

Strengthen and Streamline Consumer Advocacy

Ofgem's Response

Overview

Ofgem welcomes the DTI's consultation on consumer representation and redress. For us it is vital that we get clear and evidenced input on the consumer perspective to inform our policy considerations. It is also important that there is effective help for individual consumers in resolving disputes with energy companies.

Ofgem would urge the DTI to move to the new model as quickly as possible. We had already identified the need for an ombudsman scheme to provide effective redress on billing issues following the supercomplaint and have challenged the industry to put such a scheme in place by July this year.

However there are still a number of issues to be resolved. Some of energywatch's current activities do not obviously fall into the remit of any of the new bodies. Resolving how these would be dealt with is essential to ensuring that the new regime operates smoothly from the start.

We would also encourage DTI to continue to press for inclusion of as wide a number of sectors as possible in the new arrangements. There are significant benefits from the ability of a new body to take a broader cross-sectoral view of certain issues.

We recognise the risk identified in the consultation that the arrangements could lead to a loss of sector specific expertise. Such knowledge is important on certain issues where informed consumer input is sought. The DTI's preferred approach of allowing the sectoral regulators to establish consumer panels to address this would seem sensible. While we are not clear at this stage whether we would actually want to go down this route we would welcome the flexibility to do so depending on the eventual form and structure of Consumer Voice, taking care not to duplicate roles or create unnecessary complexity.

We have structured our response by dealing with each of the individual questions raised in turn. However we start by discussing in more detail a range of issues we have identified which are not picked up in the consultation.

Areas requiring further thought

As noted above it is essential that further thought is given to a number of aspects of the new regime to ensure that there is clarity as to where certain activities would be dealt with. Ofgem has a concern that if these aspects are not thought through we may ourselves end up needing to do more in particular areas so the cost savings envisaged by DTI may not in practice be achieved or alternatively consumers will be left without the necessary support.

Three of the key areas where further thought is required are:

- **Support for business customers.** At present energywatch's remit includes business customers. While Ofgem's view is that larger industrial and commercial consumers do not require this support and are well able to engage directly with Ofgem or the industry on issues, there may be a stronger case for continuing support for smaller businesses. The upper end of the "small" user community are represented by organisations that offer representation or advice via subscription, for example CIPS, LAGUR,

UCC etc. These organisations tend to be quite active in voicing business concerns. However, aside from energywatch's business service team, there is currently little or no support for small/micro business regarding energy matters. For example, Chambers of Commerce in each locality represent businesses ranging in size from the individual businessman to companies with more than 250 employees but there is little nationwide representation. The FSB (Federation of Small Business) has over 195,000 members, ranging from single site, very small business to high street retail. It has a 24hr helpline, offering advice on a range of general subjects, but it has no specific energy expertise. To raise the profile of the small business community, it has recently joined with energywatch to launch the "Make the connection" campaign. This scheme has three major objectives:

- to make small businesses more confident and assertive in their dealings with energy companies;
- to make small businesses more aware of the help that exists; and
- to make energy companies understand that small businesses are big customers and should be valued as such.

Further thought is needed as to whether the proposals provide adequate support for small businesses going forwards. Currently Consumer Direct and the NCC deal only with domestic consumers. However, the telecoms ombudsman Otelio does include small business customers (with up to 10 employees) within its scope. We would encourage the DTI to include small businesses within the scope of the energy Ombudsman. In terms of receiving policy input to, for example, price controls Ofgem is concerned to ensure that the views of small businesses are adequately represented. We note that the remit of the Ofcom consumer panel covers small businesses and this would seem a possible model to build on.

- **Complex real time issues.** At present a number of the complaints that energywatch deal with are urgent, real time issues where perhaps the customer is facing disconnection or has been disconnected. energywatch has recently undertaken an exercise to monitor contacts from customers who do not have a gas or electricity supply. In the six months September – February 2006, 1008 customers (almost entirely domestic) sought energywatch's assistance because they had no gas or electricity supply. Of these, nearly three quarters had problems with their prepayment meter or card and the majority had already been to their supplier without success. At present, energywatch will treat these customers as priority and contact the supplier immediately on their behalf. Under the proposed model these customers would have nowhere to turn. Consumer Direct, as currently envisaged, will not have the skills or processes to provide hands on support to customers in this situation. Consumer Voice, as currently envisaged, will not deal with individual consumer issues. The Ombudsman, with its emphasis on full investigation after a deadlock has been reached would, as currently envisaged, not be able to deal with such issues in a timely way.

