

## **Consumer Focus submission**

### **Energy Supply Probe – proposed retail market remedies consultation**

**May 2009**

## About Consumer Focus

Consumer Focus is the new statutory organisation campaigning for a fair deal for consumers in England, Wales, Scotland, and, for postal services, 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 three consumer organisations – 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](http://www.consumerfocus.org.uk)

<b>Contents</b>	<b>Page</b>
Executive Summary	5
Introduction	7
Chapter 2 – Standards of conduct for suppliers in the retail market	7
The overarching standards	7
Status of the overarching standards	8
Chapter 3 – Promoting more effective consumer engagement	8
Improving consumer information	8
Billing information	9
Annual statement	10
65 day notice period for unilateral contract variations	10
Addressing tariff confusion	11
Reviewing debt blocking arrangements	13
Simplifying the switching process	15
Promoting confidence in price comparison and switching sites	16
Raising consumer awareness	16
Chapter 4 – Helping consumers make well-informed choices	16
Strengthening sales and marketing rules	16
The written quotation	17
Comparison with consumers' current deal	18
Additional information	18
Post-sale follow up	19
Recasting the market licence condition	19
Chapter 5 – Helping small business consumers	20
Increasing availability, clarity and transparency of information	24

Code on objections	25
Eliminate ability for contracts to be automatically rolled over	26
Accreditation for non-domestic switching sites	27
Strengthen code of practice for Third Party Intermediaries	27
Chapter 6 – Promoting market transparency	29
Improving transparency of supply and generation	29
Enhancing market monitoring	31
Examining the link between wholesale and retail energy prices	31
Improving EU energy market transparency	32

## Executive Summary

Overall, Consumer Focus welcomes the proposals in the retail market remedies consultation. Consumer Focus and energywatch (one of our predecessor organisations) have long voiced concerns about the failure of the liberalised energy market to deliver value and true competition for consumers, especially vulnerable and low income consumers. We therefore welcome the retail remedies document as a long overdue attempt to tackle some of these issues.

We hope that these proposals, if well implemented, will provide consumers with the information they need to engage more confidently with the market and seek out the best available energy deals. Measures to curb poor direct marketing are particularly welcome, misleading sales activity has long contributed to poor switching decisions and consumer detriment. However we are concerned that while many of these measures will undoubtedly benefit many consumers who already switch, or are thinking about switching, more needs to be done to help vulnerable and low income consumers, especially those who struggle to afford their energy bills.

We continue to have concerns about Ofgem's over reliance on switching as a measure of an effectively working energy market, and query how this will sit alongside the move to develop energy service companies and the likelihood of longer term contracts in the future.

We would also seek to remind the regulator that its principal objective is to protect the interests of consumers, present and future, *wherever appropriate* by promoting effective competition. Consumer Focus recognises that for some consumers - those on low incomes, who are high debt risk and have little disposable income to buy additional services - the market is unlikely to deliver the same benefits. We are therefore disappointed that these proposals do not look at factors such as mandating social tariffs, which could guarantee vulnerable consumers on low incomes the cheapest deal a supplier offers regardless of their payment method. 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 deals<sup>1</sup>.

We are pleased that Ofgem has finally acknowledged the significant problems in the non-domestic market and welcome the proposals in the paper to address some of the issues that affect the most vulnerable non-domestic customers.

We again raise the issue, first identified in our response to the Energy Supply Probe findings in December 2008, that problems in the wholesale electricity market and unfair price differentials need to be given urgent priority. If Ofgem allows these issues to remain unchallenged the other remedies proposed in this consultation are likely to have only limited impact.

---

<sup>1</sup> 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](http://www.financialinclusion-taskforce.org.uk/documents/papers/third_annual_banking_report.pdf) p2).

Consumer Focus now looks forward to working with Ofgem and suppliers to implement these proposals, in time for this upcoming winter, to ensure that all consumers can benefit from a functioning energy market and improved regulatory protections.

