



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to Ofgem's consultation on the Retail Market Review – Updated proposals for businesses

December 2012

About Consumer Focus

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. We tackle the issues that matter to consumers, and 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.

Following the recent consumer and competition reforms, the Government has asked Consumer Focus to establish a new Regulated Industries Unit by April 2013 to represent consumers' interests in complex, regulated markets sectors. The Citizens Advice service will take on our role in other markets from April 2013.

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Executive summary

On the whole this second retail market review (RMR) document is very comprehensive and shows that Ofgem is taking smallest businesses' concerns on board – as well as the views of their advocates, such as us. It doesn't close the 'protection gap'¹ between domestic and non-domestic consumers but some of those areas are being handled separately (back-billing via the voluntary code, and debt and disconnection through a joint Ofgem-Consumer Focus review). Consumer Focus will continue to engage in these processes and monitor any impacts.

Ofgem's review of its approach to brokers is particularly pleasing; you have clearly listened to stakeholders by proposing to develop one code, rather than many. We look forward to helping draft the code through our participation in the stakeholder workshops. Similarly the revised approach to information remedies reflects feedback Consumer Focus and others gave in February, which we welcome.

With the extension of Standard Licence Condition (SLC) 7A imminent, we need Ofgem to be clear about the implications for complaint handling and redress ie the number of businesses that will now be covered by SLC 7A but not able to access the Energy Ombudsman or the Citizens Advice consumer service. Consumer Focus is keen to make the Extra Help Unit (EHU) services available to these consumers. However, we are not aware of the impact this will have or how many 'new' high-gas usage businesses will now be accessing the EHU. Funding and the necessary staff expertise are also uncertain and we will be writing to Ofgem on this point separately. A two-tier redress scheme is to be avoided at all costs and we will work to ensure that this does not happen.

Consumer Focus wants to see an end to punitive rollovers as they exploit market inertia and are non-cost-reflective; we would therefore urge Ofgem to begin the promised work in this area in early 2013.

¹ See annex for table. The starting point for us is that micro-businesses should receive the same protections unless a reason not to can be shown. We see both groups suffering from time pressures and knowledge gaps, as well as a lack of information. In addition domestic consumers of micro-businesses suffer if the latter are treated badly.

Answers to specific questions

Do you agree with the envisaged implementation timetable set out in this chapter? If not, what factors do we need to take into account in setting this timetable?

It seems reasonable. We have been gratified in the past with regards to how quickly originally 'radical' changes, such as the recent back-billing code, have been implemented. With that in mind Ofgem should be clear that easy to implement changes (for example complying with the new standards) can be rolled out imminently, or at least companies put on notice that poor behaviour will now not go unchallenged. It is likely that the third party intermediaries (TPI) code drafting will be the last part of the RMR to be completed given the complex issues that need to be addressed; to save time the starting point should be the existing Utilities Intermediaries Association (UIA) and E.ON codes. These meetings should begin in the New Year without delay.

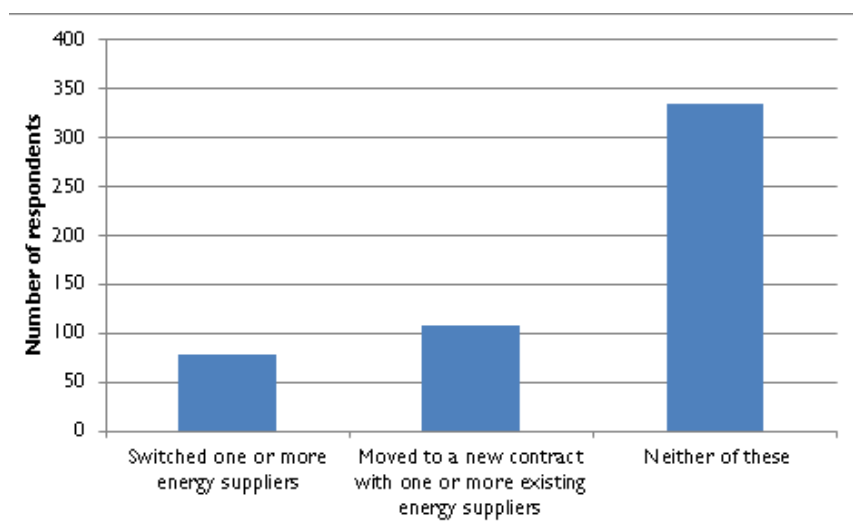
Suppliers should be allowed latitude with regard to bill changes, implementing as and when their next billing cycle begins as a preference (with a later cut-off date beyond which changes must be implemented) so that the necessary systems can be upgraded or retooled.

