



**Consumer
Focus**
Campaigning for a fair deal

**Consumer Focus
response to energy
supply probe – proposed
retail market remedies
decision document
September 2009**

Consumer Focus response to Energy supply probe – proposed retail remedies decision document

About Consumer Focus

Consumer Focus is the independent champion for consumers in England, Wales, Scotland, and for postal consumers in Northern Ireland. We are the voice of the consumer and work to secure a fair deal on their behalf. We were created through the merger of energywatch, Postwatch and the National Consumer Council (including the Welsh and Scottish Consumer Councils). The new approach allows for more joined-up consumer advocacy, with a single organisation speaking with a powerful voice and able to more readily bring cross-sector expertise to issues of concern.

www.consumerfocus.org.uk

Introduction

Consumer Focus welcomes the proposals to reform the energy retail markets as outlined in the decision document. We hope that these proposals, if well implemented, will go some way to providing consumers with the information they need to engage more confidently with the market and seek out the best available energy deals. Consumer Focus is committed to working with Ofgem, the Energy Retail Association (ERA) and suppliers to ensure that all consumers can benefit from a well functioning energy market and improved regulatory protections.

Measures to curb poor direct marketing practices are particularly welcome as misleading sales activity has long contributed to poor switching decisions and consumer detriment; however we are concerned that Ofgem's proposals only cover door step sales, just one sales channel. We are pleased that these measures also acknowledge the significant problems in the non-domestic market. While we welcome the proposals to address some of the issues that affect micro businesses, we feel that there are still significant issues that particularly affect micro businesses and call of Ofgem to commit to further research and work in this area.

However, Consumer Focus recognises that for some consumers - those on low incomes, those who are a high debt risk or do not have access to the cheapest payment methods - the competitive market, even with the improvements made by these proposed retail market remedies, is unlikely to deliver as many benefits. We would be keen to know what steps Ofgem now proposes to take in addition to these remedies to help the millions of consumers still do not use or have access to the internet or a fully functioning bank account, so are unable to access cheaper online and direct debit deals¹.

¹ An estimated 17 million people (over the age of 15) do not use or have access to the internet (Delivering Financial Inclusion, An Action Plan for Consultation, HM Government p.9) and 2.1 million people still do not have access to a bank account (please see http://www.financialinclusion-taskforce.org.uk/documents/papers/third_annual_banking_report.pdf p2).

We again raise the issue, first identified in our response to the Energy Supply Probe ('the Probe') findings in December 2008² that problems in the wholesale energy market need to be given urgent priority. We believe if these issues remain unchallenged the other remedies proposed in this consultation are likely to deliver only limited benefits for consumers.

In addition, while we welcome these initial steps to improve the energy retail market, Ofgem needs to urgently carry out a comprehensive assessment of the potential consumer risks and opportunities resulting from smart metering and develop a strategy to ensure the best outcome for consumers. Roll-out of smart meters will be a major undertaking involving visits to more than 25 million households to replace something approaching 50 million meters. As well as the opportunities and possible disruption created by the roll out itself, smart metering has the potential to radically change the consumer experience of the energy retail market. Ofgem must prepare for this rather simply react to detriment as it occurs. For example, there is likely to be an increase in long-term contracts as suppliers seek to recoup the cost of smart devices or energy efficiency services which are likely to be provided along side their energy supply. There are no doubt lessons that could be learnt from the mobile phone sector here.

Ofgem should be prepared to monitor sales and marketing activity particularly closely in the run-up to and wake of the smart meter roll out. Effective mechanisms will need to be put in place to ensure quality of customer service. While the official roll out of smart metering is not expected for a couple of years, in practice thousands of consumers already have smart meters and this number is set to increase exponentially particularly if one of the Big Six seeks to roll out early. This assessment needs to be carried out as a matter of urgency. We look forward to working with Ofgem on this work.

Below we discuss our response to each section of the decision document in more detail, including our response to the relevant revised licence conditions. Our feedback on the manner in which this consultation has been carried out is at the end of this document.

