

Adhir Ramdarshan
Retail Markets
Ofgem
9 Millbank
London
SW1P 3GE

11 March 2016

Dear Adhir,

The future of retail market regulation

Thank you for the invitation to respond to the above document. Good Energy is a fast-growing 100% renewable electricity supply company, offering value for money and award-winning customer service. An AIM-listed PLC, our mission is to support change in the energy market, address climate change and boost energy security.

Executive Summary

Good Energy is very supportive of Ofgem's intention to move, where possible to principle based regulation. We believe that principles focussing on positive customer experience and outcomes will encourage greater innovation to the benefit of all consumers.

In developing its approach, we believe Ofgem should focus on distilling a small number of broad principles to achieve three things:

- clarity for customers as to what they should expect from their supplier;
- clarity for suppliers as to the customer outcomes they need to deliver; and
- greater choice for customers by allowing suppliers room to innovate within a broader framework.

Within this framework we believe that Ofgem may need to take a reasonably prescriptive approach on certain narrow topics (e.g. interoperability) or where it is absolutely necessary to establish a robust glide-path to a principles-based system. .

Adopting a principles-based approach will also enable regulations to flex sufficiently to recognise and cater for the increasing diversity in the supplier community. For example, a supplier wanting to operate local demand side aggregation via a supply licence will look and operate very differently from a mass market vertical utility. A principles-based approach will allow Ofgem to focus on whether the desired customer experience and outcomes are being delivered in either case in a manner that is proportionate to the situation. This will be especially important as the competitive landscape develops and relative performance between suppliers becomes less relevant to determining whether an individual customer's expectations have been met.

Achieving a successful transition to a principles-based approach will also require careful consideration of the most cost effective way to implement them. In this respect, timing will be a key consideration. The amount and scale of change within the industry currently affecting both suppliers and customers is unprecedented, in many cases requiring ground up re-designs of industry and supplier systems and

processes to ensure that customer outcomes can be achieved consistently. If it is possible to match the timing of key changes with other relevant changes that are already being implemented, this may be enable synergies in implementation costs. However, if those synergies cannot be realised because decisions are not made in time, changes could easily result in incremental costs being passed on to consumers. The Government and Ofgem are both right to maintain in sharp focus that consumers' bills do not become higher than they need to be. Working with suppliers to identify and realise potential synergies would be an excellent practical demonstration of that focus. .

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

Q1. In what circumstances do you think that prescriptive rules are likely to be most appropriate? Which specific SLCs/policy areas should remain prescriptive?

Prescriptive regulations are most likely to be appropriate where they are required to facilitate the interoperability that allows the market to function. This is different from "standardisation" across the market as this can stifle innovation and inadvertently remove the benefits a competitive market should create.

For example SLC38A sets out how the Offtaker of last resort process works, and needs to be prescriptive to ensure the process is clear, understandable and fair to all parties. By contrast, SLC33A standardises the layout of customers' bills. Whilst the intention behind SLC33A was to improve the quality and comparability of information being provided to customers, the standard bill layout has not improved customers' experience nor made bills any easier to understand as the recent CMA PDR has stated Had this been expressed as a broad principle that customer bills must clear and understandable, we believe that suppliers would have invested time, money and effort in delivering the desired customer experience as a means of differentiating themselves in a competitive market. .

We do not agree that setting minimum standards or prohibiting detrimental practices should be a role for prescription. By default, if a supplier is not delivering the required customer outcomes under a set of broad principles, they will be falling short. The operation of an effective competitive market should mitigate this impact for all but the most vulnerable customers because dissatisfied customers are more likely to switch supplier. By focussing regulation in this way, Ofgem would achieve the dual purpose of creating space for innovation and differentiation and also being able to focus its enforcement activities towards situations where outcomes are not being delivered for the most vulnerable customers.

It should also be noted that prescription very often creates a "meet the target" rather than a "continuous improvement" mentality which is unlikely to be in the longer term interests of customers. As such, even where prescription is appropriate the extent of the prescription should be reviewed periodically to ensure that it remains fit for its intended purpose and to consider whether it should remain as part of the SLC or be moved into non-binding guidance (e.g. guidance for the operation of the Feed in Tariff) once a steady-state operation has been achieved.

