

Adhir Ramdarshan & Keira Schoenemann
Ofgem
9 Millbank
London
SW1P 3GE

Haven Power Limited
The Havens
Ransomes Europark
Ipswich
IP3 9SJ

Sent via email to futureretailregulation@ofgem.gov.uk

11th March 2016

Dear Adhir and Kiera

The Future of Retail Market Regulation.

I am writing in response to the above consultation, which asks for views on Ofgem's proposals for the future of retail market regulation in the domestic market. Although Haven Power is a non-domestic supplier, we take a keen interest in developments in domestic regulation as this often extends to micro-businesses at a later date.

Haven Power is a Drax Group company and is a non-domestic electricity supplier that has been supplying Small Medium Enterprises (SME), including microbusinesses since 2007. In 2009, we entered the Industrial & Commercial (I&C) sector and have been steadily growing our customer base in both areas and currently supply ~25,000 and ~9,600 MPANS in the SME and I&C sectors respectively.

Question 1: In what circumstances do you think that prescriptive rules are likely to be most appropriate? Which specific SLCs/policy areas should remain prescriptive in nature?

Prescriptive rules are most appropriate in areas where: absolute standards must be delivered, such as Health and Safety; there is a need to protect certain customer groups, for example preventing the disconnection of vulnerable customers in winter; and in areas where there is significant scope for consumer misunderstanding. We would also like to see prescriptive rules in place around objections, where there are very precise rules to protect the consumer and where innovation is not needed. All suppliers need to act the same way.

Question 2: Should we supplement the principle of "treating customers fairly" with any other broad principles? If yes, please outline what these should be and why.

If other broad principles are introduced, they should be consumer focussed. The broad principles suggested by Ofgem seem to focus on business processes rather than consumer outcomes and we do not believe that this is a good way forward.

Other principles that Ofgem may wish to consider include: a requirement for suppliers to set out clearly the type of customers that they wish (rather than that they have to offer terms for) to supply (at present customers may assume that all suppliers have an equal interest in

them when in practice there is some segmentation amongst new entrants); and, a disclosure principle (this would cover key supplier policies such as credit management and complaint handling). A principal requiring suppliers to give due and proper consideration to the customer impacts of IT system changes might also be valuable.

Question 3: Where might narrow principles be more appropriate than broad principles or prescription?

Impact on consumers should be considered by suppliers when prioritising system changes. Elsewhere, it is hard to see an application for narrow principles that is sufficiently distinct from prescriptive regulation to be meaningful.

Question 4: What are your views on the potential merits or drawbacks of incorporating consumer protection law into licences?

Incorporating consumer protection law into licences might lead to duplication and enforcement from multiple authorities. There may be unforeseen effects depending on the interpretation of this by the Courts. A list of relevant consumer protection Law included as an appendix would be a useful reference for new entrants and suppliers provided it was comprehensive.

Question 5: How should we use principles and prescription to most effectively protect consumers in vulnerable situations?

As outlined in Q1, some prescription should remain to ensure vulnerable consumers are protected. Principles may enable suppliers to develop approaches tailored to meet consumer group needs rather than applying a blanket approach. Suppliers should be encouraged to use their own judgement rather than sticking to rigid rules and relying on the PSR. Consumers move in and out vulnerability e.g. after losing a job or falling ill. Focusing more on principles will incentivise suppliers to consider and respond to individual customer needs.

Question 6: Do you agree with our proposed approach to guidance?

Broadly speaking we agree with Ofgem's approach to guidance. There is little benefit in moving towards principle based regulation if a shorter, less prescriptive rulebook is accompanied by complex, detailed guidance for suppliers to navigate. We would welcome concise, straightforward, up to date guidance in a prominent location. Making case studies available, together with relevant enforcement decisions and supporting information explaining the reasoning for decisions would also assist suppliers with interpretation of principles. We found the Challenge Panel Report into the Standards of Conduct particularly useful. It was a clearly presented document illustrated with examples of good practice and areas where the regulator felt improvements could be made. This acted as a further useful benchmark to measure our own implementation of Standards of Conduct. It would be helpful if Ofgem ran a 'service enquiry line' which suppliers could call to test their thinking on matters of principles in the licences.

Question 7: How can we best engage with suppliers in the context of principles?

Increased reliance on principle based regulation will require a change in culture for both Ofgem and suppliers. The regulator needs to be accessible, particularly for smaller suppliers and new entrants. We have enjoyed valuable relationships with ELEXON and the Ombudsman, where suppliers are assigned an Operational Support Manager or Relationship Manager as a single point of contact. This works well, as it enables suppliers to build a relationship with one person who we feel has an understanding of our business. If they are unable to assist with a particular query, they can direct us to the most appropriate

area/ person for detailed knowledge and support. The value of this service would be greatly increased if the views expressed by Ofgem people to suppliers were taken into account in any investigation. Up to now we are invariably given the 'without fettering our discretion' rider when discussing licence matters.

