

Report commissioned by 

Independent Review of the Energy Ombudsman

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**sohn**associates

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Rodney Brook & Andy Sutton

# 1 Executive summary

## General

- 1.1 The Energy Ombudsman (EO) scheme of statutory redress for energy supply and networks consumers has been in existence since 1 October 2008 and is operated by The Ombudsman Service Limited (TOSL). This review has examined how the scheme is performing against criteria which Ofgem required to be met in approving TOSL's application to run the scheme.
- 1.2 We report how TOSL has developed from providing a single redress service-provider to the telecommunications sector (Otelo), to becoming a multi-service provider. The statutory Energy Ombudsman service includes energy suppliers to domestic and micro-business<sup>1</sup> customers, and networks businesses. In addition, TOSL is running redress services for other sectors which require staff and management time.
- 1.3 This review of the EO has focussed on the four categories of Ofgem's approval criteria, namely:
- Independence, governance and fees;
  - Accessibility;
  - Effectiveness;
  - Public Accountability.

## Overall finding

- 1.4 From our study we conclude that the EO scheme is meeting most but not all of the approval criteria.
- 1.5 We have spoken to many stakeholders in the EO scheme and the common theme is the ongoing challenge of managing workloads and finance. There are also concerns in the quality of resolution which may be leading to Provisional Conclusions not being accepted. However, the general view is that the scheme is fit for purpose and through learning from recent problems, will continue to develop and improve performance.
- 1.6 From our work, we would concur with this view, providing that the root cause problems of managing unpredictable workloads are identified and resolved. There is a vital role for Council and Member Board to oversee the management of the scheme. Otherwise funding and resource difficulties will

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<sup>1</sup> To be within the remit of the EO's resolution services, a "micro-businesses" is defined as (a) employing fewer than ten people and with an annual turnover not exceeding 2 million euros or (b) using less than 200,000 kWh of gas per year or 55,000 kWh electricity per year.

continue to result in underperformance against key performance targets in both speed of response in the various stages of the EO's processes and the loss of quality of decision-making in resolution of complaints.

## **Independence, Governance and Fees**

- 1.7 In general, TOSL's governance model does deliver fair and independent redress. We can see no reason to change the basic Committee structure of Council, Member Boards and Finance Board. However, the relationship between Council and Finance Board needs further attention to ensure that Council are in full control of the financial well-being of the business and are maintaining high-quality delivery of the EO scheme alongside their responsibilities for schemes in other sectors. Council also needs to present a robust challenge to TOSL Executive before signing-off work forecasts, budgets and fees.
- 1.8 The Chief Executive, who is also Chief Ombudsman and is accountable to Council, is committed to operating the EO Scheme with high integrity and places the utmost importance in making decisions on resolution and redress which are entirely fair. There are risks of incorrect decisions being made for several reasons described in the report but we have no evidence or belief that there is bias in the views, behaviours and actions of the Ombudsman, his Ombudsman Team or his Investigation Officers.
- 1.9 The EO scheme has been underperforming against some Key Performance Indicators (KPIs) for various reasons of which the underlying driver is the slow response to workloads which, in 2009, were higher than expected. Also, there have been excessive delays in the issue of Final Decisions in those cases where the Ombudsman's Provisional Conclusion has not been accepted. There is no KPI currently in place for this. The EO is producing Provisional Conclusions of which fewer than 60% are being accepted by both parties. This is a low figure compared with redress schemes in other sectors.
- 1.10 We propose improvements particularly in the operation of the Energy Member Board, which has a significant role to play in achieving better forecasts than have been achieved to date. We have recommended that the major energy suppliers, against whom the vast majority of the complaints are made, should work more collaboratively with the EO to seek deeper understanding of drivers of complaint volumes and hence achieve better forecasts. It may be appropriate to have additional KPIs to help improve forecasting performance.
- 1.11 We also discuss how fees are set and allocated in order to ensure more robust, well-defined processes for cost allocation. A mechanism is required to ensure that the scheme is adequately resourced and funded longer-term in the face of fluctuating, unpredictable workloads and the potential impact of other redress schemes run by TOSL.

- 1.12 Ofgem's strong commitment as the regulator to ensure that the redress scheme they have approved is successful is seen as a real benefit to the scheme by most of the stakeholders with whom we have had discussions. We concur with this view but would note that Ofgem's active interest in the scheme should not dilute the efforts required from Members to ensure that the scheme, of which they are obliged to be a Member, meets their requirements.

## Accessibility

- 1.13 The Accessibility Approval Criteria are generally well-met. The Enquiries team are of good quality, well trained and well organised to either initiate complaints for resolution or to assist the consumer in what to do next if the enquiry is outside the EO's Terms of Reference.
- 1.14 Although improvements can be made to the EO website, other informational materials generally meet requirements.
- 1.15 Signposting to and from the EO scheme has been examined in this review. We conclude that more information is required to understand the experiences of consumers who have an unresolved complaint and of those who drop out of the complaints process. Specifying what is now required of the EO's information systems and processes and what is needed in terms of additional consumer research will require more liaison with Scheme Members, Consumer Direct and Consumer Focus in order to provide consumers with an integrated service.

## Effectiveness

- 1.16 It is the approval criteria in this category which have commanded most of our attention as this is where we find the greatest need for improvement.
- 1.17 Most criteria are being met, although we identify improvements which may be made in learning from the major challenges on workload which have been experienced in 2009. The predominant reason for criteria not being met has been the lack of resources in the face of a significant and unpredicted change in volume and nature of workload. We consider that three of Ofgem's approval criteria have not been met. These are criteria 3.3k, 3.3n and 3.3p relating respectively to the provision of adequate resources, regular quality assurance and reporting back to Members and Ofgem on systemic failures in Members' policies and processes.
- 1.18 The operations to deliver the Enquiries service are effective and are now consistently meeting KPI targets. However, with the unexpectedly high volumes of cases to deal with there has been a shortfall in resources in 2009 dealing with Investigations, Provisional Conclusions and Final Decisions. In order to maintain quality in investigation and resolution of cases, there has been a time lag of several months after identifying the need for resources, before the

right people can be recruited and trained. The statutory scheme is less than eighteen months' old and TOSL's delivery of the scheme should improve as experience is gained, operational processes become better-defined and data and information management systems are improved.

- 1.19 In recent months there have been falling workloads which have provided an opportunity to catch up on some of the backlogs. In addition TOSL has now developed a more flexible approach to deploying resources to meet varying workloads and, with the introduction of further measures for mutually acceptable solutions, TOSL is now in better shape to meet future workloads. However, much remains to be done, as described in the report, in order to avoid a repeat of problems caused by unpredicted, fluctuating workloads in 2009.
- 1.20 The major delays in delivering Provisional Conclusions and Final Decisions are due to the high volume of cases coupled with a lack of prior experience in TOSL of operating within the energy supply and networks sectors. The EO is currently proposing improvements to its processes in piloting a "Decision" stage of resolution between Provisional Conclusions and Final Determinations.
- 1.21 Several remedial actions have been taken to resolve the problems and backlogs are currently being reduced. More work is required to provide confidence that the challenging problems of 2009 can be mitigated in the future and we have made recommendations accordingly.
- 1.22 In 2009 only 6.5% of contacts and attempted contact<sup>2</sup> with the EO were complaints within the EO's Terms of Reference for resolution. This ratio is too high and all stakeholders have agreed that more work needs to be done to reduce it. This matter affects not only the customer experience in having to be signposted elsewhere, but also the running costs of the Scheme. Several improvements are recommended which will help to improve the service to the consumer, provided that they are made in conjunction with Scheme Members and other key players, namely Consumer Focus and Consumer Direct.
- 1.23 With the introduction of networks businesses as Members of the scheme, TOSL has faced challenges regarding Enquiries and Cases which have been of a very different nature to those experienced from energy supply businesses and customers. Improvements are in hand with the use of technical consultants to assist with investigations, and there are good relationships with the networks companies through which TOSL staff and Management may become increasingly knowledgeable.
- 1.24 As part of the remit to improve the performance of the energy sector as a whole, the EO is obliged to consider systemic problems and any potential

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<sup>2</sup> Contacts includes telephone calls, abandoned calls, non-member contacts and total written contacts. Information provided by the EO.

licence breaches which the Ombudsman may identify from consumer contact and his review of, and investigation of, complaints. There has been some feedback to Members on very few issues, and we believe that more can be done to identify systemic problems and recommend changes to Members. There has also been no feedback from the EO to Ofgem on potential breaches of Licence by Members of the scheme.

- 1.25 The statutory redress scheme includes networks-related complaints requiring additional skills and knowledge within TOSL. In particular the EO now considers disputes regarding connections charges. Connections charge disputes require a very different set of skills and knowledge within the EO and expert consultants are being hired to investigate the cases where an understanding of design policy, costs and charging policy is required. Our investigations reveal uncertainty regarding responsibilities here and more work is required to clarify the relationship between Ofgem, networks companies and the EO.

### **Public Accountability**

- 1.26 The majority of the scheme criteria relating to Public Accountability are being met.
- 1.27 Comparison with other redress scheme providers indicates that more information can and should be put in the public domain. This may include performance data, Member Board Minutes, and statistical information regarding the nature of complaints.

### **Proposals for changing the scheme criteria**

- 1.28 The current Approval Criteria for a statutory redress scheme are comprehensive and appropriate. Nevertheless we recommend that Approval Criterion 3.3k be amended. Criterion 3.3k requires the scheme to be adequately staffed and funded in such a way that complaints can be effectively and expeditiously investigated and resolved and to allow the Ombudsman to function impartially, efficiently and appropriately. We recommend that an explicit requirement for best-practice forecasting methodologies and processes to achieve reasonably practicable estimates of funding and staffing requirements be added to Approval Criterion 3.3k.

## 2 Introduction

### The Energy Ombudsman (EO) Review

- 2.1 In April 2008 The Ombudsman Services Limited (TOSL) applied to Ofgem for approval to provide redress to consumers within the energy sector under the terms of Consumers, Estate Agents and Redress Act 2007 (CEAR). TOSL's application was conditionally accepted on the 18<sup>th</sup> June 2008<sup>3</sup> and this was confirmed on the 19<sup>th</sup> September 2008 for commencement of the EO scheme on the 1<sup>st</sup> October 2008.
- 2.2 In approving the scheme, Ofgem committed to a review of the EO after twelve months' operation. Sohn Associates, as independent consultants, were commissioned to undertake this work in accordance with the full brief shown in Appendix 2. In summary our brief is to:
- Compare performance against published criteria;
  - Identify areas for amending the scheme criteria should be amended, clarified or added to; and
  - Recommend improvements to EO based upon (i) any underperformance against the criteria and (ii) with reference to best practice in customer service even where no underperformance is identified.
- 2.3 We have now completed the review and this report describes our findings.

### Methodology

- 2.4 This review included a two-day visit to TOSL's offices in Warrington for wide-ranging discussions with staff, management and TOSL Executives. The visit included observations on TOSL's operations and discussions with front-line staff working on consumer enquiries, case investigation, decision-making and support services.
- 2.5 We have consulted the Scheme Members, through round-table discussions with the six major energy suppliers and with representatives of small suppliers and of networks Members. We have used the offices of the Energy Retail Association and the Energy Networks Association for much of this liaison.
- 2.6 We have also held discussions with various other organisations which have a role in the "customer journey" through the complaints handling arrangements as now developed post-CEAR. In addition to Scheme Members and EO

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<sup>3</sup> <http://www.ofgem.gov.uk/Sustainability/Cp/Cr/Documents1/Redress%20schemes%20-%20approval%20letter%20to%20tOSL.pdf>



Executives, management and staff, we have been in discussion with Consumer Focus, Consumer Direct and Citizens' Advice.

- 2.7 A list of those we have consulted in this review is shown in Appendix 1.
- 2.8 Some background research has also been conducted to understand some of the best practices in other sectors. This is discussed where relevant throughout this report.

## Scheme Criteria

- 2.9 Prior to inviting organisations to run the redress scheme, Ofgem consulted on the criteria against which a scheme should be assessed and approved<sup>4</sup>. The Approval Criteria were finalised in Ofgem's decision document in March 2008<sup>5</sup>. The same criteria which Ofgem developed in order to initially approve the EO scheme are also used as the basis for this review and are presented within four categories:

- Independence, governance and fees;
- Accessibility;
- Effectiveness;
- Public Accountability.

## This Report

- 2.10 On occasions in this report we refer for comparison to the Postal Redress Service (POSTRS) which is the Alternative Dispute Resolution scheme approved by Postcomm and delivered by IDRS Ltd. POSTRS was launched in October 2008. Complaints are resolved by legally-trained adjudicators.
- 2.11 Our recommendations from the review are embedded within the main body of the report as appropriate and also listed in section 9.
- 2.12 In addition to several references to background reading, we provide a short section on background to the EO in Section 3.
- 2.13 Our findings in this review are reported against the four categories of criteria in Sections 4 to 7. In section 8 we have reviewed in tabular form each Approval Criterion from Ofgem's Decision report.

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<sup>4</sup> Ofgem Consultation report 247/07, 16<sup>th</sup> October 2007.

<http://webarchive.nationalarchives.gov.uk/20080806055225/http://www.ofgem.gov.uk/MARKETS/RETMKTS/COMPL/CONSREP/Documents1/Consultation%20criteria%20for%20approval%20of%20redress%20schemes%2024707.pdf>

<sup>5</sup> Ofgem Decision report 26/08, 14<sup>th</sup> March 2008.

<http://webarchive.nationalarchives.gov.uk/20080806055225/http://www.ofgem.gov.uk/MARKETS/RETMKTS/COMPL/CONSREP/Documents1/Redress%20Schemes%20Decision.pdf>

## 3 Background

### Consumers, Estate Agents and Redress Act 2007 (CEAR)

- 3.1 In 2004 DTI and HM Treasury conducted a review<sup>6</sup> which concluded that sectoral consumer bodies, such as energywatch in the electricity and gas sector, had “a crucial and effective influence on regulators and companies”. The report also concluded that the consumer bodies had a positive influence to the benefit of consumers, and that was scope for closer, more effective engagement with government, regulators, companies and EU.
- 3.2 The review also concluded that existing organisations such as energywatch were running costly operations in complaint handling, and there was a need for regulated service providers to take much more direct responsibility for handling complaints.
- 3.3 Subsequently, the Consumers, Estate Agents and Redress Act 2007 (CEAR) , which was given Royal Assent in July 2007, changed the previous framework for consumer advocacy in the energy sector (electricity and gas).
- 3.4 CEAR created new arrangements:
- Consumer Focus was formed as a new consumer advocacy body bringing together energywatch, postwatch and the National Consumer Council;
  - The role of Consumer Direct was extended to cover enquiries and simple complaints from energy customers;
  - Energy supply companies and energy networks businesses were required to belong to a redress scheme approved by Ofgem. This scheme would provide a back-stop for customers who are unable to resolve disputes with their energy provider. The redress scheme is capable of requiring resolution of disputes and compensation where warranted; and
  - A new duty was placed on Ofgem to set complaint handling standards which are binding on energy providers.