Do you have any comments on our success criteria and the outcomes we expect to see?

Ofgem has a monitoring role regardless of the RMR proposals. In most cases success should be considered in two stages. Firstly there is the 'success' of suppliers tangibly doing what the RMR posits ie putting contract end dates on bills, signing up to the TPI code. Beyond that, the monitoring of Citizens Advice consumer service (CACS) data, Extra Help Unit (EHU) data and other sources of data, by ourselves and Ofgem, will establish whether those changes are leading to improved consumer engagement levels and a reduction in the number of complaints involving brokers.

In all cases, the introduction of new licence requirements and other more stringent approaches may be appropriate if initial work does not yield success. Beyond that, we would like to see an improvement in areas identified in the recent work carried out for us by Cornwall Energy,² particularly in terms of market engagement. For example when asked what micro-business respondents had done in the last six months, the majority of businesses questioned had neither switched nor negotiated a new contract:

² <http://bit.ly/UaxNUx>



Do stakeholders agree with our proposal for a revised definition for the expansion of SLC 7A?

We said in our previous response to the RMR proposals in February³ 2012 that the extension of SLC 7A, while welcome, has not been a key priority for Consumer Focus. We consider it more important that existing beneficiaries are being properly served by the existing rules before the regulations are extended. There is little point in having medium-sized businesses covered by any rules if they are not adhered to. Regardless, we also understand that several suppliers already treat all their business customers (medium and small) as micro-businesses for ease of doing business with them. This is a best practice we very much encourage. In that sense we welcome Ofgem's move to widen protections and move things on from the existing voluntary arrangements. The consumption threshold extension makes sense in that regard also – from our conversations it is this which sometimes pushes the smallest energy intensive businesses out of the current 7A definition.

However, our main concern as before is that Ofgem understands the implications of extended SLC 7A for the CEAR Act and complaint handling in general. Consumer Focus's EHU, the Ombudsman Services: Energy and the CACS 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 number of businesses, in theory, that would be able to access these services. While we are keen that all small businesses that need independent advice, complaint handling services or an Ombudsman have access to them, there is a need to carry out a full impact assessment to understand the potential impact on resources and costs that could result from the extension to SLC 7A. We are not convinced that the voluntary sources of funding referred to in the consultation document would cover this. What backstop measures are in place should this funding not materialise, for example?

We suspect that maintaining the existing referral criteria for the EHU, CACS 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. This would be the worst outcome possible given already low consumer confidence and the range of changes (smart meters most prominently) coming soon.

³ <http://bit.ly/XOgEP2>

Do stakeholders foresee any significant costs or difficulties to our revised definition?

We cannot imagine significant costs for suppliers to extending the definition given that many suppliers already use SLC 7A for more customers than they are obliged to. New and significant costs are likely for the CACS, Energy Ombudsman and Consumer Focus EHU rather than suppliers – hence our funding concerns as above. Increased costs will take several forms; for example increased staff time at the EHU and Ombudsman, additional engagement with new/small business suppliers and also the general need for extra or more detailed policy expertise. All parties involved need to be satisfied with the proposed changes and timetable. Ofgem could play a role in helping to provide additional funding and training materials or support for staff at CACS, EHU and the Ombudsman Services: Energy.

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 the wider cost to the economy as well as the conventional accounting costs energy suppliers or TPIs would face from any proposed changes. This should then be factored into a proper funding stream rather than the vague measures apparently based on supplier voluntary agreements referred to in the RMR document.

Do stakeholders agree with our proposal to mandate contract end dates on bills for consumers covered by SLC 7A? Are there significant cost implications?

We agree with this proposal and believe that it is long overdue – 12.5 per cent of our EHU business clients were unable to understand complex contract terms and it is our view that poor information and communications by suppliers is a key cause or factor in many of the other areas of detriment the RMR is concerned with.⁴

Mandating contract end dates (as opposed to voluntary signposting) is essential. Similar attempts to improve engagement (such as signposting to CACS on bills via our encouragement but without sanction if not) have had very limited success.

