

Consultation response

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ENERGY SUPPLY PROBE - PROPOSED RETAIL MARKET REMEDIES

Which? consultation response.

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Which? is the business name of Consumers' Association, registered in England and Wales No. 580128, a registered charity No. 296072. Registered Office 2 Marylebone Road, London NW1 4DF.

SUMMARY

1. Which? is the largest independent consumer representative organisation in the Europe, with about 700,000 members. Which? offers advice to consumers in the UK and campaigns on their behalf to make consumers as powerful as the organisations they deal with every day. Which? is entirely independent of government and industry, we are funded through sales of our consumer magazines, online products and books¹.
2. Which? welcomed Ofgem's Energy Supply Probe- Initial Findings Report² as a robust assessment of the UK energy markets. We considered that the implementation of the full package of remedies proposed in the initial findings report would make considerable progress to reforming the market to the benefit of consumers.
3. Of the proposals in the remedies report³ Which? welcomes the proposals to require the name of the tariff on all bills and the introduction of an annual statement. These proposals are a positive step to providing consumers with necessary information about their energy tariffs. However, this final package of remedies does not go as far as those initially put forward⁴ which is disappointing and Which? considers they may significantly jeopardise alleviating the consumers detriments Ofgem has identified.
4. We consider that Ofgem can take additional steps to ensure a robust set of remedies. These include putting forward license modifications for the inclusion of a summary box on all bills, statements and marketing information to include essential information such as the amount of energy used on a daily basis and the introduction of minimum standards for tariffs. These will allow consumers to make true comparisons between energy tariffs and drive effective competition.
5. These proposals are a modest step from those Ofgem is currently proposing, and would make a significant difference to consumers' ability to take control of their energy use. If agreement can not be reached with the energy suppliers, Ofgem should be willing to take proposed license condition changes to the Competition Commission to ensure that consumers have a supply market that can truly deliver for them.

¹ Which? is the operational name of Consumers' Association - a registered charity No 296072.

² *Energy Supply Probe- Initial Findings report*, Ofgem, 6 October 2008

³ *Energy Supply Probe- proposed retail market remedies*, Ofgem, 15 April 2009

⁴ *Energy Supply Probe- Initial Findings report*, Ofgem, 6 October 2008

6. Which? welcome the moves towards greater transparency in the UK energy markets through greater financial reporting, and we look forward to the proposals to improve liquidity in the market. Improving transparency will also help to promote public confidence in the market and that it is able to deliver energy to consumers in a more efficient way than a non-market based arrangement.

Ofgem's Proposed Retail Market Remedies

General Comments

Ofgem's powers

7. Which? recognises that Ofgem's primary regulatory mechanism is through the enforcement of license conditions and that generally license condition modifications are made in agreement with the energy supply companies. However Ofgem must act in the best interests of the consumer and should not be timid in proposing license condition modifications that energy suppliers may not be supportive of. If Ofgem believe that the proposals are necessary to deliver what is right for consumers and if agreement can not be reached with the energy suppliers Ofgem should be bold in putting forward the proposal to the Competition Commission.

Rationale for the proposed remedies

8. Throughout the remedies report⁵ Ofgem clearly sets out the problem; then a summary of the proposals set out in the initial findings report⁶; a brief summation of the views of stakeholders on the proposals, and this is then followed by a proposed remedy. Unfortunately it is always not possible from the report to determine the rationale for Ofgem proposing the chosen set of remedies. The proposed remedy often goes against the views of the consumer organisations and appears not to address the problem, combined with the absence of rationale this is frustrating.