Question 8: What specific support may be needed for new and prospective entrants?

It is sometimes underestimated just how much support new entrants need to navigate the regulatory landscape of the energy industry. Are they prepared with processes, experience and equipment? Without the regulatory largesse and historical knowledge which established players benefit from, there are many pitfalls and challenges. It would benefit new entrants and the regulator if there was a requirement to undertake training prior to becoming a licensee. Ofgem could run quarterly workshops where potential new entrants or suppliers could consider the impacts of the principles on their businesses and concepts with Ofgem staff in safe environment.

Question 9: 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?

While there is a place for collaboration with Ombudsman Services and Citizens Advice, relying on customer complaints data will not enable the regulator to spot issues early and take action. By the time complaint volumes have reached a level where a pattern is identified, a significant number of consumers have suffered detriment. "Mystery shoppers" and independent surveys, carried out by a third party are more likely to highlight potential problems before they reach the stage of becoming widespread issue or recurring complaints. The best way would be for Ofgem to proactively develop good, collaborative open working relationships with suppliers so that any bad practice could be quickly picked up and remedied before it reached investigation or enforcement stage. The Ombudsman is already thinking about potential smart meter complaints that may be on the horizon and working with suppliers in advance. We would like to see Ofgem monitoring outcomes rather than taking a box ticking audit approach. We are concerned about the prospect of an increase in the volume of RFIs for monitoring purposes, which puts a strain on resources particularly for smaller suppliers who do not have large teams of analysts and complex reporting functionality at their disposal, and for whom the compliance burdens are disproportionate. If RFIs are to play a part in monitoring, there should be real value from the output. It would place less of a burden on suppliers if there was coordination with bodies such as DECC and CMA. Data requests could be aligned, as we are often asked for similar information in slightly different ways by different people. Ofgem should look to obtain industry data from central sources and then give suppliers the opportunity to validate it. Similarly, we would appreciate it if a uniform set of data was requested periodically so that programs can be written to extract the information automatically rather than tying up resource producing complex, one-off information requests.

Question 10: 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 welcome this proposal. It is important that Ofgem understands the fundamentals of supplier businesses and the challenges they face. A lighter touch, where suppliers feel they can engage with the regulator without fear of enforcement, will build trust and encourage compliance with principles and the identification and promotion of best practice. We would like to see regular site visits so the regulator gets a feel for our business. The onus should not always be on suppliers to visit Ofgem.

- **We will collaborate closely with the Citizens Advice Service and the Ombudsman Services: Energy to ensure we maximise the effectiveness and impact of the monitoring activities across our organisations.** Ombudsman Services and Citizens Advice are well placed to identify emerging trends, both with specific suppliers and across the market. However, it is essential that they have appropriate resource and training to ensure they are equipped to deal with this enhanced role. Both organisations deal with multiple industries, and we have experienced on occasions, particularly with Citizens Advice Service, a lack of understanding around how processes and regulation apply to domestic and non-domestic energy markets.

Question 11: Do you have any views on how best to approach compliance in the context of principles?

Particularly whilst the principles are being established and are bedding down, a progressive approach to compliance is essential. Often a high degree of judgement will be required in order to determine or otherwise compliance. It is important that Ofgem recognises the difference between suppliers, paying particular attention to those that might choose to provide 'a cut down service' and Ofgem should resist the temptation to ratchet up suppliers' services. In most markets there is range of services on offer and the same should be true in energy. There is also a big part for suppliers to play. They have to have systems throughout the organisation that link the legal aspect with others, such as honesty, integrity and putting the consumer first. The supplier has to demonstrate that everyone operates beyond the basic rule and is asking "why?" until they get to the bottom of the issue. There needs to be support throughout the organisation for change. Having recognised, trained individuals within each supplier could help. This shouldn't be onerous for small suppliers.

Question 12: Do you have any 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 recognise that a flexible approach allows the regulator to consider factors such as engagement, recklessness and repeated non-compliance. However, there is also a requirement for consistency, and suppliers need to understand how decisions have been made in enforcement cases. As set out above, we strongly recommend a progressive approach especially whilst the norms are being established. It would be helpful for the decision making framework to be available. Case study workshops with the regulator would also be useful to industry participants.

- **We will increase the links to the level and impact of harm when deciding whether to open a case.** This should help get back to the spirit of what principle based regulation is trying to achieve; improved consumer outcomes.

- **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 agree that this approach encourages transparency and should help build positive relationships between Ofgem and suppliers. Suppliers are not always instantly aware of problems, and issues are not always caused by reckless behaviour. A positive attitude to getting things right should be commended. Suppliers are more likely to feel comfortable engaging with Ofgem for advice on getting it right if they can do so without the fear that their actions may lead to investigation or enforcement action in relation to activities where there was clearly no detrimental intent.