### The voluntary scheme

- 3.5 In 2005 and prior to the requirements of the CEAR Act, Ofgem had determined that the six largest energy companies<sup>7</sup> should operate a voluntary redress scheme. This was as a consequence of Ofgem’s investigation into suppliers’ billing practices which had been conducted following a super-

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<http://www.ofgem.gov.uk/Sustainability/Cp/Cr/CJwg/Documents1/CJWG%20Stakeholder%20briefing.ppt#5>

<sup>7</sup> British Gas, EDF Energy, E-ON, npower, Scottish Power and Scottish and Southern Energy.

complaint by energywatch<sup>8</sup>. The suppliers worked together through the Energy Retail Association (ERA) and the voluntary redress scheme was established as the Energy Supply Ombudsman (ESO) Scheme in July 2006, to be delivered by TOSL.

- 3.6 The initial scope of the ESO Scheme was limited to billing and customer transfer (switching) complaints against the six Member companies. On the 1<sup>st</sup> September 2007 the remit was widened to include selling complaints.
- 3.7 The ESO scheme was governed by the Energy Member Board, comprising the six ERA Member Companies' representatives, an Independent Ombudsman Service Councillor, plus the CEO of the ERA in the Chair.

### The statutory redress scheme

- 3.8 On the 1<sup>st</sup> April 2008, in anticipation of the requirements of the CEAR Act, the name changed from the Energy Supply Ombudsman to the Energy Ombudsman, and networks companies began to join voluntarily.
- 3.9 Preparations for the change to the statutory scheme included changes to the Member Board, with the number of representatives from the major suppliers reducing from six to three. New Members were included to represent smaller suppliers, networks providers and a representative from ERA.
- 3.10 The Scheme Terms of Reference were changed to reflect the extended remit of the redress scheme to consider complaints from micro-businesses in addition to those from domestic consumers.

### TOSL

- 3.11 From its origins in providing telecommunications ombudsman services (Otelo) more than six years ago, TOSL is now delivering services to four sectors:
- telecommunications - Otelo
  - electricity and gas - the Energy Ombudsman
  - estate agents - the Surveyors Ombudsman Service
  - performing rights - the Performing Rights Society (PRS) for Music Ombudsman
- 3.12 In addition to the four redress schemes currently delivered, it is TOSL's objective to grow the business by expanding the range of ombudsman services which they deliver as a means of adding value for existing members providing that quality of service can be maintained<sup>9</sup>. A key principle is that existing

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<sup>8</sup> Energywatch ceased to exist following the changes to consumer advocacy and redress required by CEAR.

<sup>9</sup> Various 2009 Council Minutes <http://www.tosl.org.uk/pages/1022009.php> and Corporate Strategy and Business Plan

schemes should benefit from TOSL's delivery of additional schemes in other sectors.

3.13 The Governance structure of TOSL comprises the Council, a single Finance Board and a separate Member Board for each service. Essentially, the Council operates under the Companies Act in the best interests of the services to its members. The main role of the Finance Board is the approval of the business plan and budget. This process includes consultation with the individual sector Member Boards, whose role is to secure the best interests of the individual redress schemes as operated by TOSL.<sup>10</sup>

3.14 From the TOSL Corporate Strategy and Business Plan for 2009/10<sup>11</sup>, staff numbers and annual budget including allocation of the costs across the service sectors, are shown in Tables 1, 2 and 3 below.

**Table 1: TOSL Headcount 2009/10.**

Department	Staff FTE
Chief Ombudsman & Corporate Staff	14.1
Ombudsmen	3
Enquiries	59
Investigations	46.5

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[http://www.tosl.org.uk/downloads/Ombudsman\\_Services\\_corporate\\_strategy\\_and\\_2009-10\\_business\\_plan.pdf](http://www.tosl.org.uk/downloads/Ombudsman_Services_corporate_strategy_and_2009-10_business_plan.pdf)

<sup>10</sup> More details of the roles and relationships between the Council, Finance Board and Member Boards are provided within the Articles of Association. [http://www.ombudsman-services.org/downloads/Ombudsman\\_Services\\_Articles\\_of\\_Association.pdf](http://www.ombudsman-services.org/downloads/Ombudsman_Services_Articles_of_Association.pdf)

<sup>11</sup> <http://www.tosl.org.uk/pages/69corporatedocuments.php>

Table 2: 2009/10 Budget Costs

Expenditure	2009-10 (£'000)	2008-9 (£'000)
Council Fees & Expenses	107.8	113.4
Staff Costs	3,638.5	3542.9
Recruitment & Training	36.0	48.6
Occupancy	240.1	185.5
Office Run Costs	147.6	162.4
ICT	270.5	235.0
Travel & Subsistence	48.0	54.8
Legal & professional	11.2	12.8
Corporate communications	94.1	122.1
Depreciation	24.8	33.8
Bank Charges	1.8	2.5
Bad Debt	0.0	0.0
Independent Assessor	0.0	0.4
<b>TOTAL EXPENDITURE</b>	<b>4,620.3</b>	<b>4,514.0</b>

Table 3: Allocation of costs between service sectors

Expenditure	2009-10 (£'000)
Otelo	2,210
Energy – Major suppliers	2,120
Energy– Networks	50
Energy – Small suppliers	19
Surveyors Ombudsman Service	120
Reserves	102

## Energy Ombudsman Operations

3.15 TOSL deals with Enquiries in the form of phone calls, letters, emails and textphone messages. At the Enquiry stage it is determined whether the complaint can be considered by the Ombudsman as “Inside Terms of Reference” (ITOR), otherwise being “Outside Terms of Reference” (OTOR). If the complaint is OTOR then the complainant is assisted in what best steps to take. If the complaint is ITOR, then a Case is initiated and the Ombudsman processes commence.

3.16 In advance of, and in some cases instead of conducting a detailed investigation of the evidence, cases may be resolved by three alternative forms of mutually acceptable settlement:

- Pre-investigation Case Closure (PICC). Following acceptance of a complaint by the EO, there are instances when the Member Company may be permitted by the EO to review the case again with the

complainant (if the customer agrees) and may resolve the matter without recourse to the EO's investigations and resolution;

- Mediated Cases, initiated by the EO on those occasions where it is relatively straightforward to propose how a case may be resolved between the Member Company and the complainant with mediation rather than further investigation; and
- Early Resolution. This is a process which has been introduced recently to facilitate the speedier resolution of simpler cases. It will also assist in avoiding backlogs building up. If, when a case is accepted it appears to be straightforward, the EO seeks to resolve it quickly through an informal intervention to achieve an agreed solution. The Enquiry Officers and the team running this process have clear guidance on which types of case are likely to be suitable for this approach.

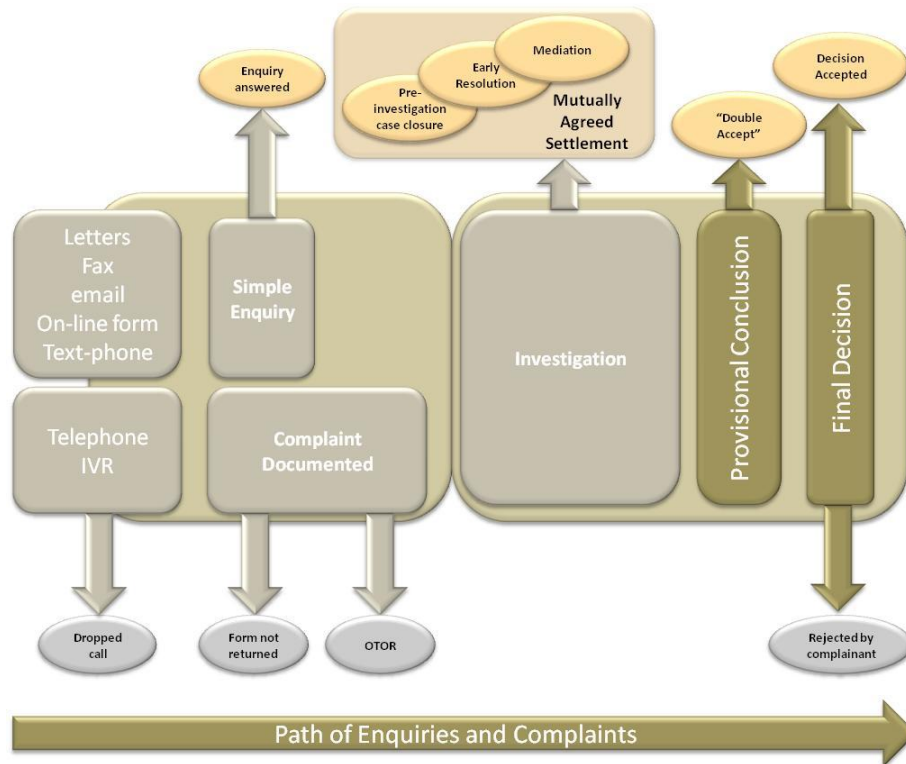
3.15 Once a Case has been initiated, evidence is gathered from the Company and the Case is investigated. The investigation will examine the facts and, working on the balance of the evidence provided, will arrive at a Provisional Conclusion, with a response target of less than six weeks from acceptance of the complaint. At this stage either party may notify the Ombudsman of any errors in fact or to present any new information which may affect the decision. If both parties accept the Provisional Conclusion it will become the Final Decision and any remedy included within it will become enforceable.

3.16 If further representations are made, the case is handed over to an Ombudsman for further consideration prior to making the Final Decision. The Final Decision is binding on the company, but the consumer may pursue the case through alternative means if not accepting the Ombudsman's decision.

3.17 Next month, an additional stage of resolution will be introduced. This is known as a "Decision" and the Provisional Conclusion stage will become known as the "Recommendation". If there is not a double-acceptance of the Recommendation Report from an Investigation Officer, then the case will be reviewed by a Senior Investigation Officer and a new recommendation may then be drawn if there is an error in the report, or if new evidence is found. Importantly, the parties' rights to referral to the Ombudsman for Final Decision are not affected.

3.18 These arrangements are currently being piloted and documented.

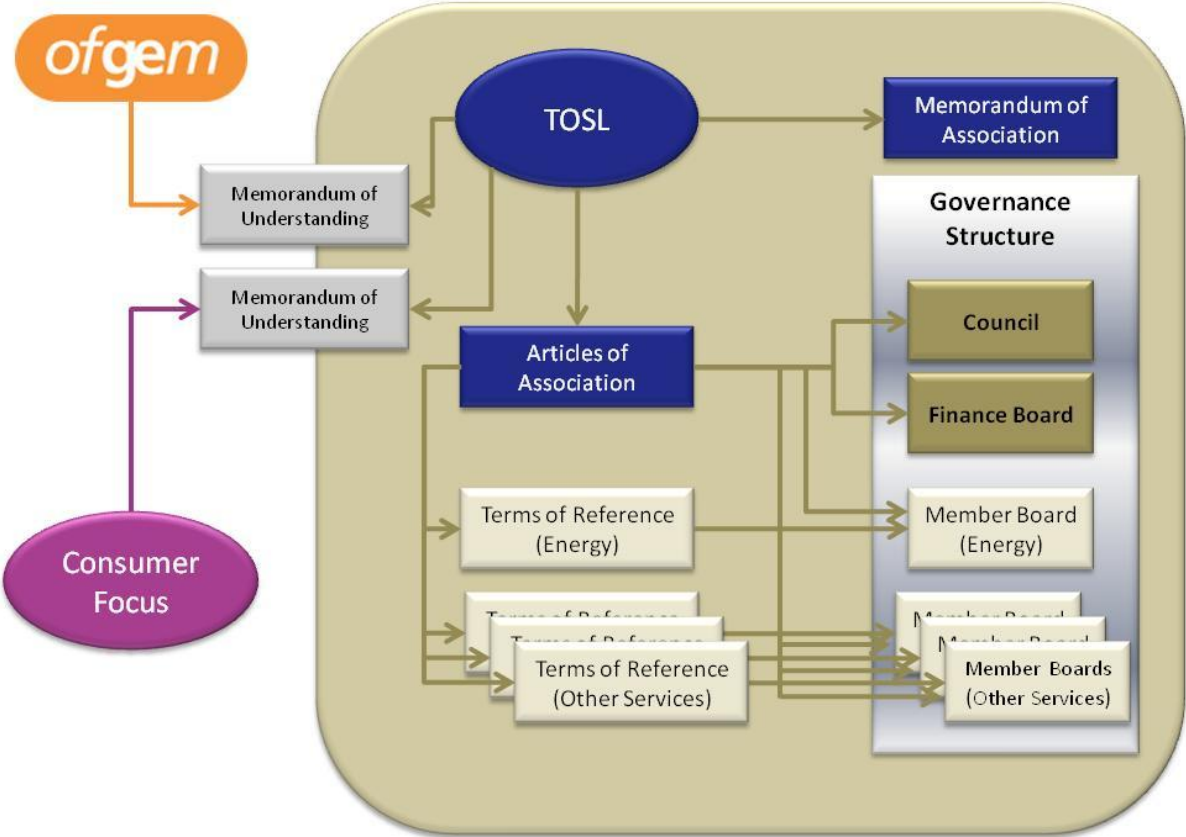
Figure 1: Schematic Diagram of EO Complaint Process



## EO Relationships

- 3.19 The Ombudsman's operations and effectiveness are very dependent upon other parties on the "customer journey", namely scheme members, Consumer Focus, Consumer Direct and consumer advocacy organisations.
- 3.20 Clearly, there is also an important relationship with Ofgem as the Regulator of the Members and as the body which approve the redress scheme which the Members are required to use for redress services.
- 3.21 The relationships are clarified in Memorandum of Understanding (MoU) and Terms of Reference as shown in Fig 2.

Figure 2 - EO Governance and relationships





## 4 Criteria category 1: Independence, Governance and Fees

### Safeguarding of Independence

- 4.1 The Ombudsman reports to TOSL's Council, which is TOSL's Board of Directors. It is explicit in Article 28b of the Company's Articles of Association that the Council shall ensure that the independence of the Ombudsman is safeguarded and maintained.
- 4.2 The EO is a full voting member of the British and Irish Ombudsman Association (BIOA). The Association requires its members to resolve disputes in an independent and impartial manner and indeed Ofgem's criteria for the redress scheme are based on the same principles.
- 4.3 Our review of past Minutes of the Council and our discussions with TOSL Executives and Members indicate that independence of the Ombudsman is of the utmost importance to the well-being of TOSL and the EO, and is under constant scrutiny. Later in the report (Section 6) we discuss our findings on the quality of case resolution, but on no occasions have we found any evidence of bias in decision-making.
- 4.4 The governance of the EO is designed to maintain the independence of the Ombudsman, and we have no evidence to suggest that it is being compromised. From our discussions we recognise that TOSL has a strong ethos and professional commitment to fairness and impartiality in decision-making on Cases.
- 4.5 The Council comprises six independent members and three industry members. In 2009, ten Council Meetings were held which were well-attended, with an average of one member absent per meeting. Garry Felgate and Chris Holland, Industry Members for Energy and Telecommunications respectively, attended all the meetings.
- 4.6 The governance structure is more comprehensive than that of POSTRS, our comparator Alternative Dispute Resolution (ADR) scheme, for which there is a Council but no equivalent to the EO Member Board.

### Energy Member Board in Practice

- 4.7 The Energy Member Board has to consider the well-being of the EO Scheme which TOSL delivers alongside redress services to other sectors. The powers, duties and conduct of the Board are detailed in TOSL's Articles of Association and within these arrangements we conclude that there is sufficient scope to safeguard the EO Scheme, and to ensure its continual improvement.
- 4.8 The Chair of the Energy Member Board is also the Chief Executive of the Energy Retail Association which represents the six major energy suppliers in

their services to domestic customers. The EO Member Board Chair is also the Industry Member on Council.

