

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

28 September 2016

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Ombudsman Services' (OS) response

1 General comments

OS welcomes the opportunity to respond to this consultation. Specific information about OS can be found at Annex A at the end of this document. In general OS supports the work that Ofgem is doing with regard to moving to a principles and risk based approach to regulation and moving away from prescriptive rules. This work also fits in with the recommendations made by the Competition and Markets Authority (CMA) report on competition in the retail energy market.

OS attended a number of the stakeholder events held by Ofgem to look at the issues outlined in the consultation. We also support the recommendation made by the CMA around carrying out a programme of trials to find what prompts work in practice to encourage consumers to engage in the market.

OS is working with Ofgem and Citizens Advice (CA) to provide more insights and trend analysis about what is happening across the sector in terms of the customer service and complaints handling. This is with a view to enabling more flexibility and innovation for energy providers but also identifying risk areas and taking action to mitigate those risk areas and help improve standards across the sector.

There is a balance to be struck here between protecting the ability of markets to be competitive and understanding what consumers experience when markets do not deliver or meet consumer expectations. The propose approach to principles based rules and risk based monitoring is the right way forward.

2 Specific response to the questions

The consultation sets out a number of questions; OS supports the direction of travel outlined and so rather than answer each specific question, the response groups relevant questions together and provides key points under those groupings:

Changes to the Retail Market Review Rules

Questions 1, 2 and 3.

We think the rationale and evidence to each of the proposals outlined in the questions are sensible and to be supported. With regard to question 1 (b) if there is a good reason why suppliers need to have flexibility in providing an estimated annual cost figure to consumers based on different assumptions, then it is appropriate for suppliers to explain why and measure the intended outcomes.

Questions 4, 5 and 6.

Again, we think that the proposition, rationale and risks identified provide a sound base of evidence and checks and balances to take forward this work, including the use of randomised control trials.

Informed Tariff Choices: Principles

Questions 7, 8, 9, 10, 11, 12, 13, 14 and 15.

We support the approach Ofgem is suggesting here. We have attended a number of the stakeholder events that Ofgem has held where the policy objective has been discussed.

Importance to consumers

It is also reassuring that at point 3.16 that the point is made that yes price is an important characteristic to the majority of energy consumers but that there will be other factors such as customer service.

The UK Customer Satisfaction Index 2016¹, published by the Institute of Customer Service, which evaluated customer services across 13 sectors of the UK economy. The four worst performing sectors were transport, public services (national), utilities, and telecommunications and media. The research identified the biggest differentiators between the best performing 50 companies across all sectors and the rest. Three of these six key drivers related to good complaint handling; the speed of resolving complaints, how complaints were handled and the outcome of complaints.

Similarly, research published by Populus² highlighted that customer service, rather than price, was the primary factor to consider in consumer engagement. Whilst noting that price should not be underestimated, the report highlighted ‘competitive prices in fact have a very low correlation with a customer’s likelihood to stay with their supplier. Instead, customer service, clear and transparent bills, money saving advice, communication and trustworthy behaviour are the most important factors responsible for driving loyalty’.

As the consultation highlights, there is a balance to be struck between encouraging competition and greater innovation and excluding consumers from engaging because they feel overwhelmed by complexity. The outcome of having consumers making informed choices, looking at what tariffs offer the best value for them based on their specific characteristics and preferences is right.

We also agree with the idea that suppliers may need to undertake consumer research in order to satisfy themselves about how well consumers are likely to understand the terms and conditions of Tariffs are understandable to consumers.

Draft Impact Assessment

Questions 16, 17, 18 and 19

We broadly agree with the methodology Ofgem intends to use for the impact assessment. There will be other benefits across the sector by stakeholders working together, for example, by OS using its data and insights to identify what is happening in the energy market and working constructively and collaboratively with suppliers to tackle

¹ The Institute of Customer Service, UK Customer Satisfaction Index, January 2016.

² Populus, ‘The sluggish, the savvy and the downright promiscuous: The truth about energy customer behaviour’, April 2016.

problems will help enable proportionate regulation. So that issues can be addressed before they escalate or require full regulatory intervention.

Monitoring the new principles

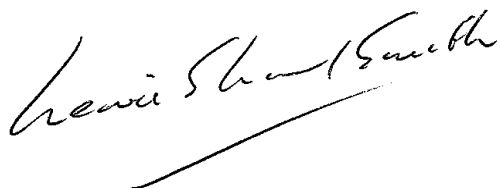
Questions 20 and 21

As acknowledged, with a principles based approach to regulation it is important to balance that flexibility with a risk based approach to monitoring those principles. So, for example, looking at new products, and considering data and information that show trends all help build the risk assessment.

