

Future of retail market regulation workshop

Notes from Ofgem's stakeholder workshop on the future of retail market regulation.

From	Ofgem
Date of workshop	3 February 2016
Location	Coin Street Neighbourhood Centre, London

1. Overview

On 3 February 2016 we held a stakeholder workshop that explored some of the questions and proposals in our Future of Retail Market Regulation [consultation document](#). Approximately 50 industry stakeholders were in attendance (see list at Appendix 1).

The workshop began with an introduction by Mr Neil Barnes (Associate Partner, Consumers and Competition) and a high-level overview of the consultation and our progress to date by Mr Adhir Ramdarshan (Head, Future Retail Regulation). Stakeholders were then divided into six tables and participated in three roundtable discussions:

1. Balancing principles with prescription
2. Monitoring compliance with principles
3. Reforming standard licence condition (SLC) 25

The main views that emerged from these discussions are captured below and have been grouped into themes. **Please note that these are the views of workshop attendees and do not necessarily represent the views of Ofgem.**

2. Balancing principles and prescription in the rulebook

Focussing on the relationship a supplier has with consumers

1. Attendees suggested any principles introduced should have a strong focus on the supplier-consumer relationship. This led to some debate about the role new principles should play alongside the existing Standards of Conduct (SoC). We encourage stakeholders to put forward their views on this matter in their response to the December 2015 consultation document.
2. Many attendees held the view that the following broad principles put forward for discussion in the consultation document did not have a clear link to the relationship a supplier has with consumers:
 - Constructive engagement with the regulator
 - Good record-keeping
 - Board-level assurance around embedding of principles
 - Not putting consumer outcomes at risk
3. There was a general sense that these principles promoted sensible outcomes, but there was a question as to whether such outcomes should be delivered via enforceable principles. Attendees also raised concerns that principles which targeted internal supplier processes could create a risk-averse culture that stifles innovation.

Areas of the rulebook where principles could benefit consumers

4. There were mixed views about a principle relating to vulnerable consumers. Some attendees suggested that placing an onus on suppliers to think about how they could identify and assist vulnerable consumers would result in more comprehensive protections. Other attendees believed that suppliers were not experts in assessing vulnerability and that they would need some prescriptive rules or independent criteria to determine which consumers were in vulnerable situations.¹
5. The potential removal of the Retail Market Review (RMR) 'simpler' tariff rules by the Competition and Markets Authority (CMA) was discussed at length by attendees. There was particular interest in the role principles could play if the information tools that currently complement these tariff rules needed to be revised.
6. Many attendees saw merit in a narrow principle that states what information suppliers must provide to consumers, but also provides them with flexibility to determine how and when this information is provided. The potential for principles to allow suppliers to tailor information to their customers' needs also generated interest at our November 2015 Effective Billing Workshop.

Determining where prescriptive rules are appropriate

7. When reviewing the rulebook, some suppliers suggested that we should use 'no prescription' as a default position and determine whether a principle or the SoC could satisfy our policy objectives. Many attendees thought principles or the SoC would not be able to satisfy a policy objective that sought to achieve standardisation across suppliers (eg calculations used for tariff price comparisons and ensuring inter-operability between smart meters).
8. Other attendees favoured a case-by-case process for determining where prescription should be maintained in the rulebook. If a prescriptive rule was out of date, or its policy objective was no longer relevant, then it should be removed.

3. Understanding the Rulebook

9. There was a general consensus that too much guidance could act as 'prescription through the backdoor' and potentially discourage innovation. To avoid this situation it was suggested that guidance should be used sparingly when principles are first introduced, and then developed on an 'as needed' basis.
10. It was suggested that the sharing of good or bad practice as guidance would help suppliers to reduce non-compliance risk when they are developing innovative practices or products. Supplier forums or an innovation hub, similar to the Financial Conduct Authority's approach, could also help to minimise non-compliance risk.
11. Several attendees suggested that rationalising all existing guidance and organising it so it can be accessed from a central point (ie a webpage) would make it easier for suppliers to understand how they can comply with their rulebook obligations. Suppliers new to the market could find this guidance resource particularly useful.

¹ We encourage stakeholders to address Question 5 in the consultation document. This question asks 'How should we use principles and prescription to most effectively protect consumers in vulnerable situations?'

12. Attendees also suggested that the rulebook would be more user-friendly if it were easier to navigate and used simpler language.

4. Monitoring Compliance

13. Attendees recognised that a risk-based and proportionate monitoring framework is required if a rulebook that relies more on principles is to deliver positive outcomes for consumers. However, there was a consensus amongst suppliers that using ad hoc Requests for Information to obtain this information would be onerous.
14. To avoid this burden, some attendees discussed whether there was scope for suppliers to 'self-report' some of the information they gather about their own performance to the regulator during risk-based or routine bilateral meetings.
15. Statistics concerning contract cancellations, erroneous transfers and customer complaints were all viewed as potential indicators of when something might have gone wrong. Mystery shopping, customer surveys and challenge panels were also seen as ways of monitoring compliance with principles, though it was noted that the most appropriate methods of monitoring will depend on what the principles are.

