

## Minutes from Consumer Groups & Charities Workshop

---

On 16 September 2016, Ofgem held a workshop for consumer groups and charities to discuss our proposals for implementing a number of the Competition and Market Authority's (CMA) remedies, following its two-year investigation into GB energy markets. This note summarises the discussion.

---

Participants were invited to give their views on the following broad areas:

- Our [Policy Consultation](#) (3 Aug – 28 Sept)<sup>1</sup> on helping consumers make informed choices. In particular, our proposed changes to rules around tariff comparability and sales and marketing to domestic consumers.
- Our consultation on [changes to the Confidence Code](#) (3 Aug – 28 Sept).<sup>2</sup>
- Our work on the future of retail market regulation and specifically, our August 2016 [working paper](#), with a focus on vulnerability.
- Implications of our implementation of the CMA's remedies (see our [Remedy Implementation Strategy](#)) and associated work.

The note below summarises the discussion at the workshop.

### 1. Session 1 – Proposed changes to rules around tariff comparability and sales and marketing

- 1.1. We provided a recap of the changes we are proposing, which involve removing a significant amount of prescription from the supply licence and introducing new principles around tariff comparability and sales and marketing.
- 1.2. In relation to the CMA's recommendation that we remove the majority of the 'Simpler Tariff Choices' Retail Market Review (RMR) rules,<sup>3</sup> we highlighted in our [Statutory Consultation](#) (3 Aug – 16 Sept 2016)<sup>4</sup> that we supported the CMA's recommendation and that, in accordance with our function of promoting competition, we proposed to implement this recommendation in full and remove these rules.

#### Do you have any outstanding concerns with the removal of the rules?

- 1.3. Consumer groups were broadly welcoming of the removal of these rules, though some raised a few specific concerns, including:

- Some felt that although the removal of these rules may not actively *harm* consumers, it is unlikely that they will be particularly beneficial for most. This was because consumers' knowledge and behaviour have not fundamentally changed from that identified in previous research, which led to the implementation of the RMR rules. Monitoring how these offers are marketed and sold will be key.

---

<sup>1</sup> Hereafter, 'the August policy consultation'.

<sup>2</sup> Hereafter, 'the August Confidence Code consultation'.

<sup>3</sup> This includes the ban on complex tariffs, the 'four tariff rule', the ban on certain discounts and bundled products and the ban on tariffs exclusive to new/existing customers.

<sup>4</sup> Hereafter, 'the August Statutory consultation'.

- Differentials between cheapest tariffs and Standard Variable Tariffs (SVTs) could widen in the short term because of these changes. One consumer group suggested that their concern was not so much about the removal of the rules, but more to do with what Ofgem puts in place subsequently. Ofgem referred attendees back to the principles with which we were proposing to replace the RMR rules.

1.4. We set out that the August policy consultation proposes key changes in two key areas: (i) Consequential changes to RMR Clearer Information tools, and: (ii) the introduction of six narrow principles around tariff comparability and sales and marketing.

### **Consequential changes to RMR Clearer Information tools**

- 1.5. The removal of the RMR Simpler Tariff Choices rules impacts the RMR Clearer Information tools (Personal Projection, Cheapest Tariff Message, Tariff Comparison Rate and Tariff Information Label). This is because the Clearer Information tools were not designed to work with the additional level of complexity that we expect to see in tariff offers following the removal of the Simpler Tariff Choices rules.
- 1.6. The August policy consultation therefore outlined proposals for managing this impact on the Clearer Information tools:
- **Personal Projection (PP):** Retain requirement to include estimate of annual costs, but proposed use of principles instead of a prescribed formula, thereby giving suppliers freedom to develop own methodologies.
  - **Cheapest Tariff Messaging (CTM):** Retain, but remove prescription behind estimated annual cost (EAC) calculation.
  - **Tariff Comparison Rate:** Remove.
  - **Tariff Information Label:** Retain, but amend to reflect changes above.