- 4.9 Similar arrangements exist on the Otelo Member Board where an Industry representative is Chair and is the sector Member of Council. However, The Surveyors Ombudsman Service is different; the Chair of the Member Board is independent and one of the Scheme Members' representatives on the Member Board is the sector Council Member.
- 4.10 The role of the Chair of the EO Member Board at Council includes upholding the best interests of TOSL and the best interests of the EO, creating a tension on matters such as contributions to TOSL's financial provisions, bad debt risk, allocation of resources etc. Inevitably there are practical needs for negotiation and compromise in representing one scheme within a multi-service environment.
- 4.11 The checks and balances of an Independent Member on the Member Board (and six on Council), coupled with the practical needs to work together to ensure that TOSL can deliver all of its services effectively, provides assurance that affairs are conducted fairly.
- 4.12 We have considered these issues very carefully and would conclude that the established governance arrangements provided by a Council, a Member Board and the Finance Board structure is satisfactory, although we make several recommendations within this report as to how the effectiveness of this structure be improved.
- 4.13 The new Energy Member Board was constituted by the Energy Supply Ombudsman (the forerunner of the EO) in April 2008 in order to accommodate representatives from networks businesses. At this stage, there were concerns expressed by small suppliers of the dominance of the major suppliers and representation of the six large energy suppliers was reduced from six to four, of which one is a member of staff of the Energy Retail Association. Plans were also made to provide for separate representation for small suppliers. From our discussions in this review, small suppliers are content with this structure.
- 4.14 Although this arrangement achieves fair representation between the member constituencies of small suppliers, large suppliers and networks, there is a significant ongoing issue regarding forecasting of work volumes with a consequential impact on staffing and funding. The problem is that the six large suppliers, which are the subject of more than 90% of total Enquiries and Cases presented to the EO, have different approaches to complaints handling and anecdotally achieve different levels of performance regarding complaints forecasts. It is inherently difficult for the three large supplier Members to be responsible for the interests and representation of the other three.

- 4.15 To enable an effective forecasting process, there needs to be a mechanism to ensure all six of the major suppliers are representing themselves and are equally accountable for their own forecasts.
- 4.16 The EO Terms of Reference require at least one Independent Member but allow for one Independent Member for every two Scheme Member representatives as may be agreed by Council. There is one Independent Board Member at present. We understand the resource implications if more than one Independent Member were to attend and agree that it would be difficult to propose more than one Independent Member on the Board which has a maximum of eight members.
- 4.17 One solution would be to expand the Membership of the Member Board to include all six major suppliers. However, this would be too large and would be difficult to resource<sup>12</sup>, particularly since an additional independent member would also be required to maintain checks and balances with small suppliers and networks Members.
- 4.18 In view of the importance of achieving more accurate work forecasts and budgets in future, a preferred solution is that all six of the large suppliers should meet formally with the EO to make a direct contribution to analysis, discussions and decisions and be more directly accountable for their individual performances in forecasting and budgetary considerations.
- 4.19 One option would be to arrange a standing workgroup which will take a systematic approach to learning from past experience, look more closely at volume drivers and the forthcoming changes in the landscape which affect complaint volumes. The outcome of the Group's deliberations would provide the Member Board and the EO with a more confident set of forecasts on which staff levels, budgets and funding allocations may be better established.

1. Better forecasting and budgeting will be achieved if all six of the major suppliers are individually represented in a more formally-structured group to work with the EO Executive and Members Board to achieve more accurate forecasts.

- 4.20 The Member Board operates in accordance with the role defined in TOSL's Articles of Association. Article 101(c) requires the Board to determine the case fees and subscriptions which Service Members pay, but does not require from the Member Board any obligation to provide information for the EO to establish accurate forecasts and costs. We would propose that there should

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<sup>12</sup> The Energy Member Board met eleven times in the twelve months from February 2009 to January 2010 and the average attendance of the eight full Members (or their substitutes) was 70% of maximum attendance. The Energy Ombudsman attended six of the meetings, including five of the last six. Seven of the meetings were conducted by telephone, including five of the last six.

be an explicit obligation on the Member Board and Members to provide reasonable information with which the EO may then set budgets and develop resources to meet the planned requirements.

2. There should be an explicit obligation on the Member Board to have well-defined processes, shared by Members and the EO provider, to understand the drivers behind work volumes and establish forecasts of complaint volumes from which resources, costing and fees may then be agreed

4.21 We recommend that forecasts are prepared for both Enquiries and Cases. Forecasting performance will be helped if there are suitable, visible measures in place. Thus additional KPIs should be specified and monitored.

3. Forecasts for each of Enquiries and Cases should be prepared and tracked with suitable KPIs.

4.22 Whilst we understand that resources are stretched in all organisations and travelling time is at a premium, the importance of the Energy Member Board in the operation and development of the EO is such that we identify that more information, analysis and discussion is required between all constituencies of Members and TOSL staff and management. This will bring dividends in improvements to the EO scheme.

4.23 There are further comments on forecasting in the Effectiveness Category of Criteria, Section 6.

## Fee structure

4.24 The costs of the Energy Ombudsman Service are met by Members through membership and case fees. In 2009/10 the case fee was set at £334 per case considered whilst annual membership fees were £61,000 for each of the large energy suppliers, £16,500 in total for network companies and £150 per company for small suppliers. In the interests of simplicity the case fees are clearly not cost reflective, as the case fees for some of the networks complaints requiring expert assistance for resolution, are higher. As far as we understand from our discussions, this is not perceived by Members as an issue.

4.25 We note for comparison that the average cost per case in the Postal Redress Service (POSTRS) in the last quarter of 2009 was £611.68, albeit on a much lower number of cases per year. In POSTRS costs are largely recovered from Members through subscription with a relatively low charge per case.

4.26 Apart from comments about the level of OTOR contacts handled (section 6), with the resultant operating cost, the EO Scheme Members' representatives did not express dissatisfaction with the level of membership and case fees.

4.27 Fees for a financial year are determined by the Member Boards as part of the budgetary process. In outline the process is as follows:

- The Ombudsman (as manager) prepares a draft business and plan budget;
- Council considers, amends and approves the draft plan and budget and recommends them to the Finance Board;
- Finance Board consults with Member Boards and approves or rejects the recommendations. The Finance Board also allocates costs over the various services.
- Member Board determines fees to be set with the objective of recovering the costs and other funding requirements (e.g. shortfall from previous year).

4.28 As discussed in paragraph 3.11, the Energy Ombudsman is one service delivered by TOSL and shares facilities with Otelo and the other services. TOSL uses activity based costing to allocate costs among services.

4.29 In discussions with TOSL and representatives of the Energy Companies, there was uncertainty regarding the ownership of the budget. The process is defined by reference to TOSL's Articles of Association (paragraphs 28(l), 96, 101, 102(d)) and the Energy Terms of Reference (paragraphs 3.6 and 10.1(g)). It is an iterative and rather convoluted process. Some confusion could arise from the wording in the Articles. Paragraph 102(d) states that the "Finance Board shall receive the relevant draft Annual Business Plan and draft Annual Budget prepared by the Council" whilst paragraph 28(l) states the Council shall "consider, amend and approve the draft Annual Business Plan prepared by the Ombudsman".

4.30 By definition within the Articles of Association, the Council is the Board of Directors. Directors have, under the 2006 Companies Act, a duty to promote the success of the company that will include ensuring the company is adequately funded to attain the objectives for which it was established<sup>13</sup>. Thus the Council, as the Board, is ultimately responsible for the budget although it will have been drafted by the Ombudsman.

4.31 As a consequence, it is important that Council ensures that the forecasts of workload which drive the need for funding are challenged very robustly. We are aware of the very divergent views of the EO and Members when forecasts for work volumes were being set for 2009, and it is important that Council members assure themselves that budgets are being prepared on what the Members and EO believe to be the best forecast which can be achieved in practice.

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<sup>13</sup>Ministerial statements <http://www.berr.gov.uk/files/file40139.pdf>

- 4.32 We observe that there have been lengthy discussions and some disagreements noted in the minutes of the various formal meetings. In our view this is a common part of the budgetary cycle in many organisations. However, we believe there is merit in TOSL reviewing the budget process and clarifying roles and responsibilities.

4. TOSL should review the budget process, clarifying roles and responsibilities.

- 4.33 In setting the balance between membership and case fees, the Member Board receives advice from the Ombudsman and his senior staff. There is a view that there should be cost-reflectivity such that the majority of the fees should be met by those Members giving rise to cases and incentivising a reduction in complaints. The Ombudsman suggests that 20% of the fee cost should be from membership fees and 80% from case fees. The suggestion has been justified by reference to TOSL's 'fixed' and 'variable' costs. TOSL deem enquiry and investigation staff costs as 'variable', with 'fixed' costs being items such as leases for office accommodation.
- 4.34 In reality, very few of TOSL's costs vary, in the short term, by the number of cases received in a year. Some cases, particularly in telecoms, can be outsourced but otherwise the cases are handled by TOSL staff with a consequent difficulty in adjusting costs if case numbers decline.
- 4.35 Another potential problem with the split of fixed and volume-related fees is the timing of the revenues. An increase in cases leads to more case fees. However, building up the resources to handle the cases will take some time and lead to temporary deficit of working capital as salaries etc. are paid in advance of the income from case fees. In general Members underwrite this cash requirement by making deposits.
- 4.36 In paragraphs 6.9 and following we discuss the level of enquiries being handled 'outside terms of reference', i.e. beyond the EO's remit. Overall, the membership and case fee structure, whilst easy to understand, does not send clear economic messages to the Members. A significant proportion of TOSL's operating costs arise from handling enquiries and it does not follow that the complaints against a member are in proportion to the enquiries. If there was a separate fee related to the number of enquiries handled for each member, there would be an incentive to reduce inappropriate calls to the Ombudsman by, for example, improving signposting. There would still need to be checks to ensure that signposting was adequate and that consumers were not actively discouraged from contacting the Ombudsman. This extra fee would not generate additional income but rather reapportion the charges according to the work created. The case fee would reduce accordingly.

5. Further work should be done to develop a more cost-reflective fee structure. In particular, consideration should be given to introducing a fee for enquiries handled, separate from the case and membership fees.

### The role of the Gas and Electricity Markets Authority (GEMA)

- 4.37 Under the CEAR Act the Gas and Electricity Markets Authority has the authority to approve redress schemes in the energy sector. It has chosen to approve the one scheme and has committed to this review and subsequent reviews as Ofgem may consider necessary.
- 4.38 The MoU between TOSL and GEMA describes the roles of each party, including the independence of TOSL from industry, regulatory authorities and the consumers. The MoU also indicates the very extensive commitment to work together in order that both parties can operate within their roles effectively.
- 4.39 We note that both parties are committed to making the arrangements work well, and we have received views from various stakeholders who operate across other sectors of Consumer Affairs that Ofgem's engagement and interest in making progress, is exemplary. It is our view that a single, well-regulated redress scheme for the sector is, on balance, better for consumers and Members, than competition between various service-providers within the same sector.
- 4.40 We also note that there is a potential issue regarding accountabilities. There is a risk that the greater attention which Ofgem gives to TOSL's performance in delivering the EO may detract from the responsibility of Members. Whilst GEMA has to be assured that a statutory redress scheme is operating according to the criteria against which the scheme was approved, it is the Members of the scheme who must hold TOSL to account in delivering the scheme, on behalf of their consumers, to their requirements. We consider it to be the Members' responsibility and very much in their interest to further support and influence TOSL's work (e.g. by providing more help with forecasting) and monitor performance against all approval criteria. Licensees are obliged to be members of a qualifying redress scheme, and as there is only one approved scheme, it is obligatory for them to ensure that the scheme is successful<sup>14</sup>.

6. GEMA and Ofgem should ensure that their actions in monitoring and reviewing the EO scheme do not dilute the responsibility of Members to ensure that the scheme is successful in meeting all approval criteria

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<sup>14</sup> Statutory Instrument No. 2268: The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008



## 5 Criteria category 2: Accessibility

### Awareness of EO and information services

5.1 There are many factors which, year on year, increase the awareness of the EO:

- A continuously increasing understanding by the public of the existence, and function of Ombudsman Schemes, as this becomes the preferred form of redress which is being introduced in a number of private and public sectors;
- Ofgem's stewardship and publicising of the post-CEAR Act complaints handling regulations;
- The increasing knowledge of the EO Scheme which Consumer Focus, Consumer Direct, CAB scheme and other consumer advocates have acquired;
- The promotion of the EO Scheme by Scheme Members on the back of bills and websites.

5.2 Market research indicates that the general public is becoming more aware of the Energy Ombudsman<sup>15</sup>.

5.3 In some instances the services of the EO may be used by a third party on behalf of consumers<sup>16</sup>. The third party may be friends and family or an advisory organisation such as CAB. The EO is contributing to third parties' awareness of and access to the EO through its own promotion of the service and regular liaison e.g. with Citizens' Advice, and we have no evidence of failures in this provision.

5.4 The EO website has extensive information to assist both consumers and prospective members. In general the website is clear and simple, providing access on how to complain and how the resolution process works. However, we propose that the site should provide clearer information to avoid customers contacting the EO too early in the complaints resolution process and should also provide better links to Members' complaint handling procedures.

7. The EO website should provide clearer information regarding what is in the EOs remit and direct links to Members' complaint handling web pages.

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<sup>15</sup> Customer satisfaction report commissioned by the Energy Ombudsman, July 2009.

[http://www.energy-ombudsman.org.uk/downloads/Energy\\_Customer\\_Sat\\_Report\\_2009\\_FINAL\\_7\\_08.pdf](http://www.energy-ombudsman.org.uk/downloads/Energy_Customer_Sat_Report_2009_FINAL_7_08.pdf)

<sup>16</sup>The third party requires the written permission of the consumer in order to make a complaint to the EO on their behalf



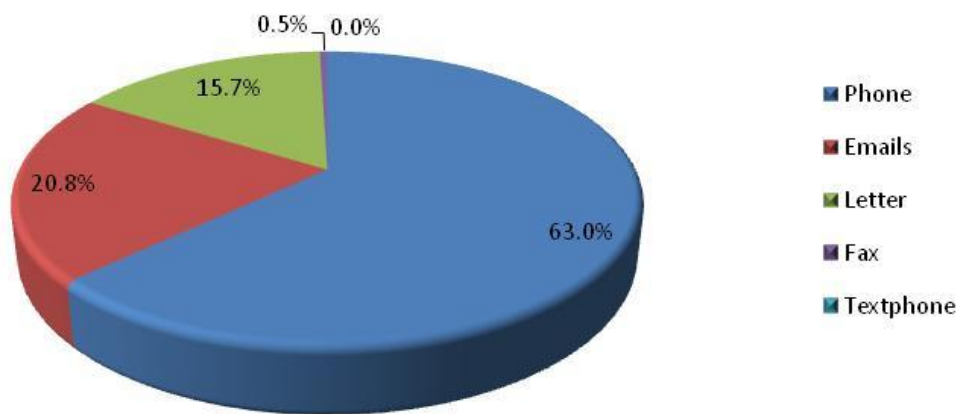
5.5 We refer further to the website in Section 7.

## Methods of contacting the EO

5.6 The EO can be contacted through a variety of means. In general, signposting and reference to the EO indicate that telephone contact is the preferred means of enquiry or complaint, and is the predominant means of contact which is used.