Q2. Should we supplement the principle of "treating customers fairly" with any other broad principles? If Yes, please outline what these should be and why.

We believe that "treating customers fairly" should be an overarching principle for regulation, primarily as it is focused on the customer who should be at the heart of regulation. Within this

overarching principle, a number of subsidiary principles would be appropriate to help customers and suppliers understand what “treating customers fairly” should look like. These might include:

1. Ensuring products and services marketed sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
2. That consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
3. Where customers receive advice, the advice is suitable and takes account of their circumstances.
4. Consumers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard and as they have been led to expect.
5. Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

For a principles-based approach to regulation to succeed for customers, it is important, that both Ofgem and suppliers stay focussed on the required customer outcomes. Whilst we are very supportive of the concept of moving to principles-based regulation, we would advocate for a different suite of principles to those proposed in this consultation as they appear to focus more on addressing the lack of trust between suppliers and the regulator rather than focusing on ensuring that the right customer outcomes are met. .

Q3. Where might narrow principles be more appropriate than broad principles or prescription?

A narrow principle would be appropriate for example where certain subsets of customers require additional support. The most obvious area is for vulnerable customers or customers who are having difficulty in paying their bill. The purpose of the narrow principle would be to further describe the outcome required for the relevant subset of customers within the overarching principle. However, it will be important to note that narrow principles should not amount to prescription; in scenarios where narrow principals are appropriate it will be even more important to ensure that the individual customer receives the outcome that is right for them. Prescription would hinder suppliers’ ability to deliver that consistently as the needs of individual customers can vary greatly. Different suppliers may also achieve the same outcome through different means and that should be acceptable (perhaps even encouraged) as long as the required customer outcome is delivered. A prescriptive rule would hamper the development of alternative solutions and hinder innovation.

Q4. What are your views on the potential merits or drawbacks of incorporating consumer protection law into licences?

We believe it would be appropriate for Ofgem to conduct a formal impact assessment into this proposal before pursuing it further.

In our view, the principal benefit of incorporating consumer protection law into licences would be to consolidate suppliers’ obligations within fewer documents, ideally under a single regulatory body. We anticipate that this would be particularly beneficial for new entrants as it would reduce the number of sources they need to interrogate in order to understand their obligations. .

For this approach to deliver a tangible improvement to the current position, we believe that three primary criteria must be met:

- a legal & regulatory “one-stop shop” – if consolidation within licences is to be pursued, this should involve consolidation across as many sources as possible (not limited just to consumer protection). This will allow consumers, suppliers and prospective suppliers to know exactly where to look to understand the legal and regulatory framework;
- a simple, and clear framework focused on customer outcomes – a consolidated legal and regulatory framework would need to take a consistent approach to each area within its scope and also remove duplication and inconsistencies between competing rules and regulations; and
- overseen by a single regulator – to ensure consistency of approach, interpretation, application and enforcement of a consolidated legal and regulatory framework, oversight should sit with a single regulatory body. Existing protections and safeguards (e.g. effective rights of appeal) must be preserved when consolidating obligations within an holistic framework.

In the absence of a formal impact assessment, it is difficult to determine the likely net benefit to customers of pursuing proposals to consolidate existing laws into licence. It is not obvious to us that there would be any specific benefit to customers from consolidation using a piecemeal approach such as that proposed.

The potential benefits of a more holistic approach are more apparent although the net benefit remain difficult to quantify given the scale, cost and complexity of change required, particularly when overlaid against the unprecedented amount of change already taking place within the industry.

It is not clear how Ofgem intends to reconcile the detailed rules established under consumer protection laws (or any other laws and regulations to be consolidated within licence) with its desire to move to a principles-based approach. On the one hand it would be inappropriate to ignore the detailed laws, for which Parliament has seen fit to legislate, to preserve the integrity of the proposed principles-based approach. On the other, it is very difficult to see what merit there would be in preserving and incorporating that detail in certain subject areas whilst adopting a principles-based approach in others as that simply replicates the status-quo.

