



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to Ofgem's proposed Corporate Strategy and Plan 2011-16

February 2011

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About Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland. We were formed by The Consumers, Estate Agents and Redress (CEAR) Act 2007.

We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers, and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to peoples' lives.

Consumer Focus has strong legislative powers. These include the right to investigate **any** consumer complaint if they are of wider interest, the right to open up information from providers, the power to conduct research and the ability to make an official super-complaint about failing services.

We receive about a third of our funding from BIS. Funding also comes from licenses paid by energy suppliers and the postal industry. We are also able to raise our own funds – for example, through externally funded projects.

Our response to Ofgem's proposed Corporate Strategy and Plan 2011-2006

Introduction

Consumer Focus welcomes this opportunity to respond to Ofgem's consultation on its proposed Corporate Strategy. We are broadly supportive of the proposals but believe that, as a whole, the Plan would benefit from being more consumer-centric in its approach and language. We seek evidence that the experience of the end customer and the cumulative impact of action across streams will be given appropriate consideration. Rather than just being a separate programme of work, 'consumer value and quality' needs to be integrated across the board, as does the impact of market and network related changes on consumers, especially those who are vulnerable or on low incomes.

The National Infrastructure Plan 2010 identifies some key issues relating to economic regulation, most notably a lack of clarity in the balance between regulator's economic, social and environmental duties; a lack of clear strategy and objectives; and weak dialogue between regulators on common issues including regulatory tools, competition and consumer affordability. We would urge Ofgem to consider the balance of these competing demands in its Strategy.

As noted by Lord Mogg, this is a challenging time for energy. The introduction of new Government programmes such as Green Deal and smart metering have the potential to radically change the energy retail market and consumers' experience of it. With this we believe comes new opportunities to improve competition and customer experience, as well as new risks. The potential for new markets in energy products and services, alongside supply, will require greater liaison and a more co-ordinated approach between Ofgem and a range of other regulators to ensure customers are safeguarded and get best value for money. At a European level, it is not just energy legislation that will impact the functioning of these markets, but policy on data privacy, access and use, and wider strategies for a low carbon economy.

Empowering individuals and consumers will be ever more important in future to ensure they can effectively engage with the market, but this alone will not be enough to ensure that customers are fully involved in major decisions. There also needs to be effective consumer engagement by regulators, for example through qualitative and deliberative research and formal involvement of consumer representative body in regulatory processes. In this regard Ofgem has a positive track record.

We have welcomed Ofgem's open and proactive engagement with Consumer Focus in many areas. However, with the abolition of Consumer Focus, the regulator may need to give greater consideration to how the consumer voice will be heard, especially on complex areas such as price controls and licence changes. In addition to the potential customer detriment, failure to involve customers in the major decisions affecting them threatens the legitimacy of both the energy industry and regulator, and risks creating greater uncertainty for investors as a result of a potential backlash from consumers and political risk.

The review of the consumer regulatory landscape and the disbanding of Consumer Focus may also require Ofgem to expand and alter its role. We would welcome recognition therefore, that the regulator is ready to innovate to meet the challenges of this new world and that there is appropriate flexibility in this Strategy to do so.

Below we have outlined in detail some areas where we would welcome greater focus. We look forward to continuing to work with Ofgem to help protect the interests of consumers.

Contributing to the achievement of a low carbon energy sector

Consumer Focus remains concerned about the costs of delivering low carbon networks; a tight rein will need to be kept on these costs to ensure that there is not a significant further deterioration in the affordability of energy. Network shareholders should bear an appropriate share of the risk of these investments; in order to maximise the incentives on them to manage costs and maximise efficiencies. To this end, Ofgem's RIIO price control framework for gas distribution and gas and electricity transmission networks is largely encouraging. However, there are a few areas where we have asked Ofgem to reconsider its initial views. We welcome continued engagement in the RIIO process and look forward to feedback on our proposals.

