

Enforcement Conference 2015 Summary

The annual Ofgem Enforcement Conference was held on 24th June 2015 at the Westminster Conference Centre, 1 Victoria Street, London.

It was attended by a range of industry participants including energy suppliers, network companies and consumer groups. The event reflected on some of our recent enforcement decisions, considered what lessons can be learnt from them, and discussed what the regulatory and enforcement landscape will look like in the coming years.

The day included a session reflecting on the implementation of Standards of Conduct and an update on our current thinking around an increased reliance on principles to regulate retail markets. We also presented Ofgem's Annual Enforcement Priorities, showcased the work of our independent decision makers, the Enforcement Decision Panel, and heard from speakers on networks regulation and REMIT¹.

We have collated the points and questions raised at the event, including from the roundtable discussions and feedback forms. We will take this feedback into consideration when thinking about our future ways of working and engagement.

Agenda:

- 09:30: Registration and reception breakfast
- 10:00: Welcome
- 10:20: Annual Enforcement Priorities
- 10:45: Enforcement Decision Panel showcase
- 11:15: Standards of Conduct and regulation through principles
- 11:50: REMIT
- 12:20: Standards of Conduct and Enforcement: discussion topic
- 12:30: Lunch
- 13:10: Breakout discussion 1: Standards of Conduct
- 13:50: Consumer Redress introduction
- 14:00: Breakout discussion 2: Consumer Redress
- 14:15: Discussion summaries
- 14:30: Break
- 15:00: E.ON Compensation Scheme
- 15:30: Networks: Compliance through governance
- 16:00: Recent Enforcement Cases: Learning Points
- 16:20: Closing remarks
- 16:30: End of conference

Speakers:

- Sarah Harrison, Senior Partner, Sustainable Development Division, Ofgem
- Anthony Pygram, Partner, Enforcement and Competition Policy, Ofgem
- James Waugh, Head of Enforcement Casework, Ofgem
- Neil Barnes, Associate Partner, Retail Markets, Ofgem
- Philippa Pickford, Associate Partner, Wholesale Market Performance
- Ian Rowson, Associate Partner, Regulatory Finance and Governance
- John Swift QC, Chair of the Enforcement Decision Panel, Ofgem
- Adam Scorer, Director, Citizens Advice
- Tracey Wilmot, Head of Downstream Regulation, E.ON UK

¹ Regulation on wholesale energy market integrity and transparency

Summary of breakout discussions – Topic 1:

Attendees were divided into six groups, each with a broadly similar representation of large suppliers, small suppliers, consumer groups, network organisations etc. Each group was asked to undertake a hypothetical exercise of developing two marketing proposals for expanding a retail supplier's customer base; one with consideration to only the relevant standard licence conditions, and one with consideration to only the Standard of Conduct (SoC). The exercise was intended to identify what stakeholders perceived to be the areas of regulatory risk, what they would desire from the regulator to mitigate their concerns, and how the contrasting approaches deliver the best outcomes for consumers. The key comments and conclusions from the discussions were:

- Several groups took the view that under an increased reliance on principles, more dialogue with Ofgem would be important. It was suggested that compliance should be achieved through communication rather than enforcement.
- The point was raised that smaller companies often struggle to have sufficient resource to comply with all aspects of prescriptive regulation.
- General agreement that innovation is more possible under SoC but there was concern that transparent dialogue with the regulator regarding innovation would allow competitors to access that knowledge.
- Many felt that a significant regulatory risk with SoC is the subjective wording. Guidance from the regulator was requested, and any advice given to one licensee should be shared with all others to prevent an unfair competitive advantage.
- Groups accepted that Ofgem would not 'rubber stamp' companies' proposals nor publicise its informal advice, but still desired a mechanism in which to run their proposals by the regulator in an unofficial capacity. They also accepted that the responsibility for compliance sits with the company and not the regulator.
- Some participants stated that a principles-based approach from Ofgem would benefit competition. If confidence and trust could be built between companies and the regulator, they would be more willing to try a new measure if there was informal dialogue and a diminished risk of sanction.
- Some participants felt that current prescriptive regulation requires excessive amounts of technical information to be communicated to customers. They suggested that a reliance on the SoC would be better when interacting with customers as plainer language can be used.
- Participants stated that in return for the licence to operate under principles, companies must assume even greater responsibility for carefully monitoring that consumers are being treated fairly and installing immediate remedies in the event that they are not. They considered that the regulator will likely place more weight on the monitoring and remedial actions rather than the initial risks taken.
- There was some concern that smaller companies may not have the resources to extensively research innovative ideas that were not in the clearly compliant end of the spectrum and therefore would need to restrict themselves to practices at the clearly compliant end of it, especially as a large penalty could put them out of business². Some thought that this could essentially provide larger companies with a competitive advantage.

