

By email to [futureretailregulation@ofgem.gov.uk](mailto:futureretailregulation@ofgem.gov.uk)  
Adhir Ramdarshan  
Ofgem 9 Millbank London

07/01/2016

Dear Adhir,

TMA started as a Consultancy and Boutique developer in 1987. Following the Electricity competitive Market opening in 1998 we provided IS and IT solutions for larger Suppliers. We qualified as a Party Agent in 2005. We now provide Half Hourly and Non Half Hourly Data Collection, Data Aggregation, AMR, Data Retrieval and Internet services to over 20 Suppliers and other market participants. We are also in the process of providing DCC Services for Smart in order to ensure that the DCC services are accessible to all Suppliers and other interested parties through Shared Services (as now defined in the SEC).

We welcome the opportunity to respond to Ofgem's consultation on the future of Retail Market Regulations.

We fully support a more principle based approach in order to foster innovation and a better delivery of benefits to consumers as opposed to a more homogenised and seemingly (from consumer's perspective) undifferentiated offering from dominant participants.

We are however concerned that some other areas of Ofgem's policy work are in direct opposition with the principle based approach and the support of a framework nurturing innovation.

The work for customer switching is highly prescriptive.

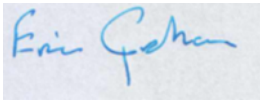
The centralisation for Smart has so far failed to deliver and has already cost the Industry significantly more than was planned. We are still waiting to hear when SMETS 1 meters will be adopted and enrolled. We fail to comprehend why Ofgem is pursuing centralisation once more for Registration and with the same service provider. Centralisation has not been shown to deliver the effects expected and it is a known innovation killer.

We have previously voiced our disagreement with the use of the DCC for a centralised registration – even if they are just procuring this -and also with the use of a central registration system.

We are also concerned that the Smart Metering Framework is solely rule based. The burden on potential new comers to comply with the many testing and security requirements are benefitting large legacy Suppliers and minimising innovation.

Please find below our responses to your specific questions.

Yours Sincerely

A handwritten signature in blue ink that reads "Eric Graham". The signature is written in a cursive style and is contained within a light blue rectangular box.

Eric Graham  
TMA Commercial Director

## Chapter 2

**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?

**TMA's response:**

We agree with Ofgem assessment that any Health and Safety matters need to remain prescriptive as well as the minimum standards to be met by Suppliers in terms of billing frequency and quality.

We would like the following areas to remain prescriptive: Provision of Info and Data Retention and Financial Information reporting.

**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

**TMA's response:** As noted in the consultation paper, we agree with the other principles mentioned by Ofgem, namely Constructive engagement with the regulator, good record-keeping, Board level assurance around embedding of principles and not putting customer's outcome at risk.

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

**TMA's response:** Metering and customer switching. The industry is slow to introduce change – changes that could benefit consumer's. A principal embracing change and avoiding over complex processes could enable a more responsive attitude to change.

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

**TMA's response:** We agree that compliance to Customer Protection laws should be incorporated into the Supplier's Licence. If Civil Fining is adopted by the Government, it will allow Ofgem to have a more potent enforcement path regarding breaches.

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

**TMA's response:** The overarching principle of treating consumers fairly in the Standard of Conduct covers consumers in vulnerable situations. However, as an example, traditionally, pre-payment customers are charged more for their electricity than customers who can pay by Direct Debit. (Not only do prepay consumers pay punitive tariffs, they pay in advance. They include the vulnerable, probably the least tech savvy and therefore less likely to switch). Some smaller Suppliers have innovated in that area and propose more attractive tariffs. ( These Suppliers also run very profitable businesses). It is against the principle of fairness to have the customer who can least afford it having to pay the highest price per

unit for Electricity. It suggests that a more prescriptive approach is needed to ensure that consumers in vulnerable situations are adequately protected.

