

Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing

Response to Ofgem's proposals



Introduction

Helping consumers make informed choices

The Citizens Advice Service thinks that Ofgem's proposed principles offer the best way of preserving key consumer protections in the post CMA world.

In terms of legal drafting, we would like to see Ofgem adopt a new approach whereby the new principles as well as the policy objective(s) are both contained within the licence. This would provide greater clarity for suppliers.

All of these new principles will require close monitoring. The CMA inquiry can only be judged a success if there are significant shifts in key market trends such as the percentage of more vulnerable households remaining on standard variable tariffs (SVTs), consumer understanding of energy bills, etc. Competition in the energy market must benefit the majority of consumers, not just the few.

In order to judge the success of the remedies, Citizens Advice would expect to see increases in the following indicators:

- Consumers are able to understand and compare tariffs, even the traditionally disengaged groups
- Improvement in energy literacy, such that more people understand their bills and know how to make effective choices, whether that is how to use less energy in the home or switch to a cheaper deal
- More of the 'unplugged' or 'on standby' groups of consumers engaging more regularly, particularly in the groups of stickiest consumers
- Reduction in the number and percentage of consumers on standard variable tariffs (SVTs) with suppliers making real efforts to get customers off their poorer value tariffs
- More suppliers entering the prepay market and offering better priced smart prepay tariffs
- Improvement in the quality as well as the quantity of switches so consumers aren't put off from re-engaging

Consultation questions

Chapter 2

1(a) Do you agree with the proposed requirement that any calculation by a supplier of the estimated annual cost figure should be internally consistent (ie calculated in the same way by any given supplier for all tariffs and for all customers over time)?

1(b) Are there any circumstances in which suppliers should have the flexibility to provide an estimated annual cost figure to customers based on different assumptions or methodologies? Please explain your answer.

Yes. With the removal of the existing requirements, we believe it is essential that consumers continue to receive a Personal Projection (PP).

We share Ofgem's concerns that this could lead to inconsistencies across suppliers and it is an area that will need to be closely monitored going forwards. In particular, the calculation of prices on price comparison websites (PCWs) will need to be regularly reviewed in order to ensure that consumers are able to access accurate prices when making switching decisions.

In our view, the benefits associated with providing consumers with a personalised and regularly updated projection of their energy costs to help them understand their energy usage are greater than the potential risk of confusion caused by the removal of the standard estimated annual costs (EAC) formula.

If the supplier changes its methodology over time due to new information becoming available then we would expect the revised calculation to be introduced across all its tariffs at the same time. This will be particularly important for new ToU tariffs. Suppliers must use internally consistent calculations to ensure that consumers are not misled. They should also be clear on any assumptions regarding behaviour change which underlie the EAC for these tariffs, and why they believe these assumptions to be fair. It may be appropriate for suppliers to provide a further estimate for these tariffs of the cost of the tariff if no behaviour change occurs.

(2) Do you support our proposal to require that, in the absence of a prescribed methodology, the estimated annual cost must be personalised, transparent, fair and as accurate as possible, based on reasonable assumptions and all available data?

Yes. Suppliers must also be able to demonstrate why its calculations are based on certain assumptions.

If suppliers use external benchmarks (such as the market average price) to compare prices, they must be clear how the average price(s) has been derived. There is a significant risk of consumer confusion if individual suppliers all use different benchmarks.

(3) Do you support our suggestion that, at the end of a fixed-term contract, consumers could be rolled onto another fixed-term (rather than evergreen) tariff, if the consumer were able to exit this tariff with no penalty and at any time?

Yes. We agree that this could be beneficial for consumers if the new fixed term contract is cheaper than the SVT.

If suppliers have a number of fixed term offers in the market at varying prices, they must be able to clearly justify why they have chosen one tariff and not another. For example if Supplier A's price offerings are:

- SVT: £1,000
- Fixed 1 year: £900
- Fixed 2 year: £950
- Fixed Charity Tariff: £975

Rolling customers onto another fixed term tariff will result in many households assuming that they are once again on the best possible deal for their circumstances. Ofgem's impact assessment highlights that consumers trust in their own supplier is far above that of consumers trust in suppliers generally.¹ Consumer engagement levels are low and suppliers could see a reduction in customer churn as a result of this decision.

As a result, suppliers must be able to clearly demonstrate why customers have been rolled onto a particular fixed term tariff as opposed to another one. For instance, if Supplier A rolls its customer onto its fixed charity tariff, then it should be able to demonstrate, based on past customer preferences, why their customers would benefit from this particular tariff over the cheaper 1 year and 2 year fix.