Standards of conduct for suppliers in the retail market

Consumer Focus welcomes proposals to introduce an overarching set of standards to ensure that all suppliers have a common set of principles to abide by when dealing with their customers. In the original proposals it was intended that the standards of conduct should apply to both domestic consumers and small businesses. We would like to seek clarification from Ofgem that this is still the case as it is not clear from this decision document. As an addition, we would argue that these standards should apply to all energy consumers not just domestic consumers and micro businesses. As indicated in our May 2009 response, while we agree with the sentiment of the proposed new standards, which aim to provide greater protection for consumers and promote increase consumer confidence in energy suppliers. We would also like to see a duty in the standards for energy suppliers to have special regard for the needs of vulnerable consumers.

We agree with Ofgem's decision that in order to be effective the standards of conduct need to have a more concrete status attached to them. In order to achieve this Consumer Focus favoured the first option outlined by Ofgem - that the standards are inserted as a preamble to the relevant licence conditions and used to underpin consideration of licence breaches, as we feel that this option would provide the best chance for the standards to have real benefit. While we appreciate Ofgem's concerns about potential legal uncertainties that would arise from Option 1 we remain concerned that the final choice,

²http://www.consumerfocus.org.uk/en/content/cms/Consultation_Respons/Consultation_Respons.aspx

Option 2 - setting the standards out as overall aims, will not provide a robust enough framework to support enforcement action.

As the standards will be introduced as general principles rather than a preamble to licence conditions much of their power will rest not only on how they are used to inform enforcement decisions but also on how they are communicated to suppliers and consumers. We are extremely disappointed that this decision will reduce protections for consumers and would argue that in order for these standards to be truly effective they need to be part of a license condition.

Promoting more effective consumer engagement

Billing information

Consumer Focus supports Ofgem's proposals for clearer and more transparent billing information. However we are disappointed that our suggestion that Ofgem supplement its proposal for the provision of additional billing information with a requirement for suppliers to provide, on quarterly bills and annual statements, an indication of comparative consumption in terms of low, medium and high usage has not been adopted.

Consumer Focus, along with other consumer representatives called for the inclusion of a comparison box on bills outlining all the necessary information that a consumer needs in order to make an accurate comparison and switch. While we recognise the reasons why Ofgem has declined to include this in the proposed licence condition, we still believe that a standardised format for this information across all suppliers would be of benefit to consumers. Therefore we welcome Ofgem's commitment to carry out additional research in this area with its Consumer Panel but call on Ofgem to commit to a timescale for this work. We also ask Ofgem to consider the new proposed international standard on billing as a potential template to be adopted by energy suppliers. We also ask Ofgem to commit to ongoing monitoring to ensure that these new billing standards are actually meeting with their proposed objective, providing better information for consumers.

Annual statement

Consumer Focus welcomes Ofgem's final proposals for an annual statement to aid consumers to make better comparisons and therefore better switching decisions. We broadly agree with the final proposals regarding the information that is to be included in the statement, especially the inclusion of the reminder of the right to switch. In reference to the condition in SLC 31A: 'Information about electricity consumption for suppliers to provide information about impartial advice and information about changing energy supplier', we would like to see a duty on suppliers in the licence condition to provide the telephone number of Consumer Direct and advice to use a switching site accredited to the Consumer Focus Confidence Code and a link to the Consumer Focus website. We believe that this will help to raise the awareness of the Confidence Code and increase consumer confidence in switching sites. We would finally ask for two additional items, firstly that information is included about energy efficiency help and social assistance programmes available and that it is clearly indicated on the annual statement that it is not a bill or demand for payment to avoid confusion.

Finally, Consumer Focus believes that these proposals will only work if Ofgem requires suppliers to provide good quality and understandable information that follows accepted standards across the board, for example requiring, as mentioned above, information in the annual statement to comply with the Plain English Campaign's *Crystal Mark*. Finally there needs to be a firm commitment from Ofgem to monitor the effectiveness of these proposals to ensure the changes made are of benefit to consumers.

65 day notice period for unilateral contract variations

Consumer Focus has continually raised concerns about the 65 day notice period, and highlighted it as a concern in both our original response to the Probe in December 2008 and our subsequent response to the retail remedies consultation in May 2009. Therefore we are very disappointed that Ofgem has made the decision to retain the 65 day notice period. While we understand that Ofgem does not regard advance notification of price rises to be one of the major issues that the Probe sought to address³ we believe that the retention of this rule directly affects consumer confidence in the market.