## Introduction

As outlined in our December 2008 response to the Energy Supply Probe, we believe that the problems in the energy supply market revealed in the Probe have caused significant consumer detriment and undermined consumer confidence.

Therefore we welcome the remedies proposed by Ofgem in this consultation as a long overdue effort to address the inability of many consumers, including non-domestic consumers, to engage effectively with the competitive market and to receive a fair deal.

The information remedies proposed in this consultation will undoubtedly help consumers to engage with the market more confidently and curb poor practice in areas such as marketing. At a time when saving money on household bills is a priority it is important that consumers can be confident that they have the necessary information to make appropriate decisions about their energy supply. It is clear from Ofgem's, and our own research, that low income and vulnerable consumers are less likely to switch. It is therefore essential that Ofgem monitors the effectiveness of these measures to ensure that they are actually making a difference.

While these measures are welcomed, as already outlined in our December 2008 response, the energy supply market will only work in the interests of all consumers if the wider issues in the wholesale market and price discrimination are tackled. These must be tackled as a priority.

## Chapter 2 – Standards of conduct for suppliers in the retail market

### *The overarching standards*

Consumer Focus welcomes Ofgem's acknowledgement that the energy supply industry has special features that cause barriers to consumer engagement and challenges in considering the right regulatory intervention.

We therefore welcome 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. We are especially pleased at Ofgem's decision to include small businesses within this proposal, a section of consumers who have historically been poorly served by the energy supply industry.

We agree with the sentiment of the proposed standards Ofgem has outlined. The main emphasis seems to be on helping consumers to switch to cheaper deals and we of course agree that effective switching is an essential element of a functioning competitive market. These standards will hopefully provide increased consumer confidence in switching and greater protection, especially for those from less engaged groups. However, as pointed out in this consultation, energy is a non-discretionary product that almost everyone uses, regardless of status and income. Therefore we would be keen to see a duty in the standards for energy suppliers to pay special attention to the needs and service provided to vulnerable consumers.

### ***Status of the overarching standards***

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.

Consumer Focus favours Option 1; that the standards are inserted as a preamble to the relevant licence conditions and used to underpin consideration of licence breaches. We feel that this option would provide the best chance for the standards to have real benefit. However we would ask Ofgem to clarify the legal situation around this. How exactly would the standards be used to add legal weight to a potential licence breach? Clarification on this issue is important to ascertain how effective and enduring the standards will actually be.

We would also like to seek clarification on how the standards will work alongside the guidance Ofgem has committed to producing on the Consumer Protection from Unfair Trading Regulation (CPR's). As Ofgem acknowledges, the CPRs have limited scope within the energy supply market and we seek assurance that the standards of conduct are materially different to the guidance that Ofgem will be producing on the CPR's.

Finally, we are keen to know what plans Ofgem has for promoting the standards of conduct to consumers and consumer groups. For example would there be potential for the standards of conduct to be published on bills or annual statements? How would consumers or consumer groups report a breach in the spirit of these standards? Consumer Focus would welcome further discussions with Ofgem and the Energy Retail Association (ERA) on this subject.

## **Chapter 3 – Promoting more effective consumer engagement**

### ***Improving consumer information***

Consumer Focus notes Ofgem's acknowledgement that ten years after the introduction of competition many consumers are still inactive and have not benefited from the potential savings that competition was designed to deliver.

Consumer Focus also shares Ofgem's concern that around half of those who do switch energy supplier often change to a worse deal as a result of direct sales.<sup>2</sup> We therefore agree that in addition to addressing the issues around misleading or inappropriate sales activity, there is a pressing need to promote more active consumer engagement in the energy market through consumer awareness programmes and improvements in customer information.

However, in order for any of the proposals in the following chapters to have a meaningful impact, we believe that there needs to be a sustained programme of consumer awareness

---

<sup>2</sup><http://www.ofgem.gov.uk/Markets/RetMkts/ensupro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf> p.10

and information improvements rather than simply a one-off campaign. We would also be keen to see targeted campaigning specifically aimed at those groups (low income consumers, vulnerable and hard to reach groups) who have traditionally been less engaged in the energy market. It is also essential that Ofgem ensures that all energy suppliers are involved on an enduring basis in any consumer engagement programme.

