

Approval criteria for redress schemes in the energy sector



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Overview:

Before approving a redress scheme under the Consumers Estate Agents and Redress Act 2007 (CEAR Act) we are required to have regard to a number of operational aspects of the scheme, including whether it meets the principles of best practice. We have considered a wide range of schemes and other guidance relating to the operation of redress schemes. Following consultation this document sets out our final criteria for approval that a scheme must comply with.

We now invite schemes to apply for approval.

Applications must be received by Friday 25 April 2008.

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Context

The Consumers Estate Agents and Redress Act 2007 (the CEAR Act) enables the Secretary of State to make an Order which requires regulated electricity and gas suppliers, and operators of certain gas and electricity networks, to be a member of an approved redress scheme to investigate and determine complaints relating to the activities of those suppliers and network operators. The CEAR Act places a formal role on the Gas and Electricity Markets Authority (the Authority) to approve redress scheme(s) for the energy sector.

These arrangements complement other new measures introduced by Parliament under the CEAR Act - the creation of the new NCC, an enhanced role for Consumer Direct to advise on energy complaints and a requirement for the Authority to make regulations on complaint handling standards. These measures reinforce the strong incentives on energy providers to provide quality services and to treat consumers fairly in respect of complaints.

Associated Documents

- Ofgem's response to the super-complaint on billing processes made by the Gas and Electricity Consumer Council (energywatch), July 2005, 163/05
www.ofgem.gov.uk/Markets/RetMkts/Compet/Documents1/11070-16305.pdf
- The Consumers, Estate Agents and Redress Act 2007
www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070017_en.pdf
- Approval of redress schemes in the energy sector - consultation, Ofgem, October 2007
<http://www.ofgem.gov.uk/Markets/RetMkts/Compl/ConsRep/Documents1/Consultation%20criteria%20for%20approval%20of%20redress%20schemes%2024707.pdf>
- Review of the Energy Supply Ombudsman, Ofgem, November 2007
<http://www.ofgem.gov.uk/Markets/RetMkts/Compl/ConsRep/Documents1/Review%20of%20the%20Energy%20Supply%20Ombudsman.pdf>
- Consumer Redress Schemes in Gas, Electricity and Postal Services - Government response document, BERR, December 2007
<http://www.berr.gov.uk/files/file43216.pdf>

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Summary

Under the Consumers Estate Agents and Redress Act 2007 ("CEAR Act") the Gas and Electricity Markets Authority ("the Authority") has a formal role in approving redress schemes in the energy sector. This document sets out our final criteria for approval of redress schemes, following our consultation in October 2007.

Redress schemes provide an important backstop for consumers who are unable to resolve a dispute with their energy company. The criteria we propose seek to provide for effective redress while maintaining the principle that primary responsibility for resolving the dispute should sit with the energy company. For suppliers competitive pressures should drive them to focus on resolving such issues.

The majority of our proposed criteria in our consultation were supported by both consumer groups and industry. However, a significant area of concern with small suppliers was about the current Energy Supply Ombudsman (ESO) scheme, in particular its governance and fee arrangements, and that we should allow more than one scheme. In support of this they also argued that the needs of micro-businesses are different. Consumer groups and the rest of industry have supported our view that a single scheme is in the interests of consumers in terms of minimising consumer confusion, facilitating awareness raising and consistency of standards. The Department for Business Enterprise and Regulatory Reform (BERR) also made it clear in its decision document in December 2007 that a single scheme is the Government's preferred approach. Consumer groups and the rest of industry also argued that the needs of micro businesses are not that different; the complexity involved in having different criteria for a scheme for micro businesses is not justified, and once additional services are set up the scheme can provide these at marginal cost.

Based on the information currently available to us, our strong preference is to approve a single scheme. We will only approve more than one scheme, if having considered the specific schemes put to us, we consider that their approval is consistent with the requirements of section 49 of the CEAR Act, including that the approval of more than one scheme is clearly in consumers' interests. However, it remains open to us to approve an alternative scheme in future if it is clear that the approved scheme is not effective. We have also decided not to have a separate set of criteria for complaints from micro businesses.

Nevertheless we have taken into account the concerns of small suppliers and the potential impacts on competition if the approved scheme imposes unnecessary burdens on them. We have clarified the requirements that the scheme's governance arrangements and fee structure must not have a disproportionate effect on any particular group of members. We have also introduced a new criterion to require the scheme to reallocate the case fee and compensation to another scheme member if as a result of the ombudsman's decision the fault is found to lie with them. This was a particular issue for small suppliers who mentioned that problems with the transfer process can be the fault of the original supplier.

As part of future reviews of the approved scheme we will formally invite views from small suppliers, providing an opportunity for them to raise any concerns, including as to how any approved scheme is operating in practice.

We proposed including an 8 week backstop timescale after which complaints could be referred to the redress scheme, which is in line with the ESO arrangements from 1 January 2008. Network companies and small suppliers highlighted that some complaints for them can take longer to resolve. We note that the ESO previously took cases after a 12 week backstop period, which gave major suppliers a period of time to develop their complaint handling procedures. We have decided that the 8 week backstop period shall apply, but for the first 12 months after the scheme's approval a 12 week backstop period can apply to members who were not previously members of the ESO. However we hope that the ENA members who have signed up to join the ESO from 1 April will continue with 8 weeks as planned.

Other key issues from the consultation were:

The major suppliers were concerned with our proposal that energy providers should signpost the scheme at the first point of contact with the consumer. They were concerned that this could set an expectation that they might not be able to handle the problem themselves and could lead to premature referrals to the scheme. We have changed the criteria to require that there should be appropriate steps to ensure consumer awareness of the scheme. We will deal with this issue in more detail in the complaint handling standards regulations where we will require energy providers to draw consumer's attention to their complaints handling process and will specify that this process should include reference to the redress scheme.

In their decision document on the scope of the scheme BERR have stated that it must include complaints where the consumer has not been able to get through to the supplier. In January we issued an open letter inviting views as to how this could be implemented in practice. We have decided that for such complaints to be considered under the scheme, the Ombudsman must be satisfied that reasonable attempts have been made to contact the energy provider.

Consumer groups wanted us to specify that the scheme should have an 0800/0808/03 number with a free call back facility. We note that the ESO and energywatch currently use a 0845 local rate number. We do not want to be prescriptive and plan to maintain the proposed requirement that the call costs be kept to a minimum. However, we have highlighted CAB and Ofcom advice on best practice in this area.

Redress schemes will now have until Friday 25 April 2008 to submit their applications. The final version of our approval criteria is included at appendix 2.

We then expect to be in a position to issue conditional approval or propose to refuse approval by the end of May 2008. BERR has indicated that it will not make the Order until we have approved a scheme. Our final approval will be conditional on the terms of the Order being substantially the same as indicated in BERR's decision document. It will then be for BERR to make the Order to make membership of a scheme a statutory requirement.

We will carry out a review of the approved scheme or schemes 12 months after we have given approval to ensure that it continues to comply with our criteria. We will also carry out further reviews as we consider necessary.

1. Introduction

Chapter Summary

This chapter explains the structure of the document, the background and related work areas, and the next steps.

1.1. The purpose of this document is to set out our decisions on the criteria that we will apply in approving a redress scheme or schemes in the energy sector. The document sets out in the following order:

- chapter 1 - the background, related work areas and our next steps,
- chapter 2 - the legal framework for our approval of redress schemes, and
- chapter 3 - our decisions on the main issues following our consultation last year.

1.2. The main issues in chapter 3 include; the fees and governance of an approved scheme, approval of multiple schemes, criteria for micro-businesses, period of time to resolve complaints, accessibility, identification of systematic issues, and other issues raised by energywatch. For each of these issues a summary of the consultation responses is included.

1.3. Appendix 1 sets out the consultation questions and lists the respondents to the consultation. All non-confidential responses are published on our website. Appendix 2 sets out our final criteria for approval of redress schemes. The application form at appendix 3 can be separately downloaded from our website.

1.4. In setting the criteria we have had regard to best practice in terms of principles of the British and Irish Ombudsman Association (BIOA) and practice in other sectors. Links to sources of information considered can be found in appendix 6.