In that vein we would encourage Ofgem to mandate signposting to CACS as well; the RMR is unclear as to whether Ofgem will be pushing for this or leaving it to suppliers' discretion still. As CACS is the main referral route to the services of the EHU it is very important that signposting to CACS is something that all suppliers do in a uniform manner eg via bills. In either case we can only imagine the most limited cost implications – and with large benefits in terms of engagement and thus competition as well.

Do stakeholders agree the last termination date should be included alongside the end date on bills? Are there any significant cost implications?

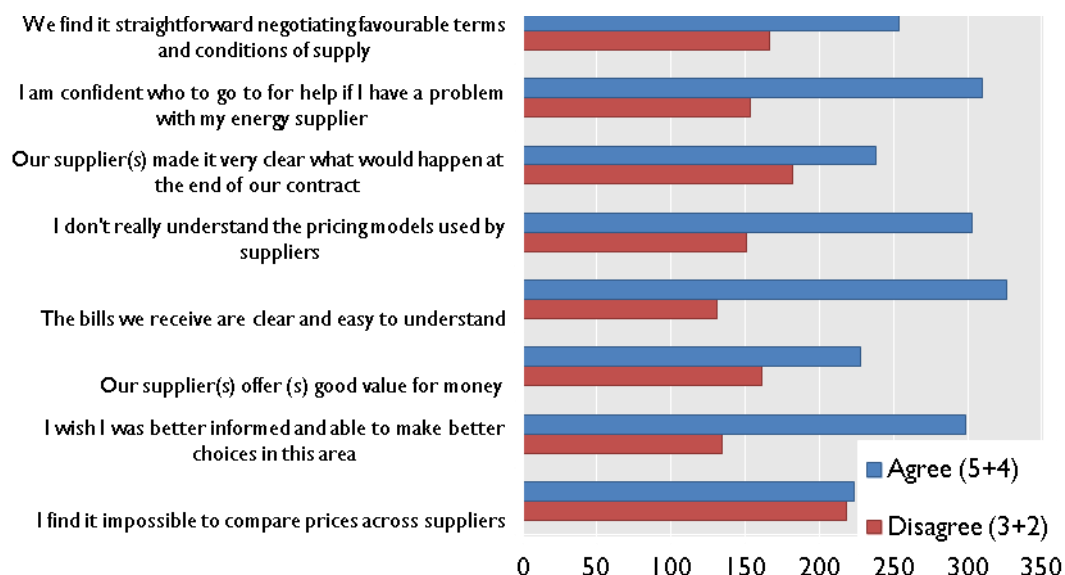
Yes, the last termination date has to be included otherwise the end date means very little – there is no less detriment if consumers still cannot switch because they did not realise they had passed their termination date several weeks before the actual end of the contract. A separate but related point is how onerous some termination process can be. We would hope that the standards of conduct would address some of the worst examples of this.

⁴ Consumer Focus board paper - <http://bit.ly/wrZNVQ>

Furthermore, alongside these measures we believe that there needs to be a more joined up approach to provide small business customers with better information in order to understand their bills, contracts and energy use. 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 with key terms highlighted
- annual online energy statements (containing information about energy usage, prices and principal contract terms)

We know from our recent report *Under the microscope*,⁵ carried out for Consumer Focus by Cornwall Energy, that while many business consumers are happy with the information they get from their supplier, a significant minority of business consumers recognise they suffer from informational asymmetry and this affects their ability to engage with the market. The chart below comes from a survey of 500 micro-businesses:



Do stakeholders agree with our proposal to require suppliers to allow small business customers to give notice to terminate their contract (as from the end of the fixed term period) from the beginning of their contract? What are the implications of this proposal, including cost implications?

We cannot imagine any strong arguments against this proposal. Suppliers might appreciate the forward planning this allows them – this should not be seen as a particularly pro-consumer policy proposal. That said, the current arrangements with multiple dates near the end of a contract are confusing and do nothing to increase consumer engagement. Surely it is not beyond suppliers’ abilities to process notice to terminate and record this at any point of the contract? What additional costs would be incurred because of it?