Comments on the proposals

Standards

⁵ Energy Supply Probe- proposed retail market remedies consultation, Ofgem, 15 April 2009

⁶ Energy Supply Probe- Initial Findings report, Ofgem, 6 October 2008

9. Which? do not consider that Ofgem has made a sufficient case⁷ that the Consumer Protection Regulations (CPRs) would necessarily be ineffective as an overarching influence on supplier behaviour.
10. While Which? is supportive of improved standards of conduct for energy supplier engagement with consumers; given the focus on consumer confusion and the absence of specific license condition modifications on, for example, tariffs which will mitigate confusion Which? does not consider the introduction of standards of conduct sufficient.
11. Ofgem state “simply presenting standards without attaching more concrete status to them may reduce the likelihood that they will have a real and permanent impact”⁸. Which? does not consider that the proposed options attach a ‘more concrete status’ to the standards. No clear process for enforcement of the standards and no clear incentive for why energy suppliers would comply with the standards.
12. We would like an example of how the standards would work in practice for example. For example, how would the standards address the problem highlighted in the Consumer First research that 70% of consumers find the number of tariffs confusing?
13. Which? does not understand how these standards ‘will encourage compliance with the “spirit” of regulation’⁹. Clarity regarding enforcement is required.

Promoting more active customer engagement

Improving information

14. Which? supports Ofgem’s proposal to improve the information provided to consumers by energy suppliers. To make informed decisions all consumers should have a right to access appropriately presented and accurate information.
15. Both the initial findings report¹⁰ and this remedies report¹¹ state improving the information to consumers could be achieved through clearer information on bills. Further, there was strong support for clearer information on bills¹².

⁷ Paragraph 2.16, *Energy Supply Probe- proposed retail market remedies*, Ofgem, 15 April 2009

⁸ Paragraph 2.13, *Energy Supply Probe- proposed retail market remedies*, Ofgem, 15 April 2009

⁹ Paragraph 2.9, *Energy Supply Probe- proposed retail market remedies*, Ofgem, 15 April 2009

Improving information- billing

16. Customers' bills are the main source of information to make comparisons between competing offers. Given the importance of bills as key points of contact and the low 'visibility' of energy as a key consumer product, Ofgem should not lose sight that bills are for customers' benefit in priority to any other uses that suppliers may put them to.
17. Which? welcomes the proposal to require the name of the tariff on a customers bill. It is incongruous that energy suppliers did not provide this information to their customers previously.
18. Ofgem states that 'many consumers find their bills difficult to understand'¹³. The provision of the tariff name is a welcome step to providing consumers with the information they need to switch tariffs, but this does not address the issue of comprehensibility of bills. We recommend that Ofgem should modify the supply license conditions to require the inclusion of a summary box presenting all the key information a consumer needs to understand their energy tariff on all bills (discussed below).

Summary box

19. Which? recommends the introduction of a summary box to display key tariff information¹⁴. There are a number of recent examples of presenting complex information to optimise accessibility and engagement by consumers. These include the development of the summary box for financial services products, which was proposed by the Treasury Select Committee¹⁵.
20. The inclusion of a summary box on bills and statements would enable consumers to see key information at a glance, allowing easier comparison of tariffs and address issues relating to the confusion mature of bills. The summary box should contain all the key elements of their tariffs. As with

¹⁰ *Energy Supply Probe- Initial Findings report*, Ofgem, 6 October 2008; and *Energy Supply Probe- proposed retail market remedies*, Ofgem, 15 April 2009

¹¹ Paragraph 3.6, *Energy Supply Probe- proposed retail market remedies*, Ofgem, 15 April 2009

¹² Paragraph 3.7, *Energy Supply Probe- proposed retail market remedies*, Ofgem, 15 April 2009

¹³ Paragraph 3.4, *Energy Supply Probe- proposed retail market remedies*, Ofgem, 15 April 2009

¹⁴ Which? response to the Ofgem *Energy Supply Probe- Initial Findings report*, December 2009; and a Which? report on Energy Bills and Tariffs, May 2009.

¹⁵ Questions 1059, Treasury Committee First Report, *Transparency of Credit Card Charges*, HC 125 and HC 125-II, 17 December 2003

financial products the summary box should be required to be presented up-front on bills, statements and marketing information.

The summary box on a bill should contain the following information:

- > **The exact tariff name:** consumers should have access to the name of their energy tariff and it is also a key piece of information required for comparing tariffs.
- > **The amount of energy used:** this is one of the key pieces of information that allows consumers to understand how their bill was calculated.
- > **The rate of gas and/or electricity per kilo watt hour (kwh) and how this is applied on a daily basis:** details of the rates and their application allows consumers to calculate energy costs and to compare with other tariffs.
- > **How the cost has been calculated:** forms a basis for consumers to verify their bill amount.
- > **Any discounts the customer is benefiting from and when they end:** key piece of information for comparing tariffs and calculating energy costs.
- > **Any fees the customer will be charged for changing tariff and or supplier:** key piece of information for comparing tariffs.