As the costs associated with the provision of new information are likely to be borne by consumers, we call on Ofgem to test all proposals thoroughly with consumers to ensure that the extra costs of implementing these measures will be justified by delivering real and tangible benefits to all consumers.

Finally, while Consumer Focus supports measures to improve consumer information and promote active engagement in the energy market, we caution that information alone will not help all consumers to access better deals. We urge Ofgem to take account of other barriers to engaging in the market, such as digital and financial exclusion which particularly affect low income and vulnerable consumers.

### ***Billing information***

Consumer Focus supports Ofgem's proposals for clearer and more transparent billing information. We are also aware however of the need to ensure that in the quest to provide better information, bills do not become overly complicated.

We support Ofgem's proposals that bills should clearly present the customer's present tariff and consumption in GBP per Kwh. Consumer Focus also recommends 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, and that this be standardised across the industry.

Consumer Focus is a member of a European-wide working group on energy billing drawing on good practice from across the European Union<sup>3</sup>. Clear recommendations have emerged from this group about what should appear on the first page of energy bills as priority items. These are:

- Supplier's name and details
- Customer's name, billing address and supply address
- Tariff name
- Account reference number
- Date of bill
- Period covered by the bill
- The energy product
- Total cost of energy consumed
- Total payable and the date payment is due
- Customer service telephone number

---

<sup>3</sup> The WG Billing is a sub group of the ECCG energy group set up by recommendation of the 1<sup>st</sup> Citizens Energy Forum in 2008 and is run by DG SANCO

- Contact information for complaints (Consumer Direct in the UK)
- The MPAN number (Switching code)

We will continue to sit on this group and share our wider research and good practice on billing with Ofgem and industry as appropriate.

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. Ofgem needs to commit to monitoring the implementation of these proposals to ensure changes are made in a way that benefits consumers.

### ***Annual statement***

We welcome Ofgem's proposals for an annual statement to aid consumers to make better comparisons and therefore better switching decisions. We agree with the proposed information that should be included in the statement and especially the inclusion of the reminder of the right to switch. While we are aware of the need to keep the annual statement easily understandable, and avoid information overload, we have some further suggestions:

- Alongside the reminder to switch we would be keen to have information encouraging consumers to use Confidence Code accredited price comparison sites
- A reminder of the energy efficiency help and social assistance programmes available
- There may also be scope for information about different payments methods to be included in the annual statement as this could alert consumers to the potential savings available by switching payment method

Finally we would urge Ofgem to ensure that there is sufficient marketing and awareness-raising by suppliers about the introduction of an annual statement to ensure that consumers are aware of it, and how it could be used. It is also important that it is designed in such a way as to ensure consumers do not mistake it for a bill. We would also be keen to see a review of the annual statement, using consumers, to ensure that the statement is fit for purpose and delivers intended benefits. Consumer Focus is also happy to be involved in such a process.

### ***65 day notice period for unilateral contract variations***

Consumer Focus raised concerns about the 65 day notice period in our original response to the Probe in December 2008. These concerns were reiterated in our response to Ofgem's open letter of March 2009 which consulted on the 65 day notice period for unilateral contract variations<sup>4</sup>. The four main issues we raised are:

---

<sup>4</sup>[http://consumerfocus.org.uk/en/content/cms/Consultation\\_Respons/Consultation\\_Respons.aspx](http://consumerfocus.org.uk/en/content/cms/Consultation_Respons/Consultation_Respons.aspx)

- Consumers are denied the opportunity to budget for the extra costs or to decide to decrease their usage in light of increased prices.
- If a consumer is already in debt to a supplier, switching to an alternative provider to avoid the increase is unlikely to be an option. Without advance notice they are unable to consider decreasing their usage and/or managing their budget to compensate for the higher prices, and as a consequence their debt is likely to increase.
- A delay in notification of a price increase or change in tariff structure denies consumers the opportunity to take and provide meter readings around the date when the rise becomes effective and thus satisfy themselves that any change has been correctly applied by the supplier.
- The primary rationale that energy suppliers' gave to the general public for price increases in 2008 was that there had been a large rise in wholesale energy prices. However, many customers received their price change notification when wholesale energy prices were falling steeply. This situation, which has been well publicised in the national press, has caused confusion among the public and has had the unfortunate effect of damaging consumer confidence in the energy market and specifically in the prices consumers pay.

