

Megan Forbes,
Legal and Enforcement Partner,
Ofgem,
9 Millbank,
London,

22nd May 2013

Dear Megan,

Review of Ofgem's enforcement activities

Thank you for the opportunity to provide comment on your enforcement review. As you are aware Good Energy is a licensed electricity and gas supplier supplying over 32,000 electricity customers and 7,000 gas customers. We are a mission based company with the aim to develop the UK energy market to be 100% renewable by 2050. Good Energy has been ranked number one in the Which? Customer satisfaction survey for the last two years.

Executive Summary

Good Energy welcomes Ofgem's review of its enforcement activity, although believe it should expand into ensuring the regulations are developed to be fit for purpose in the first place. That said, we welcome the move to more transparency and independent overview, but would strongly encourage Ofgem to adopt a strategic objective of promoting competition.

That said, we believe a wider review which encompasses how the regulations are developed in the first place would have been more beneficial. We believe that many regulations against which licensees are held to account against are badly designed thus creating the risk of unintended non-compliance because the party believed in good faith they were compliant. This, combined with Ofgem's refusal to provide guidance on request as to how some regulations should be interpreted creates an environment where Ofgem is enforcing non-compliance rather than aiding parties to be compliant.

We have answered your specific questions below, expanding where necessary.

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.

Partly. We agree with the first part about "achieving a culture where businesses put energy consumers first", however the addition of "acting in line with their obligations" implies that there will occasions when Ofgem will enforce obligations because they exist irrespective of merit. If an obligation has no merit, then it should not be enforced on a "rules are rules" basis. We would suggest that the second part is replaced with "and act in a fair and honest manner." This would ensure Ofgem could enforce obligations that ensure fairness across the market.

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 aspect which you think we should consider.

We are supportive of the strategic objectives and principles, although we are concerned that the 2nd objective of ensuring "visible and meaningful consequences" implies that penalties will be set on how they "play to the crowd" rather than in an objective manner. Hence a failing that is in the public eye may be treated more harshly than one that is more technical even if the consequences are more serious.

We are also concerned that there is no reference to ensuring and supporting competition, and believe that there should be a strategic objective on this as well. Not just to prevent market abuse by dominant players, but ensuring regulations are not designed or enforced in such a way that smaller players find compliance difficult to achieve due to cost.

Whilst we believe a periodic review of objectives to ensure they are fit for purpose we believe it is important to ensure regulatory stability. We would be concerned if the objectives changed on an annual basis depending on the issue of the moment. Stability of enforcement will deliver better results for Ofgem, companies and consumers in the long run.

Q3. What Obstacles do you consider that Ofgem may encounter in achieving its vision and strategic objectives?

In an era of rising energy prices, some of which is as a result of government policies, Ofgem will be under pressure to be seen to be punishing wrong doing rather than working with industry to deliver the culture which means enforcement is rarely required. It is wrong for Ofgem's enforcement regime to be judge by the number of actions taken. In our view success should be when businesses give Ofgem no opportunity for enforcement.

We believe that Ofgem's enforcement regime must be seen to be independent of political lobbying, and its third objective is invoked irrespective of outside pressure to act on the most visible transgressions, rather than those that will help the most customers.

Finally, on the assumption that Ofgem gain powers to enforce consumer redress, then the timing of Ofgem's enforcement decisions will become more critical as expectation of early compensation is likely once Ofgem announces an investigation under way. Ofgem will face the obstacle of timeliness versus quality of investigation.

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

We agree with the principle of an Enforcement Decision Panel. However this is dependent on how the Panel works. The Panel should not be asked to reach a decision based on the case put forward by the Ofgem investigation team, but should take evidence presented by the company concerned, and if relevant 3rd parties. We also believe that the secretariat function should be contracted out. There are several code administrators in the energy industry that could over see this function and it would embolden the perception of independence from the investigation team still further.

With regard to the make up of the panel, we believe they should not be experts, but act similar to a magistrate's court where they sit as lay persons, advised by the secretariat. The reasoning behind this is that it would be difficult to get the right level of expertise without a predetermined view of the case.

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

We are supportive of the principle of a settlement committee, but feel that its constitution of two Ofgem officials, one of which may be the senior employee who initiated the case would lack the ability to consider the case as a "reasonable person". To this end we would prefer all cases, settled or otherwise to be considered by the independent enforcement decision panel.

As a smaller supplier we are particularly concerned that decisions under £100,000 would be decided by a single individual. Whilst £100,000 maybe a small amount to a large supplier, it is not for smaller parties. It would be unfortunate, if smaller parties felt they had to contest a case to ensure a balanced oversight by more than one

person. We therefore propose that cases below this threshold should have an initial view given by the senior partner for enforcement, but the party can opt to go to full enforcement decision panel if they chose to do so.

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

Yes. We support these proposals, especially the increasing transparency of how enforcement works.

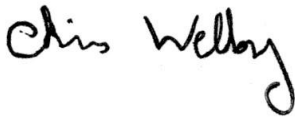
Q7. Do you have any additional comments on the matters covered in this letter?

We are concerned that Ofgem still sees its enforcement record as a success, whereas we believe Ofgem as a whole should be see the fact that it has had to resort to enforcement as a failing. Reviewing Ofgem's enforcement activity in isolation from how the rest of Ofgem which develops the regulations parties are enforced against is only looking at half the picture and we would like to see the scope of the review to include how regulations are developed in the first place, and how Ofgem could aid parties to be compliant.

In particular, we believe Ofgem should set upon itself the role of "critical friend" to smaller suppliers that it requires Code administrators to adhere to in their code of practice.

If you wish to discuss any of the above further, please do not hesitate to contact me.

Kind regards,

A handwritten signature in black ink that reads "Chris Welby". The signature is written in a cursive, slightly informal style.

Chris Welby
Policy & Regulatory Affairs Director.