



**Consumer  
Focus**  
Campaigning for a fair deal

# **Consumer Focus response to the Retail Market Review: Non- domestic proposals**

**February 2012**

# About Consumer Focus

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Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

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 consumers' lives.

## Executive summary

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On the whole the document is comprehensive and shows that Ofgem is taking micro-businesses seriously. It doesn't close the 'protection gap' but some of those areas are being handled separately (back-billing for example). Consumer Focus will continue to engage in these processes and monitor any impact.

Ofgem's new focus on brokers is promising and we are pleased that discussions are underway with the Office of Fair Trading (OFT). But a better solution would be an adaptation of the existing Utilities Intermediaries Association (UIA) code under Ofgem's authority, not the 'competition in codes' that is being proposed in the RMR.

There is however an obvious and glaring gap with regard to information remedies. Consumer Focus maintains that micro-enterprises would benefit from more transparent information on energy contracts and prices. It would also improve engagement in the market and break the reliance on brokers. It is therefore surprising and disappointing that Ofgem's consultation document failed to explore these issues in any detail or propose related remedies.

With the extension of Standard Licence Condition (SLC) 7A imminent, we need Ofgem to be clear about the implications for complaint handling and redress. For instance, how many businesses will now be covered by SLC 7A but not able to access the Energy Ombudsman or Consumer Focus Extra Help Unit?

We want to see an end to punitive rollovers as they exploit market inertia and are non-cost-reflective, we would therefore urge Ofgem to consider this.

On objections, our discussions with business groups suggest this is an enormous problem and should be one of our top priorities. It is an open secret that some suppliers abuse this process.

# Answers to specific questions

## 1. Are there other key issues that we should be looking into in the non-domestic sector?

We are once again pleased that Ofgem is taking a more active interest in micro-business welfare following on from a strong start with the 2008 Probe. Aside from the Retail Market Review (RMR) we have been encouraged by other work (on back-billing most prominently) and we hope this strong approach to business empowerment continues. A reminder of our overall approach is contained within the ‘protection gap’ table below. This shows the differences in the domestic and micro-enterprise sectors and has helped us focus our policy work in the non-domestic sector.

	Domestic	Non-domestic
<b>Contracts</b>	Evergreen or fixed – and RMR should improve things	Rollovers at punitive rates, expensive deemed rates otherwise
<b>Back-billing</b>	Back-billing code = 1 year	Up to 5 to 6 years
<b>Debt and disconnection</b>	ERA vulnerable Safety Net, negotiation and ability to pay licence condition	Disconnection in a matter of weeks even when debt due to back-billing
<b>Marketing</b>	SLC25, self-regulation, consumer protections	Unregulated brokers exploit businesses’ lack of knowledge
<b>Information</b>	SLC31 & 31A – Annual Statements	Lack of visibility of contract terms, minimal info on price in public domain
<b>Switching</b>	Debt Assignment Protocol, Confidence Code	Churn at half domestic rate, high levels of objections

Our long held view has been that micro-enterprise customers should enjoy the same protections as their domestic counterparts (as they do around complaint handling and redress) unless it can be demonstrated that it is not appropriate.

We consider that the RMR covers some of these areas, such as marketing, fairly comprehensively. There is however an extremely large missed opportunity on information remedies which we believe would deal with the roots of some of the other issues. 12.5 per cent of our Extra Help Unit (EHU) business clients were unable to understand complex contract terms.

It is our view that poor information and communications by suppliers encourages many of the other areas of detriment the RMR is concerned with.<sup>1</sup>

We consider that non-domestic consumers need:

- more transparent and easy to understand bills
- clear and understandable contract termination notices with information about next steps and what will happen if the consumer does not contact their supplier (and proof of postage, where appropriate)
- terms and conditions that are clear, using language that is consistent across suppliers
- annual energy statements (containing information about energy usage, prices and principal contract terms)

A new (and exclusively non-domestic) licence condition (again, as for domestic so as to offer guidance to suppliers) that covers the above.

Work on back-billing, a massive area of concern for us, is being undertaken through different fora. Similarly, we are now working with Ofgem on the key issue of debt and disconnection and we are currently considering a roundtable on best practice in the sector. These are very encouraging strands of work and complement much of the RMR.

On switching, published tariff prices would greatly assist with competition but unfortunately this is not covered by the RMR. While we appreciate the potential difficulties in providing this, we nevertheless believe it would improve consumer engagement in the non-domestic sector.

