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Dear Megan

We are writing to you in response to the consultation on changes to Ofgem's Enforcement Guidelines and Sectoral Penalty Statement. This submission is non-confidential and may be published on your website.

Citizens Advice welcomes the opportunity to respond to this consultation. While there have been some notable improvements since the current guidelines were published in 2017, we are concerned that Ofgem's current compliance and enforcement approach is not working well enough for consumers in some key areas.

Agile and responsive monitoring, compliance and enforcement

In addition to the proposals outlined in the consultation, we think Ofgem supplier monitoring should be more strategic and agile¹, with more clarity over the thresholds for progressing compliance or enforcement action.

As part of our bilateral engagement and through the Tripartite Engagement Group with Ofgem and the Energy Ombudsman, we share information from our service that highlights poor practice by suppliers. However, the decision making around initiating and progressing cases against companies operates as a 'black box', which can make it difficult to engage as efficiently as possible. While we recognise that legal requirements make it difficult to divulge information on a case-by-case basis, the use of scenarios, case studies or more objective criteria could help maximise the impact that we have by focusing our resource and ensuring the insight we provide is as valuable as possible for Ofgem's work.

In particular, there have been cases where we've provided detailed and consistent evidence on issues where smaller or growing suppliers appear to be breaching key rules and/or causing significant detriment to their customers. Whilst we're not privy to discussions Ofgem may have

been having with suppliers, investigations were not formally launched. Some smaller suppliers with persistent issues have gone on to fail, and there could be opportunities to intervene early which have been lost.

While monitoring has improved, we still think this could go further to help intervene sooner with riskier suppliers, improve customer outcomes and prevent - or reduce the harm of - supplier failure. New powers from Ofgem's Licensing Review should give more tools to intervene, but these will need to be used effectively to ensure new suppliers are able to meet the needs of their customers.

Key consumer outcomes

In recent years we have highlighted the detriment related to supplier failure and poorly prepared suppliers¹, so we welcome the recent focus on compliance with industry schemes like the Renewables Obligation and Ofgem's proactive approach to imposing Final Orders where breaches occur. We welcome the proposal to improve guidance around final and provisional orders, which could be a useful regulatory tool for Ofgem to use in other areas of compliance.

We have also previously also called for more scrutiny of microbusiness suppliers compliance with SLC0², and welcome the fact that new cases have been opened in this area over the past year.

However, we also believe there have been areas of compliance related to particular customers in vulnerable circumstances which should be prioritised by Ofgem.

In particular, we have previously raised concerns about belated action over suppliers not offering tariffs to prepayment customers or making it harder for these customers to sign up.³ This results in a lack of choice and can lead to higher prices for consumers who may already be more likely to be struggling financially. It also enables suppliers to unfairly avoid obligations that their competitors must adhere to.

We're also concerned about compliance with rules on providing customer service which makes it easy to get in touch and resolves issues promptly. As we continue through a difficult period, with more consumers struggling to pay bills and stay on supply, being able to quickly and easily get in touch with a supplier and receive appropriate help is more important than ever. However, the bottom 5 suppliers in our Star Rating, in Q1 2021, only responded to 35% of their customers' emails within two working days, compared to 86% for the top 5 performing suppliers. Similarly

¹ Citizens Advice (2019) [Picking up the pieces](#)

² Citizens Advice (2019) [Closing the protection gap](#)

³ Citizens Advice (2019) [Paying for energy with a prepayment meter still isn't working well enough](#)

customers with the bottom 5 suppliers wait 3.5 times longer on the phone to their supplier than those with suppliers in the top five⁴.

There has been relatively limited action started in relation to customer service and complaints handling standards in the recent past. Whilst the industry has been through unprecedented challenges due to the COVID-19, this mustn't be an excuse for poor ongoing service standards from suppliers. We would hope to see more rapid action in future to tackle these issues - especially given the new powers Ofgem now has to intervene as a result of the Supplier Licensing Review, including requiring companies to have adequate internal capability, systems and processes to serve their customers.

To help stakeholders understand its targeting, Ofgem could also publish more detail about the areas of the rulebook its compliance and enforcement cases are covering over time. This would make it easier to assess how well it is providing a credible deterrent, and the extent to which it is prioritising harm to consumers in vulnerable circumstances.

Timely resolutions

We have previously highlighted our concern around the length of some investigations⁵ and we're still aware of some being open for very long periods. For example, at the time of writing there are investigations into Utility Warehouse and PayPoint which have been open for over 3 and 4 years respectively⁶. Delays of this length mean that direct redress to consumers is delayed and may never be feasible. They can also delay improvements by companies and the opportunity to share lessons learned.