If consolidation is pursued on any basis, the drawback most readily apparent would be the duplication of enforcement activity between multiple enforcement agencies. This introduces uncertainty and a risk of double-jeopardy for suppliers, unnecessary duplication of cost for UK taxpayers and the risk that additional compliance costs are passed on to energy customers. These risks would be exacerbated in the short to medium term if there is inconsistency as to which enforcement agencies engage on which topics, the different tests and tolerances that different agencies apply to determine compliance and the enforcement actions and sanctions that are imposed for non-compliance.

If Parliament was to agree Ofgem should have these powers (and we believe this would require primary legislation), then they should not hold them concurrently with any other body.

Q5. How should we use principles and prescription to most effectively protect vulnerable customers?

We unequivocally agree with Ofgem’s desire to ensure that the most vulnerable customers benefit from effective protection. We believe that this would be best achieved through a narrow principle which sets a clear overarching definition of vulnerability, and a requirement to seek to reasonably

assist in a way that minimises or eliminates the impact of the individual customer's vulnerability on the outcome they receive.

Whilst protecting vulnerable customers might at first appear a candidate for prescription, we believe this would be unsuitable because it results in a "one size fits all" approach to vulnerability. In many cases this would mean that the prescribed solution is inappropriate for the particular customer. For example, specifying people are vulnerable over a certain age means that many under that age would not consider themselves vulnerable, whereas there may be many under the cut off age that need appropriate help. Also in terms of mental health, different situations need different outcomes based on the nature of the health problem and its severity.

The alternative to "one size fits all" would be to try to legislate for every possible permutation of vulnerability. Not only would be very cumbersome to craft, let alone administer, there is nonetheless a risk that it does not effectively protect those who need it because it tries to force objective criteria onto situations which can only effectively be assessed subjectively.

Q6. Do you agree with our proposed approach to guidance?

We agree that Ofgem should avoid providing extensive guidance which leads to prescription by the back door. We would expect Ofgem to provide guidance and clarification about the required customer outcomes from time to time but Ofgem must take care not to dictate how that outcome is to be achieved. We also believe that Ofgem should use guidance as a way of disseminating clarifications it provides to one party to all parties to ensure equality of information.

We also believe that Ofgem should be explicit that, in assessing compliance, it will consider in all the circumstances whether a supplier has delivered the required customer outcome, irrespective of whether Ofgem's guidance has been followed. This will be important to preserve the integrity of the broad and narrow principles and the customer outcomes they describe. By contrast, if Ofgem were to treat a decision not to follow its guidance as being automatically non-compliant, that would again amount to prescription by the back door which would not take into consideration the reason why a licensee chose not to follow guidance and whether that choice has resulted in a failure to deliver the required outcome in a way which has caused consumer harm.

Q7. How can we best engage with suppliers in the context of principles?

The energy market is changing and with it the old model of large utility-style companies providing services for all. As more and more new entrants with distinct business models continue to take market share, we welcome Ofgem's proposals to understand the way each licensee operates and which segment of the market its services are designed for. This requires an open and constructive dialogue which allows Ofgem to understand the diversity of offering that is available to consumers (each of which offerings is being developed in response to customer/market demand). By ensuring that it understands the different licensees, their models and audiences, Ofgem will have greater visibility of the work licensees are doing to ensure that customer outcomes are met and, where choices have to be made, how licensees make those choices in a manner which best benefits (or least impacts) customers.

We are confident that all licensees would welcome Ofgem investing the time required to develop this understanding as it will help to ensure commonality of purpose in the context of both defining and operating a principles-based system.

A corollary of this approach is the added value Ofgem could bring to both suppliers and customers by leveraging its central, independent position and broad understanding of the market and different supplier models to help suppliers develop their own leading and lagging indicators to help with the early identification and trouble-shooting in areas which are off-track. Performing this role has three main advantages:

- helping suppliers get it right first time for customers, **improving overall customer experience**;
- reducing the need for ongoing monitoring resources within Ofgem at the same time as reducing the need for enforcement activity (each of which has attendant costs which ultimately find their way onto customers' bills); and
- consolidating Ofgem's stated aspiration of being a trusted, independent source of information and data about the energy markets **and how they work**.

Once established, we envisage that Ofgem would then regularly meet with licensees bilaterally to review that licensee's indicators and discuss the pro-active interventions the licensee is taking to address off-track areas. This will also provide an opportunity for Ofgem and licensees to discuss any areas of importance in the forthcoming period, such as a major IT change or proposed new marketing initiative or product.