Consumers that are rolled onto a new fixed term tariff will not have made an active choice of tariff, and as such we would consider that they would still be eligible to be placed on the proposed disengaged consumer database after three years on default tariffs.

(4) Do you agree with our overall approach to managing the consequential impacts on the Clearer Information tools arising from the removal of the relevant Simpler Tariff Choices Rules?

Yes. We agree it is important that consumers continue to receive the cheapest tariff messaging (CTM) messaging. Both our research and Ofgem's research have

¹ <http://tiny.cc/kpl6ey> See Paragraph 1.14

demonstrated that the CTM has been important at inspiring consumers to switch tariff or supplier.²

Given the market wide benefits associated with the CTM messaging, we believe this should be a priority area for the new consumer trials. If the trials are able to establish best practice wording, we would expect suppliers to adopt this wording going forwards.

We recognise that the CTM is a prompt as opposed to a guarantee that the consumer will be able to sign up to the advertised tariff. If a consumer acts on the CTM prompt, we would expect suppliers (regardless of channel) to tell them about all available tariffs.

We note that the CMA considered the prospect of market wide CTM messaging. This is an area of interest to Citizens Advice and we would be interested in working with Ofgem on any projects exploring this idea. This is particularly pertinent given the return of acquisition tariffs in the market following the publishing of the CMA's final report, which could undermine the relevance and consumer trust in the CTM.

Without the stability provided by the four tariff rule tariffs may be introduced and withdrawn from the market much more rapidly. As such the tariff listed under the CTM may be more likely to be unavailable by the time the consumer receives their bill. We would expect suppliers to treat customers fairly by honouring tariffs shown on the CTM if consumers respond to it promptly.

We agree that the tariff information label (TIL) should be retained.

We support the removal of the tariff comparison rate (TCR).

² A GFK survey for Citizens Advice in August 2015 asked 8,050 consumers what actions they had taken in the last 12 months after receiving their energy bill. 26.5% of consumers had switched to a cheaper tariff offered by their existing supplier (16.28%) or switched to a different supplier (10.25%).

(5) Have we identified the right benefits and risks associated with our preferred approach to managing the impacts of removing the relevant Simpler Tariff Choices rules on each of the Clearer Information tools?

Yes.

(6) Are there any potential unintended consequences associated with our proposed approach?

The key risks will relate to the potential variation in supplier methodologies and whether consumers may make sub-optimal switching decisions or decide that they find the process too confusing and disengage. However, we think that Ofgem's proposals offer the most appropriate safeguards following the removal of the Retail Market Review (RMR) Simpler licence conditions.

Ofgem will need to closely monitor supplier behaviour to ensure that consumers are not confused by complex discount or tariff structures.³

The impact on consumers on Time of Use (ToU) tariffs will need to be closely monitored to ensure these households have access to the information they need in order to make effective switching decisions. Consumers on two- or three-rate tariffs need to have a much more detailed understanding of when and how much electricity is currently used within their home in order to determine whether they would be better on a different ToU tariff or a single rate tariff. The level of detail required is not always available on their energy bills, although some suppliers provide more detail in their online account management systems. It's also worth noting that consumers on existing ToU tariffs are often not on the best deal for their needs. Our 2012 report⁴ on ToU tariffs found that nearly 40% of consumers were not getting any benefits from their existing tariff. This suggests that there is risk of poorer outcomes for some consumers from more complex ToU or multi-tier tariffs in future. We have previously identified a number of new consumer protections that may be required for consumers on ToU tariffs, including improved information from suppliers on using these tariffs and billing protections (such as shadow billing) to prevent excessive increases in cost.⁵

³ Consumer Focus's open letters on energy tariffs highlighted some of the pre-RMR supplier practices that caused consumer confusion in [2010](#) and [2011](#).

⁴ [From Devotees to the Disengaged: A summary of research into energy consumers' experiences of Time of Use tariffs \(2013\)](#)

⁵ [Talk a Walk on the Demand Side \(2014\)](#)

Chapter 3

(7) Do you agree that our proposed policy objective is the correct one? Please explain your answer.

Yes. If achieved, this objective should avoid the worst issues caused by tariff proliferation in the period before the RMR reforms were introduced and help achieve Ofgem's wider objectives to increase the rate of switching and improve competition in the market. However, clear information on tariffs and fair marketing practices will not be sufficient, in and of themselves, to achieve these aims. Improvements to the reliability of the switching process and the provision of information on bills are just some of the other areas where work is ongoing (and needed) to improve outcomes.