We support the introduction of the Low Carbon Network Fund (LCNF) but would urge Ofgem to incentivise successful bids to work with consumer groups, DECC and Ofgem to develop best practice customer engagement strategies. Failure to link up LCNF with the wider programme would be a missed opportunity and inefficient use of funds. Also we would urge the regulator to learn lessons from the Energy Demand Research Project (EDRP) to ensure that findings between programmes are comparable and that there is sufficient transparency to enable good practice to be appropriately shared.

The transition to the low carbon energy market is a critical part of the move to a low carbon economy. It is unclear from this Strategy how Ofgem plans to link up with wider low carbon initiatives to ensure that the network is fit for purpose. For example, the development of smart grids may be influenced by the take up of electric vehicles as well as distribution of low carbon generation.

The Strategy makes reference to encouraging new market entry and the development of new energy services for customers. We would urge Ofgem to proactively seek to broaden its stakeholder engagement to include likely new market entrants as well as the incumbent energy companies. In particular we are keen to ensure competition in the energy services market is promoted as much as possible. Key to this market will be equal access to customer data by new entrants. It is critical that key decisions taken on the functionality of smart technologies and the DCC reflect this. Ofgem will also need to have an eye on the development of privacy and security legislation, particularly at an EU level.

Helping to maintain the security of Britain's energy supplies

Project TransmiT is a positive step – getting these arrangements right will help to promote carbon emissions reduction and also maintain secure supplies. We will look to further engage with Ofgem in this area, particularly with regards to electricity transmission charging.

The strategy states that the regulator is likely to launch a Significant Code Review (SCR) into the electricity cash out arrangements. We recognise that 'sharpening' cash out prices might improve the accuracy of price signals required by market participants to ensure secure long term energy supplies at least total cost.

However, we believe that making changes to the cash out arrangements, without complementary measures to improve forward wholesale electricity market liquidity, is likely to worsen barriers to entry and expansion that already exist in the electricity supply market. Therefore, we believe that any changes Ofgem considers for electricity cash out must be predicated on the achievement of a sufficiently liquid and competitive forward wholesale electricity market – see our response to stream three.

Project Discovery consultation in February 2010 identified a vital role for demand response in maintaining secure and sustainable energy suppliers. We welcomed the July 2010 discussion paper on this issue and seek clarity on how Ofgem plans to take this forward. Work in this area will need a strong consumer focus and will link closely with the activity in all streams.

Promoting quality and value for all consumers

We note Ofgem's intention to conclude work on wholesale electricity market liquidity in spring 2011. We accept the desire to ensure that any interventions to improve the operation of the wholesale market are consistent with DECC's Electricity Market Reform. Nevertheless, we believe the delays in the development of regulatory solutions for the lack of wholesale market liquidity are regrettable. This is particularly the case considering that wholesale market liquidity in the electricity market has been a problem for over five years. We would add that the conclusion of this work should also take into account findings from your retail market review. This is because many of the problems associated with the energy supply market are a consequence of structural imperfections in the wholesale market. For the avoidance of doubt, we are still of the view that market solutions to this problem will be inadequate in terms of delivering a more efficient market in a reasonable timeframe. The development of a regulatory solution(s) should be given a very high priority by Ofgem.

To help provide greater transparency in the relationship between wholesale and retail energy markets (and the resulting prices), we welcome the continuation of the quarterly energy supply market reports and the commitment to publish separated regulatory accounts for the six vertically integrated energy companies. However, we would like Ofgem to consider making improvements to these two important publications to include:

- **Separated regulatory accounts** – Ofgem should consider making methodological changes to this publication to ensure that the 'transfer prices' applied by the energy companies (in particular the WACO(G/E)) is consistent between companies and reflects underlying supply and demand fundamentals; ie ensures that transfer prices are not applied by companies arbitrarily to suit the commercial interests of different business units
- **Energy supply market report** – Ofgem should consider alterations to its opportunity cost methodology to take into account the data received from the separated regulatory accounts. It is our view that the current methodology bears little resemblance to the way that the energy companies currently trade and procure wholesale energy. More consideration should be given to the actual prices agreed by business units in their bilateral contracts. The ability provided under Article 40 of the electricity directive and 44 of the gas directive for member states to force suppliers to disclose information to regulators and competition authorities might be helpful in this regard.