Q8. What specific support may be needed for new and prospective entrants?

The removal of prescriptive regulation means that new entrants will lose the "tick box" list of what it needs to do to enter the market. As part of this shift we would support Ofgem taking a more pro-active approach to help new entrants into the market by stress testing their business plan before issuing a licence, and providing support and guidance (formal and informal) through market entry in a "critical friend" capacity.

Q9. Do you have any views on how best to approach monitoring in the context of principles? Specifically, which indicators and approaches should we use to catch potential problems early?

We have sought to address this question in part in response to question 7 above.

Once licensees have developed and implemented control and monitoring systems within their own businesses, Ofgem ought to only need to monitor two principal areas:

- exceptions; and
- "whole system" issues.

This would reduce the overall monitoring burden (and cost) on Ofgem whilst also allowing it to focus in on the real issues. By way of example, if a licensee's monitoring systems are functioning correctly, it should be able to anticipate issues which will give rise to exceptional spike in complaints and mitigate them. Where mitigation is not possible, that licensee should as a minimum be able to explain the cause of the spike and its plans for resolution to Ofgem on request. As long as a licensee can do so and its responses are satisfactory, it is unlikely that further action will be necessary unless customer harm has already been caused. In effect the process would become self-policing at the first-line of defence. We would expect Ofgem only to need to monitor on an ongoing basis those issues which are unresolved, where a specific licensee has a repeating anomaly

or multiple anomalies in a short period of time or where there is evidence that the licensees on monitoring systems are not operating appropriately.

Where there are “whole system” issues outside the control of individual suppliers (such as a major industry change initiatives like smart metering), we would expect Ofgem to take a more pro-active monitoring role to ensure that the change being propagated is being designed, delivered and operated in a manner which will meet the required customer outcomes. Doing so would better enable Ofgem to support licensees in shaping these initiatives in a manner which either best meets customers’ needs or is least impactful to them, whichever is most appropriate depending on the nature of the change

Most importantly, we believe that Ofgem’s monitoring activity must focus on identifying those areas in which customer outcomes are not being met (and therefore customers are suffering a detriment). In a principles-based environment, it would not be appropriate for monitoring simply to bench-mark suppliers against a pre-conceived or narrow view as to the method by which the outcome should be delivered.

Q10. Do you have any views or comments on the following proposals?

- **We will expand our engagement with suppliers to enhance our understanding of their businesses and help them better understand our rules so they can get things right first time.**
- **We will collaborate closely with Citizens Advice service and the Ombudsman Services: Energy to ensure we maximise the effectiveness and impact of monitoring activities across our organisations.**

We are supportive of both proposals. If principle based regulation is to be successful in bringing innovation and diversity to the market for the benefit of customers, then it is important that Ofgem understand the businesses they regulate. However, we would urge caution and discretion; it would be all too easy to inadvertently to share one supplier’s innovative (and differentiating) approach with others under the guise of providing guidance to help them deliver the required customer outcomes.

It is also important that both Citizen’s advice and Ombudsman services are fully engaged and supportive of this change. This means they must also recognise diversity and innovation and do not apply regimented standards of right or wrong. Ofgem will have an important role to play in helping both organisations to develop effective tools to help customers in the new environment.

Q11. Do you have any views on how best to approach compliance in the context of principles?

We believe that the key to compliance is for there to be a free flowing dialogue between Ofgem and suppliers. This would not be about getting Ofgem’s “sign-off” about a particular course of action, but about keeping Ofgem informed of changes and taking heed of any observations or concerns that Ofgem may have. As noted in response to questions 7, 9 and 10, this will be best enabled if Ofgem is able to deliver its aspiration of understanding each licensees business and working collaboratively with licensees in a discreet and trusted capacity to address issues at source; that is to say prevention rather than cure.

There would of course be significant risk to licensees in adopting this approach, particularly if Ofgem is seen to use the information shared otherwise than in the spirit intended. We anticipate than many licensees might express an aversion to this. However, we believe that investing time in

developing relationships with licensees, understanding their businesses and adopting an open-minded approach focussing on the delivery of customer outcomes (rather than the method by which they are delivered) will go a long way to ameliorating this concern. It will also be important for Ofgem to demonstrate a recognition that innovation will sometimes have unintended consequences. Whilst enforcement action may ultimately be justified if the unintended consequences are not resolved in an appropriate period (or are not capable of resolution), we believe Ofgem should not pursue enforcement action as an automatic consequence of non-compliance, particularly where a licensee is trying to innovate to improve customer outcomes.