The summary box on marketing materials should contain:

- > The exact tariff name
- > The rate of gas and/or electricity per kwh and how this is applied on a daily basis
- > Any discounts and when they end
- > Any fees you will have to pay if you change supplier.

21. The information that should be included in the summary box is already found on bills issued by some energy suppliers.¹⁶ However, it is not available on all bills and where it is present it is not easily and quickly accessible. Requiring that this information be presented up front in a standardised fashion is a modest step for Ofgem and the energy suppliers to take that would make a significant ability on consumers' capacity to understand and take control of their energy use.

22. Further, Which? has received feedback from consumers that they find the language used to stated monies owed confusing "I would like it clearly stated you owe us or we owe you"¹⁷. We recommend that Ofgem require

¹⁶ Energy Bills and Tariffs, Which?, May 2009

¹⁷ Quotes from consumers who have shared their views via the Which? website in April 2009.

uniform and simple language to express how much consumers' owe to their supplier or are owed by their supplier.

23. Which? would welcome action by the Energy Retail Association (ERA), the trade body representing the Big 6¹⁸, to incorporate these recommendations into their code for best practice on billing and set an example for improved billing for all energy suppliers, not simply those it represents. However should the ERA not be willing improve its billing code inline with these recommendations and the energy suppliers do not accept the proposals to improve the information through supply license modifications; Ofgem should refer specific conditions to the Competition Commission.
24. It is not appropriate for Ofgem which has a statutory duty to protect consumers, to leave improvements to billing practices to the ERA through their code for best practice on billing which to date has failed to require the name of the energy tariff on customers' bills.

Improving information- annual statement

25. We welcome the introduction of an annual statement as an additional prompt to remind consumers that they have a right to switch.
26. Which? understands that the purpose of the annual statement is to remind to consumers that they are able to switch supplier and to provide consumers with a summary of much of the key information they would require to switch.
27. Paragraph 3.12 details that the proposed 'annual' statement will be issued upon notification of price increases to remind consumers of their right switch. We would seek clarification of how this will differ from current arrangements¹⁹ where by the suppliers are required to notify consumers should there be in increase in price. Should a supplier increase their prices more than once in a given year, would the energy supplier be required to issue the annual statement again? In addition, many customers are often notified of price increases in their quarterly bill, in this situation would these customers receive an additional statement?

¹⁸ The 'Big 6' are: Centrica (British Gas), EDF Energy, Scottish and Southern Energy (SSE), RWE Npower, Scottish Power, EoN UK.

¹⁹ 65 day license condition 65 day notice period for unilateral contract variations (Supply Licence Conditions 23)

28. Much of the information that we recommend to be included in a summary box on bills and marketing information is detailed in paragraph 3.19 of the remedies report for its inclusion in the annual statement. Given the points made above and the fact that it is unlikely that the timing of customers' annual statement will coincide with when they wish to switch, it is essential that this information is provided in a summary box on consumers' bills. Only then will they be able to access the information they need, when they need it, to take control of their energy use.

Improving information- 65 day notice period for unilateral contract variations

29. Which? recommends that Ofgem change the 65 day notice period for unilateral contract variations to require energy suppliers to give their customers advance notification of price increases. When considered in combination with the 10 days consumers have to respond to the notification the terms appear quite imbalanced in favour of the energy suppliers. We do not believe that this is fair.