The answer here is not to create another body but to refine the proposed approach to provide a clear home for such activity. Equally it is important that the remit here is tightly defined to deal only with exceptional cases. While the number of such cases may be small, they can lead to real disruption and hardship and need to be addressed quickly and effectively. It is important that future arrangements are capable of managing these cases, perhaps with the initial filtering done by the Consumer Direct adviser, to retain the principle of a 'one stop shop' for consumers. Clearly the preferred outcome is for suppliers to improve their handling of these

issues and it may well be in the suppliers' interests to set up a dedicated team dealing specifically with such 'real time' cases. However, there will inevitably be a small number of cases where suppliers do not resolve the issue and where consumers need somewhere else to turn. Skilled staff able to identify those most in need of immediate intervention will be key. Further thought is needed as to how these cases would best be dealt with.

- **Network related issues.** Although the majority of the matters dealt with by energywatch are supplier issues there are some, again often technically more complex, which involve network companies. These might include disputes over connection charges, quality and reliability of supply and reinstatement of works. In some of these cases (such as on connection charges) Ofgem provides energywatch with guidance on individual disputes as energywatch lacks the technical expertise to do it themselves. In the last 12 months we have received 130 cases for advice from energywatch with around 5% of these ending up in a formal determination. In 2005 energywatch received 7000 enquires and 2000 complaints on network issues. Ofgem has powers to determine disputes but investigation of individual complaints is currently energywatch's role. energywatch plays an important role at present in providing informal advice, often avoiding the need for a more costly and bureaucratic formal determination.

Ofgem also has powers to determine disputes about whether a payment is due under the standards of performance regulations. These usually relate to standards applying to the network operators and energywatch has a role in gathering relevant information from customer contacts and attempting to resolve disputes before they reach the stage of a formal determination. Further thought needs to be given to how these issues would be handled in future.

The consultation currently seems to envisage the Ombudsman dealing with disputes between customers and suppliers. It would seem sensible to also require the network companies to be covered by the Ombudsman scheme, even if the number of referrals is likely to be relatively small. The question is whether this would formally take over from Ofgem's determination role on certain disputes under the Gas and Electricity Acts. In our view the Ombudsman could take on guaranteed standards determinations but not connections given its close relationship with policy development and technical complexity. However, the Ombudsman could seek to resolve connections disputes informally and refer cases for determination to Ofgem where a resolution has not been agreed.

There are also a number of more detailed examples of particular roles and responsibilities which need to be considered which are covered in our response to question 10. These include energywatch's current role in industry code panels and its proactive role in consumer education.

Summary of Questions

Q1 Do you agree that companies who provide services should have complete responsibility towards their customers, including the resolution of complaints? To what extent do you consider that companies currently fail to do this?

Answer:

Companies providing services to customers have a clear responsibility for resolving complaints. In particular for suppliers operating in a competitive market the ability to provide a good level of service and deal effectively with any complaints should be important in winning and retaining customers. In recent years suppliers have taken significant steps to deal with the sources of many complaints – the customer transfer process, mis-selling and billing. energywatch complaint levels have fallen (2003 - 88462; 2004 - 74808; 2005 - 64307) despite growing awareness of energywatch's role. Companies are improving their own complaint handling but on occasions things do still go wrong as evidenced by the volume of calls to energywatch, although this remains low compared to the overall customer base.

Q2 Do you consider that additional incentives need to be placed on suppliers in order to secure improved standards in handling consumer enquiries and complaints? If so, what form should these incentives take (licence obligations; statutory targets; etc)

Answer:

The introduction of an ombudsman scheme with the power to award compensation and to charge companies on a per complaint basis will provide a further incentive on companies to improve their complaint handling. In our view statutory targets in this area would be wholly inappropriate in a competitive market. Indeed, consistent with better regulation, as part of its supply licence review Ofgem is looking to remove the existing licence obligations on suppliers which require them to have a code of practice for dealing with complaints.

That said, over the transition period it is clearly essential that suppliers (and others) deal effectively with consumer enquiries and complaints. More active monitoring and reporting of their performance in this area could be helpful although a common definition of what constitutes a complaint would be needed for any analysis to be meaningful.

Under the new regime it is likely to be helpful for suppliers to have a dedicated team to deal with enquiries the Ombudsman has received. Where a consumer goes to Otelo too early, in some cases telcos have provided Otelo with a dedicated number to direct these consumers to.

