

1 May 2013

Louise van Rensburg
By email: rnr@ofgem.gov.uk

Dear Louise

Response to The Retail Market Review – Final non-domestic proposals

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

Given that there are no questions to answer in this document, and that much of the new content is more relevant to suppliers, we firstly refer you to our response to the updated proposals of December 2012.¹ This covers our views on all the areas in the RMR then and now in great depth. A summary of our views of the 'protection gap' inherent to the non-domestic energy market is included as an annex.

Our general views

The second RMR document was very comprehensive and showed that Ofgem is taking the smallest businesses' concerns on board – as well as the views of their advocates, such as ourselves. It doesn't close the 'protection gap'² between domestic and non-domestic 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 help 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.

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 how many:

- businesses will now be covered by SLC7A but not be able to access the Energy Ombudsman or Consumer Focus Extra Help Unit (EHU)?
- 'new' high-gas usage businesses will now be accessing the EHU?

¹ <http://bit.ly/100ycbr>

² See annex. The starting point for us is that micro-businesses should receive the same protections as domestic consumers unless a reason not too can be demonstrated. 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.

Funding and the necessary staff expertise is also uncertain and this remains a concern beyond changes of reference. 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.

We remain slightly concerned about the potential effectiveness of the proposed standards of conduct given the failure of the standards of conduct adopted in the domestic market following the 2008 energy supply probe to make a real impact.

In this response, we have restricted our comments to the main areas of interest.

New policy

In terms of new or revised policy, we are pleased that Ofgem has taken on board most of the comments made by us and other interested bodies. Requiring contract end dates on bills and more flexibility around avoiding roll-overs are welcome steps but should be accompanied by the mandating of signposting to the Citizens Advice Consumer Service (CAs) on bills and other customer communications. The inclusion of back-billing as part of the Standards of Conduct is similarly welcome and helps frame that now well-advanced work – we have much information on this area and are happy to participate in a review. Similarly the work to establish a TPI code of conduct has become a significant and separate workstream. It makes sense to run that separately from the RMR; we remain committed to working with Ofgem and other stakeholders to produce a code that works.

Roll-over contracts

On Ofgem's proposed future work on roll-over contracts and the issues that result from them, Consumer Focus is supportive of this work but remains concerned about the lack of clarity surrounding out-of-contract rates. How do they relate to the risk of non-payment and suchlike when the business has only recently been under contract?

The significant percentage difference between the best and worst rates available to micro-businesses is still present³ and could be the difference between a business 'sinking or swimming'. A new system of roll-overs could allow business to 'opt-in' to being rolled-over knowing that the rollover rate will not be any higher than their current rate but better deals may still be available elsewhere.

Therefore we would like to see Ofgem considering whether rollover/renewal and out-of-contract rates accurately reflect the cost to serve (especially 'risk', the usual justification for the much higher prices). Rollovers should only be permitted when the business has opted-in and where the tariff does not increase in price and businesses should be able to leave a rollover contract as soon as the point the business re-contracts or switches supplier. Finally suppliers should be encouraged and incentivised to begin publishing tariffs where they have standard offerings for the smallest businesses.

Prices

On prices generally, the Department of Energy and Climate Change (DECC) publishes information on the cost of electricity and gas for different sized businesses every quarter, as well as projections out to 2020.

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The trend for gas suggests an increase in the gap between the smallest and largest businesses, while the trend for electricity indicates that prices only increase for the smallest businesses. Possible reasons for these trends include: (1) different levels of engagement with the switching process; (2) smaller businesses being more credit-unworthy; (3) economies of scale assisting larger businesses.

These high prices are disconcerting because small businesses are likely to see increasing bills in future years because of climate change policies but are least able to make use of energy efficiency measures. In addition work carried out for Consumer Focus by Cornwall Energy⁴ suggests that small businesses are largely passive 'price takers' because they find it hard to compare across suppliers.

Yours faithfully,

Andrew Hallett
Policy Advocate

⁴ <http://bit.ly/UaxNUx>

Annex 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.