5.7 The means of contact of consumers is typically as shown in Fig 3

**Figure 3. Means of contact (Oct 2008 to Dec 2009)**



## Contact Handling Systems and Performance

5.8 Incoming telephone calls are handled by an IVR system with the message as shown in Appendix 4.

5.9 The message is rather long (1 minute 40 seconds) and indicates that a call may take up to 5 minutes to answer. Whilst the message is clear and helpful it does contain information which may be unnecessary and there is a trade-off between helpfulness and length of message.

5.10 Since the KPIs are being met regularly, we would question whether it is necessary to indicate that calls may take up to five minutes.

8. The IVR Opening Message should be reviewed.

5.11 A set of statistics shown in Table 4 indicate good performance of the call handling services in dealing with the majority of contacts.

Table 4 call handling information

Measure	Value	Comments	KPI Target (where applicable)
IVR incoming calls	60,983	Jan-Dec 2009	
Total abandoned	4,113	Jan-Dec 2009	
IVR incoming calls to Enquiry Officer **	89.9%	January 2010	
EO calls answered in less than 2 minutes	88.31%	3-year average	80%
EO calls answered in less than 5 minutes	99.21%	3-year average	95%
Letters & emails response less than 10 days	100%	Sept-Dec 2009	100%

5.12 \*\* This measure indicates that 89.9% of calls are getting to someone at the EO who can help. Most of the remainder of callers who do not drop out will have also been helped by the earlier Options 1, 2 and 3 on the incoming call IVR message (Appendix 4)

### Vulnerable Consumers

5.13 There are occasions where the Enquiry Officer identifies that the consumer who is making an enquiry or a complaint is vulnerable, in which case the consumer is referred to the Extra Help Unit (EHU) which is operated by Consumer Focus.

5.14 The EO refers cases to the EHU where appropriate in accordance with the Memorandum of Understanding and agreed procedures. There are usually no more than 3 or 5 such referrals per week. This process generally works well, with very few referrals from the EO being outside Consumer Focus' Terms of Reference. Upon referral Consumer Focus then deals with the complaint.

5.15 Conversely, there are occasions in which the EHU will be managing a case which, if identified as being within the EO's Terms of Reference will be referred to the EO.

5.16 As part of their role, EHU will act as a third party in some cases where it is obvious that help is needed and a complaint is within the EO's Terms of Reference for resolution. The EHU acts as the consumer's agent and compiles the information regarding the circumstances of the problem from the consumer and refers the case to the EO.

5.17 The EO's process for referring vulnerable companies to the EHU are well-defined and according to discussions with various stakeholders, are operating smoothly. We note that the referral process requires an immediate phone call

to the EHU where there is an immediate threat of, or actual disconnection. If there is no such threat, then the referral is made via email.

5.18 Although the processes for additional assistance are in place, there is a shortage of information to assess how well they are working. Anecdotally, the various parties are comfortable and opinion is that the arrangements are effective.

9. More information should be collected on the customer experiences of both signposting and referral from Consumer Focus and the EO, and vice versa.

### Barriers to customers accessing the EO

5.19 Barriers to access to the EO may be created by one of or a combination of factors. This list is not exhaustive:

- A consumer's lack of knowledge of the existence of the EO;
- A consumer's lack of understanding of the EO's role and their right to complain to them;
- A consumer's view that the EO is unlikely to be helpful in dealing with their complaint;
- Members' reluctance to issue a deadlock letter;
- Underperformance of the EO when contact is made to the organisation;
- The EO's response to the consumer.

5.20 In reviewing performance against KPIs for customer contact handling and in discussions with TOSL staff and management, we conclude that the EO's handling of customer contacts is effective and meets requirements.

5.21 We have also considered whether there are any barriers for any particular types of complainants. The EO's 2009 Customer Satisfaction Research provides some demographic information, but only of those consumers who have made an enquiry or a complaint to EO.

5.22 We have found no evidence of any particular groups of consumers having difficulty in accessing the service. If there are any shortfalls in accessibility then we would expect that more information will be revealed in the ongoing reviews and research on complaints and complaints handling of the Member Companies, conducted by the Members and by other bodies e.g. Consumer Focus and Ofgem.

### Consumer drop out

5.23 The complaints handling process includes several stages and there are various points at which the consumer may drop out. For some consumers this is a matter of choice and they may be comfortable with their decision, as their level of dissatisfaction is not sufficiently strong to motivate their continuation

with a complaint. For others consumers, dissatisfaction may remain high yet they may not, or be unable to continue with the complaint.

- 5.24 Little is known about what happens when an OTOR is referred elsewhere, unless the consumer returns with an ITOR complaint<sup>17</sup>. The statistics on the reasons for a contact being outside the Ombudsman's remit are not compiled, although information is available on an individual contact basis. It is not possible to determine how many of the consumers' issues are resolved elsewhere, although it is most probable that on most occasions the consumer has enquired upon the EO prior to deadlock or before the 8 weeks' criterion has been met. The Enquiry Officer will have signposted the consumer back to the supplier, and the matter will have been resolved with the supplier or elsewhere. Alternatively the consumer may have returned to the EO after the escalation process within the Company has been exhausted.
- 5.25 Another stage of "drop-out" arises when the Ombudsman has accepted an ITOR, a complaint form has been initiated and sent, but not returned. The EO has recently completed some analysis on complaints forms that had not been returned across all services (not specific to Energy) and between 43-46% were not returned as the company had managed to resolve the complaint.
- 5.26 Overall we note that there is relatively little knowledge within the EO of what happens to customers who are signposted elsewhere when not within the EO's remit. We would propose that more discussion is required with others involved in the "customer journey" through the complaints process in order to understand what should be done to investigate further, and what value may be placed on deeper understanding of customer behaviours and experiences outside the EO's remit.

10. The EO should liaise with interested parties to decide whether and if so, how data should be captured and analysed to improve understanding of customers who "drop out" of the EO processes.

## Deadlock letters and the 8 week criterion

- 5.27 Deadlock letters are issued either on the expiry of a set time period for the complaint or when the Energy Company believes it cannot reach agreement with the consumer. Consumers are also advised by Members that, in pursuing a complaint, they may approach the EO if the complaint is outstanding after 8 weeks.

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<sup>17</sup> In the investigation, we noted that a reference number is given for every contact with a consumer, but if the consumer returns eg with an ITOR complaint following an earlier OTOR contact, then a second reference number is generated. It is contacts which are counted, not consumers.

- 5.28 The number of deadlock letters issued by Members varies considerably. The number of deadlock letters issued in 2009 by the major suppliers range from 53 to 850, reflecting significantly different levels of complaint in general, or differing policies in complaints handling.
- 5.29 We have reviewed the wording used by the major suppliers in their deadlock letters. In all cases it is clear that deadlock has been reached. In most but not in all cases there is good signposting to the EO, explaining what form of redress the EO may decide upon.
- 5.30 There is also considerable variation in average time to deadlock. 27% of Cases<sup>18</sup> are reaching the EO via deadlock letter.
- 5.31 We have also reviewed the information provided by the major suppliers regarding the 8-week criterion. Some suppliers simply advise the customer that they can now approach the EO. Others emphasise their preference to continue to try and resolve the complaint directly with the complainant.
- 5.32 TOSL have received reports from some major supplier Members that the 8 week criterion is too tight (it was previously 12 weeks). This is because some complaints take many weeks to resolve due to delays in industry processes e.g. meter reading queries with meter agents. However in our discussions, we note that there is general acceptance that the 8 week criterion is now the established norm and is a reasonable period of time from a consumer perspective. There is no reason to re-consider this timescale.

## **EO Communication with consumers**

- 5.33 For ESL consumers (English as a Second Language), the EO provides on the website a very basic description of the EO service in 15 alternative languages and reference to the website and contact phone number which transfers to the IVR. As the website and the telephone message are in English this is of little value.
- 5.34 The EO uses an Agency to provide professional translation and interpretation services. Requests for the services are handled by the Communications Team at TOSL, who are prepared to provide information in any language or format that is requested, and can provide a translator to be on-line with the consumer within minutes.
- 5.35 Since October 2008 the services have been requested only very occasionally as shown in Table 5.

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<sup>18</sup> Based upon information provided by Ofgem for Q1 to Q3 of 2009.

Table 5. Use of communication services

Service	No. of requests	Use
Braille requests	12	1 full case
Requests for information in languages other than English	18	
Live interpretation	6	
Requests for information in large print	264	25 full cases

5.36 It would be helpful to understand whether the low use of the service is because very few people need the services, or whether the services are insufficiently accessible to those in need.

5.37 We are aware that TOSL are planning improvements to the website to meet requirements for those with a disability.

11. Some analysis is required to assess the effectiveness of arrangements to provide access to consumers with reading or hearing disabilities, or ESL.

## 6 Criteria category 3: Effectiveness

### Scheme Approval criteria

- 6.1 We consider that three of Ofgem's approval criteria have not been met. These are criteria 3.3k, 3.3n and 3.3p relating respectively to the provision of adequate resources, regular quality assurance and reporting back to Members and Ofgem on systemic failures in Members' policies and processes.

### Quality of resolution

- 6.2 We have reviewed a small, random sample of cases at Provisional Conclusion (PC) and Final Decision (FD) level. On the basis that the descriptions of the cases produced as part of the decision process and sent to the complainants are accurate, the decisions appeared to be reasonable.
- 6.3 In our discussions, Consumer Focus has questioned whether the EO is observing natural justice. Consumer Focus, in the role of consumer advocate, believe that more consideration should be given to the consumer's plight in complaint resolution. However, in the very nature of an ombudsman service, it must remain entirely independent and any change to requirements towards such advocacy would require a fundamental re-think to design an alternative form of redress scheme.
- 6.4 Energy suppliers have welcomed the EO's approach to resolution. The view has been expressed that, that prior to the CEAR Act, some cases were being resolved by unreasonable remedies, including disproportionately high levels of compensation. The suppliers' have welcomed the EO scheme's independent decision making in this respect.
- 6.5 We noted that many of the Provisional Conclusions contained numerous spelling and grammatical errors, used industry jargon and were not always clearly laid out. This is a quality control matter, possibly as a result of the heavy case loads, which affects the customer's perception of the quality of investigation. The Final Decisions are of a much better standard.
- 6.6 45% of Provisional Conclusions are being challenged by one party or both parties and therefore a high number of Final Decisions are being required. Improvements in quality of presentation will help to reduce this.
- 6.7 We are aware there is a potential inconsistency in that the EO Customer Satisfaction Report indicates that consumers were satisfied with the readability of the Provisional Conclusions (albeit a small sample size). Nevertheless, we recommend more research into the reasons why there is low acceptance of Provisional Conclusions and the extent that poor communication of the Provisional Conclusion may play a part.

12. Presentation of PCs should be of a consistently high quality to improve the consumer experience and improved the likelihood of a double-accept. Quality control measures should be introduced.

13. Analysis is required as to why there is low acceptance of Provisional Conclusions.

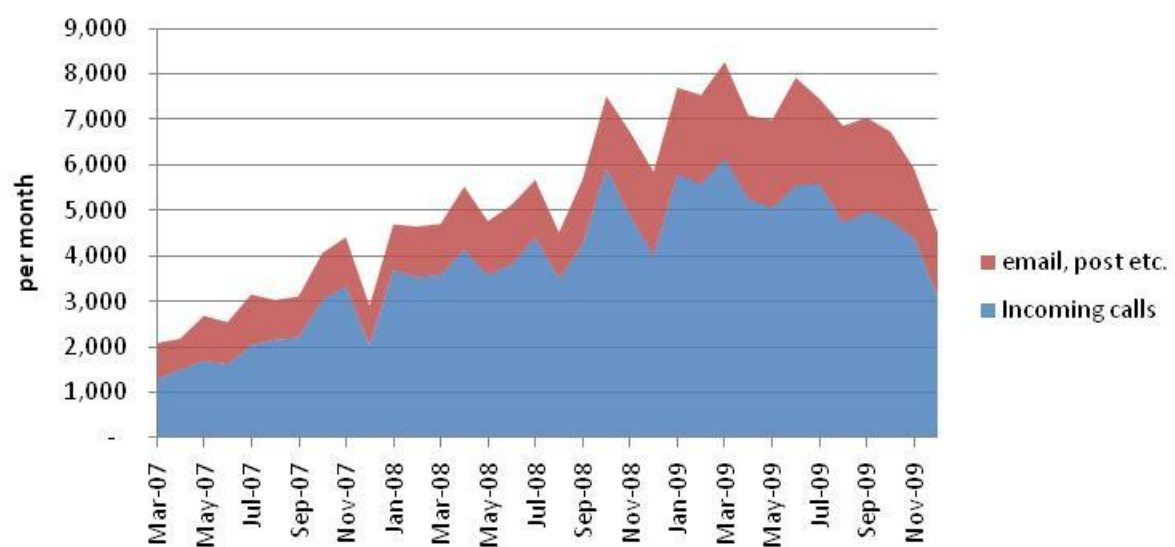
6.8 We also noted that routine information was not presented in an easily understandable way for consumers. A prime example of this was meter readings. These were not tabulated nor shown with useful statistics such as the number of kWh used per day; many disputes have a requirement to assemble and review meter details and meter reading information. It would be sensible to develop a standard way for Investigation Officers to present such information.

14. The EO should carry out a systematic review of cases to identify better ways of collating and presenting information e.g. meter readings.

## Forecasting of Enquiries

6.9 Figure 4 shows the volumes of Enquiry contacts made to the EO during the past three years.

Figure 4. – Enquiry Contacts by Source



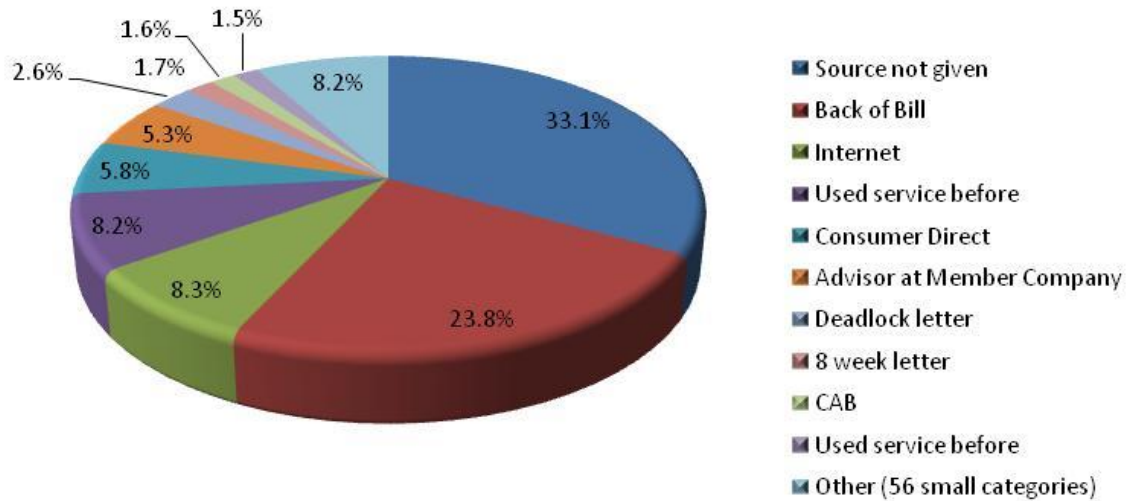


- 6.10 This is a highly reactive service, i.e. it is accepted that the number of calls is unpredictable and we have found little evidence of forecasting over the longer term, e.g. over a twelve-month horizon for budgetary purposes.
- 6.11 The short-term forecasting of Enquiries is effective, as the organisation has experience of weekly factors and time-of-day variations to work volumes. Some planning can be done for peaks of work which may arise if any particular Member has a problem. In regard to providing such “early warning” of higher volumes, some Members are more than proactive than others.
- 6.12 The Enquiries Team is regularly meeting its KPIs (Table 4 in Section 5) and is clearly sized to handle the high volumes of contacts which have been experienced.

