

Probe remedies Response by E.ON

Overview

1. We welcome the principles of the proposed market remedies for domestic consumers, which will increase the effectiveness of competition and of consumer confidence in the market. We also support the majority of the detailed implementation, but with the major caveat that although each individual systems change might be possible within a few months, the total effort required is substantial and some phasing of implementation will be necessary. We urge Ofgem to prioritise those changes which will increase the robustness of doorstep selling, as this will have the greatest benefit for consumers not yet engaged with the market.

Standards of conduct

2. We support Ofgem's proposal to articulate a set of standards which make clear what consumers should expect from suppliers. The standards will help increase consumer confidence in the market and although we and, we hope, other suppliers already seek to aspire to these standards, it can only help for Ofgem to raise their profile.
3. However, we recommend that the standards are presented as outcomes for consumers (as in Para 2.10) rather than as prescriptive behaviours for suppliers (as in Para 2.12). Outcomes are more positive and customer focussed and by emphasising principle rather than process better supports the concept of a standard. Conversely, the example prescriptions can seem to seek the impossible: for instance, that a supplier can establish that a customer fully understands all aspects of a product or determine whether a fixed or a variable price product is appropriate. The qualification 'all reasonable steps' is unhelpful – there being no objective test of what is reasonable, yet creating the expectation of ever increasing further steps.
4. We also recommend that the proposed second standard should be split in two. Fair treatment of consumers is an overarching principle, which reflects a suppliers' corporate culture, whereas full, clear and accurate information may be more mechanical.
5. We would prefer to see Ofgem set out the standards as overall aims (Option 2), as this would more readily allow a supporting commentary. However, it is hard at this stage to assess Option 1, as we have yet to see how Ofgem propose to implement the prospective market remedies as licence conditions.

Promoting more effective consumer engagement

Helping consumers make well-informed choices

6. We discuss these two sections together as they are interdependent in the key respect of enabling domestic consumers to get a reliable price comparison.
7. The requirements should cover consumers proactively using a web-site or, more reactively, responding to a field or telesale. With a web-site, the tariff name and detailed kWh will enable the consumer to get consistent estimates¹ and compare products. In other situations, the customer has to be able to get an estimate from the prospective supplier (the proposals in Section 4) and the customer then makes the comparison, to the estimate from their existing supplier (the proposals in Section 3). The key requirement is to use the same kWh for both estimates, or at least for the customer to know that the assumptions are different.
8. It is not entirely satisfactory to require the customer to make the comparison, but we accept that with most suppliers' current technology on the doorstep it is inevitable. Indeed it may that a prospective supplier is never able to replicate the existing suppliers' calculation².
9. The importance of ensuring that consumers have the information to get reliable price comparisons, and to stamp out misleading practices in doorstep sales, suggests that regulatory requirements should focus on these objectives.
10. In detail our view on each element of improving transparency is:

¹ Our experience is that referring to this as a quote can confuse customers, who expect a fixed price

² For instance one supplier caps their discounts on a quarterly basis, so that although there is a notional £90 cap, the customers' seasonal demand profile will likely reduce the amount of discount – to £76 for an average profile. The existing supplier has the information to calculate this; a comparison site would only be able to calculate the effect for a typical customer, highlighting the potential for difference for other customers (with the useful side effect of the qualification creating a disadvantage for more complex products).

Bills (Paras 3.13 – 3.18)

Essential Measure	Comment
Tariff name	Reduces risk that customer picks the wrong tariff or is misled by a sales agent, and gets a misleading estimate or comparison.
Consumption	Value is in ensuring consistency between quotes. It must be in sufficient detail, for instance day/night ³ . The best current estimate (as for instance would be used in a direct debit review) is most appropriate, but regulation should not be prescriptive - for PPM and Standard Credit it would be reasonable to use historic consumption or EAC or AQ.
Estimated annual spend	Allows a customer to make an accurate comparison with a sales agents' quote. Ideally the customer would have the last bill to hand and so be able to make an immediate comparison, but at the least the customer would have the information to be aware later that a quote was not comparable.

