



E.ON's Response to Ofgem's March 2014 Consultation Draft Enforcement Guidelines

Summary

E.ON welcomes Ofgem's moves to have an enforcement processes that better facilitates using a range of sanctions. This will help licensees provide better long term service to customers.

The establishing of a panel of independent members (the Enforcement Decision Panel) is also welcome. However, we believe that the use of the Enforcement Decision Panel should be widened so that its members, with their greater level of independence, are used for determining the sanctions to be applied for all enforcement cases, including those determined through negotiation. This would also provide greater overall consistency in the settling of sanctions.

Ofgem's Questions

Q.1 Do you agree with the proposed changes to our prioritisation criteria?

We support Ofgem having clear prioritisation criteria for enforcement. Having broad criteria should help Ofgem in responding to different situations in the most appropriate ways. Expanding the range of factors Ofgem will look at when deciding whether a case is a priority matter for it, is therefore welcome.

We agree that other criteria could come to Ofgem's attention, which should be included in the enforcement list. Should other criteria be added, Ofgem would need to publish the fact that such a criterion was being added to the list.

Q.2 Is our approach to the range of alternative actions appropriate?

We do believe having a range of alternative actions is appropriate. It will support a better service for energy customers and should be more beneficial to customers and licensees, than just having financial penalties (fines and redress to customers).

The five possible alternatives listed by Ofgem for engaging with a company to bring about compliance are each welcome. These being:

- entering into dialogue or correspondence with a company and warning them about potentially harmful or unlawful conduct;
- as above and agreeing a period of reporting by the company either to ensure that behaviour is not repeated or to show that they have taken certain action to address the issue;



- the company engaging independent auditors or other appropriately skilled persons to conduct a review focussed on a particular area of concern;
- agreeing other voluntary action, e.g. the company implementing certain remedial or improvement actions, issuing a press notice and/or making voluntary payments to affected consumers; and
- accepting non-statutory undertakings or assurances from a company to comply with a particular obligation.

Q.3 Do you agree with our proposals for making new cases public?

We recognise the merits of the arguments that, in relation to making public the opening of cases, Ofgem should protect a company's anonymity and reputation until a decision is made. Equally we recognise the argument that it is in the interests of consumers to make public which parties are under investigation. However, the reasoning to make public which parties are under investigation, namely to prompt other parties to consider whether they are complying fully with their obligations and encourage them to improve, to encourage witnesses to come forward with evidence and improve public confidence that the regulator is monitoring the market appropriately, could all be achieved without actually making public the names of which parties are under investigation. This would be through Ofgem only publishing the details of the case, not the names of the parties involved.

Q.4 Do you agree with the proposed settlement process?

We remain of the opinion that all settlement discussions should be through members of the Enforcement Decision Panel. This would build on the benefit that an Enforcement Decision Panel could provide a clear separation between those involved in the three separate phases of investigation, sanction setting and handing contested cases.

Q.5 Do you agree with the proposed settlement windows?

Having settlement windows should encourage quicker settlement. However, such benefits of having windows can only be fully realised if there is clear independence between those involved in the investigation and those setting the sanction or handling contested cases. Without such clear independence there is not the transparency that the proposed sanctions are being based on the findings of the investigation, as opposed to the allegations leading to the investigation.

Q.6 Do you have any views on how we propose to implement the new decision-making framework?

The use of an Enforcement Decision Panel within new decision-making framework is welcome. However, we believe the use of an Enforcement Decision Panel to provide



panel members for decisions in contested enforcement cases should be extended to cover all sanction decisions. This would build on two benefits that:

1. an Enforcement Decision Panel can provide a clear separation between those involved in investigation, sanction setting and handing contested cases; and
2. having cases reviewed by dedicated specialists who are on fixed-term appointments would give the decisions a greater level of independence.

Together these two benefits, if extended to cover all sanction decisions, would give greater confidence of objective decision making.

Q.7 Are these proposals an effective way to allow stakeholders visibility of our timetables and performance?

The intention to share a provisional timeline for the key steps of the investigation with the company under investigation and update the timeline as the case develops is helpful. Modification to the Appendix to the Draft Enforcement Guidelines, which as currently drafted gives clarity to the different processes involved, would benefit from also providing information as to the indicative timetables that would accompany the processes. The indicative timetables are currently spread across the main body of the Guidelines, but consolidating them on the process charts in the Appendix would be an effective way of allowing stakeholders, more generally, visibility of Ofgem's timetables.

Ofgem's intention to publish figures annually in a balanced scorecard setting out metrics such as the number of cases opened and closed, the average time needed to reach the opening of the settlement procedure and the average time taken to process cases in total, along with more qualitative metrics to give a rounded picture, is welcome. If such publishing is implemented, it should be helpful in increasing customer confidence in Ofgem's enforcement activities.

Ofgem's intention to hold regular enforcement conferences to discuss its annual priorities and the lessons that can be learned from its enforcement investigations is also welcome. If the conferences do take place then, for them to be effective, their target audiences need to be licensees. Focusing the learning on those who are best placed to build on it, which are the licensees, will be the most effective way of furthering Ofgem's vision of achieving a culture where businesses put energy consumers first and act in line with their obligations.