We continue to believe that these issues remain for consumers and that the retention of the ability for suppliers to give up to 65 days notice of price changes directly affects consumer confidence in the market.

Therefore we believe that there is a case for implementing a license condition that requires suppliers to give consumers as much advance notice of price rises as possible. While we appreciate suppliers concerns about their ability to respond to markets, we would argue that 65 days notice is too long and as previously stated in our response to the March consultation we would support, as a minimum, the reintroduction of License Condition 44 – notification of terms, and as good practice suppliers should inform consumers of price rises in advance.

We also welcome Ofgem's proposals to remove the right to debt block customers who chose to switch supplier in response to an adverse unilateral contract variation, we believe that this practice has helped to keep vulnerable consumers in debt for longer than they need be and Ofgem's action is long overdue. This proposal is discussed in greater detail in our section on debt blocking.

We agree with Ofgem that there is huge scope to develop best practice around how consumers are informed of price increases and would welcome further discussions with Ofgem and the ERA about how this could be achieved.

### ***Addressing tariff confusion***

According to recent research by Which?, seven in ten people found the number of gas and electricity tariffs available confusing. With the organisation estimating that there are 4,000 tariffs in existence this comes as no surprise.<sup>5</sup>

Ofgem has identified the factors, such as the sheer number and complexity of tariffs, that cause consumer confusion. The situation is arguably worse for some groups of vulnerable consumers, often those on low incomes or in fuel poverty are paying too much for their gas and electricity due to a combination of factors beyond that of tariff confusion. These include limited access to the cheapest deals, lack of understanding about the costs associated with different payment methods, reluctance to switch to a new supplier and poor switching decisions as a result of the complexity of the tariffs available or the provision of misleading information.

Consumer Focus welcomes Ofgem's proposals to introduce a price metric to attempt to solve some of these issues. Ofgem's initial findings highlight that 17% of domestic consumers are 'active' and regularly seek out competing price offers and switch on a basis of a good understanding of the range of offers available. While this number of consumers may be enough to provide discipline to firms in other markets, it has clearly not been sufficient in the energy market, as the outcomes witnessed in the market demonstrate.

Ofgem has indicated that it will work with consumers on the development of a price metric. We would encourage this, through research and trialling with consumers, to ensure that the ambition of producing an easy to use metric is realised. Otherwise, there is a real risk that the price metric produced will not achieve the stated ambitions of helping consumers to make better switching decisions.

We agree with Ofgem that the preferred price metric would be an adaption of the first illustrative example. This is not dissimilar to the one currently used on the Consumer Focus website<sup>6</sup>. We likewise support the adoption of a '£ per year' key indicator. Consumer Focus will be carrying out work this year on our own price comparison factsheets and we will share the results of this with Ofgem and suppliers to ensure we maintain a useful degree of standardisation on price metrics and comparisons.

We remain unsure as to how the proposed price metric will be implemented, and seek clarification on this.

We consider the concerns suppliers have raised about the negative effects of developing a price metric unfounded, hence our support for Ofgem's proposals providing they are properly researched and trialled with consumers.

As a supplement to any future price metric, we would like to see the addition of information regarding alternative payment methods (where appropriate), so that consumers can see the benefits of changing their payment method.