11. Additional information is not essential and aside from the additional systems costs, would increase clutter on the bill. A clear benefit would be required, which we do not believe exists:

- The value of including the end-date for a fixed term product is unclear – is it in reassuring the customer that there is no need to take action (although this may not be true in a falling market) or of the imminence of the fixed term ending (which need might be better met by timely communication to explain options)?
- We see no benefit in showing historic spend; it does not help price comparison.

Statements (Paras 3.19 – 3.22)

12. Billing operates in a tightly controlled environment and we are confident that an estimated annual spend included on a bill would be accurate. It would be harder to achieve the same level of control if multiple pieces of information (kWh and prices) are extracted outside of the billing cycle, and then processed through a separate billing engine. The challenge would be compounded by the stress of seeking to do this in a short timescale and at a time when prices are being changed. Increased call volumes from customers seeking to understand the new information would then challenge our ability to respond to those customers with a real need to make contact⁴, those who require advice to manage their higher bill. Finally, depending on the agreed method for calculating estimated spend we may also have to contact customers not immediately affected by the price change, but with a prospective higher charge within the next year as their fixed term contract ends.

³ We suggest day/night information is required in the initial implementation. Ofgem should consult on what further data may be appropriate, for dynamic teleswitch products and for products where seasonality is a material issue, and to accommodate additional information available with smart meters.

⁴ A proportion of customers will call to discuss the background to any information. A potential 3% response, would require an additional 100 FTE to manage call volumes over the mailing period, and potentially a 15% increase in the proportion of calls abandoned at peak times

13. Moreover the benefits of refreshing information at a price change are limited:
- The information about the price change and enhanced reminder that a customer can switch meets the need for a prompt to be proactive, whilst the consumption data on the last bill is sufficient to get an accurate comparison from an internet or telephone advice service or, where this will be available (e.g. for PPM customers) from sales agents.
 - The customers Ofgem have identified as most likely to be inactive – standard credit – would get an updated estimated annual bill within, on average, seven weeks.
14. We understand the argument for an annual reminder that customers can switch, but this can be realised as part of the existing requirement for other annual information. It does not require a separate statement to customers. We suggest that the annual reminder of the potential to switch also explains the importance of using the kWh information on the bill to get an accurate comparison.
15. The annual reminder would become quite complex if it also sought to ensure customers were on the best tariff for their circumstances. Even the simplest statement – e.g. for a standard credit customer who pays promptly, to say “you could save £x by switching to direct debit” – requires an individual calculation and must be qualified by a reminder of the risk of bank charges. For other payment methods it may be necessary to present appropriate alternatives –e.g. regular cash payment or direct debit. Nor may it be fair to PPM customers to be annually reminded of savings they may not be able to realise or have chosen to forgo; it would be more useful to use a communication to highlight the benefits of energy savings measures.
16. It is not meaningful to calculate a premium or discount for unlike products, such as a fixed term or capped product, Staywarm or a tracker product relative to a standard variable price product. It could be helpful to do a tariff health check, for instance whether an Economy 7 product is still appropriate. This type of action may be driven by suppliers’ commitment to the overarching standards. Direct regulation would be disproportionate, and inflexible.
17. We propose that the annual requirements are:
- Tariff name, kWh, estimated £ - if there hasn’t been a bill in the year;
 - A full reminder to switch and explanation of how to use the information on a bill to get an accurate comparison;
 - A reminder (as in SLC28.3) of where to find information about different payment and tariff options.

Sales (Paras 4.16 – 4.28)

18. Doorstep selling is an important sales channel and it would be particularly disadvantageous to less active customers if lack of firm action to raise standards exacerbates stakeholder interventions such as ‘no cold calling zones’.