Background and related work areas

1.5. The Consumers, Estate Agents and Redress Act 2007 (the "CEAR Act") was enacted in July 2007. It sets out a new framework for consumer representation within the gas and electricity, and postal service sectors. energywatch will cease to exist on 1 October 2008 and will be replaced by a new three tiered system:

- a new National Consumer Council (NCC) to take on an advocacy role on behalf of all consumers and to deal with individual complaints where they relate to disconnection or involve vulnerable customers,
- Consumer Direct to provide front line advice to consumers, and
- the Government to require gas and electricity suppliers and network operators ("energy providers") to be members of a redress scheme approved by the Authority.

Complaint handling standards

1.6. The CEAR Act also requires the Authority to set complaint handling standards which energy providers must comply with. This new duty relates closely to our role to approve redress schemes. For example, proposals for the complaint handling standards will include a requirement on energy providers to draw consumer's attention to their complaints handling process and will specify that this process should include reference to the redress scheme. We are due to publish our decision document on complaint handling standards by the end of March, together with our statutory consultation on the draft regulations.

BERR Order

1.7. In order to require energy providers to be members of an approved redress scheme, the government must make secondary legislation (the "Order"). BERR consulted on consumer redress schemes in gas, electricity and postal services in July 2007, and published its decision document on 21 December 2007.

1.8. The Order will set out the scope of the redress schemes in terms of the categories of consumer and type of complaint to be considered. These issues are discussed further in the following chapters.

Redress scheme and the Energy Supply Ombudsman

1.9. Redress schemes already operate in a number of sectors, including telecommunications and financial services, and in a number of countries. The schemes range in form from arbitration and adjudication to those known as Ombudsman schemes, and in formality, from those that have been set up voluntarily by the industry concerned to those that have a statutory footing. Redress schemes are also known as "Alternative Dispute Resolution" or "ADR" schemes.

1.10. Arbitration involves an independent third party hearing both sides in a dispute and making a decision to resolve it. In most cases the arbitrator's decision will be legally binding on both parties. Adjudication is similar to arbitration but in the case of the Communications and Internet Services Adjudication Scheme (CISAS, a redress scheme approved by Ofcom to resolve communications disputes), decisions are not binding on the consumer. An Ombudsman is different again because in addition to investigating and resolving complaints about organisations, it will also encourage good practice in the way complaints are handled, tends to be more user friendly and provides extra services to consumers with special needs¹.

1.11. One example of a redress scheme that is already operational is the Energy Supply Ombudsman ("ESO"), which is run by the Ombudsman Service Limited

¹ More information on types of ADR schemes can be found on the website www.adrnow.org.uk

(TOSL)². The ESO was established on a voluntary basis in July 2006 by the six largest energy suppliers³ to resolve disputes and provide redress where consumers' complaints have not been adequately addressed by suppliers⁴. We called on energy suppliers to take this action following our investigation into suppliers' billing practices, which was launched after a super-complaint was made by energywatch.

1.12. We have completed a review of the ESO after 12 months of operation, and published our findings in November 2007⁵. We concluded that the ESO had made an excellent start but there were a few areas for improvement including:

- better signposting of the scheme to consumers,
- better use of "deadlock letters" (where the consumer is informed by the energy provider that a final decision has been made on their complaint and of their right to go to the Ombudsman), and
- implementation of a Member Board and fee structure that would allow smaller suppliers and network operators to be fairly represented on the scheme.

1.13. These findings are reflected in our criteria for approval of redress schemes going forward as set out in this decision document.

1.14. We are aware that network operators who are members of the Energy Networks Association ("ENA") are set to join the ESO in April 2008, which will be renamed the Energy Ombudsman.

Next steps

1.15. Redress schemes will have until **Friday 25 April 2008** to submit their applications for approval. Applications must be made on the form (appendix 3) which can be downloaded separately in word format from our website. The completed application form and supporting evidence must be sent in hard copy to Marcus Clements, Ofgem, 9 Millbank, London SW1P 3GE, and by e-mail to marcus.clements@ofgem.gov.uk

1.16. We then expect to be in a position to issue conditional approval or propose to refuse approval by the end of May 2008.

2 TOSL also runs the telecommunications Ombudsman (Otelo) and the Surveyors' Ombudsman Service.

3 The six gas and electricity suppliers which are members of the ESO are British Gas, EDF Energy, Powergen, npower, Scottish Power and Scottish and Southern Energy. They supply over 99% of all domestic consumers and are all members of the Energy Retail Association.

4 The scheme's remit initially only allowed it to consider disputes about billing and customer transfers, however since 1 September 2007 the scheme has been able to also consider disputes about selling.

5

<http://www.ofgem.gov.uk/Markets/RetMkts/Compl/ConsRep/Documents1/Review%20of%20the%20Energy%20Supply%20Ombudsman.pdf>

1.17. As the Order to be made by the Secretary of State cannot come into force unless the Secretary of State is satisfied that there is or will be an approved scheme in place BERR has indicated that it will not make the Order until we have approved a scheme. BERR may make some further minor changes to the definition of micro-business consumers covered by the scheme, which we discuss below. We do not consider that this issue impacts on the approach we will take to the approval of a redress scheme as set out in this decision document. However, theoretically BERR could still make substantial changes to the Order (although this is unlikely) and hence any approval will be conditional on the terms of the Order being substantially the same as indicated in BERR's December decision document.

1.18. Once we have approved the scheme we are then dependent on BERR to make the Order which will make membership of a scheme a statutory obligation. We hope that BERR will move to do this swiftly after we have given approval to a scheme to ensure the new arrangements are fully effective before energywatch goes.

1.19. If we considered it appropriate to refuse an application for approval the procedure we would follow is covered in the next chapter.

2. Legal framework

Chapter Summary

This chapter sets out the legal framework and the provisions of the CEAR Act relating to the approval of redress schemes.

Introduction

2.1. Part 2 of the CEAR Act gives the Secretary of State the power to make an Order to require regulated providers in the energy sector to become members of an approved redress scheme. Under section 42 "regulated providers" includes all suppliers and certain network operators licensed under the Gas Act 1986 and Electricity Act 1989.

2.2. Part 2 also gives the Authority a formal role in approving redress schemes and in refusing or withdrawing approval for redress schemes for the energy sector.

Approval of redress schemes

2.3. The provisions of the CEAR Act relating to the approval of redress schemes are largely general in nature and provide a broad discretion for the Authority to decide whether or not to approve a particular scheme. The Act does however specify various matters which the Authority must have regard to when deciding whether to approve a scheme including:

- the provisions of the scheme;
- the manner in which the scheme will be operated;
- the interests of relevant consumers (in particular, having regard to the number of other redress schemes applying); and
- principles, which in the opinion of the Authority, constitute generally accepted best practice in relation to redress schemes and which it is reasonable to regard as applicable to the scheme.

2.4. In our consultation we listed a number of factors that we would use to assess consumer interest (in relation to the number of redress schemes) including:

- whether more than one scheme would limit the scope for building awareness, lead to consumer confusion and different standards, and
- whether more than one scheme would be cost effective in terms of economies of scale.

2.5. The CEAR Act also states that the Authority must not approve a redress scheme unless:

- membership of the scheme is open to all regulated energy providers (as defined under the CEAR Act) and they may not be expelled from membership of the scheme,
- the scheme covers all types of consumer complaints as defined in any Order issued pursuant to section 47 of the CEAR Act, and
- the independent person may require regulated providers to provide complainants with an apology or explanation, paying compensation and taking some other form of action in the interests of the complainant as the independent person deems appropriate.

2.6. In addition, the CEAR Act also specifies that the Authority must not approve a scheme unless the scheme makes satisfactory provision, including for the following matters:

- the matters about which complaints may be made,
- the independent person's duties and powers in relation to the investigation and determination of complaints (which may include the power to decide not to investigate or determine a complaint),
- the enforcement of any requirement to provide redress imposed on a regulated provider by the independent person, and
- the provision of information by the independent person to, amongst others, the Authority, the NCC, the Secretary of State and Consumer Direct.