The further work promised on rollover and deemed contracts is something we look forward to; we consider the current punitive behaviour by suppliers in this field to be unacceptable. Further information on our position is in the following answers.

## **2. What would stakeholders like to see on our website to help business customers and support a competitive supply market?**

We consider that an appropriate start would be to highlight what is already present ie include a full tab on the front-page for business rather than a sub-section of the 'consumers' section. Beyond that Ofgem should continue produce increasingly high-quality factsheets as regulation in this market evolves. These should all be grouped together under the new business section of the website which itself should reflect each area of the domestic pages, where appropriate. Ofgem is also more than welcome to link to our work in this area, some of which is accessible at <http://bit.ly/xplhHT> and is an example of bringing work together.

If Ofgem were to undertake work on published tariffs for non-domestic customers we would expect online information on this to be the single greatest use of the website to support competition – either in generic terms or as a first step for comparison. It is worth reiterating that there is little evidence to suggest that micro-businesses are better equipped to deal with the complexity of tariffs than domestic consumers.

Tariff simplification could follow from tariff publication and is almost always of net benefit to consumers of all types. In business this might mean limiting tariffs to one per the size of the business (in terms of energy consumed) and is worthy of further work. This could then lead onto the development of an accreditation scheme for the non-domestic market which could also be placed on Ofgem's website.

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<sup>1</sup> Consumer Focus board paper – <http://bit.ly/wrZNVQ>

We have also observed that there is some confusion on the part of stakeholders and consumers regarding the definition of specific terms. For example there is confusion surrounding the difference between 'deemed' and 'out of contract' rates, so some definitional information on Ofgem's website would be useful. If Ofgem goes ahead with the code management for third party intermediaries (TPIs) then information on accreditation should also be prominent.

It is also important that the new Citizens Advice service for energy consumers (from April 2012) links to the relevant factsheets and information on Ofgem's website, perhaps through signposting. Likewise the Ofgem website should spell out where micro-business consumers can obtain independent advice and redress.

### **3. Do stakeholders agree with our proposals to extend the scope of SLC 7A to include a wider small business definition, and do you agree with our proposed definition?**

The extension of 7A has not been a key priority for Consumer Focus as we consider it more important that existing beneficiaries are properly served by existing rules before they are extended. There is little point in having medium-sized businesses covered by any rules if they are not adhered to and this is our main concern. Regardless, we also understand that several suppliers treat all medium and small business customers as micro-businesses for ease of doing business with them. This is a best practice we very much encourage, so in that sense we welcome Ofgem's move to widen protections and move things on from the existing voluntary arrangements.

That said, the extension to all non-half-hour meters makes sense as consumers can self-select as micro-businesses and thus, hopefully, be aware of the benefits of this status.

Our main concern would be for Ofgem to understand the implications of extended SLC 7A for CEAR Act 2007 and complaint handling in general. Consumer Focus' EHU, the Energy Ombudsman and Consumer Direct all use a definition of micro-business which was developed in conjunction with industry, Ofgem and BIS through the Customer Journey Working Groups in 2008. The extension of SLC 7A is likely to substantially increase the amount of businesses, in theory, that would be able to access these services. While we are keen that all small businesses that need these services are able to access them, there is a need to carry out an impact assessment to understand the potential impact on resources and costs that could result from the extension to SLC 7A.

We suspect that maintaining the existing referral criteria for the EHU, Consumer Direct and Energy Ombudsman at the current definition of micro-business, if SLC 7A is extended, could cause confusion and undermine confidence in the regulatory protection framework.

### **4. Do stakeholders foresee significant costs or complications if we were to introduce our proposals? If so, please provide details and cost estimates.**

We cannot imagine significant costs to extending the definition given that many suppliers already use 7A for more customers than they are obliged to. New costs are likely for the Consumer Direct (soon to be Citizens Advice Service), the Energy Ombudsman and the EHU rather than suppliers.

In particular, Ofgem might like to consider the costs to the consumers of micro-businesses' goods and services, who will ultimately pay for any market deficiencies such businesses face. Any cost-benefit analysis should include them as well as the conventional accounting costs energy suppliers or TPIs would face from any proposed changes.

## **5. Do stakeholders agree with our estimates on the number of extra businesses covered by our proposed definition?**

We find your reasoning sound so are confident that the numbers discussed are credible.