We believe that Ofgem should commit to review whether there is scope for simplifying the structure of tariffs. While we understand the need to maintain suppliers' flexibility to

---

<sup>5</sup> <http://www.which.co.uk/about-which/press/campaign-press-releases/other-issues/2009/05/energy-companies-plug-for-confusion.jsp>

<sup>6</sup> [http://consumerfocus.org.uk/en/content/cms/Energy\\_Help\\_Advice/Energy\\_supplier\\_pric/Energy\\_supplier\\_pric.aspx](http://consumerfocus.org.uk/en/content/cms/Energy_Help_Advice/Energy_supplier_pric/Energy_supplier_pric.aspx)

innovate, it needs to be made easier for consumers to understand and compare offers. This would, we feel, encourage greater confidence in price comparison. Much could be done around the current array of tariffs and Ofgem should use the introduction of the new standards of conduct to review existing offerings, not simply to pick-up blatant attempts at confusion but to actively seek assurances on the legitimacy of the tariff structures in relation to the needs and wishes of consumers.

Finally, it is our opinion that prompting a change in consumer behaviour and delivering one are two different things. Therefore, we recommend that the roll-out of any price metric be done as part of a continuous strategy to change consumer behaviour and promote engagement with the market, rather than something which is implemented in isolation. Consumer Focus is of course committed to aiding this process.

### ***Reviewing debt blocking arrangements***

The practice of debt blocking prevents consumers from taking proactive steps to tackle their debt by barring them from switching to potentially better deals. For the many low income energy consumers, the practice of debt blocking can act as a genuine obstruction to finding better deals. The extent of energy debt must not be underestimated, particularly in light of the current economic climate. According to figures released by the Citizens Advice Bureau (CAB), during quarter 1 to quarter 3 2008/09 the CAB dealt with 55,500 fuel debt problems. Based on these figures they estimated that they would help some 74,000 clients with fuel debt problems in 2008/09, representing a 6.8% increase on their 2007/08 figures.<sup>7</sup>

Consumer advocacy bodies have for some time been calling for a review of the current debt blocking arrangements and given the problems experienced by debt blocked consumers, as discussed above, Consumer Focus is sympathetic to this stance. However, we believe that a ban on debt blocking could result in the potential unforeseen consequences of increased credit checks, requests for security deposits and more aggressive debt collection policies. Consumer Focus considers that this would be an unacceptable price to pay and consequently we agree with Ofgem's stance that major changes debt blocking rules are not currently suitable.

However Consumer Focus welcomes proposals within this document to make smaller scale improvements to debt blocking arrangements in order to help vulnerable and indebted consumers engage better with the market. We particularly welcome a long overdue look at the Debt Assignment Protocol (DAP).

Consumer Focus agrees with Ofgem's assertion that the DAP, which allows prepayment meter (PPM) users with debts up to £100 to switch, has been underused by consumers since its introduction in 2004. Therefore, the DAP in its present format is a cause of great concern for Consumer Focus, particularly given that we do not feel that appropriate research has been conducted to fully explain why it has failed.

We consider that Ofgem has failed in its commitment to monitor the DAP and ensure its effectiveness, which was promised when it was last reviewed (as part of the Supply Licence

---

<sup>7</sup>[http://www.citizensadvice.org.uk/index/campaigns/policy\\_campaign\\_publications/consultation\\_responses/cr\\_utilities/ofgem\\_s\\_debt\\_blocking](http://www.citizensadvice.org.uk/index/campaigns/policy_campaign_publications/consultation_responses/cr_utilities/ofgem_s_debt_blocking)

Review in 2007). We propose Ofgem fully investigate the possibility of extending the DAP to vulnerable and low income consumers on both standard credit and direct debit, as they will inevitably use these payment methods, albeit to a lesser extent. While we acknowledge the risks associated with a major overhaul to the existing DAP, we consider this proposal to represent a natural and obvious extension to the existing DAP and Ofgem's mandate to protect consumers.

Given that levels of consumer debt have been increasing, it would seem that the proposed £200 threshold figure has been arbitrarily decided upon, rather than being based on the ambition of ensuring that the majority of those consumers who are currently debt blocked may in the future switch. Considering the figure for average electricity debt (£236) Consumer Focus encourages Ofgem to acknowledge that there are a high proportion of electricity only households who are in debt so we are concerned that the current proposals will not help these people.