### **Calls within and outside the Terms of Reference (ITORs and OTORs)**

- 6.13 The Enquiries function is the largest within the EO operations, requiring the majority of the workforce engaged in EO activity.
- 6.14 In 2009 there were 89,187 contacts (including 4113 abandoned calls) from consumers to the EO which were signposted elsewhere or assisted in one form or other. Only 6.5% of calls led to the issue of a complaint form.
- 6.14 Effectively, the Enquiries operations, whilst undoubtedly adding value in the service they offer, are meeting a need which ideally should not exist. It is desirable that the EO deals with matters within their Terms of Reference, and other organisations which play a part in the “customer journey” should be picking up most of the enquiry and advice work.
- 6.15 In practice the Enquiries Team is an essential part of the role of the EO but it is the volume of calls and the size of the operation which are in question.
- 6.16 The pie chart below shows the sources of contacts.

Figure 5 Source of Contacts, October 2008 to December 2009



6.17 The major energy suppliers have expressed their concerns on the high ratio of OTOR/ITOR contacts. It is in the customers' interests if high-quality advice can be provided at an earlier stage in the complaints handling process, i.e. within their own organisations. Members also note the costs of providing the OTOR enquiry services. It is surprising that very little analysis has been done on this well-noted but little-understood problem.

6.18 In order to reduce the number of OTOR contacts, better information will be required as to the cause. We note several deficiencies:

- the largest proportion of logged contacts are classified as "source not given";
- the data captured does not indicate the OTOR/ITOR ratio for each source; and
- the data does not indicate whether the contact is from a micro-business or a residential consumer

6.19 Ideally, the ITORs would be the aggregate of 8 week letters, deadlock letters, Ombudsman's discretion and referrals from other organisations. As the aggregate is greater than the total ITORs, we deduce that some of the referred cases are OTOR. However, again the data is unclear.

6.20 To some extent the high OTOR/ITOR ratio is the consequence of the signposting of the EO on the back of bills and on the websites as these are the major sources of contacts. The wording used on bills provides clear direction towards the EO, but does not include any reference to the 8-week or deadlock criteria. In Appendix 3 we show some typical wording used for signposting on bills.

6.21 As a comparison to Scheme Members' wording on backs of bills, we also show the standard wording on bank statements signposting the Financial Ombudsman Service, which is less helpful for contacting the Ombudsman, but

more helpful in stating that the Ombudsman can only help in certain circumstances.

- 6.22 Scheme Members expressed views that many complainants will “jump” to the EO regardless of other stages in the process. Many complainants’ behaviour of contacting the Ombudsman is similar to that of “going straight to the top” e.g. Chairman’s letters.
- 6.23 Another factor may be incorrect signposting to the EO from consumer advocates<sup>19</sup>.
- 6.24 It is an objective shared by many stakeholders that the OTOR/ITOR ratio should be significantly lower. Scheme Members accept that that they have a part to play, and this is an issue which should be addressed to make the EO Scheme and the “customer journey” more efficient. The scale of the problem is such that it should be addressed.
- 6.25 Reducing the OTORs will require a combination of better data from existing customer contacts probably requiring changes to databases and perhaps IT systems, more consumer research, and more discussions on signposting. We would propose a project approach to tackle this, with clear objectives, problem analysis, optional remedies, implementation and review. This should be in the context of the customer journey, involving Consumer Direct, but primarily joint work between the EO and Members.

15. An objective should be agreed by Members and EO to reduce the OTOR/ITOR ratio to a target level by a target date. A project should be initiated, steered, scoped, funded and delivered to achieve the objective.

### Forecasting of case volumes

- 6.26 In Section 4 we referred to the importance of achieving accurate forecasting. Figures 6 and 7 respectively show for the past three years the monthly volumes of cases being initiated and the number being taken to Provisional Conclusion and Final Decision.

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<sup>19</sup> June Council Minutes of June 2009 state this point.

Figure 6 Complaints Handled within Terms of Reference

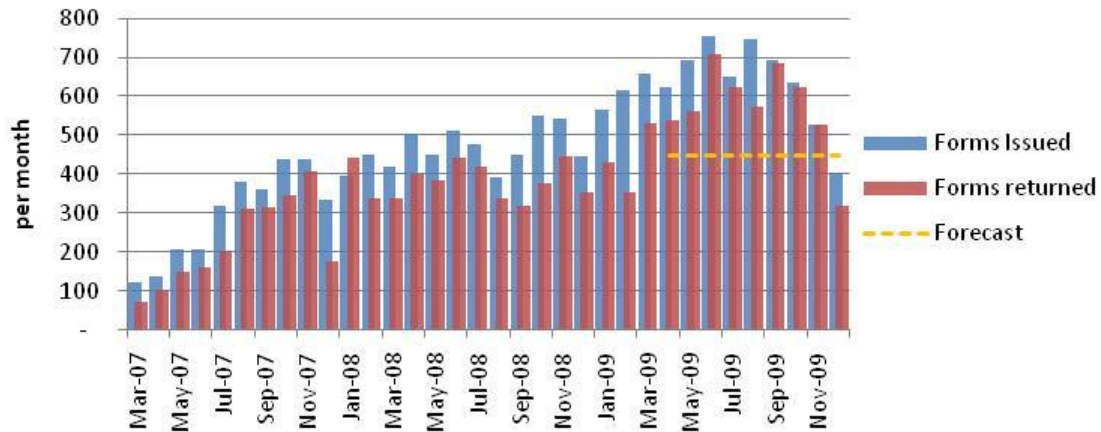
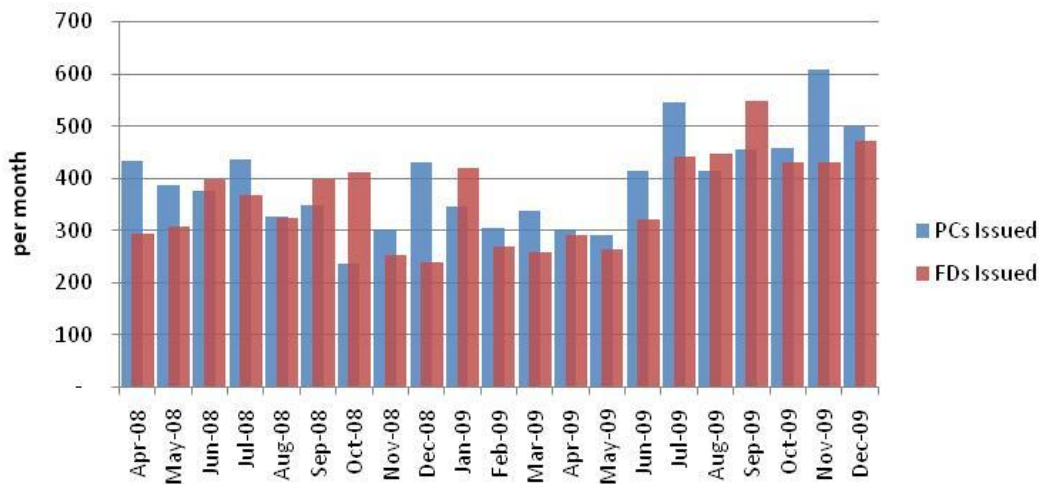


Figure 7 – Investigation Undertaken



6.27 Figure 6 indicates the level of complaints over forecast in 2009, creating a backlog of work and slippage and a significant failure to meet KPI targets for issue of Provisional Conclusions. Typically, towards the end of 2009, the following performances were being achieved:

- % PC issued < 6 weeks: 9% to 14% against the target of >90%
- % PCs issued >8 weeks: 76% to 78% against the target of <1%

6.28 There are many different points of view on what has caused the increase in volumes. In the July 2009 TOSL Council Meeting, several reasons why call volumes may have increased were proposed:

- a delayed effect of the closure of energywatch;
- significant efforts from the member companies to raise the profile of the ombudsman service with consumers;

- the effect of high winter bills 2008/9;
- political and media pressure which could undermine consumer confidence in the energy industry;
- the current economic climate could have caused an increased propensity to complain;
- suppliers logging more complaints because of the broader definition of what a complaint is within the terms of the Consumers, Estate Agents and Redress Act, 2007;
- the consumer journey is more clearly explained and understood and
- complaints from micro-businesses.

6.29 In the same discussion, it was considered that predicting work volumes is becoming increasingly difficult. This is a point of some concern, as it implies that the factors which are driving EO work volumes are becoming more uncertain at a greater speed than the EO and Scheme Members are improving their forecasting capability.

6.30 However, we note that prior to October 2008 suppliers typically did not record the complaints they received. With the complaints handling standards now bedded in, suppliers should have a much better understanding of their complaints numbers and numbers of unresolved complaints to aid forecasting and in providing an early warning to the EO of increases.

6.31 During our discussions in January and February 2010 as part of this review of the EO, the major suppliers re-iterated these views of what may have been causing increasing volumes in 2009. Now that the volumes are reducing, the common view is the seasonal pattern i.e. lower volumes of complaint at this time of year, but there is no confidence in whether the upturn in volumes according to seasonal trends will be greater than or less than, say, last year.

6.32 During 2009, similar unpredicted rises in volumes occurred in Otelo and the Surveyors Ombudsman Scheme (SOS) as have been experienced by the EO. We are aware that Otelo Members do not expect to be able to forecast volumes with any practical level of accuracy and therefore believe that the only means of providing good service is to be able to fully-flex resources to meet demand.

6.33 We agree that flexible resources will always be required as forecasts of workloads are inevitably wrong. However, Scheme Members and EO require them to be as accurate as possible and certainly more accurate than has been the case since the statutory scheme gained approval.

6.34 Insufficient time has been given to gathering data, analysing and discussing the underlying causes of volume changes, and applying both hindsight and foresight to establish a more confident set of forecasts than has been achieved to date.

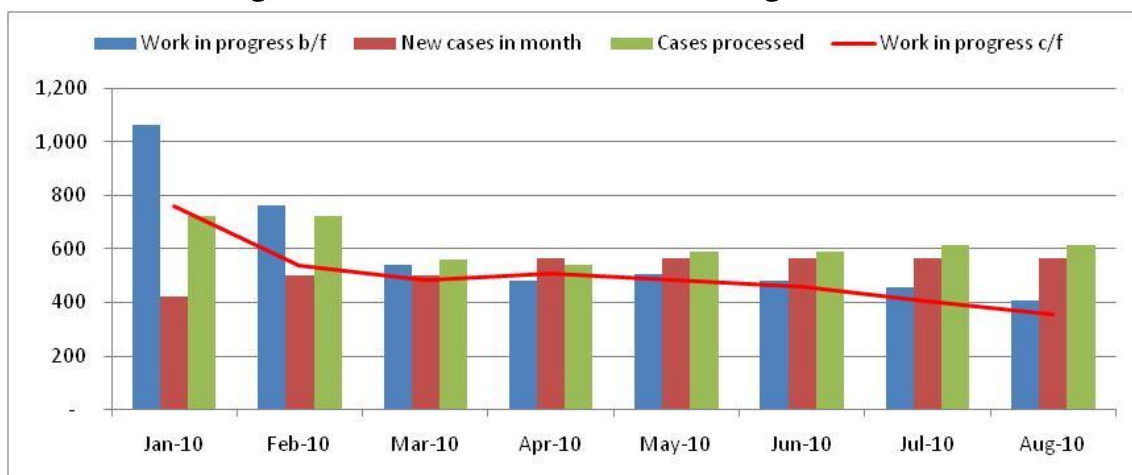
- 6.35 Changes to forecasting have been made during the past few months. Forecasts will be now made quarterly and the quarterly forecast will be reviewed monthly in order to manage the impact of deviations from the forecasts and to understand the impact for the financial year.
- 6.36 The increased focus of attention to forecasting will help to manage the variations in volumes from what was expected, but we believe that more can and should be done to enable better predictions of work volumes based upon a better understanding of what is driving them.
- 6.37 In Section 4 we have recommended that a work group be established under the Member Board to improve forecasting. We note that Scheme Approval Criterion 3.3k requires staffing and funding such that the scheme operates “effectively and expeditiously”. In our opinion this is the greatest challenge the scheme faces and it is driven by inaccurate forecasting. In view of its importance in addition to the work group we would recommend that 3.3k should be expanded to refer explicitly to forecasting.

16. The approval criteria should include an explicit requirement for best-practice forecasting methodologies and processes to achieve reasonably practicable estimates of funding and staffing requirements

## Backlogs in Provisional Conclusions

- 6.38 2009/10 work forecasts shown in Figure 8 indicate a reducing backlog of work. This should enable KPIs shown in paragraph 6.27 to be met later this year. This is achieved by the combination of more early resolution by Mutually Accepted Settlement, and better resources for Investigation, with capacity being greater than new cases arising.

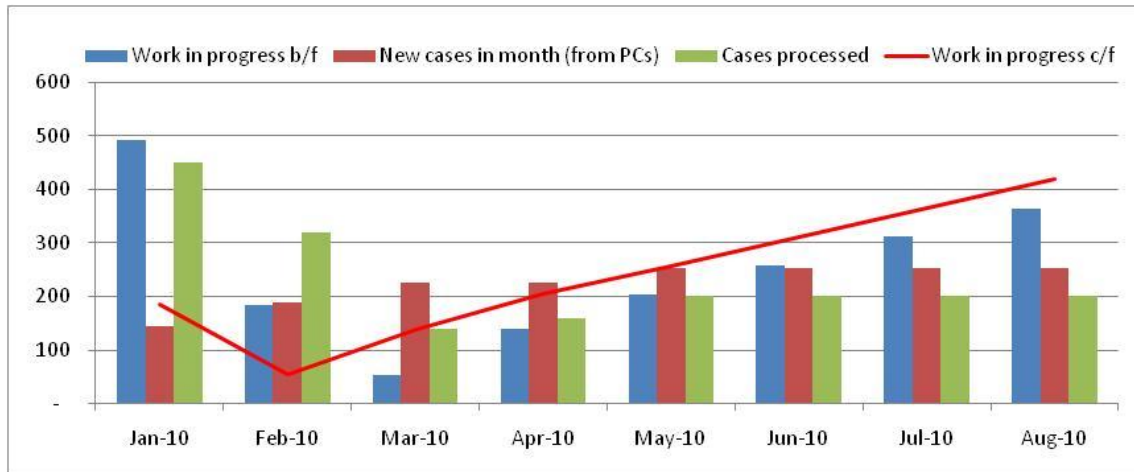
Figure 8 Forecast Reduction in backlog of Cases



## Final Decisions

6.39 Figure 10 shows the projected increases in backlogs of Final Decisions which were being forecast in January this year.

**Figure 10 Projected backlog in cases awaiting a Final Decision**



6.40 Having put plans in place to reduce the backlogs in reaching Provisional Conclusions, it is the backlog in achieving Final Decisions which will become the focus of attention. The appointment of Assistant Ombudsmen will provide support to the Lead Ombudsman for the EO Scheme and an additional stage of decision making is being introduced as described below in order to further reduce the load on Ombudsmen. However, there are no targets to achieve an acceptable level of backlog by a certain date. It is inconsistent that KPIs exist for the Enquiries process and Investigations processes leading to a Provisional Conclusion, but no KPIs have been developed for delivering Final Decisions. In summer 2009 the Members Board expressed a concern regarding “visibility with the tail end of the ombudsman process” and the EO has also expressed a desire for more information.