Therefore, while we welcome explicit reference in the new licence condition (SLC 23: Notification of domestic supply contract terms) to the fact that suppliers can notify consumers of price rises in we would argue that 65 days notice is too long and as previously stated we would support, as a minimum, the reintroduction of License Condition 44 – notification of terms.

We particularly welcome the increase in time from 10 to 30 days for debt blocked consumers to repay their debt and switch supplier to avoid the retrospective application of price rises. We also welcome changes to SLC 14 customer transfer blocking to prevent debt blocking in the case of supplier error, and reject suppliers concerns that this will be abused by consumers to avoid debt blocking. We call on Ofgem to ensure that suppliers make sure that these rights are fully communicated in a clear and understandable manner to debt blocked consumers.

Reforming debt blocking arrangements

Consumer Focus welcomes Ofgem's final proposals to make improvements to debt blocking arrangements in order to help vulnerable and indebted consumers engage better with the market, as referred to in the previous paragraph we also welcome proposals to increase the time for debt blocked consumers to repay their debt and switch supplier to avoid the retrospective application of price rises from 10 to 30 days. As mentioned in our May 2009 response to the retail market remedies consultation, we do not support a total ban on debt blocking due to the potential unforeseen consequences of increased credit checks, requests for security deposits and more aggressive debt collection policies.

Finally, while we welcome Ofgem's plans to extend the Debt Assignment Protocol (DAP) from £100 to £200 in an effort to increase take up of the DAP, we would again question the sum of £200. In the latest social monitoring statistics 80 per cent electricity and 83 per cent gas have a debt of £300 or below⁴, we also know that average electricity debt is £236. Therefore, while we understand that Ofgem has sought to increase the take up on the DAP through the increase of the threshold to £200 there will still be many people for whom this will not apply. However as Ofgem admitted in their May 2009 consultation, it is also not known whether increasing the amount will improve the numbers of those taking advantage of the DAP. Therefore we believe that, until research is carried out into why consumers have not taken advantage of it the DAP, it is unlikely that raising the threshold by an arbitrary amount will stimulate an increased take up. There needs to be more monitoring of suppliers promotion of the Protocol and more research into why the DAP has failed and what would be an effective debt limit.

We also believe that Ofgem should investigate the possibility of extending the DAP to other payment types, particularly for those in fuel poverty, who could especially benefit from switching to a cheaper deal.

³ <http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Retailper cent20packageper cent20per cent20decisionper cent20document.pdf> p13

⁴ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=2008per cent20Supplierper cent20Socialper cent20Obligationsper cent20Annualper cent20Report.pdf&refer=Sustainability/SocAction/Monitoring/SoObMonitor>

Addressing tariff confusion

We welcome Ofgem's commitment to improving tariff information as the sheer number and complexity of available tariffs has long caused confusion among consumers and contributed to poor switching decisions. Consumer Focus has strong evidence that the complexity of tariffs has caused problems in the price comparison process and therefore further undermining consumer confidence in the market, a recent example of this is the British Gas seasonal discount tariffs that despite appearing as the cheapest tariff on price comparison websites further scrutiny revealed that even high users were unable to achieve the promised maximum discounts based on tier 2 consumption. This is only one example of the ways we suspect suppliers deliberately structure tariffs to appear as 'best buys' on price comparison sites only for consumers to realise that it is almost impossible for the full benefits to be realised by consumers. Therefore we call on Ofgem to investigate a code of conduct on suppliers to govern how they operate within the price comparison market.

To help consumers make more informed switching decisions in this area Consumer Focus is currently updating and improving our own pricing factsheets and expect them to be available online in the next month (hard copies can be requested through Consumer Direct). We also expect to launch a new pricing database on our website at the end of September.

We welcome Ofgem's commitment to keep this area under review but call on Ofgem to commit to a timeframe for this work and to carry out an investigation into the potential impact of smart metering on tariffs. Consumer Focus is concerned that the increase in so-called innovative tariffs, which the new technology will facilitate, could lead to greater complexity and confusion for consumers, hindering beneficial switching decisions. It is crucial that consumers understand the implications of any new offers they commit to and can opt out easily without incurring a penalty. This is particularly the case as the Government's risk assessment for smart meter roll out estimates that one in five consumers are likely to use a time of use tariff. Suppliers are likely to offer rates which include energy efficiency services and smart appliances. Ofgem's recent discussion paper, 'Can energy charges encourage energy efficiency?' highlighted the 'negative welfare effects' of different pricing structures. We urge Ofgem to carry out further research in this area.

