

Mr Ed Blades
Department for Business, Innovation and Skills
Bay 425
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23 April 2010

Dear Mr Blades

Consumer Redress Schemes in gas and electricity: Consumer Focus response to March 2010 consultation

About Us

Consumer Focus is the statutory organisation that champions consumers' interests across Great Britain, and for post, Northern Ireland.

Through campaigning, advocacy and research, we promote fairer markets, greater value for money, and improved customer service across public and private sectors.

Consumer Redress Schemes in gas and electricity

Consumer Focus welcomes the opportunity to respond to this consultation on clarifying access for micro-businesses to the redress arrangements in the energy sector. We represent and promote the interests of micro-businesses in the energy sector, as detailed in the Consumers, Estate Agents and Redress Act 2007.

Question 1: Do you agree that it is helpful to have the factors used to determine compliance with the eligibility criteria set out more clearly in the Redress Scheme?

Consumer Focus believes that it is helpful to clarify eligibility for the Redress Scheme and is keen to ensure that the criteria for access to the scheme are set out in a clear, comprehensible and consistent manner.

One area where greater clarity is required concerns how to deal with groups of companies and this issue is articulated in 6.2(a) of the consultation. Consumer Focus believes that where subsidiaries form a group of companies, those subsidiaries should be treated as individual entities. This is provided that the subsidiary is responsible for negotiating the supply contract and for the payment of electricity and/or gas at the premises. For this reason, Consumer Focus believes that the criteria in the Redress Scheme should make clear that a subsidiary micro-business will be able to access the redress arrangements, provided that the business is responsible for the energy bills connected to those premises.

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Question 2: Are there additional factors which should be used to determine compliance with the eligibility criteria?

Consumer Focus believes ensuring any business with a micro-business contract for the period in question has access to the Redress Scheme is the most important factor in determining compliance with the eligibility criteria. If a problem arises for any period in which a business is covered by a micro-business contract, this should ensure the business has access to the Redress Scheme.

Consumer Focus is concerned that new or start-up businesses may find it difficult to establish their status as a micro-business in their first year of existence, lacking accounts to meet the turnover criteria or a full year of electricity and/or gas consumption to meet the consumption criteria. The use of 'average' consumption and turnover suggested in the consultation may exacerbate the level of detriment as the investment and consumption of start-ups in their first year may not be representative of their consumption in future years. The vast majority of start-up businesses will be micro-businesses and should be allowed to establish consumption patterns and produce accounts and subsequently secure a micro-business contract. For this reason, Consumer Focus believes all businesses should be covered by the protections afforded to micro-business for the first year of their existence. This could be verified through the registration of the business at Companies House.

Consumer Focus is not convinced that micro-businesses are aware of their status and the additional protections available to them. This lack of awareness occurs in part because micro-businesses do not receive information about Consumer Direct and the Energy Ombudsman on the back of their electricity and gas bills. We have also received anecdotal evidence from business representatives that many micro-businesses are deterred from using the Redress Scheme because of the 'consumer' element present in the names of Consumer Direct and Consumer Focus. Micro-businesses do not clearly understand that the Redress Scheme is available to them. Consequently, Consumer Focus believes any business which may have met the micro-business criteria since 1 October 2008, but has not been clearly informed, in writing, by the supplier about the Redress Scheme (including Consumer Direct and the Energy Ombudsman) or their possible status as a micro-business, should be treated as a micro-business for the purposes of the Redress Scheme. There should also be greater promotion of Consumer Direct to micro-businesses.

Question 3: Do you foresee any unintended consequences or other implications of our proposals? If so, please let us know what you believe these may be.