At the workshop, we asked the following questions in relation to the proposed changes to the Clearer Information tools:

*What are your views on our proposal to remove the prescribed formula around how the PP is calculated? Do you think the consultation identified the appropriate benefits and risks?*

- 1.7. There was broad agreement on the need to change the existing rules in order to better accommodate some of the more innovative tariffs that we now expect to see coming to market.
- 1.8. The key concern among attendees was around the comparability of tariffs between suppliers. Some stakeholders pointed to anecdotal evidence that the PP continues to be widely used and that the CTM also remains popular. Others felt that the use of different methodologies might lead to consumers making ill-informed switching decisions. Others felt that it could cause some consumers to disengage from the market because of the added complexity. This would make the job of 'front-line' consumer body advisors more difficult.

*Do you have any other comments about our overall approach for managing the consequential impacts on the Clearer Information tools arising from the removal of the relevant Simpler Tariff Choices rules?*

- 1.9. One consumer group raised a concern that there are problems with relying on Price Comparison Websites (PCWs) to fill the gap of cross-market comparability. For example, some consumer demographics do not engage with PCWs where, for instance, they may not have internet access.
- 1.10. Another attendee argued that the onus should be on energy companies to actively engage consumers, not just on PCWs to 'plug the gap'.

### **Introduction of six narrow principles (three on tariff comparability and three on sales and marketing).**

- 1.11. Ofgem reiterated the key policy objective set out in the August policy consultation – namely, that:

*'Consumers are able to make informed choices by understanding which of a suppliers' tariffs offers the best value to them based on their characteristics and preferences'*

#### Is our proposed policy objective the right one?

- 1.12. Stakeholders at the workshop generally felt that this objective was comprehensive. However, one attendee suggested that a number of assumptions were necessary if the objective is to be fulfilled: (i) consumers actually want to switch; (ii) there are a reasonable range of products in the market that satisfy all different consumer preferences. Some doubt was expressed around the extent to which this was the case.

### **Tariff Comparability Principles**

- 1.13. The August policy consultation proposed six principles as part of a revised SLC 25 – three on tariff comparability and three on sales and marketing activities.
- 1.14. The three proposed tariff comparability principles were as follows:

1. *The licensee must ensure that the terms and conditions of its Tariffs (including their structure) are **clear and easily understandable***
2. *The licensee must ensure that its Tariffs are **easily distinguishable** from each other*
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***

At the workshop, we asked the following questions:

#### Do you consider that the proposed principles are a sensible way of achieving our policy objective?

- 1.15. There was broad support for the transition from prescription towards principles and widespread agreement with the drafting of the proposed principles. There was also support for having the policy objective/intent of the narrow principles communicated clearly and prominently in the licence.

- 1.16. Some stakeholders questioned how these principles could be monitored and how we could assess the extent to which suppliers had delivered the desired outcome.
- 1.17. Another concern was around whether the use of principles would evolve into regulatory creep as more guidance may have to be introduced. An example was given of regulation in financial services, where the regulator has had to publish more supplementary guidance.

To what extent do you consider these principles to strike the right balance between protecting consumers and enabling greater competition and tariff innovation?

- 1.18. Some attendees suggested that if a customer is to make an informed choice, a supplier should tell them about the risk of moving to a complex tariff. They suggested a prominent message in customer communications could be used to notify customers of such risks.

What, if anything, would you change about the principles?

- 1.19. One stakeholder commented that the principles didn't adequately capture 'savings/costs' messages for consumers. This stakeholder was keen that the principles should require suppliers to inform consumers that their tariff costs may increase or decrease over time – particularly in relation to time of use and multi-tier tariffs.

**Sales and marketing principles**

- 1.1. Our August policy consultation proposed to: (i) remove 'the Objective' from SLC 25; (ii) remove the prescription relating to face-to-face sales and marketing (with the exception of the record-keeping requirements); (iii) replace these with three principles (set out below), and; (iv) expand the scope of SLC 25 to apply to all forms of sales and marketing, rather than limiting it to face-to-face and telephone sales (eg online).
- 1.2. The sales and marketing principles were as follows:

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*
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*
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 asked the following questions:

To what extent do you consider these principles would protect consumers from poor supplier behaviour?

- 1.3. One stakeholder highlighted the importance of suppliers having to adapt their sales and marketing approaches to ensure they are appropriate for different consumer groups.