Q12. Do you have views or comments on the following proposals?

- **We will retain our current flexible and discretionary approach to escalating issues to enforcement. We will prioritise compliance activities where possible and appropriate.**
- **We will increase the links to the level of harm when deciding to open a case.**
- **Engaging early with Ofgem may reduce the likelihood of later enforcement. Information from engagement and monitoring activities may be shared with enforcement where appropriate.**
- **We will continue to apply our full range of enforcement tools to principle based rules.**
- **We will make it easier for all suppliers to learn lessons from enforcement outcomes.**
- **Enforcement action will continue as usual throughout the transition to principles.**

We are supportive of Ofgem's desire to take a flexible approach and strongly encourage a focus on working with parties to achieve compliance. We agree that it is right for Ofgem to see enforcement action as a last resort, for example when a party is in denial or failing to adequately address the issues.

We agree that suppliers and Ofgem should engage early around compliance issues, but believe that Ofgem must withdraw the threat of enforcement where parties self report unless the gravity of the situation is so severe it cannot be ignored. This will greatly improve dialogue as without this, larger parties will not communicate with Ofgem without legal advice, and smaller parties are more likely to be reluctant to report themselves and may instead hope to sail under the radar until the problem is fixed.

We would welcome greater transparency for all not just on enforcement issues, but also issues of compliance especially where the process has led to a clarification of how the regulation should be interpreted.

With regard to enforcement through the transition we believe Ofgem should take a flexible approach and not seek to enforce when it has already decided to remove the prescriptive element and the supplier's action are in line with the principle (i.e. the intended customer outcome is being delivered).

Q13. How would you like to engage with us on our proposals and the broader work programme?

For independent suppliers, resourcing has a significant impact on capacity to engage whether with Ofgem or any other industry bodies, even though the appetite to play a full, active and engaged role exists.

We would welcome regular briefings either on a one to one or in small group basis as well as regular written updates summarising proposals and developments. Engagement via Energy UK would also be beneficial. This would help us to stay up to date, thereby better directing our engagement at the groups we are able to attend.

Building on our response to question 11, we believe that there would be advantages to both Ofgem and licensees to have a more interactive dialogue on specific points as relating to the proposals and broader work programme. For example, short emails seeking views on specific points would be useful (as long as provided in context), with multi-question consultations being reserved for the most complex or wide-ranging issues.

Q14. Do you agree with our proposal to take a phased, priority-driven approach to reforming the supply licences?

We support Ofgem's aspiration to adopt a phased priority-driven approach to reform, particularly in the context of the unprecedented scale of change already being implemented across the industry. We do however believe that there may be another opportunity which Ofgem should factor in to its change programme and assessment of priorities and timings. That opportunity arises in the fact that existing change programmes are already necessitating ground up re-designs of industry and supplier systems and processes to ensure that customer outcomes can be achieved consistently.

Wherever possible, we believe Ofgem should seek to map the timing of its reforms to those system and process changes that are already planned. Doing so not only enables co-development of regulation and system/process design (maximising alignment), but also enables cost synergies. In this sense, Ofgem and the industry have a common interest in getting it right first time

Q15. Which area of the licence should we prioritise? In particular, please provide examples where existing prescriptive rules may be causing problems or where market developments are leading to new risks to consumers.