We invite Ofgem to develop a clear timeline for initiating any such review. As previously stated, we consider an assessment of the merits and drawbacks of extending the DAP to standard credit and flexible payment customers to be a matter of urgency – not something that can be allowed to slip down the agenda, thereby allowing increasing numbers of vulnerable consumers to be excluded from the potential benefits offered by the DAP.

Consumer Focus welcomes Ofgem's proposal to prevent suppliers from debt blocking where a customer would avoid the retrospective application of an adverse unilateral contract variation by switching (in accordance with standard licence condition 23). As with Ofgem's proposal to require suppliers to offer debt, tariff and energy efficiency advice to customers at the point of objection, Consumer Focus has previously called for this measure in our response to the consultation upon the 65 day notice period for unilateral contract variations (Supply Licence Condition 23). We similarly welcome Ofgem's proposal to remove suppliers' ability to debt block where the debt has accrued as a result of supplier error. However, before Consumer Focus can endorse this proposal it is crucial that Ofgem determines what constitutes 'supplier error' in light of previous concerns around the minimal approach adopted by industry on backbilling and supplier 'fault'.

We agree to proposed changes in information provision in principle and welcome the stated aim of improving the transparency and customer awareness of the debt blocking arrangements. We would however like to understand how this will be delivered and if a voluntary approach by suppliers is adopted, how the effectiveness of this will be established given our existing concerns around other self-regulation initiatives.

We agree with Ofgem's suggestion that any such future work on debt blocking should 'dovetail' with the ongoing monitoring and review work on suppliers' debt and disconnection practices. Consumer Focus has already committed to a joint review in this area and we look forward to working with Ofgem and suppliers to deliver tangible improvements for consumers. Discussion on the right to debt block must take place in the context of suppliers doing more to proactively monitor customer accounts and deal with debt before it arises.

Finally, we regard it as a necessity that, Ofgem continues to request and monitor statistics from suppliers in order to understand the scale of debt blocking as a barrier to switching. In 2008, debt blocking affected some 6% of all domestic transfers. Continued access to (and monitoring of) this information is crucial in order to determine how far future revision to the DAP will be required to go. Moreover, we consider it of the utmost importance that Ofgem

obtain information on how many debt blocked customers subsequently go onto switch supplier. We are concerned that only four of the big six suppliers have previously provided Ofgem with this information and question why the remaining two were unable to do so.

### ***Simplifying the switching process***

Ofgem claims that ‘consumer switching is the engine of competitive energy supply markets’, however, the Probe reports that 46 per cent of the population are currently inactive and that figure rises to 58 per cent for prepayment consumers. Furthermore, one third of switchers do not achieve a price reduction with the proportion increasing to 45 per cent for prepayment consumers. With 17 per cent of consumers classified as ‘proactive’, this has not provided a sufficient competitive constraint on suppliers’ pricing and cost reduction behaviour. There is, therefore, a greater need for Ofgem, with help from Consumer Focus and the industry to tackle the causes of consumer inaction and poor switching decisions.

Switching supplier is perceived by many as being complex, time-consuming and a hassle because consumers are not aware of how easy it can be and the extent of the potential to access better energy deals. Indeed, Ofgem’s research has highlighted that although 70 percent claimed they were confident in switching, nearly three quarters of those saw no benefit from doing so.

We believe it is important to increase consumer awareness of the potential benefits of switching, as well as promote the use of price comparison websites as a useful tool to aid the price comparison and switching process.

Consumer Focus has already met with the ERA to discuss our potential role in promoting the peace of mind guarantee, and will continue to work closely with them to ensure that consumers are confident in the switching process. However, there are a number of aspects in the peace of mind guarantee that need to be addressed.