Procedure for refusing to give or withdrawing approval of redress schemes

2.7. Before refusing or withdrawing its approval of a redress scheme, the Authority is required by the CEAR Act to give notice to the scheme administrator stating that it proposes to refuse to give or to withdraw (as appropriate) its approval to the scheme. The notice must give reasons for the proposed refusal or withdrawal (as appropriate) and specify a minimum of 30 days for representations about the proposed refusal or withdrawal to be made to the Authority.

2.8. The Authority must also give notice to the scheme administrator of its final decision to refuse or withdraw its approval and the reasons for its decisions.

The scope of the Order

2.9. The Order is expected to require redress schemes to cover complaints from domestic and micro-business consumers. BERR in its consultation originally defined micro-businesses as those with less than 10 employees and/or annual balance sheet of less than 2m euros. In its decision document BERR changed the definition to "other [non-domestic] consumers whose annual bill [for gas or electricity] is less

than £5,000 (or analogous consumption threshold)". However, BERR also stated that in drafting the Order it would enter into further discussions with energy providers, Ofgem and energywatch to see whether a consumption threshold was a suitable alternative to the annual bill.

2.10. We discuss the definition of micro-businesses further at paragraphs 3.24 and 3.25. Some responses were received that electricity distributors would have difficulty with a consumption threshold, as they do not have access to such information. We have made BERR aware of this. However, we do not consider that this issue impacts on the approach we will take to the approval of a redress scheme as set out in this decision document.

2.11. BERR in its decision document stated that consumer complaints to be covered by redress schemes should be those which:

- (a) have been considered by the energy provider and not resolved to the satisfaction of the consumer, or
- (b) relate to sustained difficulty by the consumer in registering a complaint with the energy provider, and which
- (c) relate to the regulated products and services of the energy provider;
- (d) may be substantially covered by other, established, forms of redress, and which should be passed on to the relevant party for resolution by the redress scheme.

2.12. Category (d) of BERR's definition of a complaint will include complaints where we have a power to make a determination e.g. connection disputes. The BERR decision document makes clear that the important objective is to ensure that the consumer is properly directed to the most appropriate form of redress and that there should be arrangements in place to ensure that if the matter is unresolved with the energy provider, the consumer needs only to refer to the redress scheme and does not need to be aware of, or pursue independently, the determination route. For such complaints we would expect the redress scheme to resolve the matter at the appropriate time and we will discuss further with the independent person as to how this will work in practice.

2.13. We discuss the definition of complaint further at paragraphs 3.55 to 3.57. BERR in its decision added the category of complaint where there is sustained difficulty in contacting the energy provider. In January we published an open letter to invite views on how this would be applied in practice and have decided that for such complaints to be considered under the scheme, the Ombudsman should be satisfied that reasonable attempts have been made to contact the energy provider.

3. Main issues

Chapter Summary

This chapter covers the main issues set out in our consultation document, summaries of the consultation responses and our decisions.

In particular it sets out our proposals on:

- Fees and governance arrangements which must not impact disproportionately on any group of members;
- The type of scheme where we conclude that a ombudsman scheme is to be preferred;
- A strong preference for a single scheme;
- The same criteria for domestic and micro business;
- The timescale after which complaints can be referred which could be 8 weeks (or up to 12 weeks for the first year for those not previously members of a scheme);
- Different elements of accessibility; and
- Identification of systematic issues.

Introduction

3.1. Our final criteria are set out in appendix 2.

3.2. In some places we have made minor changes to the numbering of the criteria from the draft criteria in our consultation. Where respondents referred to a specific criterion we have included a reference to the new number for that criterion in square brackets.

Fees/Governance

3.3. Under the CEAR Act membership of a redress scheme must be open to all regulated energy providers. In the consultation document we stated that in considering this we would consider whether de facto exclusion occurs as a result of the governance or financial arrangements.

3.4. Small suppliers were very concerned about the fees and governance arrangements and the impact this could have on their competitiveness. Small suppliers also commented that they receive a disproportionately high number of transfer complaints (which relate to the old supplier). They suggested that the ombudsman should have the right to re-assign the case fee and compensation, and that the case fee should be reduced or cancelled if the complaint is vexatious or frivolous. The ESO does not accept complaints which are vexatious or frivolous and hence there is no case fee. It is assumed this arrangement would apply to any scheme we approve.

3.5. Bizz Energy suggested pricing the case fee according to the number of complaints within a year rather than a flat fee. They also considered that Ofgem should have a representative on the appropriate body or council. Good Energy considered that there should be an element of funding based on market share as well as the number of complaints. Haven Power suggested that in assessing whether the scheme is open to all energy providers there should be an additional criterion of fairness and appropriateness from a small supplier perspective.

3.6. The small suppliers also wanted to ensure that the "big 6" suppliers did not have a majority on the board. Bizz Energy also suggested that Ofgem should be represented on the board.

3.7. The Energy Networks Association ("ENA") supported a fee scale for the annual levy depending on customer base and number of complaints received. ENA also recommended amendment of the drafting of the criterion at 1(f) to read "there must always be a majority of independent members on the body or Council which appoints the person responsible for the scheme". Wales & West Utilities considered that the annual levy should reflect the volume of complaints, but that the case fee should be fixed to provide incentive to keep complaints down. Envoy suggested annual funding based on the number of supply connections as this works well in a number of industry agreements.

3.8. The ERA accepted that there would need to be a review of ESO's governance and financial arrangements if it were to be an approved scheme. E.on suggested an annual levy by customer base and number of complaints received, or alternatively a 25% increase on case fees. SSE considered that there should be a lower annual fee and a set charge for each complaint. EDF Energy recommended that tenure on the member board should be limited.

3.9. We understand that the review of ESO's governance and financial arrangements has been continuing. With ENA joining from 1 April a revised member board structure is envisaged comprising 3 suppliers plus ERA and ENA. The annual levy has also been set at a much lower level for ENA members.

3.10. We consider that for us to approve a scheme any annual fee should be set at a proportionately lower level for smaller suppliers or those with fewer complaints. We have amended the criteria to state "the governance arrangements and fee structure of the scheme shall not have a disproportionate effect on any particular group of members". We have also amended the criteria so that there is provision for the ombudsman to reallocate the case fee and compensation if another scheme member is at fault.

3.11. We have included the minor clarification requested by the ENA. On EDF Energy's point on limited tenure, we have amended the criterion for the body or council of the scheme, but we have not included it for the member board as not all redress schemes have a member board.

3.12. While it would not be appropriate for Ofgem to be represented on the redress scheme board, small suppliers or anyone else will be able to raise concerns with us. As stated below we intend to review a scheme 12 months after its approval, with further reviews when we consider it appropriate. As part of that review we will explicitly seek input from small suppliers.

Type of scheme

3.13. In our consultation document we said that we considered that an ombudsman-based scheme offered considerable benefits over an arbitration or adjudication scheme, such as:

- ensuring that energy providers signpost the existence of the scheme and have proper complaint handling processes,
- informing and helping consumers submit a complaint to the scheme and completing any forms for the consumer,
- encouraging service improvement in the industry by recommending changes to energy providers' processes, and
- informing regulators and the general public about ongoing issues in the industry.

3.14. Most respondents agreed that an ombudsman scheme was appropriate compared to other forms of consumer redress schemes. However, Bizz Energy believed that there was merit in considering other forms of redress schemes for non-domestic consumers such as arbitration. The Centre for Utility Consumer Law considered that arbitration schemes are not suitable because of their lack of visibility, the cost to the consumer and the inability to raise wider issues.

3.15. We continue to consider that an ombudsman-based scheme is the most appropriate form of redress scheme. As mentioned below we now consider it appropriate that micro-business consumers are offered the same level of help and assistance as domestic consumers. Also in view of the forthcoming changes to consumer representation, we consider it important that the ombudsman scheme is able to make recommendations as to changes to providers' process, identify potential licence breaches and inform us and the public about ongoing issues.

Approval of multiple schemes

3.16. The consultation set out our initial view that consumer confusion could arise from more than one scheme and we made reference to the telecoms model where two schemes have different standards of service⁶. We noted that consumers would not have any choice over which scheme to use as the choice was with the supplier.