The introduction of smart technologies, the increase in 'prosumers' and the growth in the number of energy services companies has the potential to radically change the energy retail market and customers' experience of it. We welcome the recognition of this and the commitment to work with stakeholders to address any potential issues.

While we recognise that DECC will take over Phase II of the smart meter programme, we hope that an equivalent group to the Consumer Advisory Group and the Disability Advisory Forum will continue to operate. We have found these avenues extremely useful.

As noted, this is a period of great change for the energy market. We urge the regulator to be proactive in its approach to safeguarding customers. In particular there will need to be effective monitoring of supplier practices and timely enforcement action. Proactive monitoring will enable the regulator to nip bad practice in the bud and negotiate customer improvements, whether by formal or informal routes in a timely manner.

We remain concerned over the lack of progress on what the future regulatory framework for the emerging energy services market will look like. It is crucial that there is a streamlined and coherent enforcement and redress regime in place to promote consumer confidence in initiatives like the Green Deal and the smart meter roll out. These changes will bring added complexity to the relationship between consumers and their suppliers. When something goes wrong – whether it is with the Green Deal measures installed in their home or problems with the new In-home Display (IHD) for their smart meter, consumers need a clear and simple redress route.

Consumer Focus believes that the existing redress framework for energy consumers, namely the complaint handling standard, Consumer Direct, Consumer Focus Extra Help Unit and the Energy Ombudsman must be expanded to cover the energy services market. Energy consumers should be able to benefit from a one stop shop for advice on energy matters – whether on energy efficiency or energy supply related issues. As a result, we would be concerned if the Government's proposed changes to the consumer landscape simply recreated the old energy supply model, without looking to see whether responsibility for the provision of energy efficiency advice or resolution of problems associated with the installation of such measures via the Green Deal could be streamlined. We suggest that Ofgem prepares for its role within this evolving context.

While we very much welcome the proposed closer working with the OFT which we think is essential, Consumer Focus believes that there must be a single enforcement body for energy consumers; particularly given the current Government proposals to transfer OFT's enforcement responsibilities to local Trading Standards. If the responsibilities for tackling poor practice and rogue operators are split between several bodies, energy consumers could find themselves falling through the gaps. Consumer confidence in new Government programmes could falter if the process for resolving any issues is overly complex or time consuming.

We support the commitment to publish a package of smart meter consumer protections to cover the early stages of rollout. Consumer Focus looks forward to continuing to work with Ofgem on the development of these. Given that this is a five-year strategy to 2016, we would however expect to see the proposals cover not just the early stages of rollout but also, given the Government's current expectations of an accelerated rollout, later stages. It is essential that Ofgem is appropriately resourced to handle this.

While we recognise the desire to reduce the regulatory burden on suppliers, we find the emphasis on a 'one in, one out' principle to regulation perverse. The focus should be on effective regulation which protects consumers. We would have concerns that such an ideologically driven approach could result in inappropriate weakening of customer safeguards. This is particularly the case given that current satisfaction with this market is poor and the major market changes that are pending.

The energy market was bottom rated in Consumer Focus's Consumer Conditions Survey 2009 which compared consumer confidence in energy suppliers with 45 other sectors¹.