30. Which? is not convinced by the arguments put forward by the energy suppliers that they are a special case, deserving privileges points of retrospective price notification. The reasons set out in paragraph 3.26 of the remedies report, cited by Suppliers, appear easily remedied:

- > *Inhibit ability to respond to market movements.* It is not clear which market movements are in question? Presuming Suppliers are referring to wholesale prices, then this would seem a reasonable commercial risk that firms in other industries must usually bear. The effective development of wholesale energy purchasing strategies would enable suppliers to mitigate any risks (assuming Suppliers can clarify exactly which risks they are referring to) and form the basis of potential competitive advantage;
- > *Managing calls and phasing price notifications.* Clearly, managing customer queries is a key service quality output, and Suppliers should rightly be concerned with serving their customers. However, why retrospective notice of price changes is a necessary and only solution to the concerns raised is not clear. Suppliers would be free, when notifying customers in advance, to phase notifications as they desired albeit that they meet a minimum notification period before price changes became effective.

31. In addition, notification of the price rise is also often done through customers' quarterly statements. This is unlike banks and building societies,

which are required to provide separate notification to customers of changes of equivalent charges.

32. It appears clear that, in the absence of a specific regulatory requirement, Suppliers will continue to enjoy the imbalanced position of 65 days retrospective notice to consumers versus consumers' 10 days response time. Which? will carefully consider Ofgem's conclusions at the end of June of whether UTCCR 1999 apply in this case.

Addressing tariff confusion

33. There are over 4,000²⁰ energy tariffs on the market. Consumers can choose single fuel or dual fuel, standing charge or no standing charge, 'green' tariffs, fixed or tracker tariffs. Tariffs may be discounted, such as for payment by direct debit or for online bill management, but discounts may be 'introductory', reverting to a higher rate after a short period of time. Multiple versions of very similar tariffs are offered with a range of different special offers from Airmiles to Nectar points.
34. Energy suppliers argue that the large number of tariffs in the market reflects innovation and choice for consumers. But overwhelming choice is no choice.
35. A simpler tariff structure, achieved through the introduction and implementation of minimum standards would make it easier for consumers to understand the implications of each tariff and together with the summary box (detailed above) allow consumers to make an informed choice on which tariff is most appropriate for them.
36. The minimum standards for all tariffs would include the following elements:
- > **No hidden charges** - no more 'no standing charges' tariffs when these costs are just subsumed into the overall price and no unfair penalties if you want to change energy tariff
 - > **A time guarantee if you change tariff** - tariffs should be guaranteed for a minimum of 12 weeks²¹

²⁰ Tariffs are defined separately if they vary in one of the following measures: type of fuel, method of payment, method of bill management, pattern of consumption (Economy 7 or similar) and additional tariff options - green, fixed, special offers (airmiles/wine vouchers etc). On this definition, there were 4,111 in April 2009.

²¹ Which? believes consumers should be given notification of a price increase equal to the amount of time that it will take to shop around and switch. On average it takes a consumer 6 weeks to switch energy tariff, followed by a further 6 weeks before they are on the new rate - totalling 12 weeks.

- > **Reasonable warning about price changes** - companies should commit to provide a minimum of 12 weeks if a tariff is going to be changed, or when special deals are going to end.

Price Metric

37. We welcome Ofgem's recognition that currently consumers face tariff confusion, and that easy access to clear information could help consumers to address this.
38. Ofgem identify that one reason contributing to consumer confusion when comparing tariffs is 'the difficulty of understanding price comparison information'²². Ofgem should clarify the basis on which it considered that the development of a price comparison tool was the most appropriate step to take.
39. Ofgem also recognise that consumers often incorrectly categorise their energy consumption level - low, medium or high²³, categories that will form the basis for the favoured price metric information. Consequently there is potential for consumer confusion and exacerbating existing detriment.
40. In addition, this price comparison tool will not provide consumers with quick and easy access to key elements of information regarding their tariff. Such as the duration of introductory rates and details of any fees for leaving the tariff.
41. It has not been possible to undertake a full assessment of the options presented as no working examples were provided. As already requested to Ofgem, we believe that in order for an assessment of the impact on consumers we would like examples of what would be presented to a consumer approached on their door step and a consumer reviewing tariffs online. Disappointingly at the time of writing we had not received any examples from Ofgem.
42. Paragraph 3.39 of the remedies report details that the use of the price metric by consumers will be as a "useful back up". Ofgem should clarify why the development of a "back-up" is the only proposal put forward to address tariff confusion.

