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Energy Markets and Affordability Team  
Department for Business, Energy and Industrial Strategy  
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16 September 2019

Dear Sir/Madam,

**Flexible and Responsive Energy Retail Markets – Putting consumers at the centre of a smart low carbon energy system.**

I write in response to your request for views on the consultation on a Flexible and Responsive Energy Retail Markets. Thank you for the opportunity to comment on what is an important area for the future energy market. Ombudsman Services has been involved in some of the joint workshops run by the Department for Business, Energy and Industrial Strategy (BEIS) and Ofgem leading up to this consultation.

**About Ombudsman Services:**

Ombudsman Services is a not-for-profit private limited company established in 2002 which runs a range of discrete national ombudsman schemes across different sectors including energy and communications. Each scheme is funded by the companies under our jurisdiction and our service is free to consumers. In 2018 we received 174,855 initial contacts from complainants and resolved 68,063 complaints. In the energy sector we received we received 108,349 initial contacts and resolved 45,667 cases. We also operate a private parking appeals service – POPLA and for 2018 we received over 67,000 appeals.

We are:

- to our consumers, the people they can turn to for impartial advice and solutions that's fair;
- to our partners, the people they look to for knowledgeable and insightful ways to help them reduce complaints by enabling them to make the changes they need to deliver better customer services;
- to our regulators, champions in protecting rights as well as partners in information sharing, we share our analysis so that regulators and business partners can make improvements; and
- to our people, here to enable them to deliver clarity to consumers and partners through meaningful work.



### **General comments:**

We welcome this joint consultation and agree that putting consumers at the centre of a smart, low carbon energy system is key to helping deliver a flexible and responsive energy market and to meet the targets set by the Government for 2050. Our response to the specific questions focusses on the questions where we can provide most input to the consultation.

### **Working with the wider regulatory landscape and strategic redress:**

In order to place consumers at the centre of a smart, low carbon energy system we think that the wider regulatory landscape along with energy providers need to work together. This also includes greater collaboration between different sectors, for example in terms of third-party intermediaries (TPIs). This must include the better sharing and utilisation of data and insights that all stakeholders have.

At Ombudsman Services we take the approach that prevention is better than cure. So, as well as resolving individual consumer complaints, we use our complaint data to build insights to help businesses in the sectors that we operate in - to improve their customer services and complaint handling to the benefit of all their consumers, and we work with the wider regulatory landscape to help improve policy development, horizon scan and target consumer detriment as early as possible in order to improve consumer services and complaint handling in the sectors that we operate in. We also look at the impact and outcomes of policy makers and regulators to ensure they are the best they can be for consumers. By working in this way, we help to build consumer trust and confidence in markets. We call this Strategic Redress.

As you know, an example of where this works well is in the energy sector via the Tripartite working between Ofgem, Citizens Advice (including the Extra Help Unit) and the Energy Ombudsman. This involves sharing data and insight to spot consumer detriment early and to act accordingly.

### **The Consumer Voice and policy development leading to better outcomes for consumers:**

We agree that the consumer voice must feed into consumer policy decision making. It is important that the outcomes of policies are looked at in terms of how they affect consumers, to ensure they are positive and fair for consumers, especially those in vulnerable circumstances.

Recently there have been a number of reports published looking at how regulators need to understand more fully the implications for consumers of their policies. For example, the:

- National Audit Office report highlighted that while regulators have a good understanding of key consumer issues, there are common challenges across sectors and regulators can be more specific in defining and measuring consumer outcomes;
- the Public Accounts Committee (PAC) report called for regulators to demonstrate they are delivering positive outcomes for consumers. The PAC highlighted that consumers are facing the same challenges across sectors and has called for greater consistency between regulators to ensure better services and prevent consumers being exploited; and
- Competition and Markets Authority (CMA) put forward proposals to the Government on reform of the competition and consumer protection regulation of markets. The CMA concluded that more can be done to put consumers at the heart of markets and ensure that consumer protection takes priority to reduce consumer detriment.