Prepayment remains one of the most expensive payment types, with customer service relatively poor. We urge the regulator to develop a strategy for promoting and improving competition in this market in both the short and long term. The recent proposals in the spring package are most welcome but more needs to be done. Consumer Focus has agreed with the Energy Retail Association (ERA) a series of five commitments to improve the service offered to prepayment meter (PPM) consumers ahead of the smart roll out. We believe these commitments represent a positive first step but Ofgem should go further. The introduction of smart metering provides a rare opportunity to help revolutionise the prepayment energy market and remove historical barriers to competition. It should not only reduce the cost to serve PPM customers but also help tackle barriers to consumer interest in this payment method. This is because the customer's meter will no longer have to be exchanged if they move to or from prepayment, and consumers should get access to a greater range of top-up options – over the phone, internet, via a cash point – improving convenience. Greater choice of pay as you go (PAYG) energy products should also reduce the stigma associated with this payment method. All these factors could, in turn, open up the PAYG energy market and further drive down prices². We have concerns however that this outcome will not be achieved because decisions taken on smart metering will add to the cost to serve of PPM customers and result in them being the last to get new technology.

We especially welcome the commitment to ensure appropriate protections for small businesses and to monitor their experience of operating in the competitive energy market. This group is woefully under represented and it is critical that Ofgem takes a lead role here. Given the Government's proposal to abolish Consumer Focus and the current uncertainty over whether our successor body will continue our work in this area, the regulator should consider how it might expand its work in this area.

We support the proposal to build on the Consumer First work in particular improving the website and call handling for customers seeking advice. This will be especially important given the proposed changes to the consumer protections regulatory framework and the abolition of Consumer Focus. We hope that Ofgem will continue to develop its customer facing communications. Consumer Focus has seen a marked improvement in the area of customer research in recent years and has felt that this has made a valuable contribution to informing decisions taken by the regulator.

Consumer Focus has welcomed Ofgem's more interventionist approach where market failure has occurred as compared to its more hands-off stance in the past. We are currently awaiting the outcome of a number of enforcement cases and investigations on issues from misselling to back billing.

We were pleased with Ofgem's decision to launch the Retail Market Review (RMR) and look forward to the March publication of your findings. As Ofgem is aware, Consumer Focus has a number of concerns about current supplier practices, which we detailed in our open letter on energy tariffs. The introduction of smart metering will facilitate a range of new energy deals and is likely to add to this complexity unless action is taken.

¹ Consumer Focus, 2009 Consumer Conditions survey, <http://consumerfocus.org.uk/g/4m8> This compared consumers' ratings of 45 markets on the basis of choice, meeting of expectations, consumer rights, trustworthiness, and the comparability of quality and prices.

² *Cutting back, cutting down, cutting off – Self-disconnection among prepayment meter users.* Consumer Focus, July 2010, <http://consumerfocus.org.uk/g/4lx>. Annex 4.

The regulator will need a clear focus on how new tariffs such as: critical peak pricing, single energy deals, seasonal energy tariffs, increased localised pricing, deals which combine displays and energy efficiency measures with supply, managed credit and load limiting, operate and are communicated to customers.

We hope the RMR will review whether the probe impacts, including the new licences and standards, are in fact delivering as expected for consumers. To this end, we welcome the recent decisions to open investigations into allegations of misselling and undue price discrimination. We continue to believe there is a need for more monitoring of the non-domestic market, particularly the experience of micro-businesses. We look forward to working with Ofgem on these issues. As noted, now more than ever, the regulator needs to have a vigilant eye on the future, not just respond to issues as they arise. We would expect therefore that the RMR to consider the impact of potential market changes, including Green Deal and Smart Metering.

Protecting vulnerable consumers

Regular qualitative and quantitative reporting on the experience of vulnerable and low income customers in the energy market, and their ability to access affordable energy will be particularly important. This is especially the case given the proposed changes in the consumer representation landscape.

We welcome the commitment to ensure that the financial burden of moving towards a low carbon sector does not fall disproportionately on those least able to pay. Consideration needs to be given in all streams to the cumulative impact of policies on low income and vulnerable consumers. Ofgem's past work on energy charging structures, including its work (as yet unpublished) on identifying low income consumers with high consumption is particularly welcome. We urge the regulator to explore the potential for identifying fairer and more sustainable charging structures for the Government's environmental and social policies, for example, charging by consumption rather than flat rate. The Fuel Poverty Advisory Group has set up a working group to investigate the potential for developing a fairer charging mechanism for CERT, Warm Homes Discount and related programmes. This builds on some work Ofgem carried out in 2008 in relation to rising block tariffs and structuring charges to encourage more energy efficient consumer behaviour. We would urge Ofgem to play an active role in this process.