17. More management information, including KPIs and targets should be developed and introduced for reporting and monitoring progress in delivering Final Decisions.

## Trial of an additional stage in decision-making

6.41 The EO Scheme is atypical of other Ombudsmen Schemes. As noted earlier in this section, 45% of Provisional Conclusions are being challenged by one party or both parties and are leading to the high number of Final Decisions being required. There are several reasons for this. More usually, the “conversion rate” from PC to FD is nearer to 90% (i.e. 10% challenged). Secondly, other Ombudsman Schemes typically have three stages of decision-making, in which the outcome of a Provisional Conclusion will be reviewed by a more Senior Investigation Officer to make a “Decision” if the Provisional Conclusion is not acceptable to both parties.



- 6.42 A similar Decision stage is now being introduced by TOSL in April and piloted for the EO and Otelo. If there is not a double-acceptance of the Recommendation Report from an Investigation Officer, then the case will be reviewed by a Senior Investigation Officer and a new recommendation may then be drawn if (a) there is an error in the report, or (b) if new evidence is found. Importantly, the parties' rights to referral to the Ombudsman for Final Decision are not affected.
- 6.43 If successful, there will be a reduction in workload for the Ombudsman in preparing Final Decisions. The volumes of Final Decisions as shown in Figure 10 may be significantly changed by the introduction of the new stage of decision-making. However, if the quality of presentation of Provisional Conclusions referred to in paragraphs 6.5 and 6.6 is improved, this new stage may become less valuable. Careful monitoring of the new decision stage will be required in order to assess its benefits.

### **Networks connections complaints**

- 6.44 The Memorandum of Understanding (MoU) between the Gas and Electricity Markets Authority (GEMA) and TOSL requires that, where there are disputes which have not been resolved by the Licensee and on which Ofgem has powers of determination such as connection charges, then the issue should be referred in the first instance to the EO for investigation and to provide a Provisional Conclusion (PC). The agreement within the MoU is that if the PC is not accepted by both parties to the dispute, and it is within the time limit for determination by Ofgem (12 months of the date of final connection in the case of connections disputes), then the EO can advise the complainant that the matter can be referred to Ofgem for formal determination of the relevant elements before a final decision is taken by the Ombudsman in the case overall.
- 6.45 This arrangement preserves the right of either party to refer a dispute to Ofgem for determination, but clearly requires the EO to undertake investigation and seek resolution.
- 6.46 For complaints relating to the customer services aspects of a new, reinforced or modified connection, the EO will investigate and run the usual process for resolution and redress. Where more technical knowledge is required, TOSL have recognised the limits of their own capabilities here and are using consultants with the necessary skills.
- 6.47 If there is no double-accept of the resolution at Provisional Conclusions stage, the EO continues examining the further information and pursues the case to Final Decision. As this is outside the arrangements described in the MoU but appears to be generally accepted, the position needs to be clarified.



18. The EO and Ofgem should re-visit and define the arrangements for handling connections charge complaints which have a technical or commercial component. The arrangements should be clarified in communication with network companies.

6.48 25% of the networks complaints referred to the EO concern connections charges.

6.49 There have been some instances in which a network company has challenged the EO in his judgement of accepting some connections cases as within his remit. As a consequence, the EO is exercising Ombudsman's Discretion in all network complaints, and an Ombudsman is personally reviewing whether each case is ITOR or OTOR.

6.50 The costs of taking expert advice in investigating connections complaints are not passed directly through on a case fee basis, but lie within the cost base and are smeared through the standard case fees. This keeps the charging arrangements simple and at the low level of cases experienced to date, the Member Board has been satisfied with this arrangement. However the consequence is that there is no cost message to the networks Members regarding the EO's resolution of complaints on technical connections issues. We recommend that this arrangement be reviewed in conjunction with the clarification recommended above (18).

19. The allocation of costs for resolving the more technical connections-related complaints should be reviewed.

## Systemic failures

6.51 We note that in the process of handling cases through the stages of Investigation, Provisional Conclusions and Final Decisions, very little information is being logged in systems in order to assist in identifying systemic issues and there is no formal process for dealing with them. When a group of similar complaints occur at the same time (as has happened with one particular Member<sup>20</sup>), then the issue is clear, but there is reliance upon staff memory and staff judgement to decide where complaints have similar facts which justify further action to deal with a systemic problem.

6.52 We note that in making decisions the EO examine the evidence of the case and will not consider the Member Company to be at fault if their actions have complied with the company policy. This assumes that the policy is fair. We would expect that it is more reasonable that the Ombudsman who is highly skilled at assessing "fairness", should in fact be more questioning of policy, particularly if any particular policy is causing complaints from customers.

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<sup>20</sup> This was an issue regarding the structure of a tariff.

- 6.53 In the EO Annual Report the EO makes reference to major complaint types, such as inaccurate meter reading and inaccurate billing. We have also learnt from some major suppliers that they have had useful feedback on issues such as the application of the Billing Code, proposing tighter controls over back-billing of accounts and making sure customers are contacted prior to being sent a higher-than-expected bill. These issues are identified by the EO where some companies have made improvements.
- 6.54 However, we detect some concerns that more can be done by the EO to identify systemic problems as required by Approval Criterion 3.3q and, when they do so, to recommend changes to companies' policies and processes as required by Approval Criterion 3.3p. The Investigation Officers and Ombudsman are well-placed to identify systemic issues from their deep examination of complaints. As their experience of the sector improves, it is possible for the EO to highlight problems with customer service and in some cases suggest where the root cause of problems might be. The EO should report to Ofgem, Consumer Focus and in some cases in public on issues which may arise at Company level or across the sector as a whole. From our discussions with TOSL and stakeholders and we concur with the view of many interested parties that this is an area of improvement.
- 6.55 We note that the role of the EO's Head of Stakeholder Relations includes several key responsibilities for managing the EO relationships with Members regarding the EO service but does not include any explicit reference to feedback on areas of improvement in the Members' policies and levels of performance.
- 6.56 The role of the EO in highlighting systemic issues requires more discussion. There is clearly a view at Ofgem that this requirement is not being met to the extent envisaged when the Memorandum of Understanding was written.
- 6.57 It is out of scope of our review to consider the matter further but we identify that there may be differences of view on this matter at Council. Members and regulators of the other schemes which TOSL operate may not have the same views on what role the Ombudsman should play in resolving systemic issues within their sector.
- 6.58 It would be useful to separately identify what fits within the broad definition of 'systemic issues'. This may include:
- consideration whether other consumers may be in like circumstances;
  - the identification of common issues within the sector;
  - recognising any Member of the Scheme whose performance or policies may be causing, or potentially causing consumer complaints;
  - the identification of potential breaches of industry codes, licence or laws.
- 6.59 We offer four recommendations:

- 20. The EO should be more active in identifying and commenting on systemic issues.
- 21. Information should be logged on the nature of cases and the causes of complaint as they are investigated.
- 22. Internal processes and analysis tools should be established to review the cases to identify and resolve systemic issues.
- 23. Questions should be raised regarding Members' policies if there is evidence that similar complaints are driven by policy rather than performance.

6.60 Approval criterion 3.3q also refers to procedures to identify a potential breach of regulatory requirements. Again, there are concerns of some interested parties that this criterion is not being met, especially since no potential breaches have been reported, but we have no evidence on this point. It would seem reasonable that, through dialogue, the EO may become more familiar with Ofgem's expectation and there may be some examples of systemic issues e.g. billing, which can be used to demonstrate what should be considered a potential breach. It is then the role of Ofgem to consider if the reported potential for breach has indeed been realised and what should be done as a consequence.

- 24. Ofgem and the EO should review some examples of systemic issues to illustrate how they may lead to Members being in breach of regulations.

## EO/TOSL Relationship

6.61 The statutory Energy Ombudsman scheme is delivered by TOSL alongside their commitments to delivering other schemes in other sectors. The voluntary redress scheme for the major energy suppliers which began in 2006 presented a major challenge to the organisation in moving from serving only the telecommunications sector.

6.62 TOSL has seen the development of the EO scheme from a voluntary to a statutory footing, including new members and new types of business. In particular there are many key differences between networks-related complaints and energy supply complaints. In addition, TOSL has taken on new responsibilities in delivering redress services for SOS and PRS.

6.63 Each of these changes takes time to "bed in" and generates a threat to existing services whilst the changes are being made. Also, the co-existence of several different schemes for different sectors being operated by the same management team can create de-focus of attention and therefore a threat to the EO scheme, especially if there is significant underperformance within one scheme e.g. in forecasting.

6.64 However, the growth of the organisation and the ability to flex the use of resources across different redress schemes provides resilience through diversity which is to the benefit of the EO scheme. TOSL's opportunities to apply best practice in their comparison of one scheme against another, is also of potential benefit.

6.65 It has been said at Council that if additional schemes are to be taken on in future, the decisions will be subject to assurance that it is to the benefit of all existing schemes. Certainly some potential additional schemes will add more benefit to the EO scheme than others and it is in the interests of the EO scheme that the factors for assessing whether to take on another service within TOSL should be considered and agreed in advance of any such opportunity arising. Some examples of factors which may be relevant:

- Set-up effort, risk of management de-focus from existing schemes;
- Diversity of workloads, allowing resource flexing across the portfolio of services;
- Complementary nature of sectors, maximising use of existing skills and minimising needs for re-training;
- Job satisfaction for staff and management;
- Creditworthiness of Members within any new sector.

25. It is desirable that the conditions to be considered in taking on an additional redress scheme should be determined in advance by TOSL and agreed at Council. Any opportunity which may arise thenceforth can be tested against the pre-agreed conditions.

6.66 Ofgem may also wish to consider whether there should be an Approved Scheme criterion relating to the protection of the EO within the multi-service organisation.

26. Ofgem should consider whether an additional Approved Redress Scheme criterion is required for assurance that the energy sector redress scheme is not compromised by other schemes delivered by the same organisation.

## TOSL Organisation

6.67 Since its origins in operating the single redress scheme for Otelo, TOSL has expanded to become a very different business with four schemes currently in operation, each with its own characteristics and overseen by very different regulatory regimes. Based on information provided to us, our observations during this review, and from our general business experience, we consider that TOSL needs to continue to adapt and extend its business processes to reflect the new requirements and to be able to expand further without causing any deterioration of service to existing schemes. Areas requiring attention include pay structures, the strategy for information systems and project management

necessary for planning and implementing the significant changes required as the business develops.

6.68 One particular area of improvement is the management by TOSL of the Member Board, Finance Board and Council. More time is required in preparing for the meetings, ensuring good attendance and the production of high-quality Minutes. Papers presented to the meetings should be circulated in good time to ensure that proper consideration can be given to the issues before they are debated.

6.69 These matters should be driven by Council.

27. Council should ensure that TOSL has the skills and knowledge required in general management of the expanded business.
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## 7 Criteria category 4: Public Accountability

### Annual Report

7.1 The EO Annual Report provides some useful information in a clear and well-styled document. The information is relevant, although some of the additional information which we have already considered earlier in the report to make the EO scheme more effective should then be available in the Annual Report:

- Accuracy of forecasting;
- Performance in lead times to deliver Final Decisions;
- Reductions achieved in OTOR/ITOR ratio.

7.2 In order to gain a broad view of the activities of the EO it is necessary to read two documents, namely the EO Annual Report and TOSL Annual Report. There is some valuable information in the TOSL Report which is very relevant to the EO scheme:

- The Governance structure (Council, Finance Board, Member Board);
- The Independent Assessors' Report; and
- Operations, including Communications, Resources, Finance.

28. The EO Annual Report should include some of the information contained in the TOSL Annual Report as is relevant to the EO scheme.

7.3 It would also be useful to have some financial information regarding overall scheme costs and fees. It is difficult to judge the overall effectiveness of the scheme and assessment of value-for-money services without an indication of allocated costs and fees. TOSL's published accounts help to understand the overall performance of the company, but do not indicate the overall performance of the EO scheme.

7.4 In future years, as the EO scheme becomes more established, year-on-year comparative information may also be included, showing trends in awards, case and contact volumes and trends in specific types of complaint.

29. There are opportunities for improving the Annual Report by the inclusion of additional performance information on operations, costs and trends.

### Websites

7.5 The website is far more comprehensive than that of POSTRS, our comparator.

7.6 Improvements in access to the website have already been referred to earlier in this report.

- 7.7 There is separation between the EO website and the TOSL website, which allows the separate focus on the EO for those interested in the sector. The linkage from the EO website to the TOSL website is easy, navigation of the TOSL website and link-back to the EO is more cumbersome.
- 7.8 The EO website is clear and reasonably easy to navigate, although some of the “click-throughs” which are necessary to get to further information can be avoided. The background information regarding the service is helpful and there is a vast amount of information in the form of bulletins which provide an anonymous summary of each case after it has been investigated and closed. However, there are no cases closed any later than February 2009.
- 7.9 Performance statistics on the TOSL website are up to date.
- 7.10 Earlier in this report we referred to the requirements for more information to be collected from individual cases for use in analysis and review. This could also be provided in public domain.
- 7.11 As we have discussed earlier in (paragraph 6.51) this report, the EO is in an advantageous position to identify systemic issues within the energy sector and their impact on consumers. It will be of practical assistance to the industry, regulator and many other stakeholders for such matters to be reported, and much of the reporting could, inter alia, be on the website.

30. There are opportunities to improve the EO and TOSL websites in provision of more information regarding case statistics, ensuring examples of case summaries are kept up to date, and some of the systemic issues affecting the Members and Consumers.

## The Independent Assessor

- 7.12 The Independent Assessor’s role is to decide on complaints addressed to him regarding the performance of the Energy Ombudsman, provided that they are within his Terms of Reference<sup>21</sup>. The Assessor can examine the standard of service provided but cannot decide upon complaints regarding the merits of decisions or the redress which the Ombudsman may have determined.
- 7.13 The Independent Assessor’s report is published annually within the TOSL Annual Report. In 2008/9 there were ten EO cases upon which decisions were made.

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<sup>21</sup> [http://www.ombudsman-services.org/downloads/The\\_Independent\\_Assessor\\_Terms\\_of\\_Reference\\_copy\\_1.pdf](http://www.ombudsman-services.org/downloads/The_Independent_Assessor_Terms_of_Reference_copy_1.pdf)

- 7.14 The Independent Assessor's Annual Report for 2009/10 is currently being prepared and we understand that there is no significant change in the number of complaints referred to him compared with 2008/9.
- 7.15 The Assessor has not received any complaints regarding networks companies.
- 7.16 The main type of complaint regarding the EO service which the Independent Assessor upheld is that of delays within the EO processes. The Assessor's findings that the escalation of a complaint to him could be avoided by keeping the complainant up to date with progress of their complaint and the reasons for the delay, together with improvements in drafting of some of the EO's letters concur with our own findings.