We strongly urge Ofgem to prioritise three areas:

- **removal of the RMR licence conditions, especially the information remedies:** The current bills and annual statements are incomprehensible to customers and directly conflict with the requirement under the standards of conduct that suppliers be clear and transparent with their customers.
- **removal of the "four tariff" rule:** Despite the increasing numbers of smart-meters on walls, we regularly hear customers questioning the benefit of smart metering. Although there may be many reasons, we believe that there is a core theme to the disengagement, namely that having a smart meter didn't change anything for a customer in a way that was tangible to them. Removing the rule would create space for suppliers to leverage the power of smart meters and develop more innovate and tailored tariffs to ensure that customers are not paying any more than they need to for the energy they consume (in the way and at the times that they consume it). Although we anticipate the greatest innovation relating to smart meter related tariffs, we believe that there is still room for innovation across the tariff landscape and that it would be inappropriate to remove the rule for smart tariffs only (or to grant a smart-only derogation)

- **relaxation of the prescribed language within Feed-in Tariff terms and conditions:** As one of the UK's largest Feed-in Tariff (FiT) administrators, we face the daily challenge of explaining to our customers why FiT T&Cs are so much more cumbersome than those under which we supply them energy. Whilst we wholeheartedly agree with the spirit underpinning the regulations and do not propose any changes to their commercial effect in this response, the prescription of the mandatory use of specific words, phrases and declarations has undermined the customer experience. We are confident that the same overall position could be reached in a much clearer and more intelligible manner and would be delighted to share our more detailed thoughts with Ofgem on this at an early stage.

Q16. Can you provide any initial views on potential costs and benefits (eg. Avoided costs) of regulation via principles versus prescription to your organisation? Please explain which part of our proposals (eg. Rule book operations) these cost relate to?

When considered as a whole, we consider it likely that a move to principles based regulation is more likely to increase costs in the near term. This is because licensees will need to scrutinise existing and already-planned business processes against a new standard based on principles rather than the current set of prescriptive requirements. At this stage it is impossible to predict whether this increased cost would be temporary or sustained as much will depend on the degree of consistency between treatments of similar topics, the measures used to establish and monitor compliance and ultimately the approach Ofgem adopts to engagement and enforcement. Whilst we are encouraged in this respect by many of the views put forward by Ofgem in this consultation, there remain areas of concern as highlighted in our responses.

The area in which we do predict (although cannot yet quantify) a material benefit is overall customer experience and engagement with the market. Focusing on principles based on customer outcomes will create the freedom for licensees to re-imagine the way those outcomes are delivered for customers, paving the way for new and exciting propositions that better meet customers' needs.

Q17. Are the existing provisions of SLC 25.1 and 25.2 the right ones for regulating sales and marketing activities (or are any additional principles needed)?

In our view, SLC25.1 and 25.2 add very little to the overarching Standard of Conduct principle. Consistent with Ofgem's wider proposals, we would advocate removing these provisions entirely. Alternatively, if it is felt that there are specific aspects within these provisions which are not adequately articulated by the overarching principle, those aspects should be rewritten as narrow principles based on the specific additional customer outcomes required at point of sale.

Q18. What, if any, prescriptive rules are needed in addition to the principles in SLC 25 to deliver good consumer outcomes?

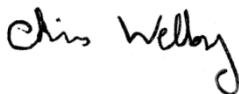
We believe the overarching Standard of Conduct principle adequately addresses consumer outcomes with respect to marketing. Given that licensees are also bound by other laws and regulations with respect to marketing and sales, we do not see any need for additional prescriptive rules in this area.

Q19. What engagement and monitoring process might be required to best operate SLC 25?

We believe that the appropriate measure of whether customer outcomes have been met under SLC 25 is the level of customer satisfaction through the Change of Supplier process. This is likely to be far more powerful for both customers and suppliers because suppliers will focus on making sure the customer receives the right experience, rather than focussing on providing certain pieces of information or achieving switching within a certain time period. Whilst timeliness is of course a key component of customer satisfaction, focussing solely on deadlines could easily sub-optimize the switch for the particular customer, for example if they have complex metering arrangements or if there are longstanding issues in industry data that would be ignored when it would in fact be better in the long run to resolve those issues for the customer once and for all. This could readily be achieved through qualitative assessment, perhaps through single-question customer surveys either at the end of calls or via email or web link at the end of the switching process. Customers should be invited to provide narrative feedback, as this will enable licensees to identify specifically areas which work well and areas which do not work well to enable ongoing improvement. We also believe that the Ombudsman should also collate thematic issues that arise through the sales process and feed these back to licensees pro-actively in order to facilitate a process of continual learning and improvement.

I hope you find this response useful. If you have any questions or require clarification, please do not hesitate to contact me.

Kind regards,



Chris Welby

Policy & Regulatory Affairs Director