In some cases, suppliers have failed before open investigations into their practice had been concluded. For example, both Extra Energy and Economy Energy had cases against them which had been open for over 2 and a half years at the point that the failure occurred.^{7,8} We believe that a swifter resolution of these cases could have helped rectify issues at these companies, or resulted in them failing with less consumer harm and lower mutualised costs.

⁴ Citizens Advice (2021) [Worst energy suppliers five times more likely to provide inaccurate bills than the best ones, Citizens Advice research reveals](#)

⁵ Citizens Advice (2019) [What can the regulator do to reduce energy company failures?](#)

⁶ Ofgem (2020) [Investigation into whether PayPoint plc has infringed the requirements of Chapter II of the Competition Act 1998](#)

⁷ Ofgem (2019) [Investigation into Economy Energy's compliance under the gas and electricity supply licences \(Standard Licence Condition 25\)](#)

⁸ Ofgem (2018) [Investigation into Extra Energy Supply Ltd and its compliance with its obligations under the gas and electricity supply licences \(SLC 7B, 14, 21B, 25C, 27, 31A\) and with the Consumer Complaints Handling Standards Regulations 2008](#)

We support the proposed changes to the Enforcement Guidelines and Sectoral Penalty Statement to enable more action to be taken through Alternative Action and quicker settlement of cases. However, it is unclear to what extent the settlement phase of the process is the driver of delays to case resolution, and therefore to what extent the changes suggested by Ofgem will enable swifter case resolution. In its decision Ofgem should set out this analysis, and the likely impact of the proposed changes.

It should also improve the public information that is available about case progress, and its own benchmarks for performance, as there are not currently clear targets or expectations set by Ofgem on case resolution time. We recognise that in practice this is likely to depend on a number of factors, like cooperation of the company and complexity of the case, but Ofgem should try to set out reasonable base case timelines to enable better accountability.

While there is good data available on case outcomes in relation to redress payments⁹, there isn't clear publicly available information on the average case open time, or the number of cases that have been open beyond different thresholds. This information would also be useful for stakeholders to better understand the status of open cases and understand Ofgem's case handling performance. We think this should be provided on an ongoing basis, and also form part of Ofgem's annual reporting.

Finally, other than when they are closed, cases are only updated when certain changes are made, for example if the case scope is changed. This means long-open cases can go years with no update being provided. We think there should be a backstop requirement for all cases to be updated at least annually to share, at an appropriate level of detail and in compliance with legal requirements, progress on the case and any forward-looking expectations in terms of case resolution time.

Transparency

Transparency about case outcomes is vital to enable reputational regulation and help consumers make informed choices. It should also help establish boundaries and share lessons learned around principle's based regulation.

Current guidelines state that when Ofgem takes Alternative Action, there may be occasions where Ofgem will not publish the findings on their website. We think Ofgem should provide clarity on the circumstances in which it will not publish information relating to a case.

⁹ Ofgem (2021) [Compliance and enforcement webpage](#)

We're also aware of cases where Ofgem has published some details of a case, but withheld the names of the suppliers involved.¹⁰ We note that this information can have a significant bearing - for example Which?'s recommended suppliers must not have 'fines or sanctions brought against them by, or have significant regulatory intervention, in the past year'.¹¹ This assessment relies on good quality data being in the public domain. Where information about the company involved is restricted, a clear explanation of this decision should be published.

Findings should also be regularly reported at the right level of detail to enable learnings to be shared. We note that apart from case closures, this information has been somewhat sporadic, with 3 semi-regular Retail Compliance and Enforcement Reports published between 2017 and 2019, and more recently a new bi-monthly Compliance Bulletin launched in June 2021. We hope that this new output will provide more regular information on compliance going forward.

We're also concerned that findings are not published in cases where suppliers fail before investigations are completed. Given the time and energy put into these investigations, there should still be lessons to share with industry, and insights into any issues related to the failure which could be useful to policymakers and stakeholders.

Looking ahead

Improvements in enforcement and compliance will be even more vital as more innovative products and services and changes come to market, bringing new opportunities and risks for consumers with them. It will be even more pressing for Ofgem to act swiftly against key consumer risks, close cases in a timely manner and share the learnings to ensure that other companies avoid the same problems. Ofgem will also need sufficient enforcement and compliance resource to maintain a credible deterrent, and will need to appropriately scale this function if it takes on new areas of regulation such as heat networks in future.

We are happy to discuss our response in more detail, if you have any questions about anything we have discussed in response please do not hesitate to get in touch.

Yours sincerely

Connie Thorn

¹⁰ Ofgem (2020) [Compliance note – adherence to Standard Licence Conditions 0 and 27 of the gas and electricity supply licences](#)

¹¹ Which? (2021) [Energy companies: Which? Recommended Providers](#)