⁶ In telecoms the two redress schemes are Otelo and CISAS. Otelo is run by The Ombudsman Services Ltd which also runs the Energy Supply Ombudsman. CISAS operates to different service standards and does not require telecoms providers to signpost the scheme and does not complete the complaint forms for the consumer.

3.17. Consumer groups, large suppliers and network companies favoured a single scheme. Consumer groups agreed that multiple schemes would confuse consumers and consumer advisers. Large suppliers and network companies did not think that multiple schemes would be cost effective and consistent in their decisions.

3.18. A recent NCC publication⁷ looking at existing ombudsman schemes across sectors comes down strongly in favour of a single scheme per sector (and indeed of greater rationalisation across sectors).

3.19. Small suppliers favoured more than one scheme. Bizz Energy argued strongly that this would best serve the consumer interest, to drive service levels and cost effectiveness. Haven Power stated that there should not be an artificial limit on the number of schemes or an environment which discourages the emergence of new schemes. Opus Energy did not consider that more than one scheme would lead to consumer confusion as complaint handling standards requirements upon providers would signpost consumers.

3.20. Generally, there was an underlying concern from small suppliers as to the fairness of fees and governance arrangements of one scheme (if the Energy Supply Ombudsman were to be approved) which is discussed further above.

3.21. BERR's decision document states that the Government has made it clear that it considers that the consumer interest is best served by having only one redress scheme, as this would offer the greatest simplicity for consumers and the prospect of maximum cost efficiency for providers. However, it also states that whilst the Government would prefer a single scheme, if members of the industry consider an approved scheme too expensive or that it disadvantages them in some way, then those industry members will be able to present a counter-scheme for approval.

3.22. It should be noted that in terms of the Order the Secretary of State will not be able to limit the number of redress schemes that we can approve, as the possibility of multiple schemes is provided for in primary legislation. However, given the strong steer from Government in BERR's document and given the consumer impacts, our strong preference is to approve one scheme and we will only consider approving more than one scheme if it is clearly in the consumer interest to do so and each scheme meets all of the approval criteria.

3.23. We are clearly mindful of the concerns of smaller suppliers and the need not to distort competition by imposing undue burdens on small suppliers. Our approach on fees/governance (discussed above) is central to this. In response to the concerns of smaller suppliers we have also included as a requirement for the scheme to reallocate the case fee and compensation to another scheme member if the fault is found to lie with them. Having a single scheme would facilitate such an arrangement to allow for reallocation of the case fee works with all energy providers.

7 Lessons from Ombudsmania - February 2008

http://www.ncc.org.uk/nccpdf/poldocs/NCC198ft_ombudsmania.pdf

Criteria for micro business

3.24. In our consultation we referred to BERR's original definition of a micro-business as one with less than 10 employees and/or annual balance sheet of less than 2m euros. Many respondents suggested that a consumption threshold should apply. Subsequently, BERR in its decision document changed the definition to "other [non-domestic] consumers whose annual bill [for gas or electricity] is less than £5,000 (or analogous consumption threshold)". £5,000 is generally the upper threshold for action under the small claims track in the county court, and Otelo informally use this as the upper threshold for a claim. However, BERR also stated that in drafting the Order it would enter into further discussions with energy providers, Ofgem and energywatch to see whether a consumption threshold was a suitable alternative to the annual bill.

3.25. Strictly, the definition of a micro-business is a matter for BERR and not part of our criteria for approval of redress schemes. However the ENA are concerned that a consumption threshold using bill size or KWH does not work for electricity distributors who do not have access to such information and need to use the profile class. We will ensure that BERR takes account of this as it develops its Order.

3.26. In our consultation we gave an initial view that micro-businesses did not require the same degree of support from a redress scheme as domestic consumers. We asked whether we could set different criteria for micro-businesses within one scheme, and we invited views on whether the following criteria should only apply to domestic consumers:

- additional help in assessing the scheme e.g. representation by third parties,
- a range of translation services and additional services for the hearing or visually impaired,
- a range of methods to progress complaints, including telephone, e-mail and post, assistance in completing forms, and
- signposting to alternative organisations or sources of advice.

3.27. Bizz Energy and Opus Energy argued that micro-businesses were unlikely to require the same range of support, as they should have a degree of commercial acumen. However, Good Energy saw no reason why only domestic consumers can complain by e-mail, post or telephone. Ecotricity considered that micro-businesses need as much 'hand-holding' as domestic consumers.

3.28. Consumer groups (including the Federation of Small Businesses), and a number of the large suppliers and network companies, were of the view that many small businesses have similar needs to domestic consumers and require these additional services. The Ombudsman Service Ltd also commented that in its experience with Otelo small businesses, like domestic consumers, lack the resources to pursue cases through the courts.

3.29. Some respondents questioned the need for translation services for micro-businesses, but the Federation of Small Businesses noted that a high proportion of business owners needed such assistance.

3.30. Generally, large suppliers and network companies felt that once these additional services were set up providing them to micro-businesses could be done at a marginal cost and that this was preferable to the added complexity of having different arrangements for these consumers.

3.31. In light of comments received we now consider that micro-businesses should be able to progress their claims for redress by a range of methods given that these additional services could be provided at marginal cost by the redress scheme. We have therefore amended the above criteria so that they apply to both domestic and micro-business consumers.

Period of time to resolve complaints

3.32. From 1 January 2008 the ESO will consider a complaint if the consumer either has a deadlock letter from their provider has had more than 8 weeks (reduced from 12 weeks originally) to resolve the complaint.

3.33. energywatch considered that 8 weeks was too long as the Energy Ombudsman in Victoria (Australia) operates without a backstop. The National Right to Fuel Campaign did not want a timescale and suggested priority treatment for vulnerable consumers. CAB welcomed the reduction to 8 weeks but expressed caution with maximum timescales when there is a low level of deadlock letters being issued.

3.34. British Gas and SSE supported the 8 weeks timescale. Others generally supported 8 weeks but mentioned some cases which can take longer in particular metering and billing cases. Envoy stated that distributors and transporters do not get so many complaints but can get these in large batches when there is bad weather. Bizz Energy considered that 8 weeks was unreasonable, that it was more difficult for small suppliers to resolve metering and transfer disputes. Bizz Energy suggested that 14 weeks was more appropriate for the non-domestic sector, which could be reviewed 12 months after the approval of the scheme. Scottish Power commented that the energy provider should be able to manage the consumer's expectations to avoid them escalating the matter to the ombudsman if a complaint is likely to go over the 8 week deadline.

3.35. We continue to consider that generally the 8 week backstop period is appropriate. It is in line with the Financial Services Ombudsman and provides a balance between the needs of consumers for timely access to redress while giving energy providers a fair opportunity to resolve the issue. Referral to the ombudsman is not automatic after 8 weeks. While the consumer will have a right to go to the redress scheme at that point, if the energy provider has managed their expectations appropriately about the time needed to resolve their complaint, they will not necessarily exercise this right.

3.36. Nonetheless, we have taken into account the fact that large suppliers have had a period of time to develop their complaints handling procedures working with a 12 week backstop timescale. Therefore, we have included in the criteria that for the first 12 months after a scheme is approved a 12 week backstop period can apply for members who have not previously been members of a redress scheme.

3.37. We hope that the ENA members who will be joining the ESO from 1 April will be willing to keep with the 8 week timescale to which they have signed up.

Accessibility

3.38. We set out a number of elements that we considered were best practice in this area. In our consultation we stated that it is essential that the scheme is, and is seen to be easily accessible to consumers.

Cost of calling the scheme

3.39. In our consultation we proposed that the cost to the consumer to contact the scheme should be minimised. energywatch and other consumer groups considered that there should be an 0800/0808/03 number with free call back facility. They also made reference to a significant number of low income consumers who only use pay as you go mobile phones, where freephone or 0845 numbers can still incur significant charges.

