

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

OFGEM consultation

Chartered Trading Standards Institute response

September 2016

About The Chartered Trading Standards Institute

The Chartered Trading Standards Institute (CTSI) is a professional membership association founded in 1881. It represents trading standards officers and associated personnel working in the UK and also overseas – in the business and consumer sectors as well as in local and central government.

The Institute aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

We provide information, evidence, and policy advice to support local and national stakeholders.

We have also, as part of our recently revised remit, taken over responsibility for business advice and education concerning trading standards and consumer protection legislation. To this end, we have developed the Business Companion website (www.businesscompanion.info).

The CTSI Consumer Codes Approval Scheme was launched in 2013, superseding the OFT scheme (www.tradingstandards.uk/advice/ConsumerCodes.cfm).

CTSI is a member of the Consumer Protection Partnership, set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

A key concern for CTSI is that of resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas. They have suffered an average reduction of 46% in their budgets since 2010 and staff numbers have fallen by 53% in the same period.

This response has been composed by CTSI Lead Officer for Energy, Steve Playle. Should you have any queries or wish to discuss the response please do not hesitate to contact Steve at loenergy@tsi.org.uk.

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Helping consumers make informed choices – proposed changes around tariff compatibility and marketing

In responding to this consultation, firstly, CTSI would like to take the opportunity to reiterate some of the points we made in response to a previous OFGEM consultation on the future of retail energy market regulation in March 2016. CTSI believes the comments made in that response are still relevant, and as such, it is reproduced here for your information. Secondly, we address some additional issues with the latest consultation and outline our views under relevant subject headings below.

Executive Summary

- OFGEM should be seeking to simplify the market for consumers. CTSI fears the current proposals on tariff compatibility will have the opposite effect and actually make the market more complex and difficult for consumers to understand and switch with confidence.
- When it comes to energy switching, the onus should be on the business to be clear and not on the consumer to be educated in best practice.
- CTSI is concerned about the nationwide roll out of smart metres in the coming years. Smart Metres will likely make tariffs incredibly complex and dissuade consumers from switching suppliers.
- More attention needs to be paid to the needs of vulnerable consumers and how the proposed changes will impact upon their ability to make informed choices around switching.

The turnover of the retail energy market is something in excess of £30 billion per annum. This assumption is based on an average annual household energy bill being £1000 and there being 30 million households in the UK. In view of this significant household expenditure, a lighter touch 'principles based' approach is inappropriate. If the retail energy market gets things wrong in service delivery, the potential detriment caused to consumers is highly significant and, for this reason, CTSI believes that it is right that the industry is carefully and closely regulated. Such regulation, if properly drafted, applied and enforced, will protect consumers and also ensure there is a level playing field for all providers in the market place. This level playing field applies not only to the 'Big Six' but also to the growing number of smaller suppliers that are now starting to have an effect and make the market more competitive.

The biggest consumer issues in relation to the retail energy market are:

- the cost of energy to households, particularly for those on low incomes;
- customer service and the ability for households to quickly resolve queries and problems;
- easy access to accurate information to make informed switching decisions.

The track record of retail energy providers and the way that they treat their customers is not particularly good. OFGEM have conducted many investigations that have resulted in massive fines being imposed. These are a matter of public record but clearly demonstrate the inability of the industry to follow prescriptive rules that are designed to protect consumers. These have covered the marketing of energy supplies, in particular doorstep selling, but also the inability to provide adequate customer service when things have gone wrong. In relation to the doorstep sale of energy, trading standards was involved in the landmark criminal prosecution of one of the 'Big Six' that ultimately contributed to doorstep sales being stopped altogether across the industry.

The problem with a general principles approach

Moving away from prescriptive rules towards a system of principles and self-regulation in the sector is, in the opinion of CTSI, going to dilute consumer protection even further.

Consumers expect clarity from their energy provider and they expect proper and appropriate regulation. The rules need to be clear and unambiguous and this cannot be achieved through a

system of general principles. General principles can be ambiguous; it could be chaotic if they are applied and interpreted in different ways by different energy suppliers.

CTSI fully understands that prescriptive rules can be a potential burden on businesses. However, in view of the sheer value of the retail energy market and the fact that every single consumer is affected by it, the importance of ensuring that there is a level playing field is vital. This will contribute to encouraging consumer switching in order to make the market truly competitive. The key point, however, must be the previous track record of the sector which, in the view of CTSI, means it is important that close regulation remains in place for the immediate future.