It would also be useful to build on work already carried out to consider the distributional impact of likely new energy deals eg multiple rate time of use (TOU) tariffs or remote automation and load limiting on different income, payment and social groups. The Victorian Government in Australia introduced a moratorium on TOU tariffs because of concerns that they would effectively be a tax on the poor. Ofgem should identify which groups might be adversely impacted by new developments and provide mechanisms for protecting vulnerable consumers.

Ofgem should explore the potential opportunities that new smart related technology offer to improve the experience of low income and vulnerable consumers and their ability to engage in the energy retail market. For example, the potential for load limiting to provide a life-line of energy as an alternative to self disconnection for PPM electricity customers or accessible displays with boiler controls to help customers better understand and control their energy use.

It is important for Ofgem to not just continue to report on monitoring debt and disconnection but to closely monitor any new supplier practices. For example, ensuring that load limiting is not used as a debt management tool; ensuring that the way in which managed credit is employed by energy companies is fair and transparent; and safeguarding customers against the misuse of remote switching to prepayment where they have a smart meter for example.

Ensuring the timely and efficient delivery of Government programmes for the sustainable energy sector

We see a high level of overlap between in the proposed work of Ofgem E-Serve and Ofgem 'orange' in terms of the overall customer experience. Consumer Focus would welcome clarity on how the regulator sees this relationship operating in practice. All of our comments above, especially on stream three are equally applicable for the priorities proposed here, so please cross reference. It will be crucial to ensure that the end customer experience is appropriately considered, including the accumulative impact of sustainable energy policies alongside retail and wider market decisions.

The proposed transfer of Consumer Focus's and the OFT's responsibilities to the successor bodies is due to take place in 2013, shortly after the official launch of the Green Deal and smart meter Go Live. Any new organisation will take a while to find its feet, which could limit the amount of proactive monitoring work carried out by our successor in its early months. The future success of both Green Deal and the smart meter roll out will depend on any emerging problems being identified and resolved as quickly as possible. It will therefore be important that Ofgem takes a much more proactive role in monitoring these programmes, at least in the first year or two until Consumer Focus's successor is well established and operating effectively.

We urge Ofgem and Ofgem E-Serve to adopt a joined up approach across programmes, in particular with regards to the experience of low income and vulnerable consumers. There is an opportunity for the regulator to lead on the development of an extra help scheme for low income and vulnerable consumers which could join up smart metering with the proposed new Energy Company Obligation (ECO) and existing supplier social obligations. A more co-ordinated approach could deliver improved customer service and greater cost effectiveness as well as providing a more consistent market for energy efficiency installers rather than the stop start supply of business created by CERT. This would also be in line with the commitment to continue to design and build systems that deliver increased efficiency and robustness on behalf of the projects you administer on behalf of DECC.

Consumers will need advice on energy issues but it is not clear whether this is a role for Ofgem. If Ofgem E-Serve is to take a role in regulation of the Green Deal and the smart meter rollout we strongly recommend that it does not seek to compete in areas that are to be opened up to regulated, competitive markets but that it ensures that independent advice is easily available to all consumers free of charge.

Our online survey of 2,000 customers (March 2010) also reported that only 23 per cent of gas customers and 26 per cent of electricity customers trust their supplier to give them help and advice on cutting their energy bills and going green³. This indicates that relying on energy companies alone to deliver customer engagement would restrict the impact of some programmes.

³ This was an online survey of 2,048 consumers aged over 18 years conducted by ICM on behalf of Consumer Focus. Full findings will be available in November 2010.

