

Future retail regulation workshop

Notes from Ofgem’s stakeholder workshop on future retail regulation.	From	Ofgem
	Date and time of workshop	7 July 2015
	Location	Coin Street Neighbourhood Centre, London

1. Overview

In our Corporate Strategy, we stated that over time Ofgem hopes to rely more on general standards of conduct rather than detailed rules about what companies can and cannot do. We are currently exploring what this transition to an increased reliance on principles might look like. We are committed to ensuring our regulatory approach offers consumers the fullest protection, while enabling industry to innovate and supporting a competitive market. We see both prescriptive rules and rules based on principles or outcomes as an important part of this regulatory framework.

On 7 July, we held a workshop with stakeholders to discuss future retail regulation, including the role of prescription and principles in regulating the market in the future. Approximately 50 stakeholders were in attendance – see Appendix 1 for a list of attendees. This included representatives from domestic and non-domestic suppliers (including larger and smaller suppliers), non-traditional business models, consumer organisations, industry groups, the Ombudsman, Government and other stakeholders.

The workshop began with a presentation by leading academic Julia Black (LSE) and an introduction from Adhir Ramdarshan (Head, Domestic Retail Market Policy) signalling Ofgem’s direction of travel and what we have learned through our engagement thus far. Stakeholders then divided into four breakout sessions to discuss the following questions:

- Principles, outcomes, prescription – what is the role of each?
- The role of guidance – what type, how much and from whom?
- What needs to be in place to make an increased reliance on principles a success?
- What should our approach and timing look like?

The main views that emerged from these discussions are captured below. These have been grouped into areas where there was general agreement, and areas which we intend to explore further. **Please note that these are the views of stakeholders and do not necessarily represent the views of Ofgem.**

2. Areas of general agreement

Wide support for an increased reliance on principles in the retail energy market

1. There was wide support for Ofgem’s plan to transition to an increasing reliance on principles to regulate the retail energy market. Stakeholders agreed that, building

on the Standards of Conduct¹, a greater reliance on principles or outcomes could allow the market to be more innovative and competitive, providing benefits to consumers. This will be especially important as we move towards a smarter market, where we may see new business models and products emerge with the roll out of smart meters.

2. While the focus of the workshop was on the domestic retail market, there was some discussion around how an increased reliance on principles could support the non-domestic market. There was a general view that similar principles could be used in both domestic and non-domestic markets (which could streamline processes for suppliers operating across both markets), however there was also acknowledgement that the different characteristics of each market means that a one-size-fits-all approach would not be appropriate either. In general, stakeholders agreed that the consumers in the domestic market would receive the most benefit from an increased reliance on principles.
3. There was also consensus around what 'good' looks like in the context of increasing reliance on principles: giving suppliers clarity in what we expect from them, building trust between all parties (Ofgem, industry and consumers), and achieving better outcomes for consumers through a more comprehensive and effective regulatory approach.
4. Stakeholders also agreed that there will be a strong continued role for prescription in certain cases, with general agreement on where prescriptive rules should continue to apply (eg where interoperability or standardisation is required).

Importance of dialogue and provision of guidance

5. One of the strongest themes throughout the workshop was the desire for increased dialogue between Ofgem and suppliers, noting that both parties could benefit from an improved understanding of one another. There were slight differences between suppliers as to what they would want from this dialogue.
6. Some suppliers would just like to receive informal guidance on the policy intent behind our principles, while others would also want to be able to come to us for advice on how specific proposals may fit with our principles, potentially including our approval that these proposals would likely be compliant. It was acknowledged that the level of guidance sought and provided may have implications for resourcing and organisational structures across both parties.
7. There was recognition that Ofgem would not be able to 'rubber stamp' proposed ideas, but there was a strong feeling that a more open and collaborative relationship between both sides can help to build trust and successfully embed any principles. There was no clear view as to exactly what this would look like in practice, though some stakeholders suggested Ofgem should explore options for a central compliance function or specific 'account managers' to provide a central point of contact for suppliers.

¹ We introduced the Standards of Conduct in August 2013 as part of the Retail Market Review reforms. They are about the relationship between energy suppliers and consumers. We expect these principles of fairness to be embedded in the design, monitoring and revision of all products, policies and processes. The Standards require a culture change in each supplier that should deliver fair outcomes for energy consumers.

Significant culture change will be required by all

8. There was wide recognition that a significant culture change on both sides can help to make the transition to principles a success. This culture change will involve more than simply increasing dialogue, and will require adaptation at both a senior and working level within all organisations.
9. It was acknowledged by a number of stakeholders that this culture change will involve suppliers increasingly thinking more about whether their actions are in line with the spirit of our principles and achieving the best outcomes for consumers, rather than compliance being a tick-box exercise against a detailed set of rules. Suppliers noted they had already largely begun this journey through their approach to embedding the Standards of Conduct, and it was suggested that suppliers who have done the most to embrace the Standards of Conduct will be best placed to manage the broader culture change associated with an increasing reliance on principles.
10. Several stakeholders raised the importance of Ofgem being comfortable that suppliers can achieve the same consumer outcome in a variety of ways. They noted it will be important for Ofgem's compliance and enforcement functions to be sufficiently flexible to respond to different approaches.

