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Megan Forbes  
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23 May 2013

Dear Megan

**Review of Ofgem's enforcement activities – consultation on strategic vision, objectives and decision makers**

Thank you for the opportunity to respond to this consultation. We welcome the opportunity to contribute to Ofgem's review of enforcement guidelines and agree that it is sensible that Ofgem considers its role and responsibilities whilst maximizing the impact and efficiency of investigations. Ofgem's key role for regulated network compliance is to protect customers and ensure companies comply with their duties. Ofgem should recognise that compliance comes at a cost (to customers and companies) and in a world of comparative efficiency based regulation, appropriate performance and reporting are essential to allow Ofgem to satisfy its statutory duties.

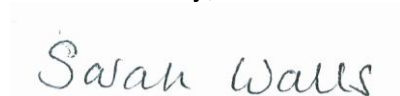
A potential breach of a company licence requires appropriate investigations to determine the facts and determine if a punishment is appropriate. We are concerned that Ofgem has historically failed to recognise that lengthy periods of investigation can cause great uncertainty and costs to regulated entities and are therefore not in the best interests of customers. One of the objectives of this review should be to ensure that decisions and investigations are completed in a timely manner in the future.

There should be a consultation on any revised enforcement guidelines and penalty policy described in phase 3 of the review. This will provide transparency for customers and investors whilst ensuring that proportionate penalties are in place.

Appendix 1 to this letter provides answers to your detailed questions contained within the consultation.

Please feel free to contact me if you have any queries

Yours sincerely,

A handwritten signature in blue ink that reads "Sarah Walls".

Sarah Walls  
Head of Economic Regulation

## **Appendix 1 – Consultation Questions**

**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.**

We are supportive of Ofgem’s vision “to achieve a culture where businesses put energy consumers first and act in line with their obligations”. It is important to ensure that customers and investors understand the consequences of inappropriate actions or failure to deliver licensed obligations. This requires greater transparency of the decision making process to drive the desired culture and behaviours.

**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.**

We agree with Ofgem’s proposed strategic principles and objectives for future enforcement activities. The key test will be how Ofgem applies these principles and the appropriateness of the enforcement tools. It is important to have a credible deterrent, with appropriate punishments for transgression and transparency of treatment for customers. This could be in the form of alternative targeted sanctions rather than lengthy investigations and financial penalties.

One of the key omissions from Ofgem’s objectives is the timely resolution of investigations into suspected breaches. From our own experience, Ofgem investigations are not time limited and this does not deliver timely conclusions. Appropriate investigations must be conducted when Ofgem has evidence of a licence breach but the current decision making process is not efficient for customers, Ofgem resources or companies. We suggest that visible, meaningful and timely penalties will ensure customers recognise the licence breach and the consequences for the body involved.

Whilst it may be appropriate to focus on key issues from time to time, consistency of treatment is also important. It would be unacceptable for companies to be treated inconsistently as a result of a change in annual strategic priorities. Ofgem needs to ensure consistency of treatment between companies and across timeframes.

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

Ofgem’s practical application of the strategy and the development of appropriate tools to deliver the policy objectives is key to achieving the stated vision. At this point, very little detail exists in this area. Robust mechanisms and transparent processes will help Ofgem to drive appropriate behaviours.

**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.**

We welcome and agree with the need for a visible, objective, decision making process for enforcement. This can be achieved by the establishment of an independent specialist panel. The focus of this panel should be the efficient, timely and transparent delivery of appropriate enforcement action. It is also important that Ofgem provides for all members of the panel to be flexible and able to meet in a way that is timely to the process of any investigation. It is

important that the relevant procedural and decision making roles are set out for the proposed secretariat, decision panel and GEMA to avoid any issues during investigations

We are concerned at the exclusion of uncontested cases from the scope of this review. This approach and vision should be applied in all cases and the process for dealing with uncontested cases should be subject to the same level of transparency and standards.

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

We are concerned with the potential for Ofgem and the company to agree a settlement which is subsequently rejected by the Settlement Committee. This issue should be avoided by early discussions with the committee or designated authority to conclude cases early in specific circumstances. Ofgem should provide the regulated entity with further details in the settlement section of the Enforcement Guidelines regarding final steps to be taken once the settlement terms are approved following the period of consultation and how they are recorded in a final order. In addition, a guideline as to the time to be taken by Ofgem to confirm the terms of settlement or the terms of the penalty notice should be included in the Enforcement Guidelines.

In terms of settlement decisions, the limit for Senior Partner sign off seems inappropriately low at £100k. This cap effectively pushes the majority of cases to the enforcement panel. The sign off level should be increased to £1m to increase the efficiency and timeliness of the decision making process.

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

We agree that the Authority is well placed to provide the necessary strategic oversight of the decision making processes. The oversight panel should seek to ensure a consistent, fair and timely decision. The delivery of the strategic vision needs to be driven by the Authority.

Generally within the overall enforcement framework, greater credence and mitigation should be given to companies that bring matters directly to Ofgem's attention through their own compliance monitoring activities. Where such companies also propose remedies (including financial remedies) there should be the potential for the acceptance of such remedies without conducting the formal investigation process.