For the monopoly network companies regulatory targets are more appropriate. Ofgem has also put in place a range of guaranteed standards of performance that each company should meet for each individual customer, with compensation payments to individual customers (subject to specified exemptions) if these standards are not met.

Q3 Do you agree that it would be beneficial to extend complaint resolution through ombudsman schemes to electricity, gas, and postal services?

Answer:

Yes. In responding to the billing supercomplaint of last year, Ofgem called on the industry to establish an Ombudsman to provide effective redress for billing related issues by July this year. In cases where customers do receive poor service it is important that they can obtain redress in a low cost and accessible way, without having to resort to the courts. While energywatch has been effective in resolving many customer issues and securing compensation, it has no formal powers to require such compensation to be paid. And indeed given its role as a consumer champion it would not be appropriate for it to have such quasi-judicial powers.

Q4 Do you agree that the electronic communications model is to be preferred, with service providers being obliged to belong to an ombudsman scheme, but leaving it to the companies to come up with their own scheme (or join an existing scheme) subject to regulatory approval?

Answer:

Yes. This is effectively the approach that Ofgem has adopted in relation to the proposed billing ombudsman. That said there is a question as to whether the individual regulators all need to get involved in approving and, auditing the ombudsman arrangements for their sector where the same body may be providing the service across a number of sectors. An alternative would be for a third party expert body such as the British and Irish Ombudsman Association (or OFT) to take on this role. We assume that, as with financial services/telecoms, the obligation to belong to an approved Ombudsman scheme would be covered in legislation.

Q5 Which of the strategic models do you prefer, and why?

Answer:

Ofgem recognises the risk identified in relation to the first model that there could be a loss of focus or expertise on particular sectoral issues. This is of real concern given the importance that Ofgem attaches to having robust and informed consumer input to our policy decisions including, but not limited to, price controls. While it is hard to determine at this stage how far this would be an issue under model 1 there would be merit in allowing for sector specific panels, while taking care that these do not simply duplicate the functions of the main Consumer Voice organisation.

While we are not clear at this stage whether we would want to go down the route of appointing a consumer panel, the flexibility to do so is helpful. There may be other options that we would consider as well such as the use of an advisory group akin to those which Ofgem has already established on environmental and social matters.

The experience in the communications and financial services sector is that having consumer panels as part of the regulator is the most effective approach. This has enabled a relationship to develop where the regulator is ready to share policy thinking informally at an early stage and to have a more active dialogue, with the consumer panel playing the role of a "critical friend". The House of Lords Select Committee on the Constitution in its report on "The Regulatory State: Ensuring its Accountability" highlighted the inevitable tension that exists between regulators and

consumer bodies and the “risk of damaging public confidence in regulation if relationships become adversarial”.

It may be helpful in taking the thinking forward to distinguish between the proactive and reactive aspects of consumer representation and advocacy. On sector specific policy issues where the regulator is looking for input there is a clear need for sectoral expertise to deal with what can be quite technically complex issues. A sector specific consumer panel – or advisory group - would seem best placed to provide that reactive advice. Including this within the regulator would allow consumer research to be commissioned in a co-ordinated way.

There is then a separate, more proactive, consumer advocacy role, focusing in particular on the needs of disadvantaged consumers. The issues here are often cross-sectoral and even where the concerns are focussed on a particular sector, it is helpful to have a broader cross-sectoral perspective to ensure a proportionate response. This role would seem to fall naturally to Consumer Voice. Indeed we would note that there have been a number of issues such as “why do the poor pay more?” or their report on call centres where NCC have already highlighted issues in the energy and other sectors. This would therefore seem a natural extension of their existing role.

Q6 Do you agree that the benefits to consumers will be diminished by the exclusion of any of the bodies listed?

Answer:

Given the vision of a one stop shop for consumers and the benefits to be achieved in terms of synergies, the opportunity should be taken to cover as broad a range of sectors as possible. It is disappointing that a number of sectors have now been dropped from the proposals and Ofgem agrees the benefits to consumers will be diminished by the exclusion of any of the bodies listed. That said Ofgem would argue that even if the energy sector were to be considered in isolation there would be a case for moving to a model akin to that in telecoms given the extent to which competition has now developed in the energy sector.

Q7 Do you agree that Consumer Voice should have a UK wide role, but with restricted scope in some areas?