- 1.4. There was some concern that suppliers could sell their 'worst' tariffs using face-to-face selling, or offer a cheaper tariff but not 'the cheapest'. There was then some discussion around the extent to which: (a) the Standards of Conduct; (b) principles 3, 4 and 6 might capture such behaviour.
- 1.5. However, other attendees commented that deliberately withholding a cheaper tariff would be captured both by the Standards of Conduct and by principles 3, 4 and 6.

Do you have any views on the 'enforceability' of these principles?

- 1.6. Consumer groups felt that alongside these principles, Ofgem should elaborate further on how they will be enforced. There were some questions around how consumer groups could best engage Ofgem where there was evidence that something had gone wrong. Numerous attendees suggested that there should be a coordinated and robust approach to information gathering.
- 1.7. Some consumer groups called for the use of a consumer challenge panel, formed of independent organisations who can comment on how participants have performed in relation to their sales and marketing, which can then result in enforcement action. This could play a pre-emptive role in feeding back information to Ofgem.
- 1.8. Ofgem noted the Challenge Panel which, in 2015, assessed how suppliers were responding to the Standards of Conduct, and in December 2016, would focus on how suppliers were helping consumers make informed choices.

One of our goals in moving towards a greater reliance on principles is to future-proof consumer protection. To what extent do you consider these principles to be 'future proof'?

- 1.9. There was some discussion around how the market may become more complicated in a world of multi-utility or more complex offerings by suppliers. Some consumer groups highlighted the challenges associated with future-proofing for this. However, there was broad agreement that a greater reliance on principles may help deliver this.

What, if anything, would you change about the principles?

- 1.10. One consumer group was keen for the Warm Home Discount to be captured in the sales and marketing principles i.e. the impact of switching to a supplier not offering the WHD. They believed that customers should be informed about whether suppliers offer this discount to consumers or not.

## **2. Session 2 – Whole of Market Remedy and Confidence Code Review**

- 2.1. We reminded participants that the Confidence Code is a voluntary code of practice for online price comparison services. It encompasses nine requirements which can be grouped into four key principles:
  - **Independence:** to ensure information on site is impartial and neutral
  - **Accuracy:** to ensure comparisons correctly reflect prices available in the market
  - **Reliability:** to ensure information provided is of a consistently good quality
  - **Transparency:** disclosure around funding and operation

- 2.2. The current rules require PCWs to list all tariffs from all suppliers on their site even if they don't receive commission from the supplier. The Whole of Market remedy effectively gives accredited PCWs more flexibility over the number of tariffs and suppliers they feature on their website. Consumers would not be guaranteed to see everything on every PCW and so would need to shop around if they wanted to see the whole market. This is the case in all other sectors.

Do you believe there are potentially unintended consequences with this remedy? If so, what are these and why would they arise?

- 2.3. Some consumer groups were generally not concerned about unintended consequences with this remedy, but commented that the impact of this remedy depends on whether consumers have a range of choices to cover their needs and preferences. There was a broad concern that this could reinforce market power of bigger firms who are able to pay commission. It was also felt that there is a risk of further disengaging consumers who are disengaged.
- 2.4. Some consumer groups discussed concerns around unintended consequences around the monopolisation of individual sites if they are not properly monitored, and an associated risk of misuse.
- 2.5. Some consumer groups discussed that consumer trust in TPis is an existing issue that limits their widespread use. The CMA remedy may further erode this trust.

How likely is it that these risks will arise and how could they be mitigated?

- 2.6. Many stakeholders said that risks of consumers not realising that price comparison websites do not display the whole market, could be mitigated by making sites disclosing commission information. PCWs could be more transparent by disclosing who they have deals with and making evident who they are monopolised by.
- 2.7. There was a suggestion of creating a market with competition between PCWs, but also acknowledging that there are different ways to engage consumers.
- 2.8. Attendees suggested the following amendments:
- Obligate code signees to give access to the Citizens Advice WoM website (which could have a transactional component).
  - Outline the percentage of the market their deals are covering. There was a question of whether this would cover deals offered by parent companies through other brands
  - Require PCW's to make clear who offer WHDs and other similar benefits.