Simplifying the switching process and promoting confidence in price comparison and switching sites

Through our work with the ERA on its 'Peace of Mind Guarantee' Consumer Focus is fully committed to working with Ofgem and other stakeholders to help promote increased consumer confidence in switching and price comparison websites. We also seek a commitment from Ofgem and suppliers to promoting the Confidence Code, for example we would like to see a link to the Confidence Code from the ERA website.

We are pleased that Ofgem recognises the Confidence Code as a valuable tool in promoting consumer confidence in switching sites and Consumer Focus is fully committed to developing and expanding the Confidence Code. We will be issuing a consultation on changes to the Code and improving its visibility as part of our consumer empowerment work with advice providers such as Citizens Advice and Help the Aged.

Helping consumers make well-informed choices

Strengthening sales and marketing rules

Consumer Focus welcomes Ofgem's commitment to tackling the problems inherent in suppliers' sales and marketing practices. With over half of all switching taking place as a response to direct marketing, we regard this as an area of crucial importance. Doorstep selling is of particular concern to Consumer Focus given it often functions as the primary medium through which consumers can access some of the benefits of the competitive market.⁵

Consumer Focus welcomes amendments to SLC 25: 'Marketing electricity to domestic consumers', which aims to improve suppliers' sales and marketing practices. We particularly welcome the removal of the sunset clause. As we have stated previously, there is little evidence in recent years that the energy industry is capable of satisfactory self regulation. We are also pleased that Ofgem has acted on calls from Consumer Focus and other consumer representatives to widen the high level objectives of SLC 25 to telesales activities.

Consumer Focus also welcomes the more detailed obligations set out in SLC 25 as a significant step to improving the reliability and quality of direct marketing. However, we would like these more detailed protections also expanded to other areas such as telesales. Although doorstep sales form the majority of consumer mis-selling complaints - they account for 70 per cent of the mis-selling complaints received by Consumer Direct for this year (Jan 09 – Aug 09) - telephone sales are the next problematic sector accounting for 21 per cent of mis-selling complaints. We are very concerned that this number could increase as we see a migration of poor sales practice from the door step to the less regulated areas of telephone and internet sales. We shall be monitoring Consumer Direct data carefully to track any significant changes in this area and also call on Ofgem to closely monitor this area to avoid any further rise in poor sales practices that already cause such detriment to consumers and damage trust and confidence in the energy market.

Finally with regard to SLC 25.6, sub-clause (a) and (b), we raised the issue of the lack of specific time frame in our response to the July 2009 consultation on amendments to this licence condition⁶. Therefore we would again reiterate our original suggestion of a seven day time limit, which is in line with the Cancellation of Contracts Made in a Consumer's Home or Place of Work etc Regulations 2008 and would therefore allow the customer to seek independent information about the proposed contract.

Helping small business consumers

Consumer Focus welcomes Ofgem's acknowledgment that for some time now the energy market has not worked well for non-domestic consumers, in particular for micro-businesses who have suffered from deteriorating service and manipulative practices by suppliers. However, we have serious concerns about Ofgem's proposals as we feel they do not go far enough either to protect micro businesses, or indeed the wider non-domestic market, from the abuses which Ofgem's own research highlights.⁷ In particular, we are concerned with the decision to continue with roll-over contract, albeit under limited terms.

⁵<http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energyper cent20Supplierper cent20Probeper cent20-per cent20proposedper cent20retailper cent20marketper cent20remedies.pdf>, p. 26.

⁶http://www.consumerfocus.org.uk/en/content/cms/Consultation_Respons/Consultation_Respons.aspx

⁷ <http://www.ofgem.gov.uk/Consumers/CF/Documents1/smallper cent20business.pdf>

Rollover contracts

Consumer Focus was supportive of the proposal to ban the automatic roll-over of contracts in our response to the original retail remedies consultation in May 2009. However, we raised some concerns about this proposal as we were concerned that under the proposed changes micro businesses could be moved onto 'out of contract rates', potentially paying far over the odds for energy, if they continued to not engage with the suppliers. We stated:

128 'If Ofgem does choose to eliminate 'roll-over' there should be explicit rules preventing any price rise for at least six months following the deemed rate transition to ensure micro businesses are fully informed of the consequences of not renewing or switching. Ofgem should also look to suppliers to prove that any increase in deemed rates corresponds to the reasonable costs incurred.'⁸

We hoped Ofgem would propose some limits to any increase in prices in out of contract rates to stop exploitation of micro-businesses who failed to switch.⁹ We did not propose the continuation of roll-over per se, as Ofgem's decision document to amend roll-over seems to suggest.¹⁰ We are concerned that our position was misinterpreted and subsequently used to justify Ofgem's about-turn following pressure by suppliers, rather than ensuring consumers' rights.

