

## Consultation response

Neil Barnes  
Office of Gas and Electricity Markets  
9 Millbank  
London  
SW1P 3GE

**DATE:**

**TO:** Neil Barnes

**RESPONSE BY:** Dr Fiona Cochrane

### ENERGY SUPPLY PROBE - PROPOSED RETAIL MARKET REMEDIES, DECISION DOCUMENT

Which? final representation.

Please contact Dr Fiona Cochrane with any questions:

Tel: 020 7770 7897

[fiona.cochrane@which.co.uk](mailto:fiona.cochrane@which.co.uk)

## Introduction

1. Which? is an independent, not-for-profit consumer organisation with over 700,000 members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and is funded through the sale of Which? consumer magazines, online services and books.
2. Which? welcomed Ofgem's thorough analysis of the UK energy markets and the problems experienced by consumers<sup>1</sup>. We are supportive of many of the proposals set out in this decision document<sup>2</sup>, including the new requirement to present key information on bills in a clear and easy to understand way<sup>3</sup>.
3. However, this final package of remedies still does not go as far as the initial package put forward<sup>4</sup>, which may significantly jeopardise alleviating consumers detriment identified in the probe analysis. Furthermore, as a consequence of the long lead in time for the majority of the proposed license condition changes consumers will have to wait too long for any benefit of the probe, despite previous commitments that changes would be made in advance of the winter period.
4. Our comments on the decision document are detailed below.

## General Comments

### Implementation

5. Which? remains concerned that as a consequence of the extensive implementation periods for the majority of the license condition amendments, consumers will have to wait unnecessarily for failings in the energy supply market to be rectified. We are very disappointed to see that the initial implementation timetable<sup>5</sup> for the majority of the license conditions has been pushed back further. This does not seem consistent with

---

<sup>1</sup> *Energy Supply Probe: Initial Findings Report*, Ofgem, October 2008

<sup>2</sup> *Energy Supply Probe: Proposed Retail Market Remedies, Decision Document*, Ofgem, August 2007

<sup>3</sup> Paragraph 3.14, *Energy Supply Probe: Proposed Retail Market Remedies, Decision Document*, Ofgem, August 2007

<sup>4</sup> *Energy Supply Probe: Initial Findings Report*, Ofgem, October 2008

<sup>5</sup> From *Probe retail package: implementation dates*- email correspondence from Neil Barnes on behalf Energy Supply Probe, Ofgem, 14<sup>th</sup> July 2009.

assurance that *'We are keen that consumers can start benefiting as soon as possible from the measures contained in our package of proposed retail market remedies'*<sup>6</sup>.

6. With the exception of the implementation of the marketing objective (SLC 25.1-2) license condition changes will not begin to be implemented until 2010. It is difficult for Which? to comprehend what rationale there is for allowing energy suppliers to continue to debt block on the basis of supplier error (SLC 14) until the 1<sup>st</sup> January 2010. We also question why the action to start to address the imbalance between energy supplier and consumer when a consumer is made aware of a retrospective price increase (SLC 23) will not take immediate effect.
7. We are also disappointed that the implementation of the proposed license conditions addressing customer information (SLC 31A) is now set as the 1<sup>st</sup> April 2010. Given the importance of consumer access to the name of their tariff when considering switching and in order to realise the full benefit of the marketing objective (SLC 25) where comparability is key it is not acceptable for consumers to have to wait until April 2010 for this to appear on their bills.
8. As we have previously noted, many of the concerns raised by suppliers regarding the implementation of proposals (for example IT system costs), appear rooted in the complexity of tariffs or discriminatory rules, such as the 65 working day notice period. It is a commercial decision for suppliers if they choose to continue offering a bewildering array of tariffs to consumers. We therefore do not accept that the cost of making key information about their tariffs clear and comprehensible should be viewed as an acceptable reason for weaker proposals.

### **Monitoring the impact of the package of proposals**

9. It is essential that the implementation and the effectiveness of the proposals are monitored in a transparent and accountable fashion. When Ofgem publish the conclusions of this decision document they must set out:
  - > The evaluation timetable
  - > The criteria against which they will evaluate

---

<sup>6</sup> Paragraph 7.6, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

- > What action they will take and when, should a proposal or combination of proposals not be achieving the intended impact.