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

**TMA's response:** Yes, we agree. We would also support the publication of Quick Start guides.

### Chapter 3

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

**TMA's response:** We fully support the idea of an innovation hub for Energy, similar to the one set up by the FCA. This would allow Suppliers to safely discuss new ideas and assess potential impacts on principles and possible applications. It would also provide Ofgem with early visibility of trends in the market as well as awareness of what regulatory obstacle might stop the application of a good idea.

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

**TMA's response:** New/prospective entrants would benefit from access to Ofgem's guidance. It could be in the form of a "training" program going over the principles and their applications, building on the Quick Start Guides mentioned in Chapter 2. We strongly believe that one of the main roles of a Regulator is to guide organisations. It would send a strong signal that new comers are welcomed and will be assisted in the complex process of becoming a Supplier. It could also be in the form of a dedicated Ofgem support manager, inspired by the Elexon Operation Support Manager. Each Supplier has a designated point of contact within Ofgem. The Support Manager would follow the new entrant from the first point of contact until they are licenced and beyond, when they become operational. It would engage Suppliers from the very start of their journey. Simplification of the trading arrangements, including a radical simplification of the BSC arrangements would lessen a barrier to market entry.

**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?

**TMA's response:** No comment

**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 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

**TMA's response:** We agree with the proposals above. It is the minimum required in order to implement a more principle based approach to regulation.

### Chapter 4

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

**TMA's response:**

The context of principles is more fluid, therefore the compliance approach requires flexibility. There is no box ticking exercise possible. The compliance approach should concentrate on measuring the outcomes and on assessing the intent of the Supplier as mentioned in the enforcement guidelines for the SOC with the Plan-Monitor\_Adapt loop.

**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 will increase the links to the level and impact of harm when deciding whether 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 principles-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.

**TMA's response:**

We agree with the proposals. Suppliers must feel confident that engaging with Ofgem early is beneficial to them in order to maintain a climate of mutual trust. It is therefore important that early engagement is taken into account as part of the decision to move to enforcement or not.

We also understand information from engagement and monitoring activities can be shared with enforcement.

We fully support the publication of lessons learned, even if some might be anonymised. We would like the lessons learned to be published as and when an investigation has ended rather than once a year in the Annual Enforcement Conference. The lessons learned should be published with the Quick Start Guides and easily found online.

We also support enforcement as usual throughout the transition to principles, given that Suppliers should already be compliant with SOC and the rest of their Licence.

We are not sure that monetary fines are fully effective. It may be more helpful to ban Suppliers from gaining new customers until they are compliant.

## Chapter 5

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

**TMA's response:**

We prefer consultations.

**Question 14:** Do you agree with our proposal to take a phased, priority-driven approach to reforming the supply licences.

**TMA's response:**

Yes, we do. A big bang approach is not appropriate in this case. The purpose of this reform is to be flexible and be adapted to technical advances, the increased

number of third party intermediates and Non Traditional Business Models. For that reason a gradual approach would be too lengthy and not appropriate.

**Question 15:** Which areas of the licences 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.

**TMA's response:**

No comment.

**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.

**TMA's response:**

No comment.

## Chapter 6

**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)?

**TMA's response:**

Yes, SLC 25.1 and SLC 25.2 provide principles that will ensure that consumers have the required quality and amount of information during marketing and sales activities to allow them to make informed decisions.

**Question 18:** What, if any, prescriptive rules are needed in addition to the principles in SLC 25 to deliver good consumer outcomes?

**TMA's response:**

The overarching principles set in 25.1 and 25.2 are enough to protect consumers and guide Suppliers.

**Question 19:** What engagement and monitoring process might be required to best operate SLC 25?

**TMA's response:**

In terms of engagement, we support the use of Challenge Panels as well as encourage the use of pilot initiatives by Suppliers to test any new marketing/sale process. Ofgem could also circulate the lessons learned from past licence breach investigations.

For monitoring we would suggest consumers satisfaction survey following interaction with the sales/marketing staff. The survey should be left with the consumer to fill in at their leisure. Of course, Ofgem should keep monitoring the number of complaints raised by consumers. It would highlight positive experiences as well as negative ones.