(8) Do you consider that the proposed principles are a sensible way of achieving our policy objective? Please explain your answer.

Principle 1 - The licensee must ensure that the terms and conditions of its Tariffs (including their structure) are clear and easily understandable.

Citizens Advice support this principle. We would expect that relevant terms and conditions would also include information on any consumer protections specific to the tariff type (for example, in relation to ToU tariffs), or where consumers are required to provide certain amounts of information for innovative tariffs (eg access to half hourly readings or other data), or where they require the consumer to use certain products/services (including bundled non-energy products) alongside the tariff.

We support the wording of the principle in requiring that suppliers 'must ensure' these outcomes. Innovation will bring new products which are inherently more difficult for consumers to understand, particularly in the case of tariffs which require a consumer to adapt their behaviour in order to maximise their benefit. We agree that suppliers should conduct research on how to ensure these tariffs can be easily understandable. This could also be shared to ensure that best practice is quickly spread across the industry.

We recognise that there will continue to be occasions in which consumers do not understand the tariff they sign up to. Ofgem should share more detail on the proposal for an objective standard on whether a tariff is 'easily understandable', and should set this broadly enough to ensure suppliers meet the requirements of as many consumers as reasonably possible.

Principle 2 - The licensee must ensure that its Tariffs are easily distinguishable from each other.

We support the aim of this principle in preventing unnecessary tariff proliferation. However, Ofgem should ensure that this will require suppliers to make not only the technical structure of the tariffs distinguishable, but also which different consumer characteristics and preferences they seek to meet. We would not expect multiple tariffs to be marketed as having the same benefits for consumers with the same characteristics, for example: a tariff called Low User tariff and one called Minimal User tariff could both have different structures, but as both refer to consumers with similar characteristics it may be difficult to distinguish which is appropriate without further information.

Principle 3 - The licensee must ensure that it puts in place information, services and/or tools to enable each Domestic Customer to easily compare and select which Tariff(s) within its offering is/are appropriate to their needs and preferences.

We support this principle, but Ofgem should set out how they intend to enforce a 'must ensure that' threshold, given that they acknowledge both the limits of the support suppliers can provide, and the wide array of consumer needs and preferences that exist. Furthermore, this requirement should be broadened to include information relevant to the consumer's final energy bill which is separate to the tariff - for example where the supplier is aware that the consumer has qualified, or could qualify, for Warm Home Discount. We would consider that in meeting this principle suppliers would provide tiered information, with extra detail available both online and via other routes, if consumer's need this to make a fully informed decision.

The principle assumes that consumers will be able to balance their own needs and preferences to make appropriate choices. However, hyperbolic discounting means that consumers may struggle to carefully weigh the long term cost of a package against the offer of an initial discount or free gadget. We have seen similar problems in other industries, such as the broadband market, where advertising featuring large upfront discounts has made it difficult for consumers to understand long term costs.⁶ In order for a consumer to easily compare energy packages or bundles, suppliers should provide consumers with information on the total cost of the package for the duration of the contract, including the financial value of any extra products or discounts.

Some tariffs, such as innovative ToU tariffs, may require new information to be provided by consumers in order to determine whether these are appropriate. This might include information about the consumer's appliances and lifestyle to help determine what levels of behaviour change might be feasible in response to the tariff.

Suppliers should consider how they make clear via their information or other tools which tariffs are available for all consumers and any that are exclusive to new consumers only. In some cases suppliers may offer a tariff which is most

⁶https://www.asa.org.uk/News-resources/Media-Centre/2016/Insight-We-confirm-tougher-approach-to-broadband-price-claims-in-ads.aspx#.V-qg_jMrKVM

appropriate to a consumer's needs or preferences, but which is not available because they are an existing consumer. We consider that suppliers should not hide acquisition deals from existing consumers, but should make clear that they are ineligible for them. This should act as a prompt for that consumer to consider searching the wider market for acquisition deals with other suppliers.

Principle 4 - The licensee must conduct its Domestic Customer sales and marketing activities in a fair, honest, transparent, appropriate and professional manner and must ensure that its Representatives do the same.

We support this principle.

Principle 5 - The licensee must not, and must ensure that its Representatives do not, mislead or otherwise use inappropriate tactics, including high pressure sales techniques, when selling or marketing to Domestic Customers.