3. Areas to explore further

There were a number of areas where stakeholders had differing views. We will explore these areas further over the coming months. In particular, we are keen to receive more specific examples from stakeholders on the type of consumer protection that is most appropriately managed through prescriptive rules and that which could be most appropriately managed through principles.

What the principles will look like in practice

11. There was no clear view as to the type or number of principles that will provide the strongest protection for consumers. There was wide agreement that the Standards of Conduct are a strong starting point on which to build.
12. There was relatively little discussion around the difference between principles and outcomes. Most stakeholders did not distinguish between the two and instead felt that determining the appropriate balance between principles/outcomes and prescription is a greater priority at this stage.
13. Some stakeholders agreed the Standards of Conduct may be sufficient (either in their current form, or slightly modified). Other stakeholders felt we should have a package of a few high-level principles, of which the Standards of Conduct could be one. Still others suggested we should have a mix of high-level principles, alongside more narrow principles covering areas like tariffs, sales approach, bills/annual statements, treatment of vulnerable consumers and metering.
14. Several stakeholders suggested we should explore whether our existing prescriptive rules could be more effectively captured under thematic principles which broadly align with the chapter headings of the current supply licence.

15. When discussing principles, several stakeholders suggested it may be helpful to work through some detailed case studies using our existing prescriptive rules, and to test whether principles could be more appropriate in securing a positive consumer outcome (including whether the Standards of Conduct may be sufficient on its own).

Specific areas for continued prescription

16. As noted above, stakeholders broadly agreed on several areas for the continued role of prescription, including areas which require interoperability or where standardisation is required. There was less agreement on specific areas or existing prescriptive rules which could be more appropriately covered by principles.
17. Provision of information was discussed at a number of tables, with mixed views on the standardisation that consumers require as it relates to bills, annual statements and other information from suppliers. Several suppliers suggested that standardisation of annual statements would be useful to maintain, but that in other areas, such as bill content and formatting, they would like more flexibility to allow innovative approaches to engaging their customers. Others suggested that we could prescribe what information should be included in supplier communications, but allow suppliers flexibility to decide the format and present the information in different ways.

Offering the best protection to vulnerable consumers

18. There was considerable debate as to whether principles or prescription would be more appropriate for dealing with vulnerable customers. Many stakeholders began by considering that prescription may be most appropriate, but on further discussion decided that in fact principles may offer stronger protection.
19. In particular, many stakeholders felt that principles may be more suited to vulnerable consumers, given the concept of vulnerability is itself somewhat flexible and is not narrowly defined. This would enable suppliers to be more flexible in deciding which of their customers they should be providing with additional support. Some stakeholders also suggested that Ofgem should have a specific vulnerability principle where we set out the outcomes that we want to see for these consumers, and allow suppliers to determine the best way of achieving this. Where stakeholders felt that principles may be more appropriate, there was disagreement as to whether or not there should also be prescriptive rules setting out what this support should look like.
20. Some stakeholders, and consumer groups in particular, felt that prescription is needed to set out minimum standards, to ensure that customers are protected from harm (particularly where this relates to health and safety). They noted this would be particularly important for vulnerable consumers.

Type and role of guidance

21. All stakeholders were clear that suppliers need to be clear on Ofgem's expectations of principles, including the consumer outcomes that are expected. Many saw guidance as playing an important role in this.

22. There was a wide variation between stakeholders as to the type and level of guidance that Ofgem should provide, including significant diversity within and across the points raised by both larger and smaller suppliers. Regarding the provision of written guidance, views ranged from providing no guidance (giving suppliers complete freedom to interpret the principles) to “as much guidance as we can get”.
23. There was some link between the level of written guidance suppliers wanted and their expectations of what their dialogue with Ofgem would look like. The suppliers that wanted little written guidance were generally the ones who also wanted to be able to clarify policy intent with us on a regular basis.
24. Among the stakeholders that did want some form of written guidance, they were clear that they wanted this guidance to articulate our expectations of outcomes that we do and do not want to see, including examples of good and (potentially) bad practice, and some definition of the principles and the policy intent or spirit behind them.
25. Several stakeholders also wanted guidance to include examples of how we might expect them to evidence their practices relating to the principles. This included what type of data we may expect them to have available to demonstrate their process and thinking behind their practices for our monitoring purposes.

Approach to enforcement

26. Many stakeholders raised questions as to how our enforcement approach may evolve following a move to an increased reliance on principles (noting that we are already undertaking investigations related to the Standards of Conduct).
27. Some suppliers were keen that we either hold off making enforcement decisions for a defined period of time, or that we consider a two-stage approach with compliance conversations before any enforcement action. They felt that this would be necessary to allow them to get used to principles and make mistakes in good faith without the fear of immediate enforcement.
28. Other stakeholders, particularly consumer representatives, suggested that a two-staged approach or a period of no enforcement action would not be appropriate, and highlighted risks to consumers of such an approach, particularly in the current environment when consumer outcomes are poor. It was suggested that swift enforcement against breaches following the introduction of any principles may be more appropriate to reduce the likelihood of further consumer detriment. Rapid enforcement could also help reinforce the importance of companies embedding the principles and changing their culture, and the enforcement decisions could act as additional guidance for suppliers as to what outcomes Ofgem does not want to see.