The end goal of competition and choice is to deliver fair prices and good service to consumers. However, in these proposed reforms there is a danger that while aiming to protect small suppliers and a competitive fringe, consumer rights are restricted, perpetuating the manipulative practices and poor service which occur.¹¹

With this in mind it is critical to see how well the caveats under which roll-over will apply will work in practice. In particular, we would like to see how energy suppliers interpret the requirement for thorough communication, with clear, transparent and timely offering of contract terms. Consumer Focus would like to input on what correspondence with customers would meet the criteria on roll-over. For example, we would advocate the use of the Plain English Society's *Crystal Mark* to adjudicate on clarity.

Contract renewal offer

While we acknowledge and support the requirement for clear rules on when communication with a renewal offer must be made prior to contract end, we feel that the end date by which micro business consumers must choose to switch or be rolled-over is too soon. If the supplier follows the proposed calendar the last date for terminating can be up to 90 days prior to the end of the contract. We believe this is unacceptably early to make the decision.

Despite clear information, with the contract end date so far away there are many business consumers who will fail to keep on top of their utility paperwork as they may be operating under a domestic mindset. Therefore, we feel that there will still be a danger of accidental roll-over where businesses fail to respond in a timely way. For many businesses only when the reality of contract end is upon them are the financial implications clear. Therefore, we would prefer consumers to have until 14 days before

⁸ Consumer Focus response to Ofgem's Probe May 2007, <http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Responseper cent20fromper cent20Consumerper cent20Focusper cent20to per cent20Energyper cent20Supplierper cent20Probeper cent20per cent20proposedper cent20retailper cent20marketper cent20remedies.pdf>, p.28

⁹ We continue to call for this for those consumers who are moved to out-of-contract rates under the revised proposals.

¹⁰ Ofgem Probe, August 2009

¹¹ FDS report, p.Si

contract roll-over to make such a decision. That would mean consumers have between 106 to 76 days to act following an offer. Ofgem must not allow suppliers' concerns about risk to prevent micro-businesses exercising what should be fundamental consumer rights.

Indeed, under the proposed framework the last point where a micro-business can switch is earlier than many of the suppliers' current practices allow.¹² This is a clear sign that in the amended proposals Ofgem has paid attention more closely to suppliers' concerns than the needs of small businesses.

We are also concerned about the protections for micro-businesses who are moved on to 'out-of-contract' rates following a cancellation of the contract or a supplier's failure to offer adequate communication with their customers. Unlike with deemed rates contracts, we understand from discussion with Ofgem there will be no protection from potentially large price increases. These concerns reflect those we iterated in our response in May.¹³ We call for Ofgem to request that suppliers evidence additional costs for supplying energy to consumers on out-of-contract rates, to prevent excessive charges on business that find themselves on out of contract rates. Indeed, for the Big Six, the likelihood is they can source this energy from internal structures and any cost increases they face will be marginal. Ofgem should also assess the legitimacy of termination rates on roll-over contracts.

Wider Reforms

It appears to Consumer Focus that Ofgem has not adapted its policy framework to the conclusions of the FDS research that states:

'For most small businesses, energy accounts for a low, though rising, proportion of their total business expenses. As such it is a relatively low priority and for some business owners especially, it is not seen as core to their business and is of limited interest to them... Customers often had a poor understanding of crucial elements such as length of contract, whether price fixed for full duration and indeed, whether they had a contract at all.'