3.40. Currently, the ESO and energywatch have a local rate 0845 number. We are aware that Ofcom requires BT to offer special fixed line tariffs for low income consumers which in part addresses the issue. On balance, we consider that a 0845 number (rather than 0800) would be a reasonable way for companies to meet a requirement to keep the cost of a telephone call to a minimum. However, we draw attention to CAB⁸ and Ofcom advice on the use of geographic numbers or call-back arrangements to help minimise the costs for low income consumers with only pay-as-you-go mobile phones, as they typically pay relatively high charges to call 0845 numbers. Similarly these numbers are often not part of the inclusive minutes on other mobile contracts. However we do not propose to be prescriptive in the criteria and have retained the principle that the cost of calling the scheme should be minimised.

Language translation services

3.41. In the consultation we included the requirement that "the scheme should provide a wide range of translation services for those consumers that do not speak English as their first language".

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http://www.citizensadvice.org.uk/index/campaigns/policy_campaign_publications/evidence_reports/er_utilities/are_you_being_served.htm

3.42. The Welsh Language Board argued that a full Welsh language service is required for the redress scheme, including a Welsh speaker at the redress scheme's call centre. The Welsh Language Act 1993 places a duty on the public sector to treat Welsh and English on an equal basis when providing services to the public in Wales. The Welsh Language Board was established under the Welsh Language Act to oversee the delivery of these promises and to promote and facilitate the use of the Welsh language. The Board is required amongst other duties to advise public bodies on the need for English and Welsh to be treated on a basis of equality.

3.43. As stated above there were differing views whether language services were needed for micro-businesses. The Centre for Utility Consumer Law recommended that the availability of language services and additional services for the hearing or visually impaired should be publicised in the scheme's information material for consumers and on its website. SSE suggested that there should be a requirement for a "reasonable range" of languages and additional services.

3.44. We note that ESO and CISAS already provide redress schemes in other sectors. With economies of scale and scope language services could be provided either by call centre staff or by use of telephone translation services such as Language Line. We also note the comments from the Welsh Language Board and the Centre for Utility Law, and have added the following words to the criterion "...including a language service in Welsh. Language services and additional services for the visually or hearing impaired should be publicised in the scheme's consumer information and on its website".

Signposting

3.45. Most of the large energy suppliers had strong reservations about our proposal on "signposting" the existence of the scheme at first point of contact with the consumer. There was concern that this would cut across the purpose of the scheme to act as a backstop and for providers to have a reasonable opportunity to resolve complaints. SSE also commented that there should be no need to do this if the complaint is resolved to the consumer's satisfaction. Scottish Power suggested that providers should only be required to signpost when the consumer expresses dissatisfaction with the supplier's proposal.

3.46. As highlighted in our review of the Energy Supply Ombudsman ("ESO")⁹ the level of "signposting" to the scheme by providers is a major concern for us. At this stage we have changed the criterion to read "that there should be appropriate steps to ensure consumer awareness of the scheme". We intend to deal with this issue in more detail in the complaints handling standards regulations where we will require energy providers to draw consumers' attention to their complaints handling process

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<http://www.ofgem.gov.uk/Markets/RetMkts/Compl/ConsRep/Documents1/Review%20of%20the%20Energy%20Supply%20Ombudsman.pdf>

and will specify that this process shall include reference to the complainant's right to refer a complaint to the redress scheme.

Free to consumers

3.47. Bizz Energy recommended that a minimal/refundable fee could be paid by micro-businesses. Good Energy recommended this for all consumers.

3.48. We consider that a basic tenet of any alternative dispute resolution scheme is that it is free to consumers.

Identification of systematic issues

3.49. In our consultation we said that the scheme should have arrangements in place for identifying systematic problems and for flagging licence breaches to Ofgem.

3.50. National Grid and Wales & West Utilities did not believe it was the role of the Ombudsman to identify breaches, which in their view should only be identified by Ofgem or another statutory body. They also did not consider it appropriate for the scheme to recommend changes to providers' processes and/or policies.

3.51. We still consider that an ombudsman-based scheme is the most appropriate form of scheme, for the reasons outlined above. In view of the forthcoming changes to consumer representation, we consider it important that the ombudsman scheme is able to make recommendations as to changes to providers' process, identify potential breaches and inform us and the public about ongoing issues. The identification of potential breaches is to be distinguished from the determination of breaches, which we agree is a role for Ofgem. We have taken this issue into account in the redrafting of the criteria.

3.52. energywatch wanted the principles in this area strengthened. We consider that their suggested changes (as shown below in italics) which reflect wording in the BIOA guidance are consistent with best practice and our view on the role of an ombudsman. We have therefore accepted the proposed changes.

- Principle 3k now 3p - "Recommend changes to energy providers' processes and /or policies where systematic failures are identified in order to promote improved service. *This should include a dedicated referral process for informing Ofgem and the new NCC that recommendations have been made.*
- Principle 3l now 3q - "Have procedures to identify a breach of regulatory requirements and systematic problems within the industry and refer these to an appropriate organisation, such as Ofgem [to determine whether or not there has been a breach] and the new NCC. *This must include a process for identifying and reviewing cases with wider implications*".

Other matters raised by energywatch

3.53. energywatch made a number of suggestions to strengthen the wording of the draft criteria and to include new criteria.

Escalation of complaints

3.54. energywatch wanted principle 2d changed to "The scheme should allow an energy provider a reasonable period of time to attempt to resolve the complaint. However, this must be balanced against the interests of consumers and therefore not be of an unreasonable length *or place unreasonable expectations on consumers to escalate their complaint within the company's complaint handling process*". We consider that consumers will need some mechanism to escalate a complaint with their energy provider and that the 8 week backstop will provide a limit on the need for repeated escalation. Therefore, we do not consider that these additional words are necessary.

Repeated attempts to contact the provider

3.55. On definition of complaints that will be dealt with by the redress scheme energywatch wanted to include situations where a consumer has been unable to resolve a complaint due to circumstances beyond their control e.g. where the energy provider's telephone lines are continuously busy. BERR included in its decision document a definition of complaints that "relate to sustained difficulty by the consumer in registering a complaint with a service provider" should be covered by the redress scheme. In January 2008 we sent a further open letter to respondents to our consultation on this issue and how BERR's definition could be applied in practice. We suggested including in the criteria that "the scheme should consider complaints which relate to sustained difficulty by the consumer in registering a complaint with the energy provider, *where the Ombudsman is satisfied that reasonable attempts have been made to contact the energy provider*".

3.56. Most of the respondents to the open letter were in favour of our proposed wording. Some also mentioned that it is within the ESO's current discretion to consider such complaints and that this merely clarifies the situation. However, some suppliers suggested that consumers should have to provide some evidence of difficulty in getting through, although they accepted that general information on time of call would be sufficient. energywatch considered that the number of consumers who would pursue such cases to the ombudsman would be a very small percentage i.e. it would be an important backstop for consumers who have made serious attempts. Some consumer groups argued that we should specify a number of attempted calls rather than just "reasonable attempts". However, ESO considered that we should not be too prescriptive on this issue.

3.57. On balance we consider we should keep our proposed definition as this matter will be for the Ombudsman to determine. However, we would generally expect the

consumer to show some evidence of attempts to contact the provider (e.g. general information on the time of the call).

BIOA guidance on complaint handling

3.58. energywatch suggested (as shown below in italics) that a number of our proposed criteria should be put under a new heading of "Quality outcomes". While we do not think it is strictly necessary to include a new heading, we agree that it is appropriate to amend the following criteria to follow energywatch suggested wording in line with the BIOA guidance (given that, as stated above, the Act requires us, amongst other things, to have regard to principles of best practice in relation to schemes for providing redress to consumers).

- Principle 3b now 3f- "Make decisions that are based on what is fair in all the circumstances, having regard to principles of law, to good practice and to any inequitable conduct or maladministration. This should have regard to any regulatory requirements and codes of practice. *All evidence should be clearly documented and analysed [by the Ombudsman]. Natural justice and fair procedure should be observed, including appropriate opportunity to comment on facts, conclusions or outcomes. Conclusions should be evidence based and decisions and recommendations should flow clearly from the analysis.*
- Include a new criterion (now principle 3g) - *"Decisions must take account of the nature of the issue and the effect it has had on the complainant. Redress should reflect the maladministration that has occurred and take account of the hardship or injustice suffered as a result. Proportionality is key, whereby the process and resolution is appropriate to the complaint"*.