19. We agree with Ofgem’s proposals that consumers should get an accurate estimate, and PPM users an accurate comparison, but two further steps are required to make the proposals fully effective:
- A. The estimate must include the consumption assumed, so that (a) a consumer can confirm that it is, or is close to, the information provided by their existing supplier and (b) to provide an audit trail which can help prevent misselling⁵;
 - B. Fulfilment must confirm what was said and, as importantly, what was not said (to detect if an “off-record” comparison has been given).
20. The written estimate should be provided before the start of the cooling-off period. This is not the same as prior to the sale, but is the only practical process with a telesale and is the most robust one with a fieldsale (also giving a supplier opportunity to provide a precise estimate if the sales agent is only able to make a rough estimate). Consumers would have ample time to cancel. Indeed it would be a better principle to encourage consumers to reflect in detail on a sale rather than focus on an immediate decision⁶.
21. Our sales agents are equipped with pentablet technology which ensures a highly controlled presentation to consumers, both in the accuracy of the estimate and in us being able to audit the sale. It would be a retrograde step for us to go back to paper records on the doorstep. However, we understand that it is more difficult to draft a licence condition which distinguishes between doorstep sales technologies. We suggest Ofgem resolves this by proposing to rigorously enforce requirement B above, following-up any discrepancies reported by consumers. We believe suppliers would quickly either improve their own technology, or voluntarily provide a written record on the doorstep – meeting Ofgem’s objectives, but without regulation weakening a move to greater use of technology.
22. If price or product features are compared, additional information will be required to be confirmed in fulfilment: current supplier, product name, payment method, assumed spend with the current supplier.

Addressing tariff confusion (paras 3.38 – 3.44)

23. The concerns Ofgem identify in Para 3.30 will be substantially addressed by the proposals for information on bills and to improve sales standards, supported by the overarching standards. The principal remaining concern, that there are too many products, is misplaced. Each of our products has been developed to meet customer needs and it is only in using an internet site that a consumer will be faced with the full product range. This potential confusion in part arises from on-line sales being a relatively new part of the market.⁷ In time, and with encouragement from

⁵ Immediately by the consumer expecting to see their information on the estimate, or by subsequent investigation if the £ estimate is not consistent with the stated assumption

⁶ A consumer may for instance lose a written estimate provided face to face at a store or event

⁷ E.ON response to the call for evidence. Para 4.11

Consumer Focus, we would expect switching sites to help consumers more by seeking to establish their preferences before offering a range of tariffs.

24. We agree with a simple “£ per year” metric as the basis for comparison. However, proposals to increase the use of tables such as shown in example 1 (Para 3.34) are incompatible with the wider aim to give consumers an accurate estimate based on their own consumption.
25. Ofgem could discourage tariff complexity, by requiring a high standard of explanation in all communications to consumers (see footnote 2 on page 2 for an example). However, genuine innovation must not be stifled – it is critical to helping consumers’ manage their principal risk, that of energy volatility, and to secure the full benefit of smart meters.

Simplifying the switching process (paras 3.53 – 3.54)

26. We are actively supporting the ERA led process to develop a customer switching guarantee.

Reviewing debt-blocking arrangements (paras 3.67 – 3.69)

27. We support the thrust of Ofgem’s proposals, but would be concerned if any changes to the debt-blocking rules allowed customers who are unwilling to take responsibility for their debts to walk away from their supplier. This could lead to an increase in debt management costs and bad debt provisions, which rebound on all customers, particularly those on standard credit terms.
28. In detail our view is:

Proposal	Comment
Enhanced advice following objection	Agree. We give this advice during the debt management process, but customers may not be receptive then. An objection may be an appropriate prompt for a second offer.
No debt block if the debt is due to supplier error	We already do this if the account is in dispute and do not block for debts which accrue but have not been demanded (e.g. for PPM calibration issues). We will also write off any debt over a year old where there has been supplier error. These steps are proportionate and operationally practicable. It would be significantly more complex to not debt block for any supplier error, as each circumstance would need to be identified and tagged. It would be disproportionate where the customer is not seeking to repay money they owe. We propose that only those customers with an agreed plan to repay a debt due to supplier error are not debt-blocked (these cases are assessed individually and can be tagged).
£200 DAP threshold	Agree. Although PPM customers are relatively low margin, the increased use of key meters makes processes more robust.
Response to unilateral contract variation	We are sceptical that customers in debt might make a different decision (to clear a debt rather than repay it over a period) if different rules apply, but agree some change is proportionate if it does not allow customers to walk away from debts. We propose that for customers in debt, in SLC23.6 the requirement to allow a reasonable period of time is interpreted as eight weeks (i.e. allowing the customer in total up to nine weeks to clear the debt, including at least four weeks after any objection to the initial loss notification)

Additional information at the point of sale (paras 4.23- 4.25)

29. We agree with the proposals in Para 4.23.

Post sale follow-up (paras 4.26 – 4.28)

30. These proposals would seem to be designed to address the concerns already addressed by other proposals, with the danger of making the sales process harder for consumers. For instance, as we understand positive confirmation, it would require a consumer to agree to a contract twice, with the second agreement requiring the intrusiveness of a phone call, repeated until contact is made.