It goes on:

'The regulations for the energy market tend to assume people running small businesses do not need the same level of protection as vulnerable residential customers. While there is a clear logic for this view our study suggests current regulations may favour energy companies over hard-pressed small businesses, whose owners are not necessarily sharp and astute business people. This study suggests tighter regulation of TPis and energy companies may be desirable.'¹⁴

The clear logic arising from the research is that protections for micro-businesses need to be aligned with the domestic sector. It was on this basis that in May we proposed:

- A two tier approach to regulation, with tight regulation of the micro-business sector including standard terms and slacker regulation of the wider non-domestic sector
- Domestic legislative protections extended to the micro-business sector
- Extending the proposed reforms of transparency, clarity and simplicity in contracts from micro-businesses to the entire SME market

¹² SSE for example who allow gas and electricity to be cancelled one month prior to contract end. E-On dual fuel tariff allows termination up to 14 days before contract termination.

¹³<http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Responseper cent20fromper cent20Consumerper cent20Focusper cent20to per cent20Energyper cent20Supplyper cent20Probep per cent20per cent20proposedper cent20retailper cent20marketper cent20remedies.pdf>, p.27

¹⁴ FDS research, Sii

- A licence condition on suppliers for transparency of commissions to brokers
- A code to govern objections

We are disappointed the reforms are not more extensive to cover the areas we mention. Since the evidence we presented in our previous response and Ofgem's own research shows micro-businesses often have similar expertise and needs as domestic consumers we would like Ofgem to consider a case for treating micro-businesses the same as domestic consumers and extend similar protections to them.

Contracts

Our major concern is on contract terms. For micro-businesses inexperienced in the energy market the array of contract terms is too confusing. The only matrix upon which they could make informed decisions is price and we still firmly believe Ofgem should reflect on providing standard contract terms in this section of the market; choice over complicated and deceptive contract terms is no choice at all.

If Ofgem does not think this appropriate then it should test supplier contracts against the Unfair Commercial Practices and Unfair Contract Terms legislation. Furthermore, we would like to see Ofgem review the termination rates imposed on rollover contracts to ensure there is a balance of obligation and risk between the supplier and the consumer. Finally, we still advocate the introduction of a mandatory seven day cooling off period in line with domestic contracts.

Code on objections

While it is likely the grounds under which objections to switching can be made will be fewer since consumers can leave at any stage in the contract,¹⁵ there is still a need for a Code on Objections and we are concerned that Ofgem has failed to address this issue adequately despite our, and others, repeated calls. We firmly believe this issue should be part of the next work programme from Ofgem on the non-domestic market in the New Year. The evidence provided by ourselves and other business stakeholders throughout this process demonstrates a clear and pressing need for one.¹⁶

If Ofgem will not invoke a Code now we would want to hear how Ofgem will interpret its over-riding standards of conduct, most notably on switching for non-domestic customers, without such a Code.

Monitoring

As we have mentioned in previous consultation responses, Ofgem needs to commit to regular monitoring and reporting on competition in the small business market. We would hope in the final document to gain more specific details about such research, most specifically on the issue of roll-over. Evidence from a range of sources indicates worrying increases in complaints from all parts of the non-domestic sector.

Regulating third party intermediaries

Consumer Focus welcomes proposals to attempt to address the problem associated with third party intermediaries (TPIs). We are aware that Ofgem has taken legal advice and feels it is unable to regulate this sector of the market, hence the proposal to use OFT accredited codes. However, we are concerned that Ofgem's efforts in this regard are insufficient to address the problem. Following the Probe Ofgem should further investigate the TPI sector of the market that is becoming more central to purchasing energy.¹⁷

¹⁵ Until that is 30 days after the renewal offer is made.

¹⁶ Such stakeholders include the Forum for Private Business, the Association of Convenience Stores, the British Chambers of Commerce and the Federation of Small Businesses.

¹⁷ Again the FDS research demonstrates effectively this growing trend. P.Sii.

Consumer Focus is happy to work with Ofgem and other stakeholders to address the evident regulatory gaps that currently exist.

Despite legal difficulties, we continue to believe that there is room for Ofgem to act now in certain ways to protect business consumers. Firstly, Ofgem could examine means to place a burden on suppliers to only work with reputable brokers through helping suppliers develop registers of disreputable TPIs following the EnergySure code model in the domestic sector. Secondly, Ofgem could insist upon seven day cooling-off period post sales so that any mis-direction by TPIs could be cancelled by business consumers following a period of reflection. Thirdly, Ofgem should insist that any sales calls be recorded. Finally, Ofgem should investigate whether the *Business Protection from Misleading Marketing Directive 2008* applies to TPIs.