## **6. Do stakeholders agree that we should review termination procedures and our current position that allows automatic rollovers?**

We have major concerns in this area so a review is the minimum position to adopt. It could be argued that some suppliers prefer to avoid competition and put consumers on very punitive tariffs when they are rolled over, that appear to bear no resemblance to their costs.

Since 2008's Probe our view has changed. We would now strongly urge Ofgem to consider proposing a setup similar to that proposed for domestic consumers after fixed-term offers expire. That is one where micro-businesses are placed on some sort of non-punitive new contract, perhaps with a unit price not exceeding by any significant amount (by licence condition) the price of the previous contract. This could still be fixed-term (rather than evergreen) but would no longer be a lazy default option for suppliers who wish to punish less than engaged businesses.

According to business utility switching website, *Make It Cheaper*<sup>2</sup>, a small business could typically expect to pay the following rates for electricity:

- 'switching' rates of 7.5p/unit
- 'renewal' (ie rollover) rates of 11.5p/unit
- 'out-of-contract' rates of 16.5p/unit

The 9p per unit difference between the best and worst rates available to micro-businesses, well over double the actual cost, is substantial and in the current business environment could be the difference between a business continuing to trade or not.

## **7. Are there other clauses that stakeholders believe we should be reviewing, in light of our expanded definition proposal?**

Our chief concern in this area would be with dealing with the issue of rollovers which continues to undermine consumer confidence; we cannot see how the expanded definition changes the underlying issue.

## **8. Do stakeholders agree with the conclusions we have drawn?**

Our discussions with business groups suggest this is one of the biggest sources of complaints for small businesses and one that undermines confidence in the market. Therefore we agree that tackling rollover contracts is a key priority. The 81 per cent of termination-related objections also flags up the poor communications that suppliers have in place and the pressing need for further work to be carried out around providing information to non-domestic customers.

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<sup>2</sup> <http://bit.ly/xYdZGG>

**9. Do stakeholders agree that we do not need to make changes to SLC 14 governing objections to supply transfer for non-domestic suppliers?**

Yes, the licence condition clearly states the limited reasons for objections so these cannot conceivably be reduced further. Instead the condition needs to be enforced properly against those suppliers who consistently abuse the process through spurious and anti-competitive objections. We are willing to assist Ofgem with identifying these suppliers.

Suppliers should be encouraged to write out clearly when they object, stating the reason for their objection and what action the consumer can take to respond to this. In the past we have suggested a Code on Objections and this may still have merit.

**10. Do stakeholders believe that we should publish our data relating to supplier objections on a regular basis?**

Certainly, and we also look forward to the regular reporting on debt and disconnection we understand Ofgem will be publishing in the future. We have found it difficult to assess the extent of debt and disconnection in the non-domestic sector because of a lack of data; this has been problematic given a rise in non-domestic cases at the EHU.

**11. Are there other issues with the objections procedure, other than the obligations of the licence condition, which stakeholders consider need to be addressed?**

While we now recognise that suppliers appear to abuse the objections process by obfuscation in the interests of retaining businesses who wish to leave them, the problem is not quite as simple as that.

We have been shown several pieces of anecdotal evidence of cases where suppliers' 'frequent' or apparently unfair objections are valid in so far as they are prompted by worrying behaviour by unscrupulous brokers. Ofgem should be aware of this when drafting any new licence conditions in this area; it would be unfortunate if in 'cracking down' on objections Ofgem gave more powers to some disreputable brokers to engineer forced or non-consumer-requested transfers. Further research may thus be necessary but the starting point is clearly that better information is key to tackling the issue of objections.

**12. Do suppliers who have voluntarily sent data have views on whether the data we currently ask for on a monthly basis needs to change and why?**

N/A

**13. Do stakeholders agree that the introduction of a new supply licence condition focused on sales activities is a suitable method to prevent harmful sales and marketing activities in the non-domestic sector?**

To some extent, although given the prevalence of brokers in sales in the non-domestic sector anything targeted at suppliers is likely to be less effective than for domestic supply. That said suppliers should play a key role in tackling misselling and the licence condition should encourage them to do this in the non-broker areas. Suppliers cannot be legally or morally responsible for brokers' activities as they do not directly contract with them (in most cases). Our preference would be for suppliers to refuse to honour any contract that they suspect or are informed has been gained through pressure selling or deception.

This would go beyond any licence condition and be the result of a positive engagement with suppliers by the regulator.