The guarantee states that ‘your new and old supplier will give you a telephone number to call if you have any problems’.<sup>8</sup> Our concern is that this will be the standard customer service telephone number, therefore not making it any easier for consumers to contact the correct person within the company. This problem is intensified for those on pay-as-you-go phone deals, as long waiting times to 08 numbers can deplete credit. Indeed, Consumer Direct has received 217 cases between the 1 January and 30 April 2009 where consumers stated that they had waited too long when calling energy suppliers.

We would like to see monitoring arrangements put in place to ensure that the peace of mind guarantee actually functions as a guarantee, rather than merely an information leaflet. We would also like to see evidence that these measures are helping vulnerable and low income consumers to access better deals through switching, rather than just being an additional tool for consumers who are already engaged in the market.

We broadly agree with Ofgem that there is no need for a radical overhaul of the existing transfer system due to the widespread roll-out of smart metering. However, although the Government has stated their aim to have smart meters in every home by 2020, if consumers

---

<sup>8</sup> ERA - Energy made clear – making it simple to switch

are facing significant detriment then it must be addressed, irrespective of the aforementioned time-frame and potential cost. We must not allow detriment to continue as there is no guarantee that the planned roll-out of smart meters will go ahead in the proposed time frame.

### ***Promoting confidence in price comparison and switching sites***

Ofgem states that ‘only a third [of consumers] (36 percent) switched as a result of making their own enquiries and only 30 per cent considered deals offered by more than one supplier’. These statistics make it clear that more needs to be done to promote price comparison and switching, including the important role and potential benefits of the online price comparison sites and the Confidence Code.

Consumer Focus welcomes Ofgem’s commitment to increase awareness of the Confidence Code and we will naturally work jointly to deliver this. We consider that there is also a role for suppliers to promote price comparison websites, particularly in relation to the peace of mind switching guarantee and following direct selling activity.

Ofgem has identified some of the issues that affect consumer confidence in online price comparisons, such as variations of the same tariff ‘flooding’ price comparison result tables which may offer slightly different benefits, such as Airmiles or Nectar points. While we would hope that new standards of conduct would help address confusion in tariff offerings, we maintain that Ofgem should review the existing array of tariffs. Consumer Focus has also committed to addressing this, along with a range of other issues as part of the review of the Confidence Code over the summer.

### ***Raising Consumer Awareness***

Consumer Focus has a 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. We are keen to continue work closely with Ofgem, suppliers, the ERA and advice agencies to ensure that an effective programme of consumer awareness can be rolled out in the light of this measures that emerge from this consultation.

## **Chapter 4 – Helping consumers make well-informed choices**

### ***Strengthening sales and marketing rules***

Consumer Focus welcomes Ofgem’s decision to commit 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 is an area of crucial importance. Whether consumers are engaged with the energy market in a proactive manner or whether they only

engage in response to direct sales approaches by suppliers, it is of the utmost importance they are able to make decisions based upon reliable information.

Doorstep selling is of particular concern to Consumer Focus given it often functions as the primary medium through which the 'benefits' of competition are drawn to the attention of lower income and disadvantaged consumer groups.<sup>9</sup> From the current evidence it appears the market is failing those consumers who are most vulnerable.

The Probe acknowledges that almost half of all consumers who switch as a result of a direct sales approach do not achieve a price reduction, a figure which increases when looking at switching rates amongst PPM customers. These figures are a truly damning indictment of the value of the direct sales approach from the consumer perspective. Consumer Focus believes that change in this area is long overdue, particularly when considering 82% of those who switch in response to this approach do so because the supplier that approached them claimed that they were cheaper.<sup>10</sup>

Though the introduction of the EnergySure Code in 2003 led to a sharp decline in the incidence of marketing and sales complaints, mis-selling has continued to be an issue for consumers. Therefore, Consumer Focus questions why it has taken so long for Ofgem to determine that decisive action is required.

Consumer Focus rejects suppliers' suggestions that the EnergySure Code represents a good forum to take forward the additional requirements which Ofgem have proposed.<sup>11</sup> In the light of continued issues with direct marketing practices we consider this is an area that continues to require regulation and we are pleased that Ofgem agrees.

### ***The written quotation***

Consumer Focus welcomes