## A framework to look at helping build consumer trust and confidence in a sector - Intent, Execution and Outcomes:

As the Energy Ombudsman, we have a unique insight into complaints across sectors. Looking at the data from complaints, we think there is a mismatch between what consumers think are fair outcomes and what energy providers consider fair. We think there is merit in looking at the relationship between the intent of energy providers when it comes to customer service, how that intent is executed in practice and what the outcomes are. The diagram at Figure 1 below helps to illustrate what we mean.

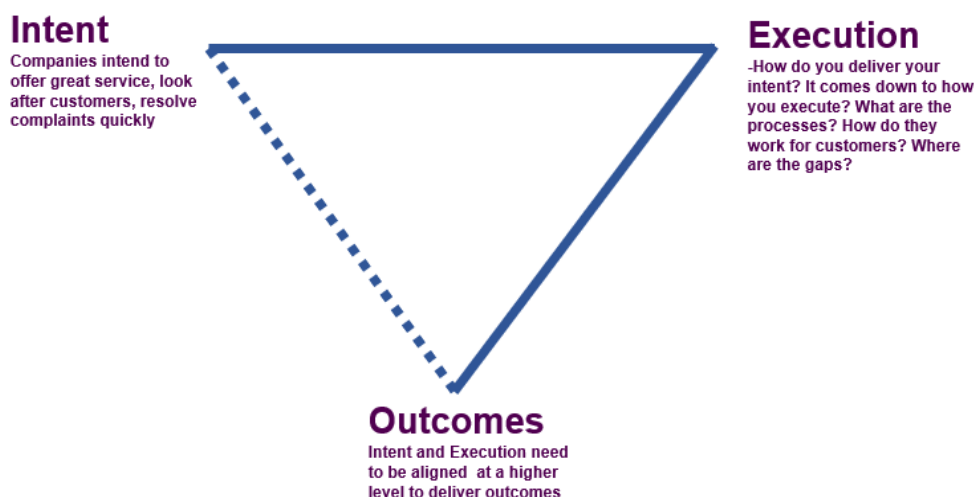


Fig 1.

The diagram links intent, execution and outcomes – the dotted line between outcomes and intent highlights that outcomes achieved should always be reviewed against the intent of the provider. It is a continuous process to build alignment between intent and outcomes. To us, it is clear that:

- energy providers want to provide good customer service to consumers, or to put it another way they do not intend to provide poor customer service. They operate in a regulated sector with Ofgem the regulator and other checks and balances being undertaken by the statutory consumer advocacy body Citizens Advice and Ombudsman Services as the single Energy Ombudsman. It is difficult to hide poor customer service in the energy sector;
- Ofgem also wants to ensure that fair outcomes are delivered to consumers. This is clear from the principles-based regulation framework in place; and
- other stakeholders, for example consumer groups and policy makers, also want fair outcomes and good customer service for consumers to be delivered.

So how might we help energy providers, Ofgem and other stakeholders look at the link between intent and execution to deliver outcomes that are aligned to what consumers consider are fair, and therefore help to improve consumer trust? If, broadly speaking, the intent part is good then it seems sensible to look at the execution part in more detail. There does appear to be a disconnect between intent and execution and the outcomes achieved. We call this the execution gap.

### The execution gap:

From the data and insights we have on complaints, coupled with what consumers and energy providers are telling us, we know that the execution gap can be the result of a whole range of things from initially accepting a consumer, setting up their account, when and how the bill is sent out, what the bill says, and dealing with consumer queries. Failure to execute with good customer service means a poor outcome for consumers and a loss of trust – which may mean that consumers switch to a new energy provider or lose trust in the whole sector.

We think that Ombudsman Services can help providers and assist regulators and other stakeholders in achieving fair and good outcomes for consumers in several ways. For example, by sharing our data and insights with the operational teams of energy providers to help them bridge the execution gap – provide better customer service and

complaint handling to achieve better outcomes for consumers. And by working with other stakeholders by using our data and insights to track the actual outcomes from policy decisions that are implemented. Offering almost real time feedback.