⁵ <http://bit.ly/UaxNUx>

The only negative we can foresee would be unscrupulous TPIs pushing businesses into making a termination notice at the outset of their contract in order to push business back to themselves. This however, could be addressed via the TPI Code of Practice.

On the consumer side, businesses will of course benefit from the security of knowing that if they terminate at the beginning of a contract there is now no way they can be 'rolled over'. However, suppliers should then remind businesses that they have already given notice to terminate as the contract nears its end so that the business has time to renegotiate a new contract and is not put on expensive 'out of contract' rates.

Do stakeholders consider that it would be to the benefit of customers to allow suppliers to terminate small business contracts, signed under the terms of SLC7A, in specific circumstances where a customer's energy usage significantly increased?

No, we do not believe that this would be of benefit to consumers. It would be a dangerous precedent and we cannot foresee many businesses experiencing drastic rises in energy consumption during the course of a contract because of the essentially static nature of different SMEs eg a kiln using much more energy all year round than a corner shop.

Suppliers would already have the option not to renew such contracts when they end if usage has increased significantly and we feel this is adequate protection for suppliers for the reason stated above.

Do stakeholders have views on the proposed amendments to SLC7A set out in Appendix 4?

The proposed amendments are clear and should accomplish the proposals in the RMR. In that regard we are satisfied that the rules are sufficiently clear for suppliers and consumers will have a clear appreciation of their contractual rights.

Do stakeholders agree that industry processes could be improved to alleviate current issues with the objections process?

Yes and suppliers should see this as just one part of a general improvement in their communications. We would reiterate though that objections are currently sometimes a weapon against unscrupulous TPIs, especially around tenancy changes. So a reduction in the number of cases is not necessarily the sole defining criterion of success. However, we would expect to see the issues around TPI abuse of the change of tenancy process to be addressed in the proposed TPI code of conduct.

Do stakeholders agree that we do not need to make further changes to the licence condition at this stage?

Yes because this is the first time Ofgem has looked at this so there is a need to gather more evidence before regulation is considered and for the reasons given to the question above regarding false transfers.

Do stakeholders agree that we should collect and potentially publish information from industry sources rather than from suppliers?

Yes, given that as Ofgem concludes (in line with our experiences) that it is a minority of suppliers who continually attempt to transfer multiple times. It is these suppliers who should be targeted, perhaps via the new standards of conduct. To sum, these suppliers are themselves the problem (in other areas too) – it is not the objections process.

Do you agree with our proposed approach to tackle issues in the non-domestic market? If not, which alternative proposals do you prefer?

Yes, if the Standards are enforced. However, it is not clear what breadth they might have. For example, will the new (voluntary) back-billing code be integrated into the Standards? This might be covered by the 'billing' category but it is not clear. Could the standards be used to enforce better behaviour in one of the areas not explicitly mentioned by Ofgem, for example debt and disconnection processes?

In addition, it is not clear whether Ofgem intends to use the Standards against breaches of the licence conditions, as for the domestic Standards of Conduct (SOCs). Is this their intended use in the non-domestic sector? Or does Ofgem intend them to be 'lines in the sand' on these three explicit areas of concern and detriment.

Does the proposed approach to enforcement mitigate stakeholders' concerns about the regulatory uncertainty and risk?

This is an area where suppliers, alongside other areas, may have objections over pace, but it is hard to see how it could be 'uncertain' or 'risky'. It follows naturally from work in the domestic sector and the categories chosen are the three causing most detriment when things go wrong.

Do you agree the proposed binding Standards should cover small businesses only?

Yes. We think larger businesses are more able to address any problems that occur and binding Standards would not be appropriate, at this time, given their additional market power.

Do you agree with the assessment that the scope of the binding requirements should focus on the relevant activities of billing, contracting and transferring customers (and matters covered by related existing licence conditions)?

Yes but 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 mis-selling and the licence condition should encourage them to do this in the non-broker areas. 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 – regardless of the relevant TPI being part of the new code. This would go beyond any licence condition and be the result of a positive engagement with suppliers by the regulator.

We would support the extension of the Standards to cover debt and disconnection as a fourth category if the current work by Ofgem and Consumer Focus to improve performance are not followed through by suppliers. We intend to monitor such cases via CACS to see what progress is being made.

Do you have any information on potential costs and benefits of the roll out of the Standards of Conduct?