Expertise to deal with energy complaints

3.59. One of our proposed criterion was that the scheme should have, or should develop, an appropriate level of expertise to resolve energy disputes. energywatch wanted us to set a time limit for the scheme to attain this level. We do not wish to be too prescriptive and consider that the existing wording which requires the attainment of such expertise within a short time period is adequate.

Independent assessment of complaints against the redress scheme

3.60. Under the heading "public accountability" energywatch wanted an additional criterion that "the ombudsman should be required to appoint an independent assessor to review complaints about their service if the complainant remains unhappy with the level of service". The Office of Fair Trading in its approval of estate agents redress schemes included a requirement allowing for the final decision on such a complaint to be made by a senior person not previously involved in the determination of the complaint, rather than requiring the appointment of an assessor independent of the scheme. We consider that this approach is sufficient and have amended our criterion on this matter accordingly.

Publication of company specific information

3.61. energywatch also recommended that we should give strong consideration to requiring the publication of company specific information. The ESO has mentioned that publishing company information on complaints to a redress scheme at this stage could have the effect of deterring signposting of the scheme. We have therefore not included this requirement, but will consider this matter further in the future.

Review of the approved scheme

3.62. A number of respondents commented that we should keep the approved scheme under review. We intend to carry out a review 12 months after we have approved a scheme, with further reviews when we consider appropriate. As a part of this review we will formally invite views from small suppliers as noted above.

Other changes

3.63. We have made a slight amendment to criterion 3a to read "*the scheme must have duties and powers to investigate and determine complaints (which may include the power not to investigate or determine a complaint) and the power to resolve disputes by requiring that energy providers pay compensation, give an apology and/or explanation or take some other form of action*". This change is to reflect duties and powers that a scheme must make satisfactory provision for, before the Authority can grant approval under the CEAR Act (see paragraph 2.6 above).

3.64. We have amended criterion 4e to read "the Authority must be notified about any changes to the scheme (including changes to its rules or procedures, terms of reference or governance arrangements) *before the end of the period of 14 days beginning with the day on which the change is made*. The NCC must also be informed of the changes". This is to align with the timescale given in section 50(3) of the CEAR Act for changes to the scheme. We also continue to consider that in the interests of public accountability the NCC should also be informed of these changes.

Appendices

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Appendix 1 - Consultation Questions

1.1. In its consultation document Approval of Redress Schemes in the Energy sector (Ref: 247/07) Ofgem sought the views of respondents about a number of questions as set out below:

CHAPTER: Three

Question 1: Do you agree with our view that an Ombudsman scheme is preferable to alternative models of redress for domestic consumers? If not, please explain why.

Question 2: Have we captured all of the issues we will need to take into account before giving our approval to more than one scheme? Please explain any additional issues you think we should take into account and your reasons why.

Question 3: Do you agree with our approach to assessing whether a scheme is effectively open to all energy providers? If not, please explain what you think our approach should be and why.

Question 4: Do you agree that different criteria could apply for micro-business customers? If not, please explain why.

Question 5: Do you consider that different criteria for complaints from micro-business customers could be incorporated within a single overall scheme, while still allowing scope for a more cost-effective service to these customers? Please explain the reasons for your view.

Question 6: Do you agree with our view of the maximum period of time a supplier should be allowed to resolve complaints before referral to the Ombudsman? If not, please explain why.

CHAPTER: Four

Question 7: Do you agree with the proposed criteria we will apply in approving redress schemes? Please explain the reasons for any changes that you suggest.

Question 8: Are there any other criteria you believe should be included? If so, please explain what they are and why.

Question 9: Do you have any suggestions regarding changes to the wording of any of the criteria? Please explain why you propose these changes.

Question 10: Do you think that applications to become a redress scheme should strictly meet all individual criteria? If not, please explain which criteria and why.

Question 11: Do you agree that we have correctly identified the criteria that could apply to domestic customers only? Please explain the reasons for any changes you suggest.

Question 12: Are there other criteria that are not needed for micro-business customers? If so, please explain what they are and why.

Question 13: Do you believe that the criteria meet the generally accepted principles of best practice applicable to consumer redress schemes? If not, please explain why.

List of respondents

List	Name
1	Bizz Energy
2	British Gas
3	CAB
4	CE Electric
5	Centre for Utility Consumer Law, University of Leicester
6	Ecotricity
7	EDF Energy
8	Energy Networks Association
9	Energy Action Scotland
10	Energywatch
11	Envoy
12	E.on
13	Energy Retail Association
14	Federation of Small Businesses
15	Good Energy
16	Haven Power
17	National Consumer Council
18	National Grid
19	NPower
20	National Right to Fuel Campaign
21	Private consumer
22	Opus Energy
23	Scottish Power
24	Scottish and Southern Energy
25	The Ombudsman Services Ltd
26	United Utilities
27	Wales and West Utilities
28	Welsh Language Board
29	Western Power Distribution

Responses received by Ofgem which were not marked as being confidential have been published on Ofgem's website www.ofgem.gov.uk. Copies of non-confidential responses are also available from Ofgem's library.

Appendix 2 - Final criteria for approval

1. Independence, governance and fees for redress scheme members

1.1. Independence means that the approved redress scheme must be, and be seen to be, independent from those whose disputes it is resolving, i.e. both consumers and the regulated providers¹⁰. This is essential to ensure that consumers and industry have confidence in the scheme, it is seen to be credible and that decisions are taken without bias.

1.2. Independence does not mean that the redress scheme cannot be appointed or chosen by the regulated provider or that the regulated provider should not pay for the redress scheme. It means that there must be sufficient safeguards in place to demonstrate impartiality.

1.3. In order to ensure that these requirements are met, the following criteria must be complied with:

- a. the jurisdiction, powers and the method of appointment of the person responsible for the scheme must be publicised,
- b. those appointing or terminating the appointment of the person responsible for the scheme must be independent of companies that are subject to investigation (this does not exclude their minority representation on the body which is authorised to appoint or terminate),
- c. the person responsible for the scheme must be appointed for a period of office for sufficient duration to ensure the independence of their actions and must not be removable from their duties without just cause,
- d. the person responsible for the scheme must be required to report to a body or person independent of those subject to investigation (this does not exclude their minority representation on that body). The body or person must also be responsible for safeguarding the independence of the person responsible for the scheme,
- e. any terms of reference for a scheme, or changes to the terms of reference, must be agreed by a body or person independent of those subject to investigation (this does not exclude their minority representation on that body),
- f. there must always be a majority of independent members on any Body or Council which appoints the person responsible for the scheme,

¹⁰ Section 48(2)(a) and (b) of the CEAR Act requires that a redress scheme is independent.

- g. there must be a limited tenure for members of the Body or Council,
- h. the person responsible for the scheme alone has the power to decide whether or not a complaint is within the scheme's jurisdiction,
- i. the governance arrangements and fee structure of the scheme shall not have a disproportionate effect on any particular group of members, and
- j. there must be provision for the person responsible for the scheme to reallocate the case fee and compensation to another scheme member, if as a result of the decision of the person responsible for scheme fault lies with that other scheme member.

2. Accessibility

2.1. It is essential that the scheme is, and is seen to be, easily accessible to consumers. Several factors are capable of impeding access, including a lack of awareness of the scheme, processes and procedures that prevent timely access to the scheme and its ease of use (or perceived ease of use) across all groups of consumer.