We also encourage the regulator to research the scoring of CERT measures, with a view to informing decision-making on ECO. The inclusion of a climate region factor would better reflect the actual carbon savings resulting from the installation of measures in homes in areas with colder climates. There is also a case for giving extra uplifts to measures installed in off-grid homes, since these typically have greater carbon emissions. More evidence is needed in general on actual carbon savings as opposed to the modelled savings currently used for CERT measure scoring. The current Energy Follow Up Survey (an addition to the rolling English Housing Survey) may provide useful information in this respect.

As regards to close monitoring of the proposed ECO, Renewable Heat Incentive, smart metering and Feed-in Tariffs, we strongly support this. Care must be taken that no one social group, payment type, geographical area or customer in certain types of dwelling is unable to access the benefits of new programmes or is unfairly disadvantaged. Lessons must be learnt, especially from reporting on CERT. We will need monitoring by geographical location, measures according to heat as well as carbon saving, monitoring of type of households helped and the impact on alleviating fuel poverty. While we recognise that this will increase the administrative burden, we think it is critical in ensuring that programmes work effectively.

Both Green Deal and smart metering rely on suppliers taking the lead role in delivering behaviour change and the benefits to consumers. Careful consideration will need to be taken as to Ofgem's role in ensuring this happens in practice. Consumer Focus has advocated for a central body to help co-ordinate supplier activity where there is potential benefit to customers such as increased customer engagement, or cost savings. It may be that Ofgem E-Serve could perform this role.

We query how the monitoring of the Government's new Warm Homes Discount by Ofgem E-Serve will link up with activity on the wider social initiatives. Again, a mechanism will be needed to ensure cross-working between programmes. Consumer Focus would welcome greater co-ordination and communication on developments in this area, than we have had to date.

Over the next few years the regulation of heat networks are likely to become more important as zero carbon homes and support for district heating through the RHI permit the development of new domestic heat networks. Work to understand the cost and consumer satisfaction of heat metering is essential. Research on satisfaction with domestic energy service contracts would also be of value.

Performance measures

Given that Ofgem's principal objective is to 'protect the interests of existing and future consumers' we would strongly urge that performance indicators focus not just on process, as seems to be proposed, but on the customer experience of the energy market and the effectiveness of regulation in safeguarding customers.

Consumer Focus would encourage Ofgem to consult more fully on what might be appropriate measures. This may include: number of customers who experienced outages – ultimately the customer measure of security of supply; customer service satisfaction; fairness of pricing, ease of switching, complaint handling etc.

We are aware that independent customer satisfaction research is being considered for the smart metering rollout. We strongly support this and feel it should be extended across the board.

Ofgem's performance should be measured on improvements delivered to customers eg are fewer vulnerable customers being disconnected; are fewer customers being disconnected in error; is customer service improving and so on. As part of the probe into the energy retail market Ofgem looked at the number of customers who ended up on a worse deal when they switched supplier. We would urge the regulator to carry out this kind of research on a regular basis as a measure of performance – measures based on churn alone, are not an effective tool for measuring the effectiveness of competition. Greater focus on the customer experience would be in line with Ofgem's overarching objective.

Ofgem in Europe

Ofgem takes a lead role at the EU level. It is well respected by policy makers which aids its ability to usefully inform draft legislation. Its role in the European Energy Regulators Group (and in future within the Agency) similarly informs the pan-European market guidelines produced by this organisation.

Ofgem has, however, traditionally given greater focus to the operation of markets. Going forward it could usefully do more to address consumer protection concerns and use its influence earlier in the decision making process. There are very few voices able to bring the consumer perspective into EU policies, in comparison to the multitude of organisations representing all segments of the energy industry. Despite the frequent references made by the EU institutions to the importance of the consumer and the EU citizen, the related policy documents are often quite weak in this area.

Ofgem could help address this deficit in consumer representation by, for example, increasing its dialogues with national third sector and consumer organisations when preparing its input into EU policy document. We would welcome greater transparency and co-operation in this area, where there is a mutual benefit for GB consumers. The recent consumer checklist for example, is a product of the consumer voice not being appropriately heard.



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