²² Paragraph 3.30, *Energy Supply Probe- proposed retail market remedies*, Ofgem, 15 April 2009

²³ Paragraph 3.37, *Energy Supply Probe- proposed retail market remedies*, Ofgem, 15 April 2009

Addressing tariff confusion- other options considered

43. Which? is concerned with the rejection by Ofgem of the other options for addressing tariff confusion presented in paragraph 3.41. Which? expects that Ofgem will be publishing the evidence relied upon and criteria used to weight the assessment of the evidence that supported rejection of simplifying tariff structures or limiting absolute numbers of tariffs. We believe that the reasons set out in paragraph 3.42 of the remedies report are insufficient, as set out below.
44. First, there is no assessment or weighting of the likelihood that innovation, to the extent that it delivers benefits to consumers, would be affected by more vigorous regulatory intervention. Which? has noted a number of comments by Suppliers and Ofgem that any regulatory intervention should not impede innovation. Innovation refers to new ways of doing things, and in the context of markets innovation should be welfare enhancing by improving efficiency and choice.
45. To date, Which? considers there has been little value-added innovation by energy suppliers. With the exception of smart meters, which will not be fully rolled out until 2020²⁴, it appears that nearly all ‘innovation’ has simply been a re-structuring of tariffs - i.e. simply rearranging (perhaps frequently) how prices are presented to consumers. We have considerable doubts over whether these ‘innovations’ are desired by consumers, *Pareto optimal*²⁵ or economically efficient and indeed appear to be the heart of the problem, as set out in paragraph 3.30 of the remedies report.²⁶ Attempts at making prices difficult to compare could be seen as ‘anti-competitive practices’, not ‘innovation’.

²⁴ DECC announcement and the Ofgem SC session

²⁵ *Pareto Optimal* refers to a situation where it is not possible to make one person better off without making another worse off.

²⁶ For example, Which? has concerns over the effects of fixed tariffs, which tie consumers into a set pence per kWh charge for a fixed duration (applying penalties should a customer wish to leave the deal early). Some consumers will of course welcome more price certainty, especially in light of recent significant and unprecedented price rises. However, there is no easily available information on which customers can judge whether a fixed price deal is optimal given the lack of transparency of alternative price offers or future price movements. If future prices fall, the customer loses out. If future prices rise, suggesting that the Supplier would potentially be supplying at a loss, then it is not at all clear that other customers on variable-rate tariffs would not face compensatory price rises.

46. If preserving the pre-conditions for innovation is of concern to Ofgem a counterfactual test may be applied: of those innovations currently in place that have delivered clear, unambiguous benefits to consumers, which of those would have been directly prevented as a result of any proposed remedy? In a meeting with Ofgem²⁷ it was stated that they had undertaken a counterfactual test, concluding that neither green tariffs nor capped/fixed rate tariffs would have been come about. We do not believe that either type of tariff have delivered clear, unambiguous benefit to consumers.
- > Ofgem recently issued revised guidelines for the marketing of green tariffs to address the consumer confusion and concerns regarding the additionality²⁸, indicating that green tariffs were not delivering clear, unambiguous benefit to consumers.
 - > With regard to fixed rate tariffs Which? recognises that consumers may value the peace of mind that a set energy bill could provide, particularly given the significant increase in the energy prices over the past year. However it is vital that a consumer is able to assess that any product constitutes value for money, and currently it is not possible for consumers to do so.
47. At this stage, Which? is unclear whether Ofgem has assessed the merits of general claims of ‘innovation’, that may perhaps offer an unknown level of benefit to consumers at an unknown point in the future, against the specific harm it has identified affecting consumers now.
48. Second, the reason relating to ‘within-tariff cost reflectivity’ is not sufficiently clear. Which? would expect that further explanation is necessary to explain:
- > What ‘within-tariff cost reflectivity’ actually is and why it is significant?
 - > Why and how reform of tariff structures or limiting the number of tariffs may limit Suppliers’ flexibility and why the impact of these two very different solutions would be the same?
 - > Why the impact of this limitation would outweigh the detriment suffered by consumers?
49. Third, Ofgem’s statement that ‘we would need to consider carefully the proportionality of such an approach’ is not a reason. As a public body, and