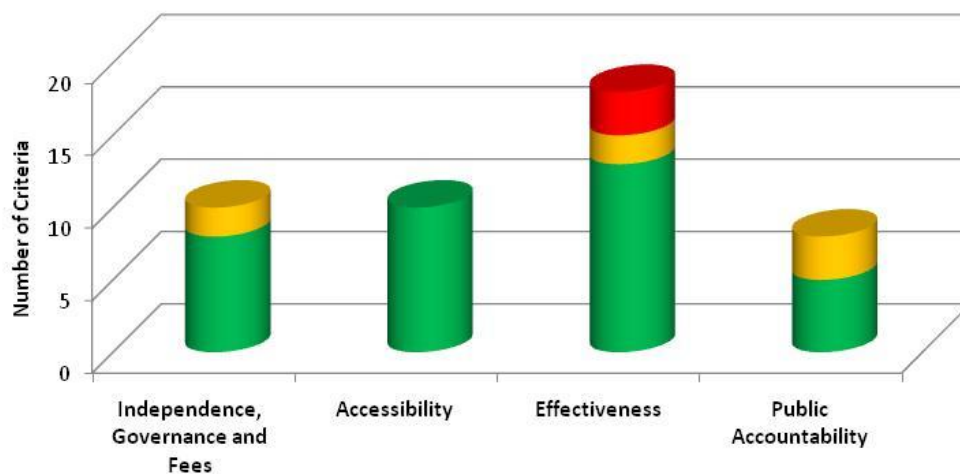
## 8 Summary of review of criteria

8.1 The following tables list the various criteria Ofgem published for the selection of an Ombudsman service. Against each criterion is shown:

- Comments including reference to TOSL's Articles of Association (AoA) and the Energy Ombudsman's Terms of Reference (ToR) where relevant paragraphs provide or limit powers etc. and observations from the review;
- A colour coded 'traffic light' status:
  - Green ■ Compliant or no issues discovered during the review;
  - Amber ■ Minor difference from the criterion;
  - Red ■ Significant difference from the criterion.

8.2 An overview of the numbers by status for each criteria area is provided by the following chart.

Figure 11 Levels of compliance against Ofgem's published criteria



8.3 Table 6 brings together the criteria with the status of 'Amber' or 'Red'. Tables 7 to 10 list the criteria by number order and, for completeness, repeat the Amber and Red criteria.

Table 6

Summary of review of criteria where the Status is 'Amber' or 'Red'	
Ofgem Criterion	Review Comments
<b>Effectiveness</b>	
3.3k. the scheme must be adequately staffed and funded in such a way that complaints can be effectively and expeditiously investigated and resolved and to allow the Ombudsman to function impartially, efficiently and appropriately.	Budget process, membership and case fees provide funding. Backlogs have developed due to inaccurate forecasts.
3.3n. periodic quality assurance monitoring must be carried out.	Ombudsman review of Investigations – not completely effective with high workload
3.3p. the scheme must recommend changes to regulated providers' processes and/or policies where systemic failures are identified in order to promote improved service. This must include a dedicated referral process for informing Ofgem and the new NCC that recommendations have been made.	Ombudsman does not actively review cases for systemic failures though ToR 10.2f and Memorandum of Understanding with Ofgem require it. Some information is apparently passed to Members but this does not appear to have been collated
3.3l. the scheme must have, or have within a short period of time, the appropriate expertise to resolve energy disputes.	Expertise is limited
3.3q. the scheme must have procedures to identify a potential breach of regulatory requirements and systemic problems within the industry and refer these to an appropriate organisation, such as Ofgem (to determine whether or not there has been a breach) or the new National Consumer Council. This must include a process for identifying and reviewing cases with wider implications.	Ombudsman does not actively review cases for regulatory failures though Memorandum of Understanding with Ofgem requires it. No evidence of systems to support collating such information and would depend on individual members of staff

Summary of review of criteria where the Status is 'Amber' or 'Red'	
Ofgem Criterion	Review Comments
<b>Independence, Governance and Fees</b>	
1.3c. the person responsible for the scheme must be appointed for a period of office for sufficient duration to ensure the independence of their actions and must not be removable from their duties without just cause.	No minimum term of office for the Ombudsman is specified but reasons for removal from office are clearly stated in AoA paragraph 86.
1.3e. any terms of reference for a scheme, or changes to the terms of reference, must be agreed by a body or person independent of those subject to investigation (this does not exclude their minority representation on that body).	The Terms of Reference are reviewed and changed by the Council which is itself independent (see 1.3b). It must gain approval of the Energy Service Member Board which does have a majority of industry representation and could thus block changes but may not propose changes.
<b>Public Accountability</b>	
4.3a. an annual report must be published which will provide for an independent assessment of the scheme's performance.	Reports produced though reports do not give information about excessive backlogs as a matter of course
4.3c. information must be provided about the scheme's decisions, including the nature of the complaint and the outcome	Synopses published on internet but no summary by type of case. Information about cases is inconsistent and does not appear to have been edited well.
4.3g. agreements such as a Memorandum of Understanding or similar must be entered into with other organisations as appropriate	MoU with Ofgem was in place; copy provided of that with Consumer Focus was not signed until after the review started.

Table 7

Summary of review of Independence, Governance and Fees Criteria	
Ofgem Criterion	Review Comments
1.3a. the jurisdiction, powers and the method of appointment of the person responsible for the scheme must be publicised.	TOSL Articles of Association (AoA) and Terms of Reference (ToR) for the Energy Ombudsman Service are published on internet.
1.3b. those appointing or terminating the appointment of the person responsible for the scheme must be independent of companies that are subject to investigation (this does not exclude their minority representation on the body which is authorised to appoint or terminate).	TOSL Council appoints Ombudsman. Only a minority of Council members can be from the Energy Industry (AoA para 21).
1.3c. the person responsible for the scheme must be appointed for a period of office for sufficient duration to ensure the independence of their actions and must not be removable from their duties without just cause.	No minimum term of office for the Ombudsman is specified but reasons for removal from office are clearly stated in AoA paragraph 86.
1.3d. the person responsible for the scheme must be required to report to a body or person independent of those subject to investigation (this does not exclude their minority representation on that body). The body or person must also be responsible for safeguarding the independence of the person responsible for the scheme.	Ombudsman reports to the TOSL Council. Only a minority of Council members can be from the Energy Industry (AoA para 21).
1.3e. any terms of reference for a scheme, or changes to the terms of reference, must be agreed by a body or person independent of those subject to investigation (this does not exclude their minority representation on that body).	The Terms of Reference are reviewed and changed by the Council which is itself independent (see 1.3b). It must gain approval of the Energy Service Member Board which does have a majority of industry representation and could thus block changes but may not propose changes.
1.3f. there must always be a majority of independent members on any Body or Council which appoints the person responsible for the scheme.	AoA para 21
1.3g. there must be a limited tenure for members of the Body or Council.	AoA para 24 and 25 specify tenure.
1.3h. the person responsible for the scheme alone has the power to decide whether or not a complaint is within the scheme's jurisdiction.	ToR para 6.1

Summary of review of Independence, Governance and Fees Criteria	
Ofgem Criterion	Review Comments
1.3i. the governance arrangements and fee structure of the scheme shall not have a disproportionate effect on any particular group of members.	Fee structure is determined by Energy Service Member Board. No evidence of dissatisfaction about fee level.
1.3j. there must be provision for the person responsible for the scheme to re-allocate the case fee and compensation to another scheme member, if as a result of the decision of the person responsible for scheme fault lies with that other scheme member.	ToR 9.7

Table 8

Summary of review of Accessibility Criteria	
Ofgem Criterion	Review Comments
2.2a. the consumer must be able to have its complaint investigated by the scheme free of charge. The scheme must also ensure that the cost to the consumer of accessing the scheme, such as the cost of making a call, is minimised.	ToR 12.1 and 9.8 Contact is by email, low cost phone numbers etc.
2.2b. the scheme must require regulated providers to have proper and effective internal complaint handling procedures.	ToR 1.3 requires members to hold licence – licence sets complaint handling procedures.
2.2c. there must be appropriate steps to ensure consumer awareness of the scheme.	Web presence, signposted on bills etc.
2.2d. the scheme must allow a regulated provider a reasonable period of time to attempt to resolve the complaint. However, this must be balanced against the interests of consumers and therefore not be of an unreasonable length. We consider that 8 weeks is an appropriate back-stop for regulated providers to resolve complaints. However, for scheme members who have not previously been members of a redress scheme 12 weeks would be an acceptable back-stop time period for the first 12 months after the approval of the scheme.	Issue of deadlock letter and 8 weeks is stated in ToR 11.1 - compliant

Summary of review of Accessibility Criteria	
Ofgem Criterion	Review Comments
2.2e. the procedures and processes for raising a complaint with the scheme must be easy to understand and use and must not be overly bureaucratic.	No issues discovered
2.2f. an easy to understand guide explaining what the consumer needs to do to raise a complaint with the scheme and what the scheme's processes are for investigating a complaint must be provided to consumers contacting the scheme.	Leaflet available and is issued
2.2g. the scheme must adopt processes that allow for additional help in accessing the scheme to be given to those consumers that need it. For example, this will include allowing persons to act on behalf of the relevant consumer	Complaints accepted from 3 <sup>rd</sup> parties acting on behalf of complainant.
2.2h. the scheme must provide a wide range of translation services for those consumers that do not speak English as their first language, including a Welsh Language Service and additional services for those that are hearing or visually impaired. The scheme must inform consumers of the availability of these translation and additional services in its consumer information and on its website.	Ombudsman offers translation service (written and verbal). Textphone and Braille used where needed.
2.2i. the scheme's procedures must allow the consumer to progress their complaint via a range of methods, including telephone, email and post.	Evidence seen.
2.2j. the scheme's staff must offer to complete any forms that are necessary in order for the scheme to investigate the complaint (excluding any signatures that are required to give staff the authority to proceed with the investigation).	If required Enquiry Officers complete forms and send for signature.

Table 9

Summary of review of Effectiveness Criteria	
Ofgem Criterion	Review Comments
3.3a. the scheme must have duties and powers to investigate and determine complaints (which may include the power not to investigate or determine a complaint) and the power to resolve disputes by requiring that regulated providers pay compensation, give an apology and/or explanation or take some other form of action which is considered advantageous to the complainant.	ToR 9.3, 9.4 and 9.5. Compliant
3.3b. the scheme must be able to consider all types of complaint as indicated in BERR's decision document on consumer redress schemes dated 21 December 2007, including those complaints which: <ul style="list-style-type: none"> <li>• have been considered by the regulated provider and not resolved to the satisfaction of the consumer, or</li> <li>• relate to sustained difficulty by the consumer in registering a complaint with the regulated provider, where the Ombudsman is satisfied that reasonable attempts have been made to contact the regulated provider, and which relate to the regulated products and services of the regulated provider,</li> <li>• may be substantially covered by other, established, forms of redress, and which must be passed on to the relevant party for resolution by the redress scheme</li> </ul>	Ombudsman has discretion to accept complaints with the limitations in ToR 11. These restrictions appear reasonable.
3.3c. any deadlines for bringing a complaint to the redress scheme must be reasonable and allow for flexibility taking into account the circumstances of the case and the complainant, and must not unnecessarily limit access to the scheme.	ToR 11 – must be within 12 months of discovery by complainant or 6 months from issue of deadlock letter.
3.3d. subject to BERR's Order the scheme must have transitional arrangements in place to investigate complaints that arose prior to the commencement date of the Order.	ToR 11.2 restricts jurisdiction such that old complaints are not accepted. This is a transitional issue and then EO can exercise discretion

Summary of review of Effectiveness Criteria	
Ofgem Criterion	Review Comments
3.3e. it must be made clear to the consumer that the scheme's decisions are binding on the regulated provider but not on the complainant.	ToR 9.9 to 9.11 specify that decisions are binding on service member if complainant agrees with decision.
3.3f. decisions must be made that are based on what is fair in all the circumstances, having regard to principles of law, good practice and any inequitable conduct or maladministration. This must also include having regard to any regulatory requirements and codes of practice. All evidence must be clearly documented and analysed by the Ombudsman. Natural justice and fair procedure must be observed, including appropriate opportunity to comment on facts, conclusions or outcomes. Conclusions must be evidence based and decisions and recommendations must flow clearly from the analysis.	Sample of cases reviewed met requirements. We consider this criterion is satisfied.
3.3g. decisions must take account of the nature of the issue and the effect it has had on the complainant. Redress must take into account of any maladministration that has occurred and take account of the hardship or injustice suffered as a result. Proportionality is key, whereby the process and resolution is appropriate to the Complaint.	Ombudsman is not a consumer advocate
3.3h. both parties must have the opportunity to present their case and to see and comment on a provisional conclusion before a final determination is made.	Provisional conclusion is sent to both parties – comments can be made.
3.3i. in all cases investigated, the decision must be notified in writing and the reasons for it communicated to the parties concerned.	Provisional conclusion and final decision (ToR 9.9) are in writing. Cases settled by Early Resolution (i.e. give service member opportunity to reach settlement) may not be documented as Ombudsman does not make decision.
3.3j. a reasonable period of time must be allowed for the complainant to consider whether they want to accept the provisional conclusion.	Complainant has 2 months to decide re Final Decision (ToR 9.9).



Summary of review of Effectiveness Criteria	
Ofgem Criterion	Review Comments
3.3k. the scheme must be adequately staffed and funded in such a way that complaints can be effectively and expeditiously investigated and resolved and to allow the Ombudsman to function impartially, efficiently and appropriately.	Budget process, membership and case fees provide funding. Backlogs have developed due to inaccurate forecasts.
3.3l. the scheme must have, or have within a short period of time, the appropriate expertise to resolve energy disputes.	Expertise is limited
3.3m. the scheme must have objective targets for reaching decisions and dealing with enquiries against which it and others can assess its performance and put in place arrangements for assessing its performance against these targets.	KPIs used and shared with members and Ofgem
3.3n. periodic quality assurance monitoring must be carried out.	Ombudsman review of Investigations – not completely effective with high workload
3.3o. there must be a set of procedures for enforcing its decisions and the scheme's Rules.	Members enter deed (ToR 13)
3.3p. the scheme must recommend changes to regulated providers' processes and/or policies where systemic failures are identified in order to promote improved service. This must include a dedicated referral process for informing Ofgem and the new NCC that recommendations have been made.	Ombudsman does not actively review cases for systemic failures though ToR 10.2f and Memorandum of Understanding with Ofgem require it. Some information is apparently passed to Members but this does not appear to have been collated
3.3q. the scheme must have procedures to identify a potential breach of regulatory requirements and systemic problems within the industry and refer these to an appropriate organisation, such as Ofgem (to determine whether or not there has been a breach) or the new National Consumer Council. This must include a process for identifying and reviewing cases with wider implications.	Ombudsman does not actively review cases for regulatory failures though Memorandum of Understanding with Ofgem requires it. No evidence of systems to support collating such information and would depend on individual members of staff
3.3r. the scheme must effectively signpost a consumer to alternative organisations or sources of advice if a complaint is outside its remit.	Enquiry process has comprehensive list of suitable contacts.

Table10

Summary of review of Public Accountability Criteria	
Ofgem Criterion	Review Comments
4.3a. an annual report must be published which will provide for an independent assessment of the scheme's performance.	Reports produced though reports do not give information about excessive backlogs as a matter of course
4.3b. information must be provided in the public domain about the scheme's performance, rules of procedure, terms of reference and process for making decisions.	Information on internet, leaflets etc.
4.3c. information must be provided about the scheme's decisions, including the nature of the complaint and the outcome	Synopses published on internet but no summary by type of case. Information about cases is inconsistent and does not appear to have been edited well.
4.3d. information must be published about consumers' satisfaction with the scheme	Consumer satisfaction surveys are carried out and published.
4.3e. the Authority must be notified about any changes to the scheme (including changes to its rules or procedures, terms of reference or governance arrangements) before the end of the period of 14 days beginning with the day on which the change is made. The NCC must also be informed of the changes	MoU – no evidence of failure
4.3f. information requested by the Authority or the NCC must be provided where the information is required to assess the performance of the redress scheme, its ongoing compliance with the criteria it has been approved against or the performance of regulated providers	MoU; Ombudsman has cooperated fully with review
4.3g. agreements such as a Memorandum of Understanding or similar must be entered into with other organisations as appropriate	MoU with Ofgem was in place; copy provided of that with Consumer Focus was not signed until after the review started.