Answer:

For energy this is not an issue given that, as noted in the consultation, the General Consumer Council for Northern Ireland covers consumer issues. However the proposal seems unduly complex and it is not clear why the General Consumer Council for Northern Ireland could not take on a broader role to cover post, for example.

Q8 Do you agree that offices should be restricted to one in each of Scotland, England, and Wales? Should Consumer Voice have the powers to appoint regional committees?

Answer:

We recognise the different Government administrations in place in Scotland and Wales and it would seem sensible to have offices in these

nations to reflect these arrangements but not to go beyond this given the costs and complexity involved.

- Q9** Do you agree that funding should be made partly from Government and partly from those industries that contribute to the funding of sectoral consumer bodies at present?

Answer:

The principle is sensible however the practicalities of apportioning the costs of Consumer Voice between sectors may mean that it is not worthwhile if the additional costs are small. In particular it is important that Consumer Voice has the flexibility to focus resources on the most pressing issues irrespective of sector and this may be difficult if there were sector specific funding. Clearly the cost of any consumer panels could much more readily be attributed to the specific sector.

No mention is made of the costs of Consumer Direct which are likely to rise. It is assumed that this would continue to be Government funded.

- Q10** Which duties and obligations on the sectoral consumer bodies should be transferred to Consumer Voice? Please give reasons.

Answer:

Under the Utilities Act energywatch has a range of duties, obligations and powers including:

- Producing a **forward work programme** which we assume would be subsumed into any requirement to produce a work programme in the new Consumer Voice organisation (S4).
- Agreeing a **memorandum of understanding** which includes arrangements for securing co-operation and the exchange of information (S7).

The MoU outlines arrangements through which energywatch and Ofgem can seek information from one another under S24 and S26. It may be sensible for similar arrangements to be put in place for Consumer Voice. The MoU also states that other information such as on complaints and standards of performance will be exchanged. Again, formal arrangements with Consumer Direct and the Ombudsman for the exchange of complaints data would be useful.

- Obtaining and **keeping under review information about consumer matters** and the views of consumers on such matters (S18).

This would seem to be the essence of the new Consumer Voice role. Linked to the above, Ofgem has a duty, wherever it is required under the Gas or Electricity Acts to publish a notice or document, to send a copy to energywatch. Given the large volume of such statutory notices, many of which may be of no direct consumer impact, we have relied on our e-mail notification service in many areas to meet this obligation. Of much more relevance to energywatch are policy consultations which are not actually covered by this duty. This duty on Ofgem would not therefore seem to be necessary going forward and could be dealt with through an MoU.

- Making proposals or providing information or advice on consumer matters and **representing the views of consumers to public authorities** (including obviously Ofgem) and the industry (S19).

Again this would seem central to the Consumer Voice role (and the potential consumer panel). One area requiring further thought is the provision of **figures on enquiries/complaints** which energywatch provide us on a regular basis and which can be helpful in directing policy development or enforcement work. Consumer Voice would not have this information but we would expect that both they and we would want to receive such information from Consumer Direct and the Ombudsman. Both organisations will need to consider how enquiries/complaints will be categorised in order to support enforcement work. energywatch records enquiries/complaints under 10 broad headings under which there are over 50 categories that reflect, as far as possible, licence conditions. Our understanding is that the Ombudsman is likely to require a formal obligation to pass us information on complaints they deal with to overcome any potential confidentiality issues

Another crucial area that requires further thought is energywatch's role in relation to **industry codes**. For some codes such as the Balancing and Settlement Code (BSC) energywatch is a member of the panel and able to propose modifications on any matter. For other codes its role is more limited. To play this role requires a detailed technical understanding of the energy sector. However it is a very important role and one which Ofgem cannot take on given it would clearly be unacceptable for Ofgem to be able both to propose modifications and decide on them.

- Providing **information to consumers** either by publishing the information or furnishing information to individual consumers. (S20) Linked to this energywatch has a power (under S21) to publish advice and information.

This is an important part of energywatch's role and one which requires further thought. Consumer Direct will have a role in providing information on a reactive basis to consumers but it is assumed the more proactive role would fall to Consumer Voice. However, it is worth highlighting the extent to which energywatch have played an active role working with the media to keep reiterating messages around "switch and save", energy efficiency, the Priority Service Register etc. This is important work on which Ofgem and energywatch have worked collaboratively under the 'energysmart' brand given Ofgem also has a duty to publish any advice and information that would promote the interest of consumers although it is clearly not our core role.