2.2. In order to ensure that these requirements are met, the following criteria must be complied with:

- a. the consumer must be able to have its complaint investigated by the scheme free of charge. The scheme must also ensure that the cost to the consumer of accessing the scheme, such as the cost of making a call, is minimised,
- b. the scheme must require regulated providers to have proper and effective internal complaint handling procedures,
- c. there must be appropriate steps to ensure consumer awareness of the scheme,
- d. the scheme must allow a regulated provider a reasonable period of time to attempt to resolve the complaint. However, this must be balanced against the interests of consumers and therefore not be of an unreasonable length. We consider that 8 weeks is an appropriate back-stop for regulated providers to resolve complaints. However, for scheme members who have not previously been members of a redress scheme 12 weeks would be an acceptable back-stop time period for the first 12 months after the approval of the scheme,
- e. the procedures and processes for raising a complaint with the scheme must be easy to understand and use and must not be overly bureaucratic,
- f. an easy to understand guide explaining what the consumer needs to do to raise a complaint with the scheme and what the scheme's processes are for investigating a complaint must be provided to consumers contacting the scheme,

- g. the scheme must adopt processes that allow for additional help in accessing the scheme to be given to those consumers that need it. For example, this will include allowing persons to act on behalf of the relevant consumer,
- h. the scheme must provide a wide range of translation services for those consumers that do not speak English as their first language, including a Welsh Language Service and additional services for those that are hearing or visually impaired. The scheme must inform consumers of the availability of these translation and additional services in its consumer information and on its website,
- i. the scheme's procedures must allow the consumer to progress their complaint via a range of methods, including telephone, email and post, and
- j. the scheme's staff must offer to complete any forms that are necessary in order for the scheme to investigate the complaint (excluding any signatures that are required to give staff the authority to proceed with the investigation).

3. Effectiveness

3.1. In order for a dispute procedure to be effective, it has to be prompt, cost effective, fair, impartial and allow both parties to present their views. All representations, whether general enquiries or cases, must be dealt with on a fair and equitable basis. The scheme's dispute procedures and processes must facilitate the achievement of this objective.

3.2. Effectiveness also relies on the scheme having sufficient scope in terms of the type of complaint it can consider, the range of remedies it can require and its ability to enforce those remedies.

3.3. In order to ensure that these requirements are met, the following criteria must be complied with:

a. the scheme must have duties and powers to investigate and determine complaints (which may include the power not to investigate or determine a complaint) and the power to resolve disputes by requiring that regulated providers pay compensation, give an apology and/or explanation or take some other form of action which is considered advantageous to the complainant,

b. the scheme must be able to consider all types of complaint as indicated in BERR's decision document on consumer redress schemes dated 21 December 2007, including those complaints which:

- have been considered by the regulated provider and not resolved to the satisfaction of the consumer, or

- relate to sustained difficulty by the consumer in registering a complaint with the regulated provider, where the Ombudsman is satisfied that reasonable attempts have been made to contact the regulated provider, and which
 - relate to the regulated products and services of the regulated provider,
 - may be substantially covered by other, established, forms of redress, and which must be passed on to the relevant party for resolution by the redress scheme,
- c. any deadlines for bringing a complaint to the redress scheme must be reasonable and allow for flexibility taking into account the circumstances of the case and the complainant, and must not unnecessarily limit access to the scheme,
- d. subject to BERR's Order the scheme must have transitional arrangements in place to investigate complaints that arose prior to the commencement date of the Order,
- e. it must be made clear to the consumer that the scheme's decisions are binding on the regulated provider but not on the complainant,
- f. decisions must be made that are based on what is fair in all the circumstances, having regard to principles of law, good practice and any inequitable conduct or maladministration. This must also include having regard to any regulatory requirements and codes of practice. All evidence must be clearly documented and analysed by the Ombudsman. Natural justice and fair procedure must be observed, including appropriate opportunity to comment on facts, conclusions or outcomes. Conclusions must be evidence based and decisions and recommendations must flow clearly from the analysis,
- g. decisions must take account of the nature of the issue and the effect it has had on the complainant. Redress must take into account of any maladministration that has occurred and take account of the hardship or injustice suffered as a result. Proportionality is key, whereby the process and resolution is appropriate to the complaint,
- h. both parties must have the opportunity to present their case and to see and comment on a provisional conclusion before a final determination is made,
- i. in all cases investigated, the decision must be notified in writing and the reasons for it communicated to the parties concerned,
- j. a reasonable period of time must be allowed for the complainant to consider whether they want to accept the provisional conclusion,
- k. the scheme must be adequately staffed and funded in such a way that complaints can be effectively and expeditiously investigated and resolved and to allow the Ombudsman to function impartially, efficiently and appropriately,
- l. the scheme must have, or have within a short period of time, the appropriate expertise to resolve energy disputes,

- m. the scheme must have objective targets for reaching decisions and dealing with enquiries against which it and others can assess its performance and put in place arrangements for assessing its performance against these targets,
- n. periodic quality assurance monitoring must be carried out,
- o. there must be a set of procedures for enforcing its decisions and the scheme's rules,
- p. the scheme must recommend changes to regulated providers' processes and/or policies where systemic failures are identified in order to promote improved service. This must include a dedicated referral process for informing Ofgem and the new NCC that recommendations have been made,
- q. the scheme must have procedures to identify a potential breach of regulatory requirements and systemic problems within the industry and refer these to an appropriate organisation, such as Ofgem (to determine whether or not there has been a breach) or the new National Consumer Council. This must include a process for identifying and reviewing cases with wider implications, and
- r. the scheme must effectively signpost a consumer to alternative organisations or sources of advice if a complaint is outside its remit.

4. Public accountability

4.1. Demonstrating that a redress scheme is publicly accountable is an important step in ensuring that consumers have confidence in the decision-making processes of the scheme. To achieve this it is important that the scheme is transparent about all aspects of its operations, including its decisions and any statistical information that informs the public about the performance of the scheme. The scheme must also inform relevant organisations of the generic and systemic issues that it has identified.

4.2. Reports and external documents must be easily understood by their target audience, including regulated providers, consumers, regulators and the general public.

4.3. In order to ensure that these requirements are met, the following criteria must be complied with:

- a. an annual report must be published which will provide for an independent assessment of the scheme's performance
- b. information must be provided in the public domain about the scheme's performance, rules of procedure, terms of reference and process for making decisions

- c. information must be provided about the scheme's decisions, including the nature of the complaint and the outcome
- d. information must be published about consumers' satisfaction with the scheme
- e. the Authority must be notified about any changes to the scheme (including changes to its rules or procedures, terms of reference or governance arrangements) before the end of the period of 14 days beginning with the day on which the change is made. The NCC must also be informed of the changes,
- f. information requested by the Authority or the NCC must be provided where the information is required to assess the performance of the redress scheme, its ongoing compliance with the criteria it has been approved against or the performance of regulated providers
- g. agreements such as a Memorandum of Understanding or similar must be entered into with other organisations as appropriate, and
- h. there must be procedures in place to consider and resolve complaints by consumers or regulated providers about the service provided by the scheme, and the final decision on the complaint must be made by a person not previously involved in the determination of the complaint and with sufficient authority to direct how the issue may be resolved.

Appendix 3 - Application form

This can be downloaded from our website in word format.

Appendix 4 – The Authority's Powers and Duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority ("the Authority"), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.¹¹

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly¹².

1.4. The Authority's principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of consumers, present and future, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

1.5. The Authority must when carrying out those functions have regard to:

- The need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- The need to secure that all reasonable demands for electricity are met;
- The need to secure that licence holders are able to finance the activities which are the subject of obligations on them¹³; and
- The interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.¹⁴

1.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

¹¹ Entitled "Gas Supply" and "Electricity Supply" respectively.

¹² However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

¹³ Under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

¹⁴ The Authority may have regard to other descriptions of consumers.

- Promote efficiency and economy on the part of those licensed¹⁵ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- Protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity;
- Contribute to the achievement of sustainable development; and
- Secure a diverse and viable long-term energy supply.

1.7. In carrying out the functions referred to, the Authority must also have regard, to:

- The effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- The principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- Certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation¹⁶ and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

¹⁵ Or persons authorised by exemptions to carry on any activity.

¹⁶ Council Regulation (EC) 1/2003

Appendix 5 - Glossary

A

Adjudication

Adjudication is similar to arbitration. However, there are examples of this type of scheme (such as CISAS) where decisions are not binding on the consumer and where both parties are asked for information rather than relying on each party to make its own case.

Alternative Dispute Resolution (ADR)

ADR refers to a range of options which can be used as alternatives to the courts to resolve disputes between consumers and providers of a product or service.

Annual levy

This is an annual subscription fee payable to the ESO by members of the scheme.

Approved redress scheme

In the context of this consultation document, an approved redress scheme is a redress scheme that has been approved by the Gas and Electricity Markets Authority for the purposes of section 47(1) of the CEAR Act.