### **Answers to specific questions:**

#### **1) Do you agree with our vision for the future of the energy retail market, the outcomes we are seeking to achieve and our characterisation of the key challenges we need to overcome?**

Yes. We support the vision for the future energy market, and we agree that it is important for the market to encourage innovation to bring increased flexibility, greater choice and lower costs for all consumers including the most vulnerable. To underpin the energy transition into a trusted, smart, low carbon energy system, a healthy retail market which continually strives for competitive offerings to meet the needs of consumers will be fundamental.

It will be important for consumer protection to keep pace with any new energy products or services, particularly those emerging outside of the regulatory framework. As an essential service we think that consumers need to be able to access energy at an affordable price, regardless of their engagement level.

We responded to the Draft Vulnerability Strategy 2025 produced by Ofgem and we agreed with the focus on better identification, support and level of service for those in vulnerable circumstances. We also think that all consumers should receive the support they require regardless of their supplier so there is more to be done to ensure this consistency and certainly exists. It is also important to ensure that those in vulnerable financial circumstances receive consistent levels of support. We will be responding to the Ofgem consultation on self-rationing and self-disconnection which proposes to identify the customers at risk of being off supply and seeks to incorporate and update the 'Ability to Pay' principles into the supply licence to help customers in ongoing financial difficulty.

We also responded to Ofgem's Microbusiness Strategic Review and provided case studies as to the issues faced by microbusinesses – which largely mirror those faced by domestic consumers. We discussed the work that the Financial Conduct Authority had done in reaching and implementing their policy decision in April this year to extend the microbusiness definition to include a wider population and small and medium sized enterprises (SMEs) who can obtain free access to the Financial Ombudsman Service. This was in recognition of the challenges that SMEs face in the financial sector.

#### **2) Are there examples of new products, services and business models that would benefit current and future consumers, but are blocked by the current regulatory framework?**

We are aware that consumer expectations are shifting in line with developments in technology. Consumers expect access to products, services and information in a way that is relevant, convenient and easy to use. In fact, this will be key in building trust and encouraging positive engagement from consumers to shift to a smart, low carbon system. A good example of where this has happened is in relation to the Standard Licensing Conditions (40.1/40.3) where suppliers are required to offer a physical In-Home display, but then as of July 2016, were also able to offer an alternative to consumers. It is important to ensure that regulation does not stop suppliers from developing and trialing innovative options while also bearing in mind adequate consumer choice and importantly, consumer protection.

It is also not uncommon for companies to now set up as 'web only' or 'app only' consumer facing basis with examples across banking, telecommunications and insurance. To minimize costs and offer cheaper deals, these companies may restrict the types of contact channel available which does not keep in line with current regulatory requirements relating to complaints handling procedures for energy providers.

#### **3) Are there current or emerging harms to energy consumers which are currently out of scope of the regulatory framework? Do these differ for domestic and non-domestic consumers?**

As previously mentioned, it will be important for regulation to keep pace with the changing energy market and emerging technology. In Chapter 3, page 19 you mention the impacts of 'prosumers', those active and engaged in demand response programmes who may be buying and selling energy. Also mentioned are energy supply contracts bundled with the installation of high value assets which may lead to consumers who are deterred from switching tariffs because of exit fees or uninstallation costs. We also agree that areas such as price comparison websites, auto-switching and brokering services need to be looked at.

In our response to the Ofgem's 'Strategic Review of the Microbusiness Retail Market' we commented that our work plan will look into the independence of energy brokers and how price comparison websites work with suppliers and if regulation is required. As Third-Party Intermediaries (TPIs) are unregulated and treated differently to suppliers but act as a point of entry for many consumers and businesses, we agree with your point that the lines are becoming blurred. There cannot be gaps in domestic or non-domestic consumer protection because of these grey areas which may affect consumer experience, and as a result undermine trust and confidence in the whole energy market. Again, we have been working with Ofgem and other stakeholders to look at these areas and share the data and insights that we have.

We also think it is worth considering what outcomes may be driven by auto-switching services. While we see the value in auto-switching as a service for consumers to seamlessly switch to better deals, if this is only determined by price, it may over-emphasize cost as a differentiator. We would like to see competition not just based solely on price and encourage suppliers to showcase great customer service.