²⁷ Which? were invited and met with Jude Cummings, Head of Consumer and Social Affairs, and Emma Kelso, Head of GB Markets, of Ofgem on the 20th May 2009 to discuss the *Energy Supply Probe- proposed retail market remedies* consultation published by Ofgem on the 15 April 2009

²⁸ Ofgem published final guidelines for green supply, February 2009

following the principles of Better Regulation, Ofgem should always assess the proportionality of any regulatory measures it proposes. To use, as a reason for not considering a regulatory option, the fact that such a proportionality assessment would need to be undertaken appears to fail on the Accountability and Transparency standard of Better Regulation. If Ofgem has indeed undertaken a proportionality assessment and found alternative remedies to be dis-proportionate, it should publish this analysis.²⁹

Simplifying switching process

50. Which? recommend that the energy supply companies provide a timetable within seven working days of the customer switching to them and, at key points, contact customers again with a progress report (for example, every 4 weeks on the basis of the current switching timeframe).

Debt blocking arrangements

51. Which? responded to the debt blocking consultation earlier this year³⁰ and our position has not changed from this. We welcome the removal of suppliers' ability to prevent customers switching where there has been an error on the part of the supplier, and still question why this was ever allowed.
52. We have serious concerns with the 'consequences' proposed by the Big 6 in paragraph 3.61 of the remedies report in relation to changes in the debt blocking arrangements. The suggestion by the Big 6 that there could be 'more aggressive debt collection activity' is not acceptable, and this should bare no weight in judgements made by Ofgem in relation to debt arrangements.
53. To the best of our knowledge, the debt collection practices of a number of the Big 6 are not regulated by the Office of Fair Trading (OFT). Given the apparent statement by the Big 6 about debt collection, Ofgem should adopt standards, inline with those of the OFT, to protect consumers from threatening and aggressive debt recovery behaviour from those suppliers not regulated by the OFT.

²⁹ See the BERR Better Regulation website at: <http://www.berr.gov.uk/whatwedo/bre/>

³⁰ Which? response to Debt blocking arrangements

54. Ofgem propose to limit the changes to the debt arrangement activities, we would like evidence for why it was decided that this would best serve consumers, and that the threat by the Big 6 that this would result in ‘more aggressive debt collection activity’ was not a factor in the decision process.

Switching sites

55. Paragraph 3.78 states that two suppliers argue that ultimately it was for them to decide whether to advertise on switching sites and incur the resultant costs’. We disagree with this assertion by these energy suppliers for the following reasons:
- > In the Initial Findings Report it is stated that the UK energy supply markets are in “transition to effective competitive markets”³¹, in such situation it is often necessary to put in place a framework to support and facilitate the transition to a fully competitive market. In a situation such as the domestic energy supply market where there is a well recognised problems of consumer/demand side engagement within the market, ensuring that any barriers to switching are addressed is vital. It is also clear that Ofgem place considerable value on encouraging consumers to switch and so it would seem important to improve consumer confidence in switching sites, particularly those that are Confidence Code compliant, that they will have access to the full range of tariffs on offer should they use a switching site to attempt to navigate the large number of tariffs on offer.
 - > In addition, in a situation where a market is the method for distributing a public utility, such as energy, the companies who distribute must accept their responsibility as public servants.
56. We recommend that Ofgem modify the supply license conditions to require that energy supplier make their tariffs fully accessible at independent switching sites, and that consumers will not be required to navigate away from the site to the supplier’s site in order to switch tariff.

Marketing practices

³¹ Paragraph 1.4, *Energy Supply Probe- Initial Findings report*, Ofgem, 6 October 2008

57. Which? believes that all consumers should be given a written quotation and marketing information containing a summary box with the key pieces of information on the energy tariff, as detailed above.

Promoting market transparency

58. Promoting market transparency should benefit consumers, prospective entrants and existing in both the generation and supply markets. It is vital that the information collected should allow an easy evaluation of:

- > Which energy supplier achieved the lowest wholesale costs; and
- > Which energy supplier passed on the greatest proportion of the lowest costs to its customers.

59. Of the four options presented in the remedies report Which? supports option 4 as this required the most comprehensive financial reporting.