- **We will continue to apply our full range of enforcement tools to principles-based rules.**

There will always be a place for enforcement, but it should be a last resort. Investigations are lengthy and costly. It would be far better for consumers if the regulator worked with suppliers to head off non-compliance early on. This will result in less detriment to consumers in the long run and a better marketplace. Ofgem should consider applying a restricted range of enforcement tools especially in the early days. The aim is first and foremost to improve matters for customers. As principles involve judgement Ofgem should recognise a different basis for engagement, compliance and enforcement compared to prescriptive regulations.

- **We will make it easier for all suppliers to learn lessons from enforcement outcomes.**

Careful communication of enforcement action will help suppliers interpret principle based regulations and understand how enforcement works. This will be especially advantageous to new entrants in the market, but will also support long-standing players by enabling them to compare their activities against defined standards. In our view, cases that were closed without enforcement should be anonymised to avoid brand damage and strengthen trust and engagement with the regulator. It is vital that the business context is considered and explained in these situations.

- **Enforcement action will continue as usual throughout the transition to principles.**

Taking into account the process of embedding and adjusting to principles, it seems sensible for enforcement to continue throughout the transition period subject to the comments that we have made elsewhere in this response.

Question 13: How would you like to engage with us on our proposals and the broader work programme?

Consultations, together with workshops along the lines of Ofgem's recent Future of Energy Regulation workshop. These encourage interactive, focussed discussion from a range of participants with a good mix of views, and are time-bounded which gives maximum value to participants in a short space of time. Working groups have their place, but it should be borne in mind that smaller suppliers often struggle to commit resource. There are already a number of working groups dedicated to the switching programme over a long period of time. If additional multiple groups were set up to engage with this work programme, they would inevitably be dominated by the Big 6 suppliers. We would encourage Ofgem to treat suppliers fairly and recognise that smaller suppliers will find it more difficult and expensive to engage. We would like to see a range of engagement opportunities so that we can participate appropriately.

Question 14: Do you agree with our proposal to take a phased, priority-driven approach to reforming the supply licences. Yes, this seems the most workable approach.

Question 15: Which areas 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.

From a non-domestic perspective, we would like see less prescription around information on bills. Feedback from our customers indicates that they would like clear, simple invoices. The obligations to include ever increasing volumes of information on bills has resulted in complex invoices and we have seen very little evidence to justify most of the requirements. As 21st century technology has brought a wealth of communication options it seems archaic to use bills as our primary tool to interact with consumers, particularly when the "bill payer" may not be the individual in the business that needs the extra information. This is a good opportunity to clean up the licence conditions. If we can't justify rules, or remember why they are there, they should be taken out. For example, SLC 20 demands suppliers advise customers of the postal address of DNOs. Customers are most likely to contact their network operator in the

case of a power cut, so we question the usefulness of a postal address in such an emergency situation.

Question 16: 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 parts of our proposals (eg rulebook, operations) these costs relate to. It is difficult to predict costs without knowing what form monitoring will take. If the volume of RFIs increases, and those RFIs are complex and subject to change, we foresee potential costs in terms of resource, system changes and the opportunity costs of forgone developments (currently Ofgem RFIs displace development activity for customers in our business). The non-domestic objection RFI, issued by Ofgem just before Christmas, was extremely onerous for small suppliers with limited resource and the effort was disproportionate compared to larger suppliers. A number of complex reports had to be manually compiled for what appears to be a one-off exercise. There may also be potential costs if suppliers are expected to fund third parties conducting surveys or audits. There are costs associated with initial training and process changes, as well as embedding and reviewing our performance, however we can see the benefits of innovation opportunities and changing the way we think about consumer outcomes.

Question 17: Are the existing provisions of SLCs 25.1 and 25.2 the right ones for regulating sales and marketing activities (or are any additional principles needed)? This seems to us to be a very good place to start. These SLCs could be replaced with a principle.

Question 18: What, if any, prescriptive rules are needed in addition to the principles in SLC 25 to deliver good consumer outcomes? Different suppliers use different sales techniques, so a variety of rules could apply. It may be necessary to state that customers should be provided with a copy of the contract they have agreed to but, if regulation is to focus on consumer outcomes and encourage innovation, then a principle ideally alone but with minimum prescriptive rules only if absolutely necessary are needed in SLC 25. In the future more suppliers may wish to offer bundled packages including energy alongside telephone and television services. This would be difficult to achieve if tariffs were limited and innovation was stifled with prescriptive regulation.

Question 19: What engagement and monitoring process might be required to best operate SLC 25? Joint, risk based meetings to test out new ideas and build confidence. We also agree there is a place for challenge panels, perhaps including panelists from other industries where principle based regulation works well, where suppliers can demonstrate their compliance with SLC 25. It is important that there is an audit trail of sales and marketing activity, particularly in the face to face arena, so complaints of mis-selling can be investigated effectively.

I hope our response is useful. Please contact me using the details below if there is any aspect you would like to discuss further.

Yours sincerely

June Mallett
Regulation Manager
Email june.mallett@havenpower.com
Direct Dial 01473 632536