We also welcome the on-going work Government is doing at looking at heat networks and what a potential framework might look like to attract investment and also provide appropriate consumer protection in the sector. Currently, there are significant differences in the level of consumer protection provided to gas and electricity domestic consumers and domestic consumers using heat networks. Given the importance of heat networks in helping to deliver the energy targets of the future we look forward to continuing to work with the Government and other stakeholders on this area.

**4) Would it be beneficial to allow suppliers to specialise and provide products and services to targeted groups of customers? If so, how can this be delivered while balancing the need for universal service?**

We can certainly see the advantages of allowing suppliers to specialise in certain products and services, to tailor to the needs or circumstances of certain consumer groups and they may be more motivated to do so. It is important that whether new products and services are targeted to specific groups or across a broader customer group, it is important that there is access to redress when things go wrong. Heat Networks, as outlined above, are an example of heat provision for a targeted group of residents, but they do not have the same protection as gas and electricity customers. The closest protections for consumers on heat networks are those provided by the Heat Trust Scheme, though only a small proportion of heat networks are signed up to that voluntary scheme.

We also think that there will need to be a balance of focused initiatives tackling specific challenges with commitments to greater product choice for all to ensure the wider system delivers the Universal Service Obligation effectively. This may mean a scorecard, ensuring that initiatives across service types and categories are supported and approved evenly and assessed for their cost, effectiveness and impact.

**5) Are incremental changes to regulation sufficient to support the energy transition and protect consumers? Or does this require a more fundamental reform, such as moving to modular regulation?**

We think there is a case for more fundamental reform such as modular regulation as this would be a more flexible approach and would make measuring and comparing suppliers against service standards easier. Derogations and exemptions mean that it is more difficult to measure suppliers so with a modular approach which would turn certain parts of the rule book 'off' or 'on' depending on the services offered by the supplier would mean outputs and consumer outcomes are under regulation and not the supplier itself. This could make it easier for a regulator to

measure its impact and performance, something recently called for in the National Audit Office (NAO) report and the Public Accounts Commission (PAC).

However, we should flag the need to guard against unintended consequences. If a modular approach to regulation was taken forward, then the situation where a consumer may find themselves falling into a gap in terms of who is responsible for the energy product or service provided to them. This has the potential to increase consumer detriment and making the consumer journey and experience complicated and stressful.

For example, meter splitting to enable more than one energy supplier to provide energy and services at the same meter point could lead to unintended consequences and confusion for consumers. This may manifest itself in the following ways:

- consumers will need to compare prices of more services, making comparison more time-consuming and difficult;
- switching may become harder as there will be different contract lengths and potential exit fees for different products;
- there may be issues with existing meters or moving to new meters for consumers; and
- there is an increased risk of the customer 'falling in between cracks' – if something goes wrong which provider is responsible.

We think there is a balance required to ensure that innovation can thrive, that new business models can be developed and sustained while at the same time, making sure that consumers are protected and are able to choose from a selection of providers that cater to their needs.

Taking a modular approach to regulation would mean that there needs to be even greater working together of stakeholders. This includes strategic redress and the sharing of data and insights to ensure consumer outcomes are being achieved. If you look at some of the known challenges for the future such as:

- more TPIs operating in the sector and across sectors; and
- the issue of how wide the definition should be of microbusiness and small and medium sized enterprises (SMEs) that have similar protection to what domestic consumer have because they face similar issues in terms of complaints, and information and negotiating asymmetries. Attached at Annex A are a number of case studies showing the issues that SMEs face.

These issues alone are significant challenges. With TPIs operating in so many markets it will be key that regulators, ombudsman schemes and redress providers, consumer organisations and other stakeholder work closely together to ensure consumers do not fall between gaps in service provision across sectors.

For SMEs, the recent policy decision taken by the Financial Conduct Authority (FCA) to expand the definition of SMEs who are eligible to use the Financial Ombudsman Service (FOS) for free redress has meant that an estimated 210,000 additional SME's are able to use the FOS free of charge. The definition in the energy sector that we use for microbusinesses that can access free redress via the Energy Ombudsman is:

- fewer than 10 employees (or their full-time equivalent); have an annual turnover not exceeding €2 million; and in the energy market, annual consumption of electricity must be below 100,000 kWh and gas consumption below 293,000 kWh.