'Safe' and 'Unsafe' switching – issues for consumers under the new guidelines

Between January and June 2016, the number of switches made by consumers was 3.8 million, an increase of 1 million on the same period the previous year. This is extremely encouraging and at last it seems that there is a hard core of households (37% of consumers have been active switchers in the last 12 months according to OFGEM statistics) who are now playing the switching game. These switches have not been prompted by cold calling or door knocking agents, but rather, they have been initiated by consumers themselves.

Switches initiated by consumers themselves are what CTSI would term 'safe switches'. These are switches where consumers have found the most competitive tariffs available for their particular energy consumption pattern. Inevitably, consumers who make 'safe switches' have used a price comparison website to help them. 'Safe switches' are driving true competition in the market to ensure that consumers are not being exploited.

At a time when the number of consumers carrying out 'safe switches' is on the increase, CTSI feel the regulator needs to be building on this success. However, we are concerned that OFGEM's latest proposals will make it more likely that switching rates will decline due to the number of tariffs rapidly increasing and consumers being less able to understand what is best for them based on their actual energy consumption pattern.

CTSI wishes to make it clear that, at present, it would strongly oppose a return to doorstep and telephone sales. Encouraging consumers to switch is very important but this can be facilitated in other ways than dealing with commission paid sales agents.

Keeping the number of tariffs to a minimum and providing timely, clear and accurate data on energy consumption are areas where market regulation could have a real benefit. Consumer bills are still highly complex documents and need to be simplified for consumers and based on an industry-wide template to provide further clarity.

Concerns with the current proposals around tariff compatibility

CTSI has very serious concerns about OFGEM's latest proposals and how these will impact upon consumers:

- Firstly, a return to face-to-face or telephone sales will result in what CTSI terms 'unsafe switches'. It is highly unlikely that an 'unsafe' switch will result in a consumer achieving the cheapest rates because every sales agent will attempt to persuade the consumer that the deal they are offering is the best. In reality, of course, this is a sales tactic and simply cannot be true as only one supplier can have the best tariff for a particular consumer. When it comes to 'unsafe' switches, the consumer will therefore, in the vast majority of cases, be switched to a tariff that is not the cheapest deal for them. Sales agents will inevitably be paid on a commission basis and history shows time and time again that this is a recipe for disaster that will ultimately result in widespread consumer detriment. As previously stated in this submission, evidence for this kind of activity can be found in both the fines previously imposed across the energy sector by OFGEM for mis-selling and in the

criminal conviction achieved by Surrey County Council Trading Standards Service against one of the 'Big Six'.

- OFGEM is now advocating a shift in the landscape and a move away from a limited number of tariffs available to consumers. Very soon, it is likely that there will be hundreds or even thousands of different tariffs available to choose from. This will make the landscape incredibly complex and challenging for consumers and it will be difficult to evaluate if they are achieving the best deal. For example, one supplier is currently offering a tariff that includes free electricity on either Saturday or Sunday and another supplier has just announced its 'power up' tariff which does away with the traditional standing charge.
- While CTSI understands the reasoning behind the rollout of Smart Meters across the UK, the Institute is concerned that this rollout will come at a massive cost to consumers. Significant complications will be introduced once Smart Meters are rolled out and a multitude of 'time of use' tariffs will likely confuse and baffle a large proportion of consumers making it virtually impossible to carry out a 'safe switch'.

CTSI believe that the safest and simplest way to help consumers is to have a limited number of tariffs and encourage them to use accredited 'whole of market' price comparison sites to find the cheapest energy supplier. This will drive true competition. The effective use of price comparison websites does rely on consumers knowing their actual energy consumption data rather than estimates and the energy sector is already making this data more readily available on statements, a factor that will make safe switching even safer in the future.

Vulnerable Consumers

CTSI has concerns over what we term vulnerable consumers and these do not, regrettably, seem to be given much attention in the consultation documentation. At present, 21% of consumers are very disengaged in the energy market and CTSI believes that this probably includes a high level of vulnerable people. Much more needs to be done to identify them and help them and there is potentially a role for the voluntary sector to play.

CTSI believes that OFGEM should be simplifying the energy market and placing all its efforts into ensuring that all energy consumers are making 'safe switches'. CTSI cannot support the proposed changes outlined in the consultation document and will be watching developments with Smart Meters very carefully. The 'Green Deal' was planned to be the way forward to make homes and businesses more energy efficient and was a hugely expensive failure. Smart Meters have the potential to be an even more expensive failure. However, if the Smart Meter roll out is a success, the Institute fears that the biggest losers will be energy customers who will simply be paying more money and the vast majority will find it virtually impossible to shop around for the best deal.