

Ms M Forbes
Legal & Enforcement Partner
Sustainable Development
The Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

23 May 2013

Dear Ms Forbes

REVIEW OF OFGEM'S ENFORCEMENT ACTIVITIES – CONSULTATION ON STRATEGIC VISION

I attach a note that we have prepared in response to your recent open letter on enforcement activities.

In summary we are concerned that the proposals set out in the Ofgem letter are misguided, or wrong in law, in the following respects:

- the proposals introduce too great a separation between the enforcement function and the other functions given by Parliament to the Authority;
- the proposed panel and secretariat, may lack the expertise necessary to carry out the enforcement function properly;
- the composition of the proposed panel from which each Enforcement Committee will be drawn appears to render the committee *ultra vires* in regard to the provisions of the Utilities Act 2000;
- the proposals have not addressed the potential problem of inconsistent findings as between the Enforcement Committee and the Authority itself that may arise at whatever point jurisdiction is retained by the Authority;
- the proposals appear improperly to fetter the discretion of the Authority to become involved in “live” cases; and
- the proposals do not address the issues that may arise following a review by the Authority of past decisions taken by the panel.

If there is anything that is not clear or that you would like to discuss please let me know.

Yours sincerely

A handwritten signature in black ink that reads "John France".

John France
Regulation Director

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