The FCA did have a similar definition in the financial sector as energy but expanded that definition to:

- is any SME that falls below all of the following thresholds:
  - an annual turnover of £6.5 million;
  - an annual balance sheet below £5 million;

- fewer than 50 employees.

The policy change here by the FCA is to reflect the issues faced by SMEs in the financial sector and the asymmetry in information and bargaining power that SMEs have in the financial sector. We think there is scope to look at this in other markets including energy.

We think that the pace and scope of change in the energy market will be so great that it will be difficult for stakeholder acting in isolation to keep up with that change and pace. For example, focusing regulation on energy providers when the reality of the market might mean that provision of certain aspects of service to consumers may sit outside the control or remit of energy providers means a more adaptable and flexible approach to regulation and cross sector regulation needs to be looked at. We do think that all stakeholder including energy providers, Ofgem, Citizens Advice, the Energy Ombudsman and other stakeholders do need to work more closely together to:

- ensure good customer service and complaint handling for consumers when things go wrong;
- identify consumer detriment as early as possible;
- put in place good consumer policies using as much data and insight as possible; and
- track the outcomes of policies to make sure they are good and fair for consumers.

We think this will help to build consumer trust and confidence in the energy sector.

#### **6) Are there any other potential market distortions we should be considering as part of our review?**

As mentioned in our answer to question 5 above, the idea of a cross-sectoral regulatory regime for TPIs is an interesting idea and we think on that should be progressed. However, we think a key piece in that work is a cross sectoral redress regime to support and work alongside the regulatory regime. We would welcome exploring this further. For example, Ombudsman Services operates in both the energy and communications sectors. We already help to facilitate sharing good practice between the sectors, for example, looking at consumer vulnerability.

#### **15) What are your views on the measures being considered to address loyalty penalties in different markets? What approach or – combination of approaches – would be most effective in the energy retail market?**

We think that the measures set out by the CMA, highlighted on page 38 of the consultation document provide useful lessons for avoiding the loyalty penalty. There is an interesting example of work being undertaken by Ofcom to help target the loyalty penalty in the communications sector. As of February 2020, communications provider that provides mobile, home phone or Pay TV company is under an obligation to inform customers when their minimum contract term comes to an end. This will also involve the use of more tailored and personalised messaging to tell customers about the best tariffs available for their needs at that point. In addition to this, several providers have signed up to commitments to reduce consumer bills once they are 'out-of-contract' as the customer would have paid off the handset and should not continue to pay the same price.

#### **16) What other approaches could be adopted to ensure loyalty penalties do not re-emerge?**

Again, we agree and think it is fundamental that any regulatory landscape that is effective and able to be agile and react to potential and actual consumer detriment quickly, needs to place consumers at the centre. We think stakeholders working together sharing data and insights will help achieve this goal.

In relation to the loyalty penalty issue specifically, we think it would be useful to track and be aware of the balance between offers of bonuses and incentives for new customers as opposed to those who have remained with a supplier for any length of time. We would expect to see energy suppliers to treat all consumers fairly.

**17) What protections or support may be required to engage consumers in vulnerable situations in the future market?**

We think there is more to be done as a sector to ensure early identification of consumers in vulnerable circumstances, particularly to avoid detriment or exacerbate circumstances further. For that reason, we think that as the market evolves, suppliers need to share best practice from across their activities whether that be billing, communications or engagement to help consumers get not only the right service from one provider but a consistent experience across all providers.

It will be important to ensure that the conversation includes all suppliers, regulators and any new players who offer energy services in the future market and crucially, that there is a continued place for consumer advocacy bodies and redress to provide information on the challenges and issues consumers in vulnerable circumstances are facing.

Please do not hesitate to contact us if you would like further information regarding our response. We welcome the opportunity to continue to work closely with BEIS, Ofgem and other stakeholders to help put consumers at the centre of a smart, low carbon energy system.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'M. Vickers', with a long, sweeping horizontal stroke extending to the right.

Matthew Vickers  
Chief Executive and Chief Ombudsman

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