### **3. Session 3 – Prompting greater consumer engagement**

- 3.1. We introduced for discussion the CMA's information based remedies to address weak customer engagement:
- The CMA recommended that Ofgem create and maintain a secure database of disengaged domestic and microbusiness customers who have remained on standard variable tariffs for three or more years. The CMA recommended that Ofgem share the data with licensed suppliers for the purpose of direct marketing to those disengaged customers, encouraging them to switch suppliers.
  - The CMA recommended that Ofgem establish an ongoing programme of research (including randomised control trials) to identify, develop and implement measures to

drive consumer engagement via communications from or interactions with their own supplier. To support the trials activity, the CMA recommended that Ofgem introduce a new licence condition that enables Ofgem to require a supplier to conduct a trial.

- 3.2. We outlined that we are introducing a package of interventions with the aim of prompting a change in consumer behaviour that (i) empower more informed decisions by individual consumers, and (ii) encourage greater participation in the market. Increasing engagement among domestic and microbusiness consumers aims to increase competitive pressure on suppliers.
- 3.3. The new licence condition (SLC 32A) would enable us to direct a supplier to develop an implementation plan or trial design, and conduct a trial or testing; and request specific information from suppliers for any purpose relating to a trial.
- 3.4. The CMA's proposed licence condition includes a provision for us to publish criteria for the selection of suppliers which will be required to conduct tests and/or RCTs. The overarching objective for these selection criteria is to enable us to choose the most appropriate supplier to undertake a particular trial in a way that is proportionate and likely to produce meaningful results.
- 3.5. We said we intended to publish a Selection Criteria Open Letter and Statutory Consultation in October.
- 3.6. Consumer groups commented that unsolicited calls and marketing can open up a gateway to other problems, or lead to consumers making wrong decisions. There was a concern that even if good deals are being offered, people may be unhappy with their details being shared, particularly in the case of customers with mental health issues. One consumer group suggested trialling database prompts with the non-domestic market beforehand, and that a more incremental approach would carry less risk. Ofgem clarified that customer telephone numbers would not be shared.
- 3.7. Consumers groups were very supportive of the prompts to engage initiative, and that it would be tested on customers. They noted that including vulnerable consumers in trials could be a risk and this should be managed appropriately. It was put forward that bespoke trials for vulnerable consumers could have value. It was also felt that energy companies should be providing ideas to the regulator.

## **4. Session 4– Future of retail market regulation**

### **Overview of Ofgem presentation**

- 4.1. We emphasised our commitment to rely more on principles and less on prescription when regulating the retail energy market. This regulatory approach will help to: promote innovation and competition among suppliers; provide effective protection for consumers in a rapidly changing market; and put responsibility firmly on suppliers for achieving good consumer outcomes.
- 4.2. We gave an overview of the August broad principles [working paper](#) setting out our current thinking for amending the Standards of Conduct (SoC). Any changes would aim to ensure the SoC remain fit-for-purpose in a rapidly changing retail market that is regulated through less prescriptive rules. The working paper also outlined our intention to introduce a broad, enforceable principle relating to domestic customers in vulnerable situations.
- 4.3. In relation to a broad vulnerability principle, the intent is to clarify our expectations in the licence that suppliers must consider the needs and circumstances of domestic

customers in vulnerable situations. A domestic customer's vulnerability should not disadvantage and get in the way of them realising the current and future benefits of the market. A principles-based approach requires suppliers to take accountability for finding effective ways to identify and respond to vulnerability.

### **Workshop session feedback**

How do the current SoC influence your organisation's day to day operations?

Are your front-line advisors aware of a supplier's obligation to treat each domestic customer fairly?

How can Ofgem help your organisation better understand and utilise the SoC?

- 4.4. While some stakeholders advised that they do not find the SoC a useful tool in the day-to-day operations of their organisations because it was set at a high-level, other stakeholders said that they referred to the SoC when dealing with an issue that had been escalated, and found that referencing the SoC helped in remedying a situation. Some stakeholders suggested that Ofgem should make the consumer outcomes it expects suppliers to deliver more explicit as this will enable advisors to reference these outcomes in their conversations with consumers.
- 4.5. Limited awareness of the SoC among front-line consumer group staff was flagged by a couple of stakeholders. To improve awareness, it was suggested that Ofgem provide information tools, tailored to front-line staff, about how the SoC works to protect customers (this could include easy to use materials outlining the policy intent of the SoC and how it has been applied in recent enforcement cases).
- 4.6. There was a question of whether suppliers could be made to provide guidance to consumer groups about what their commitments to customers are. This would allow suppliers to express how they are treating customers fairly and allow consumer groups to reference these statements when dealing with issues.