There may be a number of unintended consequences to the proposals:

1. The introduction of the phrase 'at an average' to the Gas and Electricity Regulated Providers (Redress Scheme) Order contributes to, rather than reduces, the lack of clarity about access to the Redress Scheme. Consumer Focus is not convinced of the relevance

of this phrase. We believe that the phrase could undermine the principle, stipulated in SLC 7A.2–3 of the Standard Licence Conditions, that a business will be defined as a micro-business as long as they satisfy the micro-business consumption or turnover criteria when they negotiate the contract. The business will retain the micro-business definition and the attached additional protections for the duration of their contract. The level of consumption over the year previous to the complaint may be irrelevant if the micro-business contract is of two or three years' duration. To ensure continuity and to enhance medium-term planning for micro-businesses, the contract between the micro-business and the supplier should be the key governing document. The use of average figures could prove to be unrepresentative, unclear and potentially confusing for businesses and suppliers alike.

2. Consumer Focus is concerned that the revised Order has inexplicably removed the reference to full-time equivalent employees. The need for the number of employees to refer to full-time equivalent staff is discussed in detail in 6.2(c)(iii) of the Consultation and, for this reason, we presume that the omission in the Order must be the result of a drafting error. This error needs to be corrected before the Order is amended, as many shops, pubs and restaurants employ a number of part-time staff.
3. The Consultation suggests in 6.2(c)(ii) that, 'if the [energy] bills had been submitted for a period of less than 12 months, and the total consumption reflected in these bills exceeds the [micro-business] threshold, that could count as the average'. Consumer Focus is concerned by the possible implication of this suggestion. We do not believe that it is the intention of BIS to discourage businesses from consuming more or less energy for any particular duration of their fixed-term contract. It is not inconceivable that a micro-business on a three-year contract could consume a great deal more energy in one year than in other years, owing to factors such as a short-term rise in orders or business, the painting and decorating of new premises, or even an unusually prolonged period of cold weather. We believe that the key determining factor should be the contract negotiated by the micro-business.
4. The Consultation suggests in 6.2(e)(ii) that, 'if the complainant has accounts for a period of less than a year and turnover recoded in them exceeds the [micro-business] threshold, the amount is that in the most recent accounts' and that this could lead to the business falling outside the remit of the Redress Scheme. As stated above, this proposal could have unintended consequences, potentially penalising a micro-business which secures a two or three-year contract. Consumer Focus is also concerned that start-up businesses will not have annual accounts to prove relative staff numbers or business turnover and so may be unable to prove their micro-business status for the first year of their existence. Consumer Focus presumes that BIS does not intend to disadvantage start-up businesses and we suggest that all businesses should be covered by the protections afforded to micro-businesses for the first year of their existence. As explained previously, the vast majority of start-up businesses are likely to be micro-businesses.

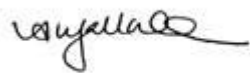
5. In 6.2(g), the consultation discusses the exchange rate to be used during the ‘calculation of the euros equivalent of sterling...in respect of any document where an amount of sterling is specified’. The suggestion to consider the “exchange rate prevailing on the date [a complaint was raised]” is unclear and could lead to unnecessary dispute about access to the Redress Scheme. Consumer Focus believes that the use of the Euro may have unintended consequences, such as being a confusing and unnecessary burden for smaller businesses, and we would like to see the turnover/balance sheet criteria changed to Pound Sterling. As such, we recommend that the €2 million should be changed to £2 million. If BIS were to retain the reference to the Euro, greater clarity and certainty is possible by adopting the exchange rate at a certain fixed date rather than allowing the rate to fluctuate over time. Consumer Focus proposes that the figure is fixed at the exchange rate between the Euro and Pound Sterling prevailing on 1 March 2010.

Consumer Focus believes that the following organisations are interested in these issues and should also be consulted:

- Consumer Direct
- Association of Convenience Stores
- British Chambers of Commerce
- Utilities’ Intermediaries Association
- National Farmers Union
- Make It Cheaper

If you would like to discuss the contents of this letter, please contact Thomas Lowe by email at thomas.lowe@consumerfocus.org.uk or by telephone on 020 7799 8057.

Yours sincerely



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