10. This review should include evaluating the effectiveness of the wholesale retail report.

## Standards of conduct for suppliers in the retail market

11. Which? continues to question the rationale for the development of the standards for conduct. It remains unclear why Ofgem believe that these proposed standards, which have no legal basis, will be more effective than Consumer Protection Regulations (CPRs) at addressing energy supplier behaviour.
12. Clarification is also required on how these standards of conduct will be used, especially how they will address tariff confusion. The proposed update to the enforcement guidelines<sup>7</sup> and the letters to suppliers that will set how Ofgem will assess performance against the standards<sup>8</sup> are welcome steps in this direction.
13. In order for suppliers to be held accountable against the standards of conduct it is important that guidelines for enforcement and interpretation are widely publicised.
14. Which? would welcome the opportunity to represent consumers in the development of assessment criteria.

---

<sup>7</sup> Paragraph 2.10, *Energy Supply Probe: Proposed Retail Market Remedies, Decision Document*, Ofgem, August 2007

<sup>8</sup> Paragraph 2.11, *Energy Supply Probe: Proposed Retail Market Remedies, Decision Document*, Ofgem, August 2007

## Promoting more effective consumer engagement

### Billing information and annual statements

#### *Illustrative projected cost*

15. Which? appreciates that the inclusion of an illustrative projected cost is intended to aid consumers compare their current tariff<sup>9</sup> with others available but we have a number of reservations. An ‘illustrative projected cost’ that has no guarantees does not form a firm platform on which consumers can make an informed choice. Consumers may not fully understand that the cost is purely illustrative and so base their decision to switch or not, on the basis of this illustrative projected cost which may subsequently change.

#### *Presentation of key information*

16. The requirement to present key pieces of information in a ‘form that is clear and easy to understand’<sup>10</sup> is a welcome step. How ‘clear and easy to understand’ will be defined and by whom needs to be clarified. Which? would recommend that Ofgem use the widely used summary box format, which is well recognised and an easily understood format. The inclusion of a summary box on annual statements would provide a simple and straightforward format to enable the comparison of premiums and discounts as detailed in the proposals<sup>11</sup>.

#### *Provision of information*

17. Which? does not believe it is acceptable that consumers who do not receive regular bills will have to wait for up to three months after they have been notified of a price increase to receive the information they require to

---

<sup>9</sup> Paragraph 3.12, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

<sup>10</sup> Paragraph 3.14, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

<sup>11</sup> Paragraph 3.17, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

compare energy tariffs<sup>12</sup>. Consumers should be provided with the key information on their tariff on a regular basis and it is vital that they are provided with this information during the limited period they have to mitigate price increases by their energy supplier<sup>13</sup>.

### Research

18. Which? welcomes the announcement that Ofgem will be undertaking research into consumer bill comprehension. Our research has found that consumers find their bills difficult to understand<sup>14</sup>. In addition, research undertaken by the University of East Anglia into successful switching decisions<sup>15</sup> clearly illustrates that the low level of successful switches is down to poor decision making and poor bill comprehension may play a role in this. We would be happy to input into the development of the research.

### 65 working day rule - SLC23

19. As we have previously stated<sup>16</sup>, we welcome the proposed license change to give consumers more time to end a contract. However, we do not feel that this change meets the stated aim to *“redress what seems an imbalance at the moment and to make sure that the sort of flexibility currently offered by some suppliers is available more widely.”*

20. The proposed amendment to the licence condition (SLC 23) will still allow suppliers 65 working days to inform their customers after a price change has taken place but the customer will still only have 20 working days to end a contract<sup>17</sup>. We do not accept cost savings on a billing cycle<sup>18</sup> as an

---

<sup>12</sup> Paragraph 3.20, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

<sup>13</sup> Gas and electricity supply standard license condition 23.

<sup>14</sup> Energy Bills and Tariffs, Which?, May 2009

<sup>15</sup> Memorandum submitted by the University of East Anglia, *Energy prices, fuel poverty and Ofgem*, Eleventh Report of Session 2007-08, House of Commons Business and Enterprise Committee, Ev 510-514, Volume II, HC 293-II, July 2008

<sup>16</sup> Which? response to Ofgem Energy Supply Probe: Revised License Drafting, July 09.

