



3rd Floor North
200 Aldersgate Street
London
EC1A 4HD
citizensadvice.org.uk

Mark Wagstaff
Ofgem
9 Millbank
London
SW1P 3GE

By email: mark.wagstaff@ofgem.gov.uk

9 February 2016

Dear Mark

Ofgem Simplification Plan 2016-17

This submission was prepared by the Energy team within the Citizens Advice Service. It has statutory responsibilities to represent the interests of energy consumers in Great Britain. We welcome the opportunity to provide a submission on Ofgem's Simplification Plan 2016-17. Our response is not confidential and can be published on your website.

Innovation

We note that you would particularly like views on how Ofgem can build on its existing work to develop new approaches to support innovation and the safe testing of new products and services in the energy market.

Citizens Advice has begun two related research projects which investigate, in part, the roles Ofgem can play in facilitating innovation. The topics are:

- Regulatory and consumer implications of disruptive technologies
- New methods for distribution tariff charging

Both research reports are likely to be published in the spring. We are happy to discuss the projects with you in the meantime and hope that our findings will be able to inform your Innovation Plan, also due for publication around this time.

Future retail regulation

We recognise Ofgem's commitment to regulating more through principles and will support this workstream by participating fully in the stakeholder engagement programme. As noted in your consultation letter, a greater reliance on principles may reduce burdens on industry

and could allow Ofgem to regulate an increasingly diverse market more effectively, allowing space for businesses to innovate. However, it is crucial that the new regime also delivers better consumer outcomes and more effective consumer protections. Throughout our involvement, we will advocate consumer protection as an essential consideration that should remain at the forefront of the programme of work.

In terms of burdens reduction, the regulator has made clear that they do not intend a principles-based regime to be 'light touch'. In what sense, then, does it reduce regulatory burdens on industry? Whilst stripping out prescriptive rules from the supply license reduces time spent box-ticking, it should also introduce an onus on suppliers to think more carefully about and demonstrate due regard to consumer outcomes. Striking the correct balance between flexibility, to support the aims of principle-based regulation, whilst providing sufficient structure to ensure the protection of consumers may be difficult. We are therefore cautious about the role that principles-based regulation has to play in the burdens reduction agenda.

We will provide detailed views on current proposals in our consultation response, but take this opportunity to outline some concerns and suggestions that apply more widely.

The move to principles-based regulation will require a much greater emphasis on compliance monitoring, in order to ensure that any changes on the ground are in the consumer's interest and, if not, to support strong enforcement action. We are concerned that this need for increased monitoring capacity may be in direct conflict with Ofgem's reduced budget for 2016-17 and onwards through to 2020. We gather that Ofgem is looking to achieve a proportionate, risk-based approach to compliance, in order to regulate efficiently and effectively. Nevertheless, we are concerned about whether it will be possible to commit sufficient resource to these activities, which are inherently resource-intensive.

We reiterate our recommendation made in previous years' submissions that there may be value in the regulator maintaining and publishing a risk register. This would sit well with Ofgem's desire to become more transparent in its compliance monitoring activities. For example, if the regulator goes ahead with proposed plans to remove the prescriptive rules around supplier sales activity, this area might be viewed as high risk and could thus warrant transparent and comprehensive public monitoring. The introduction of a risk register could also facilitate cost savings further down the regulatory path by enabling a more targeted, efficient monitoring regime.

We would also like to draw Ofgem's attention to a piece of work we are undertaking to improve the collection and use of energy data collected across the Citizens Advice service. We have commissioned independent research in order to understand the existing barriers to best using our data, how we may overcome these, and which strengths we can build on. The research will include an analysis of our approach to sharing information internally as well as with our key stakeholders. We look forward to hearing Ofgem's thoughts on how our data can inform their enhanced compliance activities in a principles-based regime. In order to achieve a proportionate, risk-based approach to compliance, Ofgem will need to have a clear idea of which data is most valuable to it at any point in time and a consistent

way of communicating this with us. This will enable us to prioritise our own work more effectively and avoid sending information that is not needed or not used.

