

# Ofgem consultation on proposed changes to The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008

## Energy UK response

8<sup>th</sup> February 2017

### 1. Introduction

1. 1. Energy UK is the trade association for the energy industry. We represent over 90 members made up of generators and gas and electricity suppliers of all kinds and sizes as well as other businesses operating in the energy industry. Together our members generate more than 90 per cent of the UK's total electricity output, supplying more than 26 million homes and investing in 2012 more than £11 billion in the British economy.
1. 2. Energy UK strongly believes in promoting competitive energy markets that produce good outcomes for consumers. In this context, we are committed to working with Government, regulators, consumer groups and our members to develop reforms which enhance consumer trust and effective engagement. At the same time, Energy UK believes in a stable and predictable regulatory regime that fosters innovation, market entry and growth, bringing benefits to consumers and helping provide the certainty that is needed to encourage investment and enhance the competitiveness of the UK economy.
1. 3. These high-level principles underpin Energy UK's response to Ofgem's consultation on proposed changes to the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (hereafter referred to as CHS) and our wider concerns about the CHS. This is a high-level industry view; Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.
1. 4. Energy UK welcomes the opportunity to respond to this consultation and is fully supportive of the changes proposed. However, given that these changes require the opening up of the Statutory Instrument (SI) this is an ideal opportunity to carry out a detailed review of the CHS and whether it is still fit for purpose.

### 2. Proposed change for DNOs and GTs

- 2.1. Energy UK is supportive of the proposal to amend regulation 10(3) of the CHS to remove the obligation on DNOs and GTs to inform all consumers once a year about the existence of their complaints handling procedure and how to obtain a copy. We agree that this requirement is onerous and unnecessarily costly.

### 3. Improvements to the current Statutory Instrument

- 3.1 The current SI is nearly ten years old and the industry has changed considerably in that time particularly with the number of new suppliers now operating in the market. Energy UK are concerned that the regulations are as a result no longer fit for purpose, particularly as they result in inconsistent reporting which is available externally to compare supplier performance.

- 3.2 The CHS gives overall guidance to suppliers to manage complaints. However, despite the level of detail prescribed in the CHS, key elements remain open to interpretation which results in suppliers adopting different approaches to complaints handling and management. This lack of clarity results in significant differences in the way suppliers record and report complaints. Energy UK has identified a number of specific challenges with the SI which are set out in Appendix 1. Appendix 1 was prepared by Energy UK's Complaints Group in response to a request last year from Ofgem's Consumers and Competition team to consider what was / wasn't working well for consumers regarding the application of the CHS.
- 3.3 Given the time and effort required to make amendments to a SI, Energy UK request that Ofgem use this opportunity to carry out a full assessment of the CHS taking into consideration the comments in Appendix 1 and also looking at whether the CHS delivers a reasonable complaints journey for the customer.

**For further information or to discuss our response in more detail please contact Daniel Alchin at [daniel.alchin@energy-uk.org.uk](mailto:daniel.alchin@energy-uk.org.uk) / Kerry Le Van at [kerry.levan@energy-uk.org.uk](mailto:kerry.levan@energy-uk.org.uk).**

## Appendix 1

Energy UK has identified a number of challenges with the existing SI's below.

### Definition of a complaint and Expression of Dissatisfaction (EoDs)

*2 (1) A "complaint" means any expression of dissatisfaction made to an organisation, related to any one or more of its products, its services or the manner in which it has dealt with any such expression of dissatisfaction, where a response is either provided by or on behalf of that organisation at the point at which contact is made or a response is explicitly or implicitly required or expected to be provided thereafter.*

The definition of an "expression of dissatisfaction" (hereafter referred to as EoD) is one of suppliers' main concerns. Energy UK has previously highlighted to Ofgem<sup>1</sup> the difficulties in providing meaningful guidance to enable consistent recording of complaints across all suppliers. However, in the absence of an objective definition, the current SI allows suppliers to adopt their own interpretation of what amounts to an EoD and in turn what they report as a complaint. While this is consistent with a principle based approach to regulation (i.e. suppliers are encouraged to ensure they have processes in place to deliver the desired customer outcomes), it is unfair to suppliers when Ofgem publish the resulting complaints data which is then used to compare suppliers' performance.

Energy UK has already asked Ofgem to revisit the information which is published in relation to supplier performance to ensure consumers are given a consistent and clear picture. In addition Ofgem needs to revisit the current definition and review the data currently published by suppliers to remove the inconsistencies.

Whilst recognising the challenges with producing definitive guidance, with the number of new suppliers now operating in the market, as a minimum Ofgem need to provide greater clarity around what should and should not be recorded as an EoD. Historically Ofgem has provided some guidance (for example if there is any doubt suppliers should always record an EoD as a complaint) but this guidance remains unpublished.