**14. Do stakeholders agree that this licence condition is necessary if Ofgem decides not to proceed with its Standards of Conduct proposals?**

Yes, in so far as previous standards of conduct have not been successful at changing supplier behaviour. A separate licence condition for sales would ensure suppliers are aware of their responsibilities.

**15. Do stakeholders consider the introduction of an accreditation scheme for TPI Codes of Practice will reduce harmful TPI activities across the whole market?**

We have had major concerns regarding the behaviour of TPIs, particularly one broker whose behaviour has been consistently poor and anti-competitive. These concerns have clearly been taken on board, as has the analysis and conclusions in our report 'Watching the Middlemen'.<sup>3</sup>

The RMR appears to suggest Ofgem is only looking at situations where suppliers directly contract with TPIs or through direct supplier marketing. Where will TPIs who act on their behalf fit into the code?

**16. What do stakeholders consider to be key criteria for an accreditation scheme for TPI Codes of Practice?**

We believe that the existing UIA code should be Ofgem's starting point. Indeed with the addition of clearer guidelines around commission and other payments the code works well, perhaps explaining the lack of alternatives. The 'competition in codes' approach that the RMR appears to propose would seem a bizarre use of resources, both at Ofgem and suppliers, when a credible code already exists and could be adapted. Multiple codes are likely to cause confusion for consumers (who simply want to know who to trust) and the process generally could be open to abuse, hence the rationale for one code that all brokers have to adhere to. Consumers might argue that there is no point to the scheme if non-accredited brokers can still operate.

**17. Do stakeholders believe it is necessary for TPIs to disclose their actual fee, or would making clear the fact that the customer is paying a fee for their services be sufficient?**

As part of the process of transparency the actual amount should be disclosed. We also believe that it is essential the brokers are forced to reveal how much of the market they search on behalf of their customer, similar to the Financial Services Authority's 'Key Facts' document for Independent Financial Advisers. We are aware that some brokers currently give consumers the impression that they search the whole of the market when in fact they only contract with a small number of suppliers. Consumers need to have clear information about which suppliers individual brokers deal with so they can understand how much of the market they are seeing.

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<sup>3</sup><http://bit.ly/yPgmSP>



### **18. Do you feel the revised SOC's will help to achieve our objectives?**

The revised Standards of Conduct (SOC's) suffers from a lack of information remedies through which other aspects of the SOC's would be redundant. For example, rollover contracts will occur solely because consumers do not understand the contractual process. We also recall how the domestic SOC's have fallen short of what consumer groups expected and desired, for example how suppliers consistently flouted four out of five conditions in just one area, that of rollovers.

From our conversations with suppliers we would suggest that such SOC's need clear guidance at the point of introduction or their later enforcement is considered arbitrary. Appendix 6 of the RMR is extremely vague and the Customer Objectives of 1A.4 might be interpreted any number of ways. Will precedents set in the domestic sector apply here? If not, will new interpretations be easily challengeable and thus less than optimal? These are questions Ofgem must address.

### **19. Do you agree that the SOC's should be in a licence condition and enforceable?**

We consider that the non-domestic SOC's need a separate licence condition given the unique challenges faced by business, specifically TPIs, objections and contractual issues generally.

However, we stress again that the SOC's licence condition would serve its role better if there was also to be an enforceable 'information remedies SOC' as so much detriment flows from poor communications. One key provision in such a licence condition would be to mandate that suppliers put the contract termination date on each bill in a prominent place.

### **20. Do you agree the revised SOC's should apply to all interactions between suppliers and consumers?**

Yes.

### **21. Do you have information regarding potential costs this may impose on suppliers?**

Not specifically but as with many similar proposals any costs borne by suppliers should be weighed against the costs borne by small businesses, and thus their customers, through inaction. We would also hope, if not expect, that suppliers were already trading in a way similar to that way prescribed in the SOC's and so no radical new approach by them would be necessary.

### **22. Do you think these proposals should apply to the whole non-domestic market, or only a sub-set of it, eg small businesses?**

Our view remains that larger businesses can take care of their own energy supply within general consumer law and that any specific regulations should apply to small businesses only.

### **23. Given your answers to the questions above, do we still need the licence changes proposed elsewhere in this document?**

Yes because of the unique nature of the non-domestic market, not least the prevalence of TPIs and, until recently, the low level of sector-specific regulation.



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