Arbitration

Arbitration is a form of ADR where an independent party hears both sides in a dispute and makes a decision to resolve it. In most cases the arbitrator's decision will be legally binding on both parties.

B

British and Irish Ombudsman Association (BIOA)

BIOA is an association for ombudsmen, their staff, and other organisations and individuals, such as voluntary bodies and academics interested in the work of ombudsmen. The Association came into being in 1993 as the United Kingdom Ombudsman Association and became the British and Irish Ombudsman Association when membership was extended to include ombudsmen from the Republic of Ireland in 1994.

The association works to ensure that organisations wishing to be known as an Ombudsman comply with a number of criteria. Amongst other things, it liaises with central government through the Cabinet Office and Department for Constitutional Affairs (DCA), and with other government departments such as BERR and the OFT to ensure that the role and title of Ombudsmen is safeguarded.

Department for Business, Enterprise and Regulatory Reform (BERR)

BERR is the government department responsible for seeing through the changes to consumer representation as a result of the CEAR Act 2007.

C

Case fees

The fee a member company has to pay the redress scheme, if the scheme has to handle a complaint about them.

CEAR Act

Consumers, Estates Agents and Redress Act 2007

Communications and Internet Services Adjudication Scheme (CISAS)

CISAS is an independent dispute resolution service for communication providers and their consumers. It is one of two schemes approved by Ofcom.

D

Deadlock letter

A deadlock letter is a notification in writing to the consumer from the regulated provider that it is unable to resolve the complaint to the consumer's satisfaction.

E

Energy Networks Association (ENA)

The ENA is the industry body funded by the UK gas and electricity transmission and distribution licence holders.

Energy providers

Licensed gas and electricity suppliers and licensed gas and electricity network operators.

Energy Retail Association (ERA)

The ERA is a trade association that represents Britain's six largest domestic electricity and gas suppliers, namely British Gas, EDF Energy, npower, Powergen, Scottish Power and Scottish and Southern Energy.

Energy Supply Ombudsman

The Energy Supply Ombudsman is an independent body established on a voluntary basis by the six members of the Energy Retail Association. It resolves disputes

associated with billing, transfer and selling issues between consumers and their energy suppliers. Further information is available from www.energy-ombudsman.org.uk.

[energywatch](#)

energywatch is the independent gas and electricity watchdog which represents the interests of gas and electricity consumers in Great Britain.

F

[Financial Ombudsman Service](#)

The Financial Ombudsman Service is the independent redress scheme set up to help settle individual disputes between businesses providing financial services and their consumers.

G

[Gas and Electricity Markets Authority \(the Authority\)](#)

The Authority consists of non-executive and executive members and a non-executive chair. The Authority determines strategy, takes all major decisions and sets policy priorities. The Authority's powers are principally provided for under the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002, and the Energy Act 2004.

M

[Mediation](#)

Mediation is where an independent third party helps parties with a dispute to try to reach an agreement. The people with the dispute, not the mediator, decide whether they can resolve things, and what the outcome should be.

[Micro-businesses](#)

BERR in its decision document dated 21 December 2007 defined micro-business consumers as "other [non-domestic] consumers whose annual bill [for gas or electricity] is less than £5,000 (or analogous consumption threshold).

N

[National Consumer Council \(NCC\)](#)

Part 1 of the CEAR Act 2007 intends that a new National Consumer Council will take on the consumer advocacy responsibilities of energywatch and postwatch in the energy and postal services sectors. It will not have a general complaint handling function but it will be required to help consumers who have been disconnected or face the threat of disconnection and those who are vulnerable.

Network operators

Gas and electricity network operators are those companies that own overhead lines and underground cables that deliver power from the transmission networks to businesses and domestic consumers.

O

Office of Fair Trading

The Office of Fair Trading is the body of that name which is established by section 1 of the Enterprise Act 2002. It is responsible for making markets work well for consumers. It achieves this by promoting and protecting consumer interests throughout the UK, while ensuring that business are fair and competitive.

Office of the Telecommunications Ombudsman (**Otelo**)

Otelo is an independent dispute resolution service for communication providers and their consumers. It is one of two schemes approved by Ofcom. Otelo is run by the Ombudsman Service Limited (TOSL), which is the same organisation that runs the Energy Supply Ombudsman.

Ombudsmen

Ombudsmen investigate and resolve complaints about organisations that have failed to resolve disputes to the consumers' satisfaction. They are independent of consumers and those they investigate and they also encourage good practice in the way complaints are handled.

P

Postwatch

Postwatch is an independent watchdog which represents the interests of consumers of the Royal Mail and other postal providers.

R

Redress schemes

Redress schemes are services which offer alternative dispute resolution without going to court. They range in form from arbitration, mediation and adjudication to those known as Ombudsman schemes. They are also known as "Alternative Dispute Resolution" or "ADR" schemes.

S

Super-complaint

A super-complaint is where a designated consumer body, such as energywatch, makes a complaint to the Office of Fair Trading or a relevant regulator under Section

11 of the Enterprise Act 2002 that any feature or combination of features of a market in the UK for goods and services is or appears to be harming the interests of consumers.

T**The Ombudsman Service Limited (TOSL)**

The Ombudsman Service Limited is the company which administers Otelco, the Energy Supply Ombudsman and the Surveyors' Ombudsman Service.

V**Vulnerable customers**

There is no one definition of a vulnerable customer. However, in the context of the CEAR Act, a person is vulnerable if the NCC is satisfied that it is not reasonable to expect that person to pursue the complaint on that person's own behalf.

When carrying out its functions, the Authority must have regard to the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.

Appendix 6 - Information sources

"Criteria for Recognition by BIOA", BIOA, www.bioa.org.uk/criteria.php

"Consumer Redress Schemes in Gas, Electricity and Postal Services - a consultation document", BERR, July 2007 www.berr.gov.uk/files/file40283.pdf

"Consumer Representation in Regulated Industries - A Report by the Department of Trade and Industry and HM Treasury", BERR and HM Treasury, July 2004
www.berr.gov.uk/files/file25252.pdf

"Commission recommendation on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes", European Commission, Official Journal of the European Communities, 19 April 2001
www.europa.eu/consumers/redress/out_of_court/adr/acce_just12_en.pdf

"Alternative Dispute Resolution - Recommendations for best practice", Ofcom, December 2005
www.ofcom.org.uk/consult/condocs/adr/statement/statement.pdf

"Ofcom Review of Alternative Dispute Resolution Schemes", Ofcom, October 2005
www.ofcom.org.uk/consult/condocs/adr/adr/adr.pdf

"Consumer codes approval scheme - Core criteria and guidance" (Criterion 4d - Independent redress schemes), OFT, November 2006
www.oft.gov.uk/shared_of/consumer_codes_approval_scheme/oft390.pdf

"OFT approval of estate agents redress schemes - consultation document", OFT, May 2007 www.oft.gov.uk/shared_of/business_leaflets/general/oft919con.pdf

Financial Ombudsman Service, www.financial-ombudsman.org.uk

Office of the telecommunications Ombudsman (Otelco), www.otelo.org.uk

Communications and Internet Services Adjudication Scheme (CISAS),
www.cisas.org.uk

Energy Supply Ombudsman, www.energy-ombudsman.org.uk

"Complaint Handling and Dispute Resolution: the New Framework in Energy - Recommended Actions", Centre for Utility Consumer Law University of Leicester, commissioned by energywatch, April 2007
www.energywatch.org.uk/uploads/Complaint_handling_and_dispute_resolution_recommended_actions_April_2007.PDF

"Complaint Handling: Principles and Best Practice", Centre for Utility Consumer Law University of Leicester, commissioned by energywatch, April 2007
www.energywatch.org.uk/uploads/Complaint_handling_Principles_and_Best_Practice_April_2007.PDF

Appendix 7 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

- Does the report adequately reflect your views? If not, why not?
- Does the report offer a clear explanation as to why not all the views offered had been taken forward?
- Did the report offer a clear explanation and justification for the decision? If not, how could this information have been better presented?
- Do you have any comments about the overall tone and content of the report?
- Was the report easy to read and understand, could it have been better written?
- Please add any further comments?

1.2. Please send your comments to:

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