What benefits and/or challenges can you see with a broad enforceable principle regarding supplier behaviour towards domestic customers in vulnerable situations?

How can a broad principle encourage suppliers to take their responsibilities towards those in vulnerable circumstances seriously?

- 4.1. It was felt that a prominent, enforceable vulnerability principle will improve supplier performance when dealing with vulnerable consumers. One consumer group proposed that suppliers could publish their interpretation of the vulnerability principle, perhaps by way of a vulnerability strategy. They also supported suppliers making a statement on their compliance with this requirement i.e. specifically on vulnerability as opposed to treating customers fairly.
- 4.2. There was a feeling that the definition of vulnerability is quite broad, and there was a challenge regarding how broad it should be while still being operational. Other stakeholders commented that the vulnerability definition is wide for good reason, due to the nature of different types of vulnerability. We noted that we will think about the appropriate role for a vulnerability definition in a broad principle.
- 4.3. Consumer groups suggested that the larger energy companies might be more familiar with dealing with vulnerability. Conversely, small suppliers may start off with a business strategy that means they appeal to a market segment that does not initially include vulnerable customers. Therefore, it was suggested that smaller, new suppliers may need extra support from Ofgem so they understand our expectations concerning vulnerable consumers.



## 5. Session 5– Implications of the CMA’s remedies

- 5.1. We said that 26 of the CMA’s remedies have fallen to Ofgem to implement, which are a combination of new projects and extensions to existing projects or strategies.

Which of the implementation actions do you think will have the greatest positive benefit for consumers?

- 5.2. Consumer engagement was seen as a positive remedy. The database remedy could also potentially have the most positive (or negative) impact on consumers.

Which (if any) of the remedy clusters could have a negative effect on consumers? And, if so who and what?

- 5.3. One stakeholder expressed a concern around comparability of tariffs on PCWs: it is not clear how much confidence consumers can have if different methodologies are being used.

- 5.4. Some stakeholders expressed concerns that the Database Remedy could have negative impacts, and should be tested on non-domestic consumers in the first instance. This consumer group stated that this piece of work was more likely to draw negative press attention should anything go wrong in the domestic market.

- 5.5. The removal of the four tariff rule raised some concerns among stakeholders about flooding the market with complex tariffs which may result in consumers being confused about the choices they have.

How could any negative impacts be mitigated?

- 5.6. One consumer group suggested not giving suppliers access to the database, but instead allowing local authorities to access it for collective switching. One stakeholder agreed with our proposal for testing the database and ensuring it works for consumers.

- 5.7. PCWs could disclose supplier parent-subsidary relationships.

- 5.8. One consumer group stated that the communication around the PPM price cap has been confusing as a result of the intervention which means consumers can only benefit from this if they have a SMETs 1 or 2 meter. It was suggested there is a need for clearer information around this so as to enable them to be able to advise households. It would also be helpful if there was clarity as to which suppliers are offering SMETs 1 & 2 meters.

How can Ofgem work most productively with you during the implementation?

- 5.9. Consumer groups said that they would welcome similar engagements and face-to-face meetings. Stakeholders said that Ofgem display a very clear message about openness which is appreciated.

- 5.10. Regarding the consultation approach, suggestions included:

- Ofgem link different policy areas and publish combined consultations as opposed to multiple consultations, as this is sometimes difficult to track.
- There was a comment that the title of consultations sometimes doesn’t reflect the content.

- Ofgem broaden our engagement so that it is not London-focused.
- Ensuring CMA and business-as-usual policy developments are coherent and consulted on at the same time (less of a burden for consumer groups)
- List the consultations that we have coming up (including summary information, when responses are due etc) and sending this to consumer bodies to help them plan resources accordingly
- Develop a factsheet or user-friendly summary of complex/technical consultations. Could also flag which parts of the consultation are particularly relevant for different stakeholders to provide feedback on
- Producing summary documents of consultations
- Holding more workshops, more consumer group only workshops, or having a workshop roadshow to gain different perspectives throughout the UK.