from a range of relevant backgrounds. However, we consider that at least one panel member should come from an energy background.

We welcome the decision-making guidance and hope that the guidance will help ensure Ofgem can take a clearer, more efficient and co-ordinated approach to its work across the organisation.

We would especially like to see a more co-ordinated approach towards the Enforcement process and acknowledge the proposed arrangements for the Authority's oversight of the Panel's work should help ensure this process works better across Ofgem.

**Q5. Do you agree with the proposals for settlement decisions? Please explain the reasons for your answer.**

Again Consumer Futures would like to see a joined up approach across Ofgem and we hope that the proposed arrangements will help with this. On the settlement decisions themselves, we would like to repeat our concerns outlined in Consumer Focus' response to your consultation on *Draft Enforcement Guidelines on Complaints and Investigations* (March 2012).<sup>4</sup> We would like to see a balance between early resolution and applying a penalty by the regulator that reflects the severity of the breach.

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<sup>4</sup> <http://bit.ly/12P40EB>

**Q6. Do you agree with the proposed arrangements for the Authority's oversight of the Panel's work? Please explain the reasons for your answer.**

Consumer Futures welcomes the formation of an Enforcement Oversight Board for strategic oversight of decision-making for contested and settled cases. The priority for the panel must be to have a more co-ordinated approach to enforcement across Ofgem.

**Q7. Do you have any additional comments on the matters covered in this letter?**

We repeat our call for the need for any investigations into non compliance to be concluded in a timely fashion.

Imogen Birch  
Policy Manager