5. Reforming SLC 25 as a priority

16. Many suppliers stated that the existing prescription in SLC 25 was not the reason for the small amount of face-to-face and telesales activity currently occurring in the market. Cost and unpopularity with consumers were the major reasons why most suppliers were discouraged from utilising these sales methods.
17. Even if the SLC 25 proposal² did not trigger an immediate change in supplier behaviour, most attendees acknowledged that a reduction of prescription in the rulebook, without creating a risk of poor consumer outcomes, was a step in the right direction. However, many attendees questioned whether other areas of the rulebook, which were likely to stimulate more immediate and significant innovation from suppliers, should be reformed as a priority.
18. Given their size and business models, several attendees noted that Third Party Intermediaries (TPIs) may be well-placed to engage in face-to-face and telesales. However, there were suggestions that this may be better facilitated if the regulatory framework that applies to suppliers and their TPI representatives was separated.

6. Transitioning to a greater reliance on principles

19. Cultural change across the industry was a key theme throughout the workshop discussions. Attendees emphasised that the entire Ofgem organisation would need to accept that good consumer outcomes could look different depending on the business model of the supplier and the type of customers they serve.
20. Suppliers in attendance were also keen for Ofgem to recognise that innovation involved an element of risk. Ensuring suppliers felt comfortable to report an issue that may have gone wrong was raised as another cultural change that should occur.

² In the consultation document (pp. 50-51) it is proposed that we rely on the existing principles in SLC 25 (SLC 25.1 and SLC 25.2) when regulating face-to-face and telesales. The prescriptive elements of SLC 25 (SLC 25.3 to SLC 25.17) would be removed under this proposal.

21. Several attendees stated that Ofgem should carefully consider the costs its regulatory changes could create for the industry. Given the CMA is advancing their Energy Market Investigation remedies at the same time as the Future Retail Regulation programme, the sequencing of these processes was viewed as important.

7. Next steps

Our Future of Retail Market Regulation consultation is open until 11 March 2016 and we would like to hear your views on the questions and proposals in this document. We will continue to engage actively with stakeholders throughout this programme and are always happy to hold bilateral discussions over the phone or in person.

If you have any questions or further views relating to this work, please get in touch at FutureRetailRegulation@ofgem.gov.uk

Appendix 1 – List of attendees

Name	Company	Job title
Alison Russell	Utilita	Regulatory Affairs Manager
Chris Welby	Good Energy	Policy and Regulatory Affairs Director
Cian Fitzgerald	Ovo Energy	Economist
Claire Lindsay	SEOPA	Senior E Business Executive
Colin Prestwich	Smartest Energy	Head of Regulations
Daisy Cross	Energy UK	Policy Manager
Daphne Yao	Ovo Energy	General Counsel
Dave Dawson	Our Power	Director of Operations
David Crossman	Haven Power	Director of Supplier Management
David Pilling	Ombudsman Services	Assistant Director
Dawn Armstrong	DECC	Policy Advisor
Debbie Harding	Spark Energy	Director of Legal & Regulation
Debra Vaughan-Massey	Ombudsman Services	Ombudsman
Geoff Parker-Naples	Economy Energy Trading Limited	Head of Compliance
Gillian Cooper	Citizens Advice	Head of Retail Energy Markets
Guy Thompson	My Utility Genius	Product Director
Haren Thillainathan	Scottish Power	Regulatory Policy Manager
Hazel Ward	RWE nPower	Regulation Manager
James Taylor	Which?	Campaigns Manager
Jennifer Pride	Welsh Government	Head of Renewable Energy Team
June Mallett	Haven Power	Regulation Manager
Kenny Griffith	Energylinx	Head of Partnerships
Lesley Gray	SSE	Interim Head of Market Regulations
Louise Murphy	SSE	Regulation Manager
Mark Sommerfield	Renewable Energy Association	Policy Analyst
Matthew Whittle	Money Super Market	Chief Risk Officer
Naomi Grayburn	Citizens Advice	Policy Researcher
Natasha Hobday	First Utility	Head of Policy and Regulation
Peter Smith	National Energy Action	Policy Lead
Phil Darwick	GB Energy Supply	Operations Director
Rhona Peat	Scottish Power	Head of Retail Regulation
Richard Gow	Loco2	Regulatory Analyst
Robert Larkins	Utility Warehouse	Head of Energy Regulation
Ryan Wilkins	Ecotricity	Regulation & Compliance Analyst
Sebastian Eyre	EDF	Head of Regulation
Tabish Khan	British Gas	Regulatory Manager
Thomas Lowe	British Gas	Regulatory Manager
Tom Breckwoldt	Gazprom	Regulatory Advisor
Tracey Wilmot	E.ON	Head of downstream regulation
Vicky Simonds	Cornwall Energy	Analyst