This principle should be broadened to ensure that suppliers consider situations in which it is appropriate not to sell to consumers - for example, where their circumstances mean that it will make it hard for them to make an informed choice, regardless of the information provided.

Ofgem should also set out in more detail how it would define terms within the principle including 'inappropriate tactics' and 'high pressure sales techniques', which are not currently used in the supply licence. Rather than a single standard to apply to all consumers this definition should take into account the circumstances of the individual consumer, as sales techniques which may be appropriate for some consumers could be detrimental to others. Ofgem should also confirm whether 'misleading' in this context includes both information provided or omitted (in line with the Standards of Conduct).

Principle 6 - The licensee must only recommend, and must ensure that its Representatives only recommend, to a Domestic Customer products or services which are appropriate to that Domestic Customer's needs or preferences.

We support this principle. However, Ofgem should make clear how they define a 'recommendation' in the context of this principle. This should be defined broadly enough to cover all information that suppliers send to, or share with, individual consumers to influence them to make a particular tariff choice, including materials which are not exclusively used for the purposes of marketing.

The principle as drafted refers to 'needs or preferences'. Suppliers should consider both of these when recommending a tariff, so the drafting should be amended to align with Principle 3 (which refers to 'needs and preferences'). Suppliers will also need to judge (perhaps with guidance from Ofgem) how they balance a consumer's needs and preferences, and should ensure that needs (based on consumer's characteristics) are met by a product, before considering any stated preference from the consumer for certain discounts, free gadgets etc.

There may be occasions when a consumer selects a tariff using the information/tools provided by the supplier, which the supplier considers is not appropriate for them based on the information they hold about that consumer. It would be appropriate for the supplier to discuss this with the consumer to explore this, including offering alternatives or support to facilitate their use of the tariff. However, in some cases it could be necessary for the supplier to refuse to allow the consumer on to the tariff.

In making explicit recommendations suppliers should not only consider which tariffs are appropriate for the consumer, but which is *most* appropriate (in line with the approach set out in response to question 3). The logic of this approach would mean that, all else being equal, suppliers should recommend consumers the cheapest of any tariffs they consider appropriate, and that all tariffs the consumer is eligible for should be considered, regardless of the sales channel.

Suppliers should not only make this judgement at the point of sale, but should also make necessary changes to a consumer's tariff if they later become aware that their tariff is no longer appropriate for that consumer due to changes in their circumstances. In particular we would expect suppliers offering more innovative tariffs using half hourly data to monitor consumption data to ensure that the tariff remains appropriate over time.

9) Are there any benefits, risks or potential unintended consequences associated with the proposed principles which we have omitted? If so, what are they and how could they be mitigated?

Some of the principles may conflict with each other, and/or the remaining 'clearer information' requirements. Taking a broad definition of 'recommend' under Principle 6, there could be an issue whereby the CTM could be for a tariff which the supplier considers is not appropriate for the consumer. Withholding information on the tariff could protect the consumer, but also reduce the efficacy of the CTM. There may also be issues, set out above, whereby a consumer selects a tariff using the information/tools provided (Principle 3) which the supplier does not consider is appropriate, based on the information they hold about the consumer (principle 6). It is not clear exactly how suppliers would be able to meet both requirements simultaneously to the strong 'must ensure that' threshold proposed. Ofgem should provide guidance on how they expect suppliers to balance different aspects of the principles based regime.

There is a further risk with Principle 6 that suppliers could ask for much more information from consumers in order to allow them to access certain products. This could prevent harm to consumers, but suppliers will need to take care not to be overly intrusive. There may also be a risk that suppliers prefer to exclude certain consumers from certain products, such as ToU tariffs, entirely rather than provide more support to enable them to benefit.

The principles, if followed, should help to ensure consumers make informed outcomes, and make suppliers consider whether tariffs are appropriate for consumers. However, a consumer's circumstances may change, or they may find that tariffs they believed were appropriate no longer meet their needs. In order to protect consumers, especially in the context of innovative multi-tier or ToU tariffs, new protections, such as requirements to waive exit fees or to limit bill increases, may be required as backstop protections.

(10) Are these principles likely to result in differential impacts across different types of suppliers (eg large vs. small or medium suppliers)? Please explain your answer.

Yes. It may be harder for smaller suppliers to run research to ensure that consumers are able to understand their tariff offerings. However, this limitation may be appropriate in limiting these suppliers to focus on fewer tariff options which they can expand as they grow. Sharing learning from research in the industry could also help overcome this problem. Similarly, it may be harder for smaller suppliers to invest in tools to help consumers choose an appropriate tariff, although these services could be offered to consumers via PCWs and TPIs.