<sup>17</sup> Paragraph 3.26, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

<sup>18</sup> Paragraph 3.27, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

acceptable rationale for requiring advance notification. Ofgem has described advance price notifications as “best practice.” We therefore question why the regulator has not taken the opportunity to mandate this via an amendment to the SLC 23.

#### *Unfair Terms in Consumer Contract Regulations (UTCCRs)*

21. Ofgem’s statutory obligation is to protect consumers now and in the future. In fulfilling this obligation, Ofgem should be satisfied that the licenses it issues are consistent with protecting consumers and that there can be no room for suppliers to translate any license conditions into unfair terms for their customer.
22. Any correspondence between Ofgem and the suppliers regarding the issue of advance notification of prices changes<sup>19</sup>, should be made publicly available to address public confidence surrounding this issue.

#### *Preventing switching in response to price increases on the basis of debt*

23. We welcome the recognition that consumers are still vulnerable to energy suppliers’ attempts to prevent them from switching away from their supplier in response to a price increase<sup>20</sup>. However, there is a need for clarification as to the process involved in this and how it would work in practice.

#### *Energy Retail Association (ERA) Guide to Switching*

24. Consumers have a right to know and understand how their energy supplier has applied a change in tariff rate to their account, and as with all pricing practices there should be transparency. The development of a good practice guide to pricing practices and customer service by ERA<sup>21</sup> is a step in the right direction. However unless there is a real incentive or a requirement for energy suppliers to comply with the best practice guideline this may translate into little practical benefit for consumers. Ofgem and ERA should benchmark suppliers against the best practice and publish the results

---

<sup>19</sup> Paragraph 3.29, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

<sup>20</sup> Paragraph 3.32, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

<sup>21</sup> Paragraph 3.33, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

as a means of improving practice and increasing consumer confidence in switching. As a next step they should be publishing performance of the suppliers against the best practice and ultimately make this a requirement of supply license conditions and ERA membership.

## Debt blocking

25. Which? supports the removal of an energy suppliers' right to block a customer from switching due to supplier error.<sup>22</sup> However, we find it unacceptable that energy suppliers will be able to continue with this practice until January 2010<sup>23</sup>.
26. We do not agree with the proposal that on all occasions where an estimated reading is replaced with an actual reading that the supplier should retain the right to debt block<sup>24</sup>. If a meter reading has been taken by an energy supplier (or a metering agent on a supplier's behalf) or if the customer has been providing their supplier with meter readings and the energy supplier has not updated the customer's account with this information, it is likely that the customer would not have appreciated the accumulating debt in their account. For a supplier to then block a customer from is unfair and not acceptable. As with supplier error, we do not believe that consumers should be penalised for inefficiencies on the part of the supplier. Ofgem must amend the license condition to protect consumers from such bad practice by preventing debt blocking in these circumstances.
27. We have concerns regarding Ofgem's position that energy suppliers would be entitled to look more sceptically at disputes brought forward by consumers only after the energy supplier has sought to debt block<sup>25</sup>. Many consumers, not solely vulnerable consumers, may not having been able to appreciate the circumstances leading to their being debt blocked, especially if meter readings are not translated to billing amounts or if they are not made aware in advance of price increases to their energy tariffs. We recommend that

---

<sup>22</sup> Paragraph 3.43, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

<sup>23</sup> Paragraph 7.8, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

<sup>24</sup> Paragraph 3.43, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

<sup>25</sup> Paragraph 3.44, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007



Ofgem monitor disputes of this nature closely with a view to taking further action as necessary.

## Tariff Confusion

28. We remain concerned that Ofgem is not proposing any significant action to address the high level of consumer confusion regarding tariffs given its own analysis of the issue<sup>26</sup>.
29. Ofgem's own analysis of the limitations of a price metric<sup>27</sup> and its role as a 'back-up'<sup>28</sup> illustrate that a price metric is not adequate. As detailed above, it is unclear how the proposed standard of conduct will rectify this considerable problem. We understand from Ofgem that the standards of conduct will be used to assess the degree of breach of a license conditions<sup>29</sup>. However, there are no specific license conditions relating to tariffs.
30. In addition, as 70% of consumers currently find tariffs confusing<sup>30</sup> and variations in tariff structure exacerbate errors in decision<sup>31</sup>, we do not believe that it should be acceptable for energy suppliers to offer tariffs with 'complex structures'.
31. As discussed in detail in previous consultation responses, we would like to see the introduction of minimum standards for tariffs, as well as the introduction of a summary box on all marketing materials, a time guarantee if you change tariff and reasonable warning about price changes.
32. This is a serious issue and Ofgem must take action to address it. We would welcome further stakeholder discussions around the issue.