Summary of review of Public Accountability Criteria	
Ofgem Criterion	Review Comments
4.3h. there must be procedures in place to consider and resolve complaints by consumers or regulated providers about the service provided by the scheme, and the final decision on the complaint must be made by a person not previously involved in the determination of the complaint and with sufficient authority to direct how the issue may be resolved	Escalation to Independent Assessor (appointed by Council, AoA 28f) and stated in publication 'Service Standards'.

## 9 Recommendations

9.1 The recommendations which have been made throughout this report are listed below with page numbers to which they refer.

<u>Recommendation</u>	<u>Page</u>
1. Better forecasting and budgeting will be achieved if all six of the major suppliers are individually represented in a more formally-structured group to work with the EO Executive and Members Board to achieve more accurate forecasts.....	18
2. There should be an explicit obligation on the Member Board to have well-defined processes, shared by Members and the EO provider, to understand the drivers behind work volumes and establish forecasts of complaint volumes from which resources, costing and fees may then be agreed .....	19
3. Forecasts for each of Enquiries and Cases should be prepared and tracked with suitable KPIs.....	19
4. TOSL should review the budget process, clarifying roles and responsibilities.....	21
5. Further work should be done to develop a more cost-reflective fee structure. In particular, consideration should be given to introducing a fee for enquiries handled, separate from the case and membership fees.....	22
6. GEMA and Ofgem should ensure that their actions in monitoring and reviewing the EO scheme do not dilute the responsibility of Members to ensure that the scheme is successful in meeting all approval criteria.....	22
7. The EO website should provide clearer information regarding what is in the EOs remit and direct links to Members' complaint handling web pages.....	23
8. The IVR Opening Message should be reviewed.....	24
9. More information should be collected on the customer experiences of both signposting and referral from Consumer Focus and the EO, and vice versa.....	26
10. The EO should liaise with interested parties to decide whether and if so, how data should be captured and analysed to improve understanding of customers who "drop out" of the EO processes.....	27
11. Some analysis is required to assess the effectiveness of arrangements to provide access to consumers with reading or hearing disabilities, or ESL.....	29
12. Presentation of PCs should be of a consistently high quality to improve the consumer experience and improved the likelihood of a double-accept. Quality control measures should be introduced.....	31

13. Analysis is required as to why there is low acceptance of Provisional Conclusions.....	31
14. The EO should carry out a systematic review of cases to identify better ways of collating and presenting information e.g. meter readings.....	31
15. An objective should be agreed by Members and EO to reduce the OTOR/ITOR ratio to a target level by a target date. A project should be initiated, steered, scoped, funded and delivered to achieve the objective.....	34
16. The approval criteria should include an explicit requirement for best-practice forecasting methodologies and processes to achieve reasonably practicable estimates of funding and staffing requirements.....	37
17. More management information, including KPIs and targets should be developed and introduced for reporting and monitoring progress in delivering Final Decisions.....	38
18. The EO and Ofgem should re-visit and define the arrangements for handling connections charge complaints which have a technical or commercial component. The arrangements should be clarified in communication with network companies.....	40
19. The allocation of costs for resolving the more technical connections-related complaints should be reviewed.....	40
20. The EO should be more active in identifying and commenting on systemic issues.....	42
21. Information should be logged on the nature of cases and the causes of complaint as they are investigated.....	42
22. Internal processes and analysis tools should be established to review the cases to identify and resolve systemic issues.....	42
23. Questions should be raised regarding Members' policies if there is evidence that similar complaints are driven by policy rather than performance.....	42
24. Ofgem and the EO should review some examples of systemic issues to illustrate how they may lead to Members being in breach of regulations.....	42
25. It is desirable that the conditions to be considered in taking on an additional redress scheme should be determined in advance by TOSL and agreed at Council. Any opportunity which may arise thenceforth can be tested against the pre-agreed conditions.....	43
26. Ofgem should consider whether an additional Approved Redress Scheme criterion is required for assurance that the energy sector redress scheme is not compromised by other schemes delivered by the same organisation.....	43

27. Council should ensure that TOSL has the skills and knowledge required in  
general management of the expanded business.....44

28. The EO Annual Report should include some of the information contained in  
the TOSL Annual Report as is relevant to the EO scheme.....45

29. There are opportunities for improving the Annual Report by the inclusion of  
additional performance information on operations, costs and trends.....45

30. There are opportunities to improve the EO and TOSL websites in provision of  
more information regarding case statistics, ensuring examples of case  
summaries are kept up to date, and some of the systemic issues affecting  
the Members and Consumers.....46

## Appendix 1 List of people and organisations consulted

Organisation	Name	Position
TOSL	Lewis Shand Smith	Chief Ombudsman
	Richard Sills	Ombudsman
	Richard Brown	Head of Corporate Services
	Sue Jackson	Head of Stakeholder Relations
	<i>And many others</i>	
Energy Networks Association	Andy Phelps	Director of Regulation
	Louise Kennerley	Regulation Assistant
Western Power Distribution	Alison Sleightholm	Energy Member Board member for networks
Legal Services Board	Chris Kenny	Independent member of TOSL Council and Energy Member Board
Energy Retail Association	Garry Felgate	Chief Executive, industry member of TOSL Council and Energy Member Board member
	Julian Anderton	Energy Member Board member
British Gas	Nigel Howard	
Scottish Power	Grant Tierney	Energy Member Board member
EDF	Simon Rowe	
E.ON	Tina Pearce	
Scottish & Southern Energy	Jacqui Maxwell	Energy Member Board member
NPOWER	Elizabeth Gibson	
Opus Energy	Andy Nash	Small Suppliers' representative as Energy Member Board member
Consumer Focus	Audrey Gallacher	Head of Company Performance and Consumer Experience
	Dhara Vyas	Senior Policy Advocate
	Monica Davidson	Extra Help Unit
Consumer Direct	Tom Ballard	Contract & Service Manager
Citizens' Advice	Tony Herbert	Social Policy Officer
The Independent Assessor	Roger Jefferies	
Otelo	Chris Holland	Chairman of the Otelo Member Board representing BT and industry member of TOSL Council
Surveyors Ombudsman Service (SOS)	Steven Gould	RICS, Surveyors Ombudsman Service Member Board, TOSL Council Industry Member
	David Pilling	RICS and alternate Industry Member representative, SOS
The Postal Redress Service (POSTRS)	Catherine Hammond	

## Appendix 2 Requirements of the review

### Invitation to Tender – The Requirement

The work for which we are now seeking responses to tender is designed to determine how the ombudsman arrangements are working now that it has been operating as the approved statutory scheme for a year.

In particular:

- whether the scheme is performing in accordance with the approval criteria as stated in our March 2008 decision document;
- where the scheme is not meeting the criteria to make recommendations on the improvements it should make;
- to identify any areas where the scheme criteria needs to be improved by reference to best practice or amended to provide greater clarity;
- to identify areas where improvements may be made to existing Energy Ombudsman processes and to make recommendations on what those improvements may be;
- to review and make recommendations on improvements to the customer service and communications aspects of the scheme, including the interfaces with members, consumers, and third party agencies; and
- to consider and make recommendations on how the scheme may demonstrate further its independence and public accountability, and improve its accessibility and effectiveness for consumers.

We expect that the views of relevant stakeholders will also be taken into account in the review

### Outline of Scope of Energy Ombudsman Review

To carry out a review of how the new statutory ombudsman arrangements are working after a year of their operation.

- Compare performance against the published criteria.
- Identify any areas where the scheme criteria should be amended, clarified or added to.
- Recommend improvements to EO based on: i) any under performance against the criteria; & ii) with reference to best practice in customer service even where no under performance is identified.

### Scheme criteria

#### 1. Independence, governance and fees

Assess the EO's performance by reference to the published criteria, identifying areas & making recommendations for improvement. Areas to consider include:

- processes in place to ensure that there are accurate forecasts of anticipated complaint levels, that the scheme is adequately funded;
- processes in place to review the accuracy of forecasts;
- processes in place for revising forecasts & meeting new demands;
- processes for allocating funding between case & membership fees;
- process for monitoring performance of EO; &
- mechanisms for seeking views from/reporting information back to members.

#### 2. Accessibility



Assess the access arrangements to the EO by reference to the published criteria, identifying areas & making recommendations for improvement. Areas to consider include:

- methods of promoting awareness of the EO;
- customer drop out rate at different stages of the process & the reasons for this;
- process for dealing with third parties making complaints on behalf of consumers;
- process for identifying customers in need of greater assistance, particularly those who may be vulnerable, & the approach taken to assist those customers;
- availability of different methods for making a complaint & the numbers utilising each method;
- frequency of communications with consumers, & whether those communications at all stages are clear & understandable;
- any research on barriers to access, demographic of who is using the EO & actions taken to widen it;
- sources of consumer referrals (excluding referrals from members) & numbers referred by them to EO;
- reviewing statistics from suppliers & network businesses on the number of deadlock & 8 week letters issued, including the average time for a deadlock letter to be issued;
- reviewing suppliers & network businesses deadlock & 8 week letters, assessing whether they are clear or a barrier to accessing the EO;
- comparing the number/% of cases taken up by the EO across suppliers, network businesses, & other redress schemes (e.g. Post), identifying reasons for differences in take up; &
- availability, visibility, & information about services for customers with ESL, hearing or visual difficulties.

### 3. Effectiveness

Assess how effective the EO is by reference to the published criteria, identifying areas & making recommendations for improvement. Areas to consider include:

- processes for resolving disputes between EO & members who challenge the EO's acceptance of a complaint, the number of cases where a challenge has been made, whether it has been successful, & where it is has been how this has been communicated to the consumer;
- circumstances in, & the extent to, which the EO's discretion to investigate is being utilised;
- processes for reallocating case costs to another member, the number of cases where it has occurred & the reasons for this;
- processes for training new & existing staff on energy matters, & for updating them on changes including how quickly this occurs;
- basis of performance targets, are they being met, what & how often is a review of performance is undertaken, how is this information utilised;
- arrangements in place to deal with peaks in demand, including whether & how quickly extra resources are deployed;
- effectiveness & frequency of quality assurance monitoring;
- processes for identifying breaches & systemic issues;
- impact on member's service standards, processes, policies including whether any changes have been recommended to improve service; &
- number of cases outside its remit, the reasons for this, where these customers have been referred from & where they are referred to, measures taken to address any problems, & quality of communications with consumers which result.

### 4. Public accountability

Assess how the EO is meeting the scheme requirements to be publicly accountable by reference to the published criteria, identifying areas & making recommendations for improvement. Areas to consider include:

- availability, visibility, & quality of information on the website;
- level of customer satisfaction with the scheme using existing research and how research findings have been taken into account in the development of EO service;
- scope & development of customer/stakeholder research;
- whether agreements have been made with stakeholders (e.g. MoU) & what these cover; &
- number of complaints about the EO, reasons for these, the outcome including information on those sent to the independent assessor, & whether any changes have been made to EO processes as a result.

#### Stakeholder engagement

- Seek views from scheme members on the performance of the EO, including any changes they have made to their service or processes as a result of the EO's findings or recommendations.
- From small suppliers to also seek their views on governance arrangements, reassigning case fees between suppliers, and the transition from 12 weeks to 8 weeks before referral to the EO.
- From network businesses to also seek views on governance arrangements, and for handling technical cases particularly those concerning connection charges and the impact on their processes.
- Seek views from Consumer Focus, Citizens Advice, Consumer Direct and Age Concern about the performance of the EO drawing on their experience of working on behalf of consumers wishing to use it.

## Appendix 3 Examples of references to EO on backs of bills

### British Gas:

If following Steps 1 and 2 you are still dissatisfied you may contact the Energy Ombudsman on 0845 055 0760 (Textphone 18001 0845 051 1513), or via [enquiries@energy-ombudsman.org.uk](mailto:enquiries@energy-ombudsman.org.uk). The Ombudsman offers a free, independent service where customer and supplier cannot reach final resolution. Their final decision is binding on the energy supplier, not the customer.

### EDF Energy

If for any reason you still feel your enquiry has not been responded to effectively, you can refer to the Energy Ombudsman (EO) website: [www.energy-ombudsman.org.uk](http://www.energy-ombudsman.org.uk) or call them on 0845 055 0760.

### E.ON

If you have followed each of the above three steps and we still have not managed to resolve your complaint within 8 weeks, you can contact the Energy Ombudsman on 0330 440 1624

### Npower:

If we haven't been able to put the matter right within eight weeks or you have received our Final Response letter, you can take your complaint to the Energy Ombudsman by phoning 0845 055 0760 or email [enquiries@energy-ombudsman.org.uk](mailto:enquiries@energy-ombudsman.org.uk)

### Scottish & Southern:

If you are still not satisfied you can contact the Energy Ombudsman on 0845 055 0760 or [enquiries@energy-ombudsman.org.uk](mailto:enquiries@energy-ombudsman.org.uk)

### Scottish Power

We are confident your query will be resolved satisfactorily. If after contacting our customer service centre you remain unhappy with the way your complaint was handled, please ask to speak to our customer care team. If your complaint is not resolved within eight weeks, or you receive our final response letter, you can contact the Independent Energy Supply Ombudsman on 0845 055 0760, [www.energy-ombudsman.org.uk](http://www.energy-ombudsman.org.uk)

## Bank Statements – a Comparison

It is of interest to note that standard wording is used on residential bank statements in reference to the Financial Ombudsman Service. By comparison with the energy sector, this wording is less clear on the referral to the Ombudsman:

### **Dispute resolution**

If you have a problem with your agreement, please try to resolve it with us in the first instance. If you are not happy with the way in which we handled your complaint or the result, you may be able to complain to the Financial Ombudsman Service. If you do not take up your problem with us first you will not be entitled to complain to the Ombudsman. We can provide details of how to contact the Ombudsman.

## Appendix 4 IVR Opening Message

Thank you for calling the Energy Ombudsman, your call may be recorded for training purposes.

Please note that we are not your energy company and we can't transfer this call through to them.

The Energy Ombudsman helps to resolve complaints between household and small business customers and energy companies.

We can't help unless you've already complained to your energy company and given them up to eight weeks to sort out the problem. Advice on how to do this can usually be found on the back of your bill or on the energy company's website.

If you have a general enquiry you may wish to contact Consumer Direct on 0845 404 05 06

If you are calling about a power cut please call the emergency helpline number on the back of your bill. For the National Gas Emergency services please call 0800 111999.

If you are calling to pay a bill or to arrange for a meter reading, please press 1.

If you are calling about the price you pay for your energy, or to change supplier, please press 2.

If you believe that you have a complaint that the Energy Ombudsman can handle but you haven't contacted the company that you are complaining about please press 3

If you believe that you have a complaint that the Energy Ombudsman can handle but you HAVE contacted the company that you are complaining about please press 4

If you are calling for general information on the Ombudsman service or for an update on a case that the Ombudsman has accepted please hold and we will transfer you through to an Enquiry Officer. Our calls are normally answered within 5 minutes.