(11) Do you think that we should introduce a principle about informed tariff choices?

Yes. This should not add extra burden at this point and could ensure consumers are protected as the market develops in the future, by catching emerging issues not covered by the other principles.

(12) Do you agree that we should expand the scope of SLC 25 to apply to all sales and marketing activities? Please explain your answer.

Yes. We expect the large majority of switches in future to be completed online, so it is appropriate to expand the scope of SLC 25 to cover this, as well as face to face and telephone activities. Aligning the standards of conduct and scope of SLC 25 should help to drive the consideration of consumer needs through all areas of a supplier's business.

(13) Do you support our proposal to extend the requirement to keep records for two years to include telephone sales and marketing? If not, please explain why, including the scope of any potential increase in costs.

Yes.

(14) Do you agree with our rationale for not applying the requirement to keep records to include online sales? What would be the implications of extending the requirement to online sales (eg impact on PCWs, increased costs)?

No. As sales increasingly move to online channels it makes sense to keep the same records for these sales activities. The administrative burden of keeping records of online sales should be lower than that related to telesales or face to face marketing, although it would impact PCWs and could increase their costs. However, having a

blanket requirement would protect consumers and also future-proof the obligation in the case of future innovative sales channels, for example automated web chat.

(15) Do you agree with our proposal to remove the prescription from SLC 25? Are there any other areas where you think prescription still needs to be retained to maintain consumer protection?

We support the removal of prescriptive rules except for the requirement to make post-sales contact after face to face sales, which should be retained. The Citizens Advice consumer service continues to receive cases of mis-selling by suppliers via this channel in which consumers are switched despite not believing themselves to have signed up for a contract. The requirement to make post-sales contact is an important backstop protection against this happening.

The removal the point-of-sale requirements will not remove all prescription in this area, as energy suppliers will still need to follow requirements of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and other relevant legislation.

(16) Do you agree with the methodology we intend to employ in our impact assessment?

Not answered.

(17) Have we captured all expected key impacts? If not, what else should we include in our impact assessment?

Not answered.

(18) What costs do you expect to incur as result of the proposed changes (both to the RMR package and to SLC 25)? Please provide a description and a range, if possible.

Not answered.

(19) What benefits (including avoided costs) do you expect to realise as result of the proposed changes? Please provide a description and a range, if possible.

Not answered.

Chapter 4

(20) Do you think there are any other indicators we can use to monitor the impact of changes to the RMR rules on customers?

Citizens Advice is committed to working closely with Ofgem and Ombudsman Services: Energy under the new tripartite framework. We are making improvements to our existing data to improve our ability to monitor market trends and the impact on consumers.

Given their position in the market Price Comparison Websites (PCWs) may also be well placed to monitor the impacts of tariff comparability between suppliers, and to identify discrepancies between approaches. We have called for PCWs to take a more active role in our response to Ofgem's consultation 'Confidence Code Review 2016'.

We support Ofgem's current work in reviewing new tariffs that enter the market on a weekly basis. However, this work may require more dedicated resource if it is to continue, both due to the potential increase in tariffs following the removal of the RMR 'Simpler Tariff Choices' rules and the growing number of suppliers entering the market.

(21) Are there any other sources of information we could use to provide us with an early indication of potential issues with sales and marketing activities?

As we've previously discussed with Ofgem, monitoring sales activity has always presented challenges for our organisation. In our view, consumers who have experienced inappropriate sales activity are likely to under-report their concerns as they don't have an existing relationship with the supplier. Many consumers do not realise that they've been mis-sold until weeks or months after their transfer has taken place.

We agree that seeking to obtain data from other sources such as housing providers could provide useful insight.

We have discussed a number of initiatives with suppliers including using devices capable of fully recording the conversation when carrying out face to face sales. This would bring assurance into line with telesales where full call recording is now viewed as essential.

Where a supplier employs sales practices which carry higher risks, such as face to face sales, one way of monitoring the quality of the sale would be for suppliers to monitor the type of issues these consumers contact them about in the first six months. This could help indicate whether consumers may have been misled about

aspects of the tariff. We think this would be most relevant for consumers who have switched to a ToU tariff.

Suppliers could also monitor which tariffs consumers have been switched to, particularly if the supplier had better value tariffs available. However this is based on the assumption that suppliers won't revert to previous practices whereby their most competitive tariffs were not available via the face to face sales channel.