### Recording complaints upon receipt, reopening complaints & signposting implications

*4 (6) Where a regulated provider has recorded that a consumer complaint is a resolved complaint but subsequent contact from a complainant in relation to that consumer complaint indicates that it is not a resolved complaint*

Energy UK also notes that there are different interpretations of when a complaint is reopened/repeat/closed/resolved across both suppliers and Ofgem documentation, where the terms are often used interchangeably. As a result, the complaints figures published by suppliers and Ofgem potentially do not provide a genuine like-for-like comparison of supplier performance. Providing further clarification and consistency across suppliers in recording the status of complaints would support a clearer view across the industry. Energy UK has created some guidance in this regard and would be happy to work with Ofgem in developing clear definitions for use by both suppliers and Ofgem.

We also note that the CHS makes no allowance for suppliers to close complaints where the customer has actively disengaged with the complaints procedure. Members have highlighted that some customers raise complaints but fail to respond to the supplier despite repeated phone calls, letters and emails, yet under the CHS the complaint can only be closed where *"there remains no outstanding action to be taken by the regulated provider and which has been resolved to the satisfaction of the relevant consumer"*.

Members consider that the CHS should be amended to allow for the closure of complaints where the supplier has made reasonable efforts to contact the customer to close the complaint. Energy UK could include information on what constitutes adequate attempts as part of the guidance document referred to above. Alternatively these complaints could be separately recorded in both supplier's Ofgem's and Citizens Advice's monthly complaints reporting.

### Letters and timings

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<sup>1</sup> Letter from Audrey Gallacher to Rachel Fletcher dated 6<sup>th</sup> April 2016

*10 (1) Where a consumer complaint has not become a resolved complaint by the end of the first working day after the day the consumer complaint was first received by a regulated provider, the regulated provider must as soon as reasonably practicable (a) direct the complainant to the complaints handling procedure on its website*

The signposting timescales in the CHS are not necessarily beneficial to the customer in some circumstances. The customer may prefer the supplier to review and make all reasonable steps to resolve the complaint in appropriate timescales rather than be provided with the required signposting.

In particular, the issue of the Day +1 written notice can be inefficient, costly and often questioned by customers. Very often the sending of it crosses with the resolution of complaints at Day 2-3, and causes unnecessary confusion for customers who then often have two pieces of communication giving conflicting information. Whilst the closure of cases is not always possible on first contact, the vast majority are closed within a few days. A potential change to the CHS could be to send written notice only where a complaint cannot be resolved by the end of the second or third working day after it was raised, thereby, removing unnecessary costs for suppliers and confusion for customers.

Whilst suppliers recognise that including the Ombudsman's contact details on the Day +1 letter is not specified in the regulations, suppliers are required to make the customer aware of their complaints handling procedure which must contain details of the relevant redress scheme.

We also note that the inclusion of Ombudsman's contact details on the Day +1 letter may have contributed to the high number of Outside Terms of Reference (OTOR) contacts - 49% of total contacts were OTOR in 2015. As a not-for-profit organisation, the costs associated with OTOR contacts will be borne by all energy customers through the case fees it charges suppliers.

#### Existing consumer complaints

*4 (5) Where a complainant claims to have made a consumer complaint in respect of a matter but it is not possible to identify a relevant existing consumer complaint, the regulated provider must record the fact that it is unable to trace the existing consumer complaint*

Suppliers have highlighted the need for greater clarity from Ofgem around how to deal with such complaints, particularly in terms of the timescales to issue relevant documentation to customers. For example, where the customer has tangible evidence of having made a complaint (such as a time and date stamped email to a valid email address), arguably the clock starts running as per that piece of evidence. However, where the customer does not have proof or has no specifics around when they made the complaint (e.g. "I called sometime in June"), it seems unfair to expect suppliers to re-age a complaint to a certain point. It has been suggested that in the later cases the complaint should be treated as a fresh complaint (albeit making note and marking it as one where the customer claims they had complained previously).

#### Additional points

Energy UK would also like to raise the following comments on the handling of complaints and the CHS more generally which can have an impact on their ability to provide the services they would like to their customers:

- It is vital complaints' reporting is relevant, comparable and consistent. Energy UK has previously written to Ofgem about suppliers' concerns on complaints reporting and a consistent approach will help consumers understand what complaints mean.
- .Given the increased awareness of social media and ongoing change in customer preferred contact methods, consideration should be given to allow innovation in this area, particularly moving to a world with more principles based regulation. It would be beneficial to review the existing regulations on the basis that more complaints come through communication channels other than voice/letter/email for example web chat.
- References to the National Consumer Council and Consumer Direct throughout the CHS are out of date and could cause confusion for customers.

- The SI was brought into force when the Ombudsman was a voluntary scheme for the then suppliers to consider offering their customers. As the Ombudsman is now linked inextricably with the requirements of the CHS, the SI needs brought up to date to incorporate the requirements and timescales for the role and requirements of Ombudsman.