Recasting the marketing licence condition (paras 4.29 – 4.31)

31. We are not sure of the benefit of redrafting the licence condition. In the example in Para 4.29, persistent mis-selling must imply inadequate management arrangements, and we would have thought the latter was easier to prove. We would not want any difficulties in drafting to delay implementation of the proposed improvements at the point of sale and in follow-up. However, we support the aims of Para 4.30. We ask that Ofgem share any proposed redrafting with suppliers as soon as possible.

Consumer protection legislation (para 4.35)

32. We do not agree that Ofgem should seek additional powers to avoid the principles of enforcement under the CPRs. There is no reason why Ofgem should not seek to establish case law itself, and have confidence that its arguments will stand up in court. For a general breach of the CPRs (as opposed to the specific issues which do require Ofgem to seek new licence conditions), stopping an activity, coupled with an unfavourable impact on reputation, is a proportionate remedy.

Helping small business customers

33. We support Ofgem's proposals to raise standards in the business market, but this should be recognised as quite different from consumer protection. No small business can be regarded as unable to engage with the market, and whilst many may regard energy as low interest, that does not equate to vulnerability. Indeed Ofgem's own analysis shows that businesses' frustrations are in part to do with their different expectations from domestic consumers (e.g, para 5.4 – inability to influence terms and conditions; choice from a complex range of offers).

34. We agree that small businesses should have timely, clear and understandable information and that Ofgem should take action to ensure this. Such action would raise standards, without reducing customer choice or having adverse side-effects. E.ON has invested considerable effort in developing a simple business proposition, based on a low-effort (automatic) renewal process,

which is clearly explained to customers and has attracted few complaints. Nullifying our effort is disproportionate as a remedy to the issues raised, negating rather than supporting efforts to apply good practice.

35. Moreover the evidence from other parties does not support such wholesale change. The principal consumer groups⁸ recognise the detriment to businesses from poor practices, but propose clear information as the remedy. The research by FDS paints a similar picture, with lack of information being the principal issue, with some concerns at renewal processes associated with long-term contracts. FDS also highlight businesses' dislike of frequent sales approaches, particularly by TPIs. Fixed term contracts make these approaches easier to resist.
36. Nor is there certainty of consumer benefit. In principle, supplier margins would be lower, as renewal offers are more keenly priced, but the effect may be offset by higher prices for those customers who do not renew, reflecting increased energy risk and, possibly, knowledge that the customer was less active. Industry sales costs would be higher.
37. We accept the implication of Ofgem's proposals that small businesses will tend to become a separate segment to medium and large businesses and the public sector. The evidence of consumer detriment gathered during the probe, and parliament's expectations⁹ that small businesses should receive additional support justify this, but Ofgem should be aware that there is a risk of less choice of contracts and of less innovation for small businesses.
38. In summary, our view based on those set out in paragraphs 5.11 to 5.17, is that there should be standards for both the initial sale, which would apply to all contracts, and for the renewal process for fixed price contracts.

Standards for contracting

39. We support Ofgem's proposals:
 - A. Full copy of terms and conditions whenever a small business agrees a new energy contract;
 - B. Clear summary of key terms and conditions (principal terms) before a contract is agreed.
40. We have some concern at the proposed number of principal terms. The explanation of what action is needed at the end of a fixed price period should be proportionate to what will happen. The list given in Para 5.11 is appropriate to auto-renewal, but more than is needed if, for instance, a customer would go onto tariff terms. Conversely a fuller explanation would be appropriate if there were objection or termination provisions in a variable price contract.