## The switching process

---

<sup>26</sup> *Energy Supply Probe: Initial Findings Report*, Ofgem, October 2008

<sup>27</sup> Paragraph 3.30, *Energy Supply Probe- proposed retail market remedies*, Ofgem, 15 April 2009

<sup>28</sup> Paragraph 3.39, *Energy Supply Probe- proposed retail market remedies*, Ofgem, 15 April 2009

<sup>29</sup> Paragraph 2.10, *Energy Supply Probe: Proposed Retail Market Remedies, Decision Document*, Ofgem, August 2007

<sup>30</sup> *Key facts, Consumer First- Consumer Engagement Summary*, December 2008

<sup>31</sup> Section 5, Appendix C 'Do consumers switch to the best supplier?', Memorandum submitted by the University of East Anglia, *Energy prices, fuel poverty and Ofgem*, Eleventh Report of Session 2007-08, House of Commons Business and Enterprise Committee, Ev 510-537, Volume II, HC 293-II, July 2008.

33. Given the current mechanism for domestic energy supply through the UK energy markets, it is vital that consumers are confident in the switching process which will relate to their ability to make positive switching decisions. Actions by the energy suppliers and ERA to promote and improve consumer confidence in switching are welcomed<sup>32</sup>. However, given the number of consumers who make a mistake when switching and switch to a tariff that makes them worse off financially<sup>33</sup> it is vital that it is the number of consumers who make positive switching decisions that increases. The ultimate aim must be to ensure that all consumers make a positive (generally cheaper) switching decision and success should be measured on this basis.

## Helping consumers make well-informed choices

### Comparability

34. As stated above we are concerned that while the marketing license condition (SLC 25) will be fully implemented in January 2010 consumers will not be able to realise the full benefit for several months later. In order to benefit from the 'comparison' element of the new condition consumers will require access to the name of their tariff. However, the customer information license condition (SLC 31A), which will require the inclusion of the exact tariff name, will not be implemented until April 2010. The two license condition amendments should be implemented concurrently and consumers should not have to wait until 2010 to benefit from these changes.

35. As stated above we are concerned that while the marketing license condition (SLC 25) will be fully implemented in January 2010 consumers will not be able to realise the full benefit until several months later. In order to benefit from the 'comparison' element of the new condition consumers will require access to the name of their tariff. However, the customer information license condition (SLC 31A), which will require the inclusion of the exact tariff name, will not be implemented until April 2010. The two license condition amendments should be implemented concurrently and consumers should not have to wait until 2010 to benefit from these changes.

---

<sup>32</sup> Paragraph 3.59, *Energy Supply Probe: Proposed Retail Market Remedies, Decision Document*, Ofgem, August 2007

<sup>33</sup> Memorandum submitted by the University of East Anglia, *Energy prices, fuel poverty and Ofgem*, Eleventh Report of Session 2007-08, House of Commons Business and Enterprise Committee, Ev 510-537, Volume II, HC 293-II, July 2008.

36. If consumers are to be able to compare tariffs<sup>34</sup>, it is important that the criteria on which the comparison is being made are presented consistently in a format that is easy to understand. The use of a summary box, as seen in the financial services market, would be a simple solution for consumers and energy suppliers.

## Telesales

37. We are disappointed that the proposals for the license conditions relating to telesales<sup>35</sup> are not as rigorous as those for doorstep selling. The decision not to extend the scope of the marketing license condition to telesales seems odd given Ofgem's statutory obligation to protect consumers today and in the future. In addition, with the removal of the sunset clause for the doorstep marketing practices there is now no timeframe for reviewing telesales practices<sup>36</sup>.

---

<sup>34</sup> Paragraph 4.16, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

<sup>35</sup> Paragraph 4.12, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

<sup>36</sup> Paragraph 4.24 *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007