Linked to this energywatch have taken on responsibility for checking and approving the various **price comparison services** that exist. Again further thought needs to be given to where responsibility for this should lie if the view is taken that it is still required as the market for price comparison services has developed.

Linked to the above, energywatch currently have a specific responsibility to publish statistical information about companies' performance under **standards of performance**; energy efficiency obligations (the **Energy Efficiency Commitment (EEC)**) and **complaint levels and handling**. Ofgem collects and publishes information annually on the EEC. For standards of performance the information is collected by Ofgem and then passed to energywatch for publication. Ofgem will continue to collect this

data but would suggest that there is a need to review what should be published going forward.

For complaints, which includes both complaints received by energywatch and the companies themselves, the way forward is less clear. Consumer Voice would not receive complaints itself, but as noted above, there will be a need for visibility of the level of enquiries/complaints received by Consumer Direct and the Ombudsman. energywatch does not currently publish company complaint levels although we understand that this is the subject of some debate and the position may change in the future. One problem, as noted in the response to question 2, is that all the companies categorise contacts differently as between complaints and enquiries but, assuming this could be addressed, monitoring and reporting of complaint levels and handling would be helpful at least during the transition period.

- A duty to **investigate complaints** against suppliers or other licensees (S22). This function would obviously not transfer to Consumer Voice as it is not envisaged that they would deal with individual consumer issues. The remit would be taken on in a slightly different form by Consumer Direct and the Ombudsman. However, as noted above, there are some urgent and serious complaints which would not be effectively dealt with under the proposed model and where further thought is needed.

Linked to this function energywatch has a duty to inform Ofgem where the complaint relates to a matter in respect of which an enforcement function may be exercisable. It may be appropriate to place a similar duty on Consumer Direct/the Ombudsman.

Similarly, where the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority for determination, energywatch must inform the complainant of that right, although they do so with the caveat that in the first instance they will try to resolve the complaint. Consumer Direct could clearly play this advisory role although as noted above energywatch play a more active role in investigating the dispute which helps resolve the issue more quickly and limits the number of cases in which formal determinations are required. Further thought needs to be given to the whole area of determinations as noted above.

As a part of its complaint handling function energywatch has a duty where appropriate to make representations on behalf of the complainant to assist in reaching a satisfactory resolution of the complaint. This is an area where there is potentially a gap in the proposed arrangements. With the development of competition suppliers have improved their complaint handling arrangements and most now have dedicated customer service teams to deal with more vulnerable customers. The need for a third party to take on this role is therefore reduced. However, as highlighted above, we believe that there will be some urgent and complex cases, in particular where a customer is off supply, which would not be covered adequately by the proposed arrangements.

- **Investigating other matters** and making a report (S23). This would seem to be a core part of the consumer voice role.
- **Provision of information** to energywatch. Provision of information to Ofgem (S24 & 26)
Underpinning the functions and duties are a set of arrangements around the provision of information. If Consumer Voice's remit is to focus on representing consumer views then they should not need specific

information gathering powers that do not exist in relation to other competitive markets. Clearly the Ombudsman will need certain information gathering powers in relation to cases referred to it. The need for Consumer Direct and the Ombudsman to provide information to Ofgem about enquiries and complaints has been touched on above.

Q11 Which of the interactions between the consumer body, regulator, and Government should be preserved and transferred to Consumer Voice? Please give reasons.

Answer:

Largely, covered in our response to question 10.

There are in addition certain detailed requirements within licences for companies to provide specific information to energywatch (such as copies of codes of practice). Further work is needed to determine how far Consumer Voice should take these on when its overall remit is clearer. Many of these obligations are anyway being reviewed as part of Ofgem's major review of supply licences.

Q12 Do you agree with the estimates of the benefits of the proposed options? Please provide quantifiable evidence where possible to support your view.

Q13 Do you agree with the initial estimates of the costs of the proposed options? Please provide quantifiable evidence where possible to support your view.

Answer:

There may be other cost implications for Consumer Direct or Ofgem for example which should be considered as these proposals are developed.

Q14 Do you agree with the assessment of the impact of the proposals on small firms? We would welcome, in particular, comments from small firms on the impact of the proposals.

Answer:

The IA focuses purely on small companies as market players who may have to participate in the ombudsman scheme. The impact on them would depend on the funding arrangements. However as noted above, the more important issue is the impact on small businesses as users of these services where it is not clear that they will in future receive the level of support which energywatch provides.

Q15 Do you agree with the assessment of the impact of the proposal on competition?

Answer:

Yes