² Ofgem notes that its penalty statement allows the decision committee to consider whether a fine may put a company out of business, although they may still decide to impose it.

Summary of breakout discussions – Topic 2:

We presented the same discussion groups with proposals under consideration by Ofgem to improve the allocation of consumer redress monies in the context of settlement. The preferred option for discussion was to consider externalising the administration and allocation of redress money to a specialised fund. This would require the creation of an independent external fund and issuing of principles to guide its allocation decisions. The main expected benefits include focusing Ofgem and the companies' resources on the settlement process, more transparency, and matching consumer needs to redress monies as effectively as possible. Stakeholders were asked whether they considered this as a good idea and the potential risks and opportunities. The key comments and conclusions from the discussions were:

- Concern among a number of the Big 6 suppliers that this proposal would undermine their established charitable funds and existing relationships with various consumer organisations and charities.
- Some felt that an independent fund would deter Boards from settling cases as they would have no influence over the direction of payments. Prefer providing compensation to customers involved and then a smaller amount to the fund³.
- Companies expressed a desire to retain some governance over the allocation of monies, perhaps by being represented on the panel of the new body.
- Scepticism among some that the scheme would reduce the burden on Ofgem's resources; there would be administrative and remuneration costs towards the external body managing the monies.
- Widespread agreement that it would save time and help focus minds on settlement. It would benefit companies from releasing them from the responsibilities of managing and monitoring the funds.
- An extensive knowledge of consumer groups and schemes would be required to mitigate risk of certain geographic regions or demographics being overlooked.
- Participants also noted that it would not be a good outcome to see the money allocated to a cause too remote from the initial breach or policy.
- It was acknowledged that redress payments allow an opportunity for companies to mitigate some of the punishment via positive PR. The prevailing view was that this is fair as there is considerable reputational damage incurred by the public announcement.
- Due diligence would need to be rigorously applied to the parties applying for funding, perhaps with the involvement of the Charity Commission.
- Many felt the proposed system would result in a more evenly spread benefit across charities and therefore a greater positive net impact for consumers. However, further clarity is needed on the proposed governance arrangements.
- Participants considered that removing the connection between the companies and the charities has the potential to detach the companies from understanding the harm and how their actions have affected consumers. Possibly mitigated by a public facing webpage indicating the source of the funds and where they have been distributed.

³ Ofgem notes that compensation will always be directed towards the affected customers where it is possible to identify them.

Feedback Forms:

We received positive comments about the organisation and timings of the event, and many responses indicated their appreciation at the opportunity to engage with Ofgem in an open and constructive dialogue. Suggestions for improvement included a morning comfort break at future events and a call for more non-retail content (though there was acknowledgement that the varied agenda was an improvement on the 2014 Conference).

Respondents were also asked what topics they would like to see covered at the next Enforcement Conference. The most common answers were:

- Further exploration and discussion around principles-based regulation and Standards of Conduct.
- More learning points from recent enforcement cases.
- More sessions on networks or REMIT/wholesale, possibly incorporating dedicated breakout discussions for those stakeholders.
- A discussion on the definition of vulnerable customers.
- A session examining the penalty statement.
- Further details on the compliance workstream.

This feedback will be used when determining the structure and content for the 2016 Enforcement Conference.