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[redacted]

16th June 2014

Response to OFGEM's Consultation on financial penalties and consumer redress policy March 2014.

This response is made as a former customer of Npower who obtained a favourable determination from the Ombudsman in relation to a complaint.

Q.1 Are these objectives appropriate?
As a percentage of total domestic energy customers, almost nobody complains about their energy supplier or follows the dispute resolution process. The figure is even smaller than that of consumers switching energy supplier despite several years of exhortations to us all to do so.

The objective talks of pain 'significantly exceeding' the gain for the supplier from mis-deeds. The aim - broadly - is to cane suppliers into compliance. However, given the very large profits of the parent energy groups (as opposed to their domestic UK supply arms which are very much less profitable), any such pain is beyond the practical capacity of OFGEM.

Npower - as an example familiar to me - have been handed penalties for some years now in the amount of millions of pounds sterling. Yet they remain easily the supplier with the poorest levels of customer satisfaction. It seems to me that no OFGEM penalty has been large enough to be effective, nor will it be so in the future. A parent group the size of RWE can happily bat these tiny fines aside as mere fly-bites.

If the objective is intended to compel modified behaviour, I am unconvinced OFGEM will be able to do so by penalties. If these are appropriately large, they will not wish to be seen to be shrinking competition as suppliers shy away from or even pull out of a firmly-regulated market, nor will OFGEM have the stomach for a costly legal challenge to the fairness of any such penalty. For whose lawyers will shout the loudest at the High Court?

The outcome of the objective - financial pain leading to compliance - depends on a misconception. Specifically that the large energy groups are in the UK domestic energy market to make a profit. They aren't and don't. They make their profit elsewhere. The large energy groups are only in the UK market as part of a beauty contest for institutional shareholders. Profit from participation is not a material consideration, but market share is.

Penalties of millions of pounds are a sad deception, for while to the public they seem large sums and give the appearance of firm corrective action, their effectiveness in encouraging correct

behaviour is minor at best. OFGEM have only to review their past punitive action against Npower over some years and contrast that with current and persisting levels of customer satisfaction at that company.

Therefore, I say that not only has OFGEM neither the muscle nor the will to apply truly effective financial sanction even under the new policy, that is the least effective sanction in any case for the large energy groups. Fines and penalties to the levels OFGEM has the will to apply are easily mopped up and made tiny in the parent group's annual R&A. My impression is that it is the bad publicity associated with penalties which is more effective in changing behaviour rather than the fine itself.

A more effective deterrent approach would be one of corporate shame. Were energy suppliers compelled by OFGEM to give prominence in all their advertising material to the number of dissatisfied customers, the number of complaints, the number of unfavourable Ombudsman determinations and the like, then these would be of use to consumers in making switching decisions.

This principle worked for cigarette advertising, and it will do likewise for energy suppliers. It would be useful to compel adoption in all advertising of a league table for such KPIs. *'Voted number six out of six for customer satisfaction six years running*' would be directly useful at consumer, board, and investor level. "*Honey - I shrank the company*" is something no director wants to tell the institutional investors. It would also be cheap, quick, and easy for OFGEM to apply and administer a shame-based system compared to financial penalties.

Q.2 Is the proposed process for determining the amount of penalties and/or redress appropriate?

The process perhaps hints at taking past offender behaviour into account when calculating redress, but should make this explicit. If, for example, a supplier had been unable to correctly implement something as fundamental as a billing system, I should expect redress to become progressively more stringent as the years of failure dragged on.

The process speaks of reasonableness, but for financial penalty this will always be subjective and encourage OFGEM to err on the low side for fear of legal challenge on this very basis. The process should explicitly include consideration of the corporate shame element of punishment alluded to above, as this will be a matter of record so far as numbers of complaints, determinations, etc., are concerned and be more resistant to legal challenge.

Q.3 Do you agree with the proposed factors that may aggravate or mitigate the amount of a penalty or redress payment?

To my eyes, some or all of the factors identified are not properly matters for penalty or redress payments but are licence breaches. I should expect OFGEM as regulator to see items such as "*cooperating fully with us during an investigation*." as a basic function of a regulated company, not as a virtue. Doing otherwise as a breach of licence.

At what point does ‘licence breach - fine’ become ‘licence breach - curtailment/removal’? The proper course of action by the regulator in the event of non-compliance with the listed items is licence restriction or removal, not a new regime of fines slightly larger than in previous years.

Q.4 Do you agree with the proposed settlement percentage discounts in cases under the Gas Act or Electricity Act?
Not really. Although they offer the regulator a path of lesser resistance and exertion, such accommodations have become unfashionable. The recent example of the Serious Fraud Office is instructive in this regard.

Setting out a tariff in anticipation of non-compliance sends a strong signal to suppliers that OFGEM is not properly resourced, willing, or able to exercise full regulatory oversight and investigation. I say this is not the message of a strong regulator in a sector where public disquiet is so very high.

Although I realise the aim is to incentivise the suppliers to manage their businesses effectively and in a compliant manner, it is unwise for any regulator to set out a negotiating position so very far in advance. It speaks of weakness and of lightness of touch in a market where there is deep public suspicion of failure (however wrong such an impression may actually be). To say nothing of a lack of corporate empathy with the public’s needs and desires.

Neither the public nor their MPs want to see OFGEM opening negotiations on the basis of any discount of 30%. There will inevitably be ‘discount creep’ whereby the true, initial cost of any redress is skewed by the existence of the tariff. OFGEM will tend over time to factor the discount - perhaps subconsciously - into their determination of what the true initial cost should be. Whether that increases or decreases the true initial cost remains to be seen, but it places the regulator further away from what the public sees as a proper resolution to problems.

Q.5 Do you agree with the proposed policy on determining who receives payments where consumer redress powers are used?
Yes.

Q.6 Are there any other potential consumer redress requirements that we should specifically refer to in section 7 of the policy statement?
Section 7 should refer explicitly to the ‘corporate shame’ element of any redress as outlined above. This will be more effective than any flea-bite of a fine so far as correcting behaviour goes, although the financial element will be invaluable to vulnerable customers in the specified categories.

The reference to “*We could also require a company to remedy deficiencies in its operations, for example by ordering it to take action to improve aspects of its training, monitoring,*

complaint-handling or IT systems" is mystifying. As regulator, OFGEM should be doing this anyway and these powers already exist with appropriate sanctions.

Q.7 Do you agree with the proposed approach to the treatment of detriment?
Yes.

Q.8 Should administrative costs be borne by the company in addition to any compensation or other payments that may be required?
Yes, although such costs will eventually be passed on not to shareholders but to consumers. The costs of the administration process will be proportionate to its resourcing and effectiveness. Such passed-on costs will form a tiny, un-noticed part of consumers' bills and certainly will not lead anyone to switch suppliers. Very few consumers switch anyway, so the principle that failing and non-compliant suppliers will have their shortcomings punished by operation of the market also fails here. The principle of consumers paying more because of regulatory enforcement is a distasteful one.

From this draft policy, I am unconvinced OFGEM have thought carefully enough about the money-go-round within the energy industry. There is widespread public concern that the energy market is not operating properly. There is widespread resistance amongst consumers to switch supplier. For those reasons, it is most unwise to propose increased financial sanctions as these will in large part be passed on to the very folk who have been the victims of the energy companies' failings.

OFGEM would be better advised to consider sanction and redress that reach the shareholder, or the bonuses of senior managers, not the customer. Only that way can the regulator hope to encourage consistently compliant behaviour.

Regards,
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