Not applicable. However, 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.

Do stakeholders have views on the proposed New Standard Condition 7B set out in Appendix 4?

The language here is clear and Ofgem's intent comes through; that said, as always with new licence conditions, the spirit of adherence will have to be developed after introduction. We might want a more explicit mention of back-billing for example, as well as time to pay in debt and disconnection scenarios if such a licence condition inclusion becomes necessary.

Do stakeholders agree with the proposal for Ofgem to develop options for a single Code of Practice (the Code) for non-domestic TPIs?

Yes and we would expect Ofgem to begin by looking at the existing codes operated by the UIA and E.ON; much can be adapted. Ofgem 'buy-in' is essential to give the project credibility. Signing this code should be considered the cost of operating in this market by TPIs, akin to suppliers abiding by licence conditions.

Do stakeholders consider the Code should apply to all non-domestic TPIs (including those serving small businesses and large businesses)?

Yes as the market is not divided neatly into small and large businesses. To ensure coverage of all TPIs that deal with the smallest (and thus most vulnerable) businesses those that currently only deal with larger firms should be included also. The ultimate test for this will be when suppliers refuse to take contracts when the relevant broker is not signed up to the code. This principle is crucial and outweighs any consideration of explicit business size.

What do stakeholders consider should be the status of the Code, the framework in which it should sit, and who should be responsible for monitoring and enforcing the Code?

It needs to be a binding code akin to the licence conditions suppliers face across many areas with robust governance arrangements. Ofgem should monitor and enforce the code, presumably in some new to-be-created unit, alongside some informal role for bodies such as ourselves who have a high level of interest in TPIs. To clarify 'binding' means that suppliers commit to only contract with TPIs who have joined it.

After the code is established every TPI should have advisers with appropriate training and their details kept on central database. Effective monitoring of this (via CACS and EHU data or a new regime within Ofgem for this purpose) and penalties for non-compliance will have to be worked out via the stakeholder groups. It has to be credible and involve loss of revenue and status where appropriate, and ultimately expulsion from the Code.

Would you like to register your interest in attending the TPI working group?

Yes, and indeed we envisage playing a key role in this group given our past work bringing this to Ofgem's attention. Consumer Focus can also play a balanced role between suppliers and TPIs, as our position is purely the advancement of consumer interests. This is important given the crucial nature of TPIs to small suppliers and should be considered by Ofgem when taking representations from large suppliers on the working group.

What issues should Ofgem consider in the wider review of the TPI market? What are the benefits and downsides to looking across both the domestic and non-domestic markets?

With Ofgem due to take over responsibility of the (domestic) Confidence Code from early 2013, from Consumer Focus, and the growing popularity of the collective switching schemes, it is appropriate that a wider review of the role of intermediaries is carried out.

In general, Consumer Focus is keen to understand what impact brokers moving into the smart meter and Green Deal markets might have. In that regard the non-domestic code being developed might be the prototype for similar guarantees.

A wider review of TPIs within the non-domestic market should consider the appropriateness of companies effectively being both suppliers and brokers; our view is that such arrangements are not conducive to effective market searches and should be restricted.

Suppliers should also undertake a verification call once contract agreed between TPI and business or full recording of telephone contracts (if necessary); failed contracts should be flagged and recorded centrally. In the code there needs to be a clear standard implemented confirming a TPI's status (self-employed, aggregator etc) along lines of the Financial Services Authority's Statement of Professional Standing.

Annex 1

The protection gap

Domestic	Non-domestic
Evergreen or fixed – and RMR should improve things	Rollovers at punitive rates, expensive deemed rates otherwise
Back-billing code = 1 year	Moves to 3 years and 4/5 years (electricity and gas respectively) under Energy UK/ICoSS code
ERA vulnerable Safety Net, negotiation and ability to pay LC	Disconnection in a matter of months even when debt due to back-billing; general practice is often poor
SLC25, self-regulation, consumer protections	Unregulated brokers exploit businesses' lack of knowledge – though new moves by Ofgem in accreditation
SLC31 & 31A – Annual Statements	Lack of visibility of contract terms, minimal info on price in public domain
Debt Assignment Protocol, Confidence Code	Churn at half domestic rate, high levels of objections. Still no switching sites or even published tariff prices.



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