Approach and timing

29. Stakeholders were generally not in favour of a ‘big bang’ approach to introducing principles, whereby a package of principles is developed and introduced all at once.
30. There was a clear preference for an incremental approach to developing any new principles, recognising that Ofgem has already begun its move towards principles through the Standards of Conduct. Many attendees suggested that any incremental

approach should prioritise areas where we currently see the greatest consumer harm.

31. While stakeholders generally preferred an incremental approach, there was also a consensus that the process of introducing principles should not take too long or it could lose momentum. Specific concerns were raised that if the process is too slow, it could be affected by changing government priorities or other external factors beyond our control.

4. Next steps

We will continue scoping this work over the coming months, and look forward to continuing our conversation with stakeholders during this time. We have a number of further bilaterals planned with stakeholders and will be looking to focus particularly on the areas we have highlighted above. We are intending to publish a consultation outlining our thinking and high-level way forward later this year.

If you have any questions or further views relating to this work, please get in touch with Kiera Schoenemann (Senior Policy Manager, Domestic Retail Market Policy) at kiera.schoenemann@ofgem.gov.uk.

Appendix 1 – List of attendees

Name	Organisation	Job title
Adam Boorman	Cornwall Energy	Regulatory Lead
Adriana Guerenabarrena	Scottish Power	Regulation Analyst
Alison Russell	Utilita	Regulatory Affairs Manager
Alun Rees	British Gas	Head of Market Design and Reform
Andrew Green	Total	Head of Regulation
Andrew Paterson	E-UK	Operational Support
Angela Beardsmore	Economy Energy	Head of Operations
Aniru Shyllon	Utility Warehouse	Regulatory Analyst
Bindi Patel	Energy UK	Senior Manager
Chris Greer	Green Energy UK	Policy Advisor
Chris Harris	npower	Head of Retail Regulation
Chris Welby	Good Energy	Policy and Regulatory Affairs Director
Claudia Proffitt	E-UK	Operations Manager
Daisy Croft	Energy UK	Policy Manager
Dan Walker-Nolan	Citizens Advice	Policy Manager
Daphne Yao	Ovo	General Counsel
David Crossman	Haven Power	Director of Supplier Management
Debra Vaughan Massey	Ombudsman	Ombudsman
Emma Piercy	First Utility	Senior Regulatory & Policy Manager
Faye Widdowson	Extra Energy	Regulation & Compliance Executive
Gareth Evans	ICoSS	Chair (ICoSS)
Gemma Newsham	Opus Energy	Regulations Manager
Gillian Cooper	Citizens Advice	Head of Retail Energy Markets
Ian George	EDF	Senior Policy and Regulation Analyst
Isla Philips	Spark Energy	Head of Compliance and Regulatory Affairs
Jacqui Fellows	Opus Energy	Regulations Manager
James Johnston	Open Utility	CEO and co-founder
Jay Downs	Cabinet Office	Deputy Director of Red Tape Challenge
Joel Chapman	BES Utilities	Head of Industry Regulation and Compliance
John Howard	Personal capacity	
John McPate	Hudson Energy Supply UK/Green Star Energy	Commercial Manager
Jonathan Matthews	Crown Gas	Operations Manager
Julia Black	LSE	Director for Research
Keith Evans	DECC	DECC Energy Markets and Consumers
Lesley Gray	SSE	Interim Head of Markets Regulation
Lorraine King	Scottish Government	Head of Competition Policy
Louise Murphy	SSE	Regulation Manager
Martin Thomas	Better Energy	Managing Director
Mary Gillie	Energy Local	Director
Miles Macallister	Smartest Energy	Regulation Analyst
Naomi Grayburn	Citizens Advice	Policy Researcher
Natasha Hobday	First Utility	Head of Policy and Regulation
Nicky Kerridge	npower	Compliance Investigations Manager
Paul Youngman	Cooperative Energy	Compliance and Regulation Manager

Philip Byrne	British Gas	Head of Energy Compliance
Rhona Peat	SP	Interim Head of Retail Regulation
Robert Larkins	Utility Warehouse	Head of Energy Regulation
Robin Johnson	Wingas	Metering and Regulation Manager
Ruben Pastor-Vicedo	Robin Hood Energy	Regulations and Compliance Manager
Ryan Wilkins	Ecotricity	Compliance Analyst
Sebastian Eyre	EDF	Head of Regulation
Steve Rowe	Cooperative Energy	Regulation and Compliance Manager
Tracey Wilmot	EON-UK	Head of Downstream Regulation
William Hayter	UKRN	Director of UKRN