Standards for the renewal process

41. We propose a slightly different set of requirements:

⁸ Consumer Focus, Federation of Small Businesses, Chartered Institute of Purchasing and Finance

⁹ Consumer, Estate Agents and Redress Act 2007

- A. Clear, full information on the renewal process no more than 60 days before expiry of a fixed price period;
 - B. At least 21 days to act (with the last day for action no earlier than 21 days before expiry of the fixed price period);
 - C. Prompt and full explanation of any objection to a transfer, including explanation of how to enable a future transfer;
 - D. At any time a customer can indicate that they wish their next renewal to be opt-in (i.e. renewal on tariff terms if the customer take no further action);
 - E. Auto (opt-out) renewal only to a one year fixed price period.
42. These requirements would ensure that customers were in control, well-informed and able to choose how to active to be. Customers who wanted to could secure the benefits of fixed price contracts with a simple low effort renewal process, whilst the risk of inadvertent inaction would be proportionate: a one year commitment, at a fixed price.
43. The majority of these proposed standards are the same as Ofgem have outlined. The differences, and their justification are as follows:

	Difference	Rationale
A	Specific limit on early notification, 60 days	Customers may not be ready to decide early, or able to assess prices. If a supplier wanted a short, 21 day window, notification would be closer still to renewal - 42 days beforehand.
B	21 day window, with end date at most 21 days before renewal date	Allow time for a two week holiday, but avoid additional cost (e.g. the risk premium from holding an offer open for a longer period).
C	<u>Future</u> transfer	For clarity – if a customer follows-up an objection by registering for tariff terms at the next renewal, it would be likely be a new contract and transfer
D	Entitlement to advance notification	Simple for customers – only have to act once, and can do so immediately, if change their mind about their auto-renewal contract
E	Auto-renewal for one year	Retains successful business proposition, whilst removing customer concern of lock in to long term contracts. One year price is simple for customers.

Transition

44. The above standards could reasonably be implemented four months after the relevant licence condition is passed¹⁰ with immediate effect to forthcoming contract renewals.

¹⁰ We do not believe a self-regulatory solution could be implemented as quickly, if at all given the absence of a trade association for suppliers to small businesses.

45. Suppliers would have to make some contract changes to distinguish between small and medium businesses. A particular risk is that customers inadvertently (or due to misrepresentation¹¹) take a contract for larger customers and then seek to escape from it if wholesale prices fall (stranding a suppliers' hedge entered in to in good faith).
46. Other changes will also require business' agreement. We for instance have customers who expect a three year auto-renewal; we would need to negotiate a new contract at the next renewal. Contracts will also need to be amended to meet the "inform of objection" requirements of SLC14.2. However, we do not see that further change to SLC14.2 is required, as Ofgem imply in Para 5.17¹².

Switching sites & TPIs

47. We support Ofgem's desire to see switching sites and TPIs operate to a high standard code of practice, which meets OFT principles. If this can be agreed, there is confidence in the enforcement mechanism and consumer groups will support efforts to promote the code to businesses, we would be prepared to only work with accredited sites and TPIs.
48. The code should require TPIs to ensure they only employ reputable agents – an accreditation scheme for field agents and a commitment to call recording and to prosecute if there is fraud.

Promoting market transparency

49. We have responded separately to the proposals on financial accounts and on monthly reporting. In summary:
- We prefer Option 1 for financial reporting. Although there would be some additional cost of reporting and we doubt the value of the information provided, this is the most proportionate of the four options.
 - We propose that the increased information on switching and consumer numbers is reported annually, with a monthly breakdown.
50. More onerous reporting, in either area, would require some systems changes, which as noted below would need to be prioritised.

¹¹ This risk will also need to be covered in the TPI code of practice

¹² Especially as this condition has been much debated and yet is still unsatisfactory in allowing customers on deemed contracts to leave with unpaid debts

Implementation

51. The proposed timescales in Section 7 are challenging and Ofgem should be prepared to focus on the key proposals for domestic consumers, those in Sections 3 and 4, and ensure the details are right before proposing licence changes.
52. Consideration will also need to be given to the phasing of implementation of changes¹³. The majority of the proposals require some systems changes and even with the simplifications we have proposed it will be challenging to implement the total package within six months.
53. Although we could implement the changes to the SME renewal process in a slightly shorter period, that is in isolation and we recommend more time is allowed, to give priority to the domestic consumer measures. In any case more time may be needed to ensure acceptance by a majority of business suppliers of the potential changes.
54. We estimate the total cost of the systems changes we have supported to be around £450,000.

¹³ Ofgem should include all other prospective regulatory changes in the prioritisation, for instance any requirements on direct debits