Third party intermediaries

It is crucial that Ofgem's work on Third Party Intermediaries (TPIs) reflects the increasing reality of pan-market TPIs. As we have said in previous years, we believe that this work stream would benefit significantly if Ofgem discussed key issues with other regulators and tried to see if, together, they could develop solutions across different markets. This could be a principles-based approach in line with Ofgem's new approach to regulation more generally.

We are thus pleased that Ofgem is working with other regulators, through UKRN, to ensure there is a joined approach to the regulation and accreditation of TPIs operating in different sectors. The UKRN could be a useful starting platform to explore ways of increasing consumer awareness and understanding of the benefits of using an accredited TPI. As part of this, we would advocate the development of a more recognisable 'kitemark' to be used across different sectors.

On another note, an obvious simplification in energy market TPI policy would be to have one master TPI Code of Practice (administered by Ofgem) for both domestic and non-domestic markets, with some elements removed for the latter. This would be more efficient than having two separate Codes with their associated processes and monitoring work.

Behavioural insights

Behavioural insights are increasingly being used to inform regulatory discussions and ensure that changes to regulation reflect the ways consumers actually behave, rather than how they claim to behave. This ultimately yields more effective regulation, particularly in terms of delivering better consumer outcomes. It is particularly crucial to take these insights on board at a time when the regulatory framework is changing so rapidly and drastically. Against this backdrop, we are pleased that Ofgem is considering how such insights can be used to inform its work on simplifying energy bills, and that the CMA has taken an interest in the area as part of its Energy Market Investigation.

For our part, Citizens Advice is currently undertaking a study into how behavioural insights could be used to encourage more consumers to participate in the energy market. When it comes to switching, we believe that behavioural insights have not up to now been applied in a consistent way to increase activity. This was borne out by our previous research into the consumer hierarchy of priorities, which established that consumers place energy relatively low on their list of things to shop around for, and that the mass of information available when switching actually acts as a block on our ability to make good decisions.¹ Our ongoing project seeks to tackle these issues by testing consumer messaging intended to transform the way people think about and engage with the energy market. The project is

¹ goo.gl/Gjc8Z5

set to run until March and we would be very interested in working with Ofgem to establish what implications our findings could have for the energy market.

Price controls

In the past year we have worked with Ofgem to improve reporting transparency for network companies, ensuring that consumers and stakeholders will have access to simple outputs that enable them to more easily assess network performance. We welcome Ofgem's December decision to roll out this requirement for electricity distribution companies and look forward to working with them on design and implementation. In the coming year, we see considerable benefit in rolling out this requirement to RIIO GD1 and T1 as well.

Code governance

There have been a number of positive developments in simplifying code governance in the past year, though there remains much to do. The CMA have identified the current code governance framework as a potential barrier to entry and competitive innovation and provided initial recommendations about what needs to be done to address those concerns. Ofgem are also reviewing the process through Code Governance Review Phase 3 and recognise the need to radically reform the system. We particularly welcome the move to make consumer impacts a more explicit part of the modification process.

It remains our view that Ofgem should attempt where possible to consolidate and simplify the codes. This would make the change process more accessible to stakeholders outside industry and reduce Ofgem's workload at the end of the process.

Stakeholder relations

Effective consultation is a key part of developing good policy and we encourage Ofgem to be mindful of the demands that it and other bodies place on their stakeholders. In addition to Ofgem's work, its stakeholders are likely to also be engaging with energy policy developments emerging from bodies like DECC and the CMA. All of Ofgem's stakeholders will have fewer staff working on energy regulation than it does, and they are comparatively more likely to be generalists who are covering multiple strands of energy policy rather than a single area. It is therefore very important that you ensure adequate time is allowed for consultation and that you try to stagger deadlines to try and reduce the number of times these coincide on major consultations, whether your own or those being run by other bodies. During times of peak demand on your stakeholders, for example during the final consultation round of the CMA investigation, we would encourage you to consider allowing greater time for responses to your own consultations in order to ease the resourcing bottlenecks that your stakeholders would otherwise face.

Yours sincerely,

Naomi Grayburn
Policy Researcher