



3rd Floor North
200 Aldersgate Street
London
EC1A 4HD
Tel: 03000 231 231

citizensadvice.org.uk

16 November 2020

The Retail Energy Code – proposals for version 1.1

This submission was prepared by Citizens Advice. Citizens Advice has statutory responsibilities to represent the interests of energy consumers in Great Britain. This document is entirely non-confidential and may be published on your website. If you would like to discuss any matter raised in more detail, please do not hesitate to get in contact.

Dear Rachel,

Citizens Advice is strongly supportive of the move to consolidate retail governance under the Retail Energy Code (REC). We recognise the impact that COVID-19 has had on the wider energy industry and hence on the timelines of implementation of Retail Code Consolidation. The RECCo has made important strides towards its objectives, and the designation of REC V1.1 is a further incremental step that we welcome.

Having engaged with the relevant Code Manager parties, we are already participating in the moves toward the early establishment of the Performance Assurance Board so it can mitigate risk as the process towards the full establishment of the REC continues.

Kind regards,

Tom Crisp

Senior Policy Researcher

Patron HRH The Princess Royal **Chief Executive Dame Gillian Guy**

Citizens Advice is an operating name of the National Association of Citizens Advice Bureaux

Charity registration number 279057 VAT number 726 0202 76 Company limited by guarantee Registered number 1436945 England

Registered office: 3rd Floor North, 200 Aldersgate Street, London EC1A 4HD

Q2.1 Do you have any comments on the process for appointing additional RECCo Directors?

We have no specific comment on the process for appointing additional RECCo directors. We have in previous responses stated that we welcome that the terms of reference of the nominations committee are flexible, so they are not a barrier to identifying any gaps or desirable additions to the board's skill set and competencies. We therefore approve that both Ofgem and the RECCo board have recognised that consumer advocacy and digital transformation are two areas where expertise is not currently available and that these gaps must be addressed swiftly for the REC to be successful.

In terms of the Nominations Committee Terms of Reference, a welcome clarification could be what is envisaged as a timeline for "regularly reviewing" the structure, size and composition of the board.

Q2.2 Do you agree that Meter Equipment Managers (MEMs) should be Party to the REC?

We have previously stated that given the consumer-facing activities of MEMs, we support the proposal that MEMs should be REC parties. It is vital, particularly given the metering challenges in the smart meter rollout, that MEMs have an active role in governance to support the standards, capabilities and development of metering critical to the consumer experience. Given this, it is also appropriate for a metering representative to play a role on the PAB as proposed by Ofgem. Work should also be done with MEMs to consider barriers and potential support to help them engage with the REC.

Q2.3 Do you agree in principle that the obligations currently placed upon metering agents by the BSC could be integrated with the REC performance assurance framework, subject to certain conditions being met?

We support the principle that obligations on metering agents are consolidated where possible. We generally agree that requirements that are currently placed upon metering agents by the BSC could be provided through the REC performance assurance regime. Further examination in future consultations will be necessary to assess how this could be achieved without disruption.

Q2.4 Do you agree that the RECCo should be required to develop and maintain a Strategy for the REC, including but not limited to digital transformation of REC processes and data?

We welcome that RECCo has already taken proactive steps to fulfil this requirement. However, we still support a formal requirement for a Strategy to be developed and maintained by the REC, explaining how it will achieve the REC objectives, including digital transformation.

In RIIO2 business planning, Ofgem originally asked network companies to publish their strategies for how they are modernising energy data through digitalisation without an obligation, but this is now being codified through two proposed licence obligations.¹ As we argued there, it should be a priority, rather than discretionary activity, that data strategies are regularly reassessed where necessary to unlock the efficiencies and service improvements that are possible through better accessibility of data sets for relevant stakeholders. The REC is an opportunity to pursue best practice in code governance and the Strategy should help drive forward innovation and improvement of access, engagement and change. More broadly, REC should be required to engage with the strategies that other codes have developed where there is an opportunity to drive greater efficiency.