Certainly complaints data and information that OS and CA have will be important to draw out insights and trends. The tripartite working between Ofgem, OS and CA ensure that such insights are captured across the whole customer journey.

OS is happy to discuss our comments in more detail and continue to work with Ofgem to help to fine tune the final proposals. In the first instance please contact David Pilling at: dpilling@ombudsman-services.org for further information.

Yours sincerely



Lewis Shand Smith
Chief Ombudsman & Chief Executive
28 September 2016

Annex A - Summary about OS

Established in 2002, The Ombudsman Service Ltd (TOSL) is a not for profit private limited company which runs a number of discrete national ombudsman schemes across a wide range of sectors including communications, energy and property.

We are an independent organisation and help our members to provide independent dispute resolution to their customers. Each scheme is funded by the participating companies under our jurisdiction. Our service is free to consumers and, with the exception of an annual subscription from the former Department of Energy and Climate Change (DECC) now the Department of Business, Energy and Industrial Strategy for the Green Deal, we operate at no expense to the public purse. OS governance ensures that we are independent from the companies that fall under our jurisdiction and participating companies do not exercise any financial or other control over us.

We have in the region of 10,000 participating companies. Last year we received 220,111 initial contacts from complainants and resolved 71,765 complaints. We saw a year on year increase in complaints of 118% between 2013 and 2014 and a further 35% increase between 2014 to 2015. In the energy industry alone we have witnessed a 336% increase in complaint volumes between 2013 and 2015. The company currently employs more than 600 people in Warrington and has a turnover in excess of £27 million.

In July 2015 the EU Alternative Dispute Resolution Directive (the ADR Directive) came into force requiring all member states to ensure that ombudsman or ADR schemes are available in every consumer sector. The former Department for Business Innovation and Skills (BIS) - now known as the Department for Business, Energy and Industrial Strategy, the government department responsible for implementing the ADR Directive in the UK, called upon the market to plug the gaps where no ADR provision existed and to coincide with this in August 2015 we formally launched our new portal (<http://www.consumer-ombudsman.org>). The launch of this website was welcomed by BIS and means that consumers can raise a complaint about a product or service in any

sector where there is no existing redress provision - including retail, travel and home improvement.

Our complaints resolution service operates once a company's own complaints handling system has been exhausted, and we have the authority to determine a final resolution to each complaint. Our enquiries department handles primary contacts and makes decisions on eligibility. If a complaint is not for us, or has been brought to us too early, we signpost the consumer and offer assistance. Eligible complaints are then triaged. The simplest can be resolved quickly, usually by phone in two or three hours. Around 10% are dealt with in this way. For the majority of complaints we collect and consider the evidence from both parties, reach a determination and seek agreement; about 55% are settled like this. The most complex cases require a more intensive investigation; they may require more information and lead to further discussion with the complainant and the company to achieve clarification. The outcome will be a formal and binding decision.

Traditionally our key focus has been on handling individual complaints and ensuring that consumers, where appropriate, receive redress. In future we will take a much more proactive role. Firstly, through identifying and tackling issues in individual companies, and making recommendations to improve customer service and complaint handling. Secondly, by identifying systemic industry wide issues and either making recommendations for improvement, or referring them to the appropriate body for action. This will allow us to make a stronger contribution to tackling consumer detriment in the sectors in which we operate, and in addressing emerging problems before they become systemic.

We are 'Good for Consumers and Good for Business'.

For consumers, we offer a free, fast and accessible form of civil justice with no requirement for legal representation or specialist knowledge, and with a particular focus on access for vulnerable consumers. We ensure that complaints are dealt with swiftly in an impartial manner, and we make decisions based on what is fair and reasonable rather than the narrow remit of the law.

For businesses, we offer a fast and low-cost alternative to the courts, and make decisions based on expertise in industries. By looking to resolve disputes, we promote brand loyalty and repeat purchasing as well as building reputation and trust. We offer guidance on improving standards of service hence sharpening competitiveness. We go beyond individual complaints to find broader trends which can be a source of innovation.

More broadly, we provide an efficient and effective means of addressing consumer detriment and building business capability without recourse to the public purse. We take pressure and cost away from small claims court and legal system and help to build consumer confidence which bolsters the economy.