

Andy MacFaul,  
Ofgem  
9 Millbank  
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23<sup>rd</sup> June 2014

Dear Andy,

### **Consultation on financial penalties and consumer redress policy statement**

Thank you for the opportunity to provide comment on the above consultation. As you are aware Good Energy is a licensed electricity and gas supplier supplying over 34,000 electricity customers with electricity sourced primarily from decentralised renewable generators, and 11,000 customers with gas supporting renewable heat.

#### Executive Summary

Good Energy is fortunate not to have been subject to an enforcement investigation by Ofgem, it does however suffer the consequences that arise by such cases leading to mistrust of the industry by the public. We believe that prevention is better than cure and see some enforcement decisions as a collective failure by both the party concerned and by unclear guidance (and unwillingness to offer such guidance) by the regulator.

We therefore urge Ofgem to address the issue of providing better support to licensees to ensure they understand the actions required for compliance, especially new and smaller market players, but recognise the importance of a credible enforcement regime as a back stop power to ensure compliance.

Where enforcement action is taken it should be appropriate and focused on consumer harm. We are supportive of the principle of using redress powers where appropriate but feel that Ofgem should allow the licensee to propose suitable redress without the formal use of powers. We are concerned that the proposal not to take into account in setting any penalty the costs of redress, may act as a double penalty on smaller suppliers who will face a higher fixed cost of delivering redress.

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

#### **Q1. Are these objectives appropriate?**

Ofgem's primary duty is to protect the interests of existing and future gas and electricity customers. Whilst delivering a credible deterrence is an important function we take the view that Ofgem relies too heavily on this, and should spend more resource in guiding companies to be compliant with sometimes very complex regulations with significant room for misinterpretation. This is especially important for smaller and new entrant companies who perhaps do not have the same access to legal resource as larger companies.

We support the view that meaningful consequences should apply to companies that do not comply with the regulations leading to consumer harm. We do however feel that Ofgem, by excessive publicity around enforcement cases often creates harm to players in the market by creating a general distrust of the industry, and thus feel the level of visibility should be relevant to the case.

We support the objective of targeting resource where it achieve the greatest beneficial impact, and this should be where it prevents consumer harm in line with Ofgem's primary purpose.

**Q2. Is the proposed process for determining the amount of penalties and/or redress appropriate?**

We believe that the process is appropriate but have concerns that many of the criteria are subjective. We feel that more transparency about how the amount of penalties and/or redress should be available to the market. This information would be particularly helpful to parties facing enforcement for the first time as it would allow them to consider precedence from previous cases.

**Q3. Do you agree with the proposed factors that may aggravate or mitigate the amount of a penalty or redress payment?**

We support the principles with the following caveats;

- Reporting a breach promptly should allow time for the licensee to properly assess the impact of the breach. A Licensee may be aware of a potential breach, but will need to assess whether the breach has occurred and quantify consumer harm if any.
- Taking prompt action should be divided, into the promptness that the breach is stopped and the speed at which the historical breach is rectified.
- Full co-operation during an investigation. Whilst supportive, Ofgem should consider the reasonableness of its requests for cooperation and the resources available to the licensee.

In addition we are concern that an aggravating factor could be a lack of evidence of systems in place to prevent a breach. This implies a "guilty unless proved innocent" principle. Smaller and growing suppliers often struggle to keep documented changes to processes current, even though the updated process is followed. We therefore feel that this aggravating factor is unhelpful.

We also feel that the cost of delivering redress should be a mitigating factor if it is felt to be disproportionately high for the company due to the high fixed costs, see our response to question 8 for more detail.

Finally, we believe that Ofgem should consider the reputational harm they have caused the industry. Several cases, whilst not affecting smaller suppliers, have none the less impacted their reputation as participants in the industry and this should be considered an aggravating factor.

**Q4. Do you agree with the proposed settlement percentage discounts in cases under the Gas Act or Electricity Act?**

Whilst we agree with the proposed discounts we are concerned that where a licensee disputes the settlement, thus taking it into the middle settlement period but is successful in its dispute, then it is not allowed to return to the 30% discount rate. We believe if a case is successfully argued, then the full 30% discount is applied.

**Q5. Do you agree with the proposed policy on determining who receives payments where consumer redress powers are used?**

We are supportive of the principle that where consumers have suffered harm they should be compensated, however we have a concern that the cost of identifying both the customers affected, and the quantity of harm may create a disproportionate burden, especially on smaller suppliers. We are therefore supportive of the ability to offer a proxy in the form of a charity or group of consumers.

**Q6. Are there any other potential consumer redress requirements that we should specifically refer to in section 7 of the policy statement?**

We believe the list is fully comprehensive.

**Q7. Do you agree with the proposed approach to the treatment of detriment?**

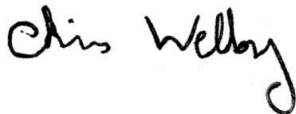
Yes, but the proposed proxy should consider the likely wishes of the consumers affected. So for example, Good Energy customers would be more supportive of payments being made to improve energy efficiency as a root cause of fuel poverty than payments as a credit to bills of customers in fuel poverty.

**Q8. Should the administrative costs be borne by the company in addition to any compensation or other payments that may be required?**

Whilst we recognise that the company should cover the cost of delivering consumer redress, we are concerned that the fixed cost of doing so, will mean that as a cost per customer, smaller suppliers will face a higher cost, than a larger supplier. We therefore feel that the cost of delivering redress should be considered a mitigating factor in the setting of any penalty, especially for smaller parties.

I hope you find this response useful. 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 slanted style.

Chris Welby  
Policy & Regulatory Affairs Director.