Furthermore, we would welcome clarity on whether there would be an ex-post evaluation - perhaps annually as part of the business plan - as to how far progress has been achieved against the Strategy.

Q2.5 Do you agree that RECCo should adopt zero based budgeting from 2021/22?

We welcome that RECCo will be required to develop a business case to support proposed budget expenditure, not simply any additional expenditure. We agree that the approach is in line with an organisation that is aiming to proactively and continually evolve and seek ways of delivering value to REC Parties and consumers.

Q2.6 Do you agree that future RECCo budgets should be decided upon by the RECCo Board, subject to appeal by REC Parties?

Yes, we agree both with the mechanism through which budgets are set, and the grounds for appeal contained in the Main Body. We would note the importance for consistency across codes in this regard, with the REC offering an opportunity to set a wider standard, exemplified by P416 being raised at the BSC.²

¹ Citizens Advice (2020) [Ofgem consultation on RIIO-2 Draft Determinations Executive Summary, General Comments and Core Section](#)

² BSC (2020) [P416](#)

Q3.1: Do you agree with the proposed composition of the PAB, as set out in the Terms of Reference published with this document (see Appendix 2).

We agree with the proposed composition of the PAB as detailed in the Terms of Reference. We particularly welcome the opportunity to take up the role of consumer representative and concur that the insights offered on supplier performance by Citizens Advice should be substantially additive to the Performance Assurance Framework, and look forward to working over the coming months to facilitate this. We also note that there is a minor grammar error in our name in the current draft which needs to be corrected.

In respect of industry members, at time of writing the current draft version of the Terms of Reference does not specify a number to be nominated by suppliers - it would be helpful to have an illustrative indication of expected supplier representatives to benchmark against other codes. This should be set at a level sufficient to allow participation of incumbents and new entrant suppliers, while ensuring a balance is retained between industry parties and those outside the energy sector.

Depending on the future evolution of the REC, there could be a case for a dedicated role for a TPI representative on the PAB. As detailed in the consultation, it is planned that a TPI that wishes to access the Enquiry Service would sign an agreement requiring them to comply with the Data Access Schedule - though admittedly a small element of the overall body of the code. The RECCo Board has also considered whether the REC could offer an alternative governance framework to deliver the proposals of Ofgem's Strategic Review of the Microbusiness Retail Market.³ Given the significant role of TPIs within switching, input and buy-in from this group of market participants could increase the effectiveness of the PAB.

Q3.2: Do you agree that any organisation undertaking an activity governed by the REC would be within scope of the performance assurance framework in respect of those Activities?

Yes. We agree that any organisation that carried out an activity governed by the REC should be subject to the performance assurance framework in that regard. Performance assurance in relation to the REC may identify issues in relation to activities outside the auspices of the REC. For licensed parties Ofgem should be able to pick up any broader issues that are identified through its compliance function. However, in relation to third parties there will be limited scope for direct compliance action, although Ofgem may in some cases have recourse through its voluntary Confidence Code. There may also be scope to take action against a supplier if the third party was acting as their representative and breached supply licence

³ RECCo (2020) [Highlights, RECCo Board Meeting, 7th October 2020](#)