Extending the Confidence Code to include non-domestic pricing sites

We agree with Ofgem that there is a need for a tool similar to the Confidence Code to help aid confident switching in the non-domestic sector. However, Ofgem will be aware of the concerns raised in our response in May 2009 that this will not be easily or quickly achievable. Discussions internally and externally on extending the Confidence Code to cover business price comparison sites have highlighted the extreme difficulty in comparing contracts in the non-domestic sector. The sheer variety of contract terms and bespoke packages means it is extremely difficult to provide a straight-forward numeric comparison for businesses. We are happy to talk with Ofgem about the extension of the Confidence Code to the non-domestic sector and how we can tackle these issues. One easy way of course would be through the provision of standard terms at least in the micro-business section of the market.

Promoting market transparency

Consumer Focus is pleased that Ofgem is at last looking at bettering both wholesale and retail energy markets through the rigorous promotion of market transparency. We believe that the introduction of separate regulatory accounts (with additional energy volumes data) for the vertically integrated energy companies could bring greater market transparency and make the market more contestable. However, this measure will only succeed in meeting these objectives if the energy firms adequately explain and clearly present their internal transfer pricing mechanism. We will monitor the intended increased transparency and talk to small suppliers to see if the remedy is making a difference and make future representations accordingly.

Enhancing market monitoring

Consumer Focus welcomes Ofgem's proposals to enhance its market monitoring by publishing quarterly reports and we are grateful for the opportunity to input into these proposals; however we would note that it is important that these reports keep to schedule as far as is possible. Consumer Focus will continue to do our own analysis as part of the debate and look forward to aiding mutual understanding.

Raising consumer awareness

Consumer Focus has a key role in raising consumer awareness and ensuring that advice agencies and other intermediaries have access to information which will support them in the provision of advice to energy consumers. We are committed to ensuring that consumers are aware of their rights in order to influence change and take advantage of the competitive market where possible.

Consumer Focus is fully committed to working with Ofgem in the coming year to ensure that the proposals to reform the retail energy markets achieve the best possible outcome for all consumers, and in particular those vulnerable and low income consumers who

have suffered disadvantage as a result of the poor functioning of the retail energy markets.

Since early 2009 we have been building new, and strengthening existing, links with advice providers. We have set up an email network (Consumer Community) and will be holding a number of events to share information, engage with and facilitate two way dialogue with advice providers and community groups to raise awareness of how we can provide support, information and advice to consumers and advice providers. Consumer Focus maintains a dedicated online 'knowledge base' with support and information available to empower consumers seeking advice on energy issues, with more detailed in-depth information provided on our dedicated website for advice providers. We also maintain a dedicated telephone helpline for advice providers whose clients have complex or unusual energy related issue (Ask the Adviser).

We note that Ofgem is keen to ensure that the proposals in this decision document are implemented as soon as possible, we call on Ofgem and suppliers to ensure that there is adequate publicity and awareness raising as each of these measures come into force to ensure that consumers are aware of these remedies. It is essential that this is a sustain information campaign and not a one-off initiative.

Feedback on the consultation process

In general we feel that Ofgem's decision document has reflected some, but not all, of the views in our original consultation response. We have highlighted areas where we have concerns above. On the whole we are satisfied that stakeholder opinions have been explored and reasons for final decisions have been explained.

However we would like to raise two issues around the wider Probe consultation process. Firstly we are concerned about the volume of consultations and also the timeframes given, for example, although they were short consultations we believe that that the two week timeframe given to answer consultation letters on proposed licence changes was unacceptably short.

Also while we appreciated the chance to attend workshops on the proposed licence changes we have to express some frustration and disappointment at the manner in which these were conducted. Attendees felt that some of these workshops were poorly chaired and it often seemed that the large suppliers were often allowed to dominate and sometimes derail the debate with irrelevant concerns and questions. In order for these workshops to be of use, particularly for consumer groups and smaller suppliers, there needs to be a rethink on how workshops such as these are organised and run.

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If you have any questions or would like further information about our response please contact Hannah Mummery, Senior Policy Advocate, by telephone on 0207 799 7972 or via email: [**Hannah.mummery@consumerfocus.org.uk**](mailto:Hannah.mummery@consumerfocus.org.uk)

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