

Megan Forbes
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Dear Megan,

Review of Ofgem Enforcement Activities

Thank you for the opportunity to comment on these proposals. Our detailed comments on the questions raised are set out in the attached appendix.

We are encouraged that the aim of the review is to make the enforcement process more efficient, transparent and proportionate. Ofgem's focus should be on encouraging compliance and using its resources on investigating those matters which have a serious and measurable impact on customers.

Generally within the overall enforcement framework we would like to see greater credence and mitigation 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.

Please do not hesitate to contact me if you wish to discuss any aspect of our response.

Yours sincerely



Stephen Parker
Regulation Director

APPENDIX

Question 1: 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 don't see the need for a separate vision for enforcement within Ofgem and don't believe that having a range to different vision statements for different sections within an organisation is the best approach. In our view it is better to focus the whole organisation on a single vision.

Question 2: 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 we should consider.

The consequences of any failures as well as being visible and meaningful should also be proportionate and reflect the impact on customers. If the consequences are disproportionate then this will be reflected in an increased cost of capital across the sector resulting in increased bills for customers generally. This objective should therefore be *"Ensure visible, meaningful but proportionate consequences for businesses who fail consumers and do not comply."*

We agree with the principles proposed.

It is difficult to comment on the process for an annual review of strategic enforcement priorities without seeing these priorities at the outset. However, in this area Ofgem does not directly control the amount of work it is required to carry out. The level of work is "event driven" with the performance of the regulated companies complying with obligations placed upon them being the primary driver of enforcement workload. It appears in most reported enforcement cases that this is identified in the first instance from complaints from customers or other third parties, or companies own assurance arrangements identifying particular issues rather than Ofgem directly identifying issues.

In this area it seems questionable that such priorities would change as frequently as annually. There are also questions as to what would practically change and how this would impact any enforcement activities being carried out at the point of any change.

Question 3: What obstacles do you consider that Ofgem may encounter in achieving its vision and strategic objectives?

Ultimately Ofgem is seeking to ensure regulated companies comply with the obligations upon them. To ensure this occurs there is a responsibility on Ofgem to ensure that those obligations which are defined by Ofgem are clear, unambiguous and realistic. Where this is not the case then the potential for non-compliance is increased.

Question 4: Do you agree with the proposals for an Enforcement Decision Panel and Secretariat to take decision in contested enforcement cases? Please explain the reasons for your answer.

We understand this change is driven partly by resource requirements given the increasing range of matters that fall within Ofgem's remit and the desire to ensure independence of the decision makers in these cases. Both appear reasonable grounds for making this change which is line with processes in other regulatory bodies.

For this to work effectively it is essential that the panel has an appropriate balance and the necessary degree of industry knowledge to deal with what can be specialist industry issues.

Having a specialist secretariat would be helpful provided this brings more project discipline to the management of enforcement cases as there are instances where cases appear to have taken a very extended period to reach a decision. It is also essential that the roles of the investigation team and secretariat are clear and lines of communication are not confused.

Question 5: Do you agree with the proposals for settlement decisions? Please explain the reasons for your answer.

We believe the proposals for the settlement proposals are fit for purpose.

The current process we believe is flawed in that a settlement is reached then subsequently re-opened for further consultation. This consultation can result in a situation where both parties then have to revert to a situation whereby the settlement discussions never took place. In practice this creates uncertainty over whether a settlement has actually been reached and makes it challenging for all involved to ignore any evidence presented during the settlement discussions. This undermines the purpose of the settlement process.

Question 6: Do you agree with the proposed arrangements for the Authority's oversight of the Panel's work? Please explain the reasons for your answer.

These arrangements seem appropriate to ensure consistency of decision making.

Question 7: Do you have any additional comments on the matters covered in this letter?

Where companies bring compliance matters to the attention of Ofgem and set out proposed remedies (including financial remedies) there should be provision for such arrangements to be accepted by Ofgem without undertaking the formal investigation process.

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.