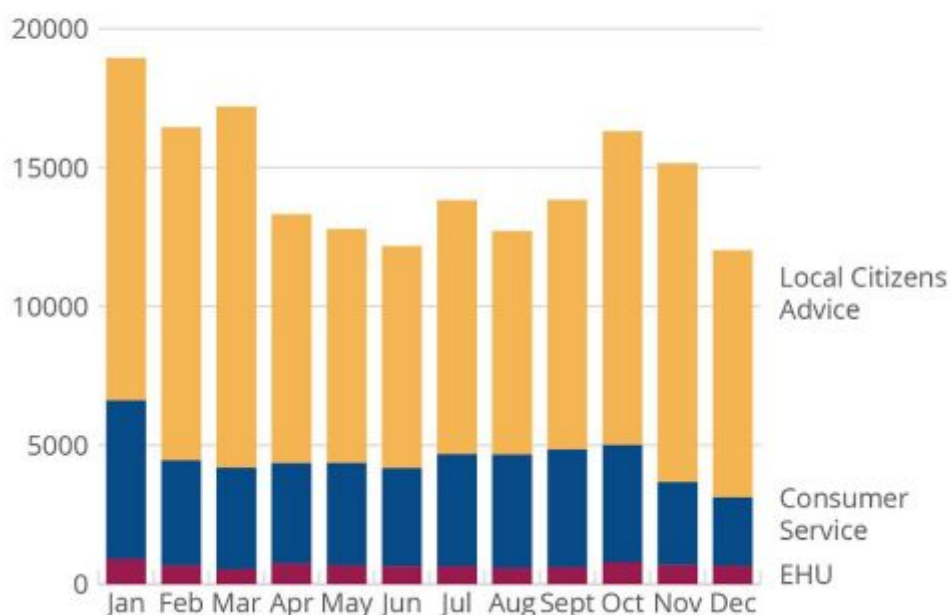
conditions. In the longer term we think it would be preferable for third party intermediaries to be directly regulated by Ofgem, to close these sort of gaps in consumer protection.⁴

Q3.3 Do you agree that at least one of the PAB’s priorities should be determined by Citizens Advice?

We strongly welcome the proposal that one of the PAB’s priorities could be determined by Citizens Advice, given the unique insights and perspective as statutory consumer advocate we are able to bring. This includes directly linking to the issues that people contact us about in relation to energy every day. Through our function as statutory consumer advocate, we monitor all energy suppliers in the market on an ongoing basis; drawing on a range of data sources including Consumer Service and EHU⁵ cases, social media and local Citizens Advice data, as well as our ability to directly request information.⁶

We deal with over 150,000 energy cases a year

Monthly contacts to Citizens Advice about energy supply issues in 2019, broken down by service



This track record of identifying performance issues and escalating both directly to suppliers and through cooperative functions (such as the tripartite arrangements with Ofgem and the Energy Ombudsman) provides a strong institutional foundation of knowledge and experience on which to base the selection of prospective PAB priorities.

⁴ Citizens Advice (2020) [Stuck in the middle](#)

⁵ The Extra Help Unit raises complaints with energy suppliers on behalf of people who may be considered vulnerable or at risk of disconnection. EHU caseworkers help resolve issues for more than 12,000 people and micro-businesses each year

⁶ Citizens Advice (2020) [How we monitor energy suppliers](#)

Citizens Advice already utilises this experience representing consumers on the panels of the Balancing and Settlement Code (BSC), Uniform Network Code (UNC), the Connection and Use of System Code (CUSC) and Smart Energy Code (SEC) panels, and the Smart Meter Installation Code of Practice (SMICoP). Citizens Advice has also participated previously in the Erroneous Transfers Working Group, including developed proposals for automatic compensation for consumers.

In summary, both through unique insights and proven experience, we welcome the opportunity to select a PAB priority.

Q3.4: Do you agree that the PAB should have discretion to escalate liabilities within a defined range if the earlier application of charges does not achieve the desired effect?

We have stated before that the PAB methodology should be prescriptive enough that it is bound to apply appropriate sanctions at each stage, with deviation from these only in exceptional circumstances, and with the agreement of the RECCo Board. This will also ensure REC parties are able to understand the decisions of the PAB and retain confidence in it.

Without the 'menu' of service standards and corresponding liability for poor performance, it is hard to be definitive on whether the proposed approach would meet these objectives, but in principle, transparency on the conditions that may prompt an escalation of the applicable liability with a prescribed range is a welcome approach.

Q3.5: Do you agree that suppliers with serious performance issues should face restrictions on their ability to acquire new customers until those issues are resolved?

In prior consultation responses, we have advocated that an empowered PAB should have strong sanctions, and proportionate to the performance issue, restrictions on the ability to acquire new customers is an appropriate potential sanction. This is based both on the argument that such a measure would minimise the socialised cost to the rest of participants from bad debt, but also the proven effectiveness of removing the ability to acquire customers as a regulatory tool.

We have in relation to Ofgem's Supplier Licensing Review also argued that Provisional Orders used in cases of extremely poor service have resulted in relatively blunt restrictions (e.g. total bans on sales) and that in certain cases such restrictions could be imposed more flexibly (e.g. by restricting acquisitions, rather than preventing them entirely)⁷. Ofgem's has also proposed -

⁷ Citizens Advice (2019) [Citizens Advice response to Ofgem's Supplier Licensing Review: Ongoing requirements and exit arrangements](#)

and we have supported - reviews supplier performance around certain customer thresholds and apply measures if it identifies risks related to growth in customer numbers. These restrictions through the REC would complement these measures.

Q4.1: Do you support our proposals regarding the production of preliminary and detailed IA?

We welcome clear timetable expectations on the production of Impact Assessments, recognising this as a key element of timely progression of industry change proposals.

Q4.2: Do you agree that the Change Panel should be appointed by the RECCo Board, following a process overseen by the nominations committee?

We have no concerns over the proposed approach to appointing the Change Panel, recognising the argument that composition will need to be dynamic to reflect a rapidly changing retail market. This should include strong consumer representation.

Q4.3: Do you agree that the REC should encourage shorter and more frequent Change Panels, to be held remotely where possible?

The code manager should be able to work with participants and consider the agenda of the meeting to determine the appropriate format to maximise engagement. This should include remote panels, noting that other codes including UNC and BSC where Citizens Advice is represented have successfully transitioned to remote meetings during COVID-19.

The proposal for scheduling on a fortnightly basis, alternating between a firm scheduled agenda and a buffer meeting seems to strike the right balance between frequency and the burden on participants. This could be subject to review after an appropriate period of time.

We particularly welcome the commitment that high quality reports produced by the Code Manager should enable participation from a broader range of participants, particularly smaller parties who have been less able to engage.

Q4.4: Do you agree with the proposed categorisation of REC documents and associated change paths?

We agree that the proposed categorisation of REC documents and associated change paths are a logical approach to ensuring the process followed is proportionate. The establishment

of specific committees to agree category 2 documents is welcome given the distinct specialisms and expertise inherent in, for example, a metering group.

Q4.5 Do you agree that code administrators and managers should be able to raise any changes identified as necessary by the Cross Code Steering Group (CCSG)?

Pending the outcome of the Ofgem-BEIS codes review, it is apparent that there is a current need for a coordination function and reciprocal rights for code administrators and managers to raise modifications. We would expect panel chairs to be closely involved where this is required to support the cross code engagement.

Q5.1-5.4

Not answered.

Other Issues

Sandbox

While outside the scope of the consultation questions, to comment briefly on the REC sandbox proposals, Citizens Advice is strongly supportive of efforts to spur innovation that benefits consumers and for new participants to be able to trial propositions. In response to recent proposals by Ofgem to grant supply licence derogations to enable innovation, we suggested that the test for exemption from protections which benefit consumers must be wider benefit to consumers from the innovation.⁸

The standard as currently drafted in the consultation is that the PAB should “consider and progress an enduring and uniformly applicable change to the REC rules if the relief offered during the trial is demonstrated to have had no detrimental impact upon REC Parties or the achievement of the REC objectives”. This could benefit from being positively framed; that the relief should positively contribute to the achievement of REC objectives, particularly consumer outcomes.

⁸ Citizens Advice (2020) [Citizens Advice response to Ofgem’s supporting retail innovation: Policy consultation](#)