

Response to Ofgem Consultation – Standards of Conduct for suppliers in the retail energy market

20 March 2017

Ofgem Consultation – Standards of Conduct for suppliers in the retail energy market

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 we support the work Ofgem is undertaking on Future Retail Regulation (FRR) and the focus on consumer outcomes both in the domestic and non-domestic sectors.

We continue to work closely with stakeholders in the energy sector, including Ofgem, the Department for Business, Energy and Industrial Strategy (BEIS), Citizens Advice (CA), energy providers, Energy UK and Smart Energy GB as well as others to fulfil the wider role of Ombudsman Services: Energy (OS:E). This includes providing improved data, more insights and trend analysis about what is happening across the sector in terms of customer service and complaints handling as well as enhanced working with energy providers.

More specifically we can work with Ofgem and other stakeholders in three broad ways to help introduce FRR:

- a. By using our data and horizon scanning mechanics to identify risk and to track trends. This will help to make the best use of resources and identify and address issues quickly;
- b. We work with all of the energy suppliers on a day to day basis looking at individual consumer complaints. That means we are really well placed to help

Ofgem and businesses with bringing principles to life in the practical running of their businesses. We think this is likely to be especially valuable for smaller and newer suppliers.

We operate in other sectors, where the regulator has moved to principles based regulation, for example, legal services and the property and construction sector and so we understand many of the challenges involved, for example, avoiding the unintended consequences of introducing more documentation and more red tape as companies look to protect themselves from risk rather than more innovation; and

c. We have worked with principles such as fairness for many years and it will be important that such principles are applied consistently across the sector. The move to principles based regulation is a major plank in Ofgem simplifying and improving how it regulates. We can help make the move to principles successful and avoid even more detail being introduced.

Also the enhanced work that we are undertaking with energy providers around tackling consumer detriment as early as possible and improving complaints handling helps to build the foundations of treating customer fairly.

2 Specific response to the questions

The consultation asks a number of questions under each section. We agree with the direction that Ofgem's work on FRR is taking. Our response highlights specific points in relation to some of the sections in the consultation document.

Amending the "Fairness Test"

We are very familiar with working to principles and concepts such as 'fairness', on a day to day basis, when looking at and considering complaints from consumers and micro businesses. We are very keen to work with Ofgem, energy suppliers and other stakeholders to ensure that there is alignment as to what principles like fairness mean

and to ensure there is consistency in defining and using the principles. So that the ‘golden thread’ of treating customers fairly flows through everything the sector does.

We support maintaining a Fairness Test for all the broad principles and with the test being one of reasonableness – this fits well with the move to FRR. We also agree that it is sensible to make these changes to both domestic and non-domestic standards of conduct.

Removing all reasonable steps

We agree with the proposal to remove the all reasonable steps threshold from both the domestic and non-domestic Standards of Conduct. We agree that what is important are the outcomes achieved rather than the process or steps that are undertaken to achieve the outcome. Again, each principle has to be considered using the Fairness Test.

Broad “Informed choices” principle

We do agree with the “informed choices” principle and the suggested wording. We agreed with the idea of this principle in our response to the earlier consultation last year. We wonder if this principle might also fit with the non-domestic Standards of Conduct.

Existing guidance

We do not think it is necessary at this stage to produce additional guidance on the Standards of Conduct but suggest that in the future, as and when key issues arise, that you might add case studies to help contextualise the principles.

Treating Customers Fairly statement

We think the concept of treating customers fairly fits well with the move to FRR and placing a Fairness Test with each principle. As to whether the requirements on energy suppliers to provide a statement on this to consumers when requested is successful or

not is another question. We would question whether consumers are aware of the requirement to provide a statement if requested. However, we do know that when our Enquiry Officers and Investigation Officers talk to consumers who have brought a complaint to OS that they quite often talk about energy suppliers not treating them fairly.

Continuing the requirement for each energy supplier to produce a statement on how they treat their customers fairly might not fit well with the move to FRR, where the focus is on energy suppliers looking at what they do and putting their customers at the heart of that and producing positive and good customer outcomes. As part of that work an energy supplier may consider providing a statement on treating customers fairly is appropriate but others may not. The important thing is the outcome and not necessarily requiring a 'one size' fits all type of approach.

Broad vulnerability principle

We agree that there should be an enhanced responsibility on energy suppliers towards consumers in vulnerable situations. We think that the:

- Overarching objectives set out at 3.11 in the consultation document are right;
- Two proposed changes to the domestic standards of conduct – making explicit reference to customers in vulnerable situations in the Customer Objective and to introduce a vulnerability broad principle are right; and
- Definition of a vulnerable situation is holistic and therefore right.

We have done a lot of work looking at the issue of vulnerability and how we identify and work with vulnerable consumers, including working closely with Ofgem and CA. Our work with all energy providers puts us in a good position to provide insight, guidance and help around helping vulnerable consumers.

It is encouraging that Ofgem makes reference to working closely with CA and OS in understanding what is happening in the market. We certainly want to continue and build upon that tripartite working.

Ofgem's information gathering powers

We agree that Ofgem should have the information gathering powers to enable it to monitor the market more effectively and support the proposed drafting to amend SLC 5.

To enhance the tripartite working between Ofgem, CA and OS we wonder whether making changes to the information gathering powers of Ofgem provides an opportunity to consider how Ofgem can provide relevant access to data and insights into suppliers' behaviour to CA and OS. Currently, CA can formally request information through the Consumers, Estate Agents and Redress Act 2007, whilst there is no provision for OS to do the same - though we do appreciate that this is being considered at the tripartite level. It may well be that the best way to develop this is via a less formal option than changing legislation or the licensing conditions but more by agreement with key stakeholders, in particular energy suppliers, on sharing data and insights.

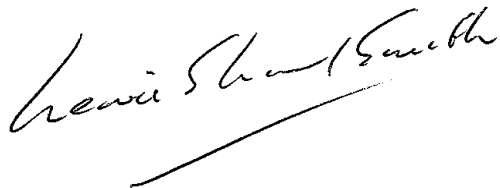
Appendix 6 – Call for Evidence

We agree with Ofgem that it is difficult to quantify in monetary terms the costs and benefits of making the changes proposed and the wider work on FRR. We do think it is the right way to develop regulation of the energy market and to put the consumer at the heart of the sector. We certainly think that there is a strong case for arguing that improving the customer journey and having good complaint handling systems in place does provide return on investment for energy suppliers. The latest Consumer Action Monitor <https://www.ombudsman-services.org/downloads/Consumer-action-monitor-report-2017.pdf> commissioned by OS looks at the cost to business of poor customer service. As well as an aggregate figure across all sectors in the UK, the research is also broken down into sectors including energy.

As we have indicated throughout this response we think that much of the work we do – complaint handling, providing data and insights and working with energy providers and the sector more widely – means that we can work closely with Ofgem to help achieve a successful move to FRR.

We are happy to discuss these comments in more detail. 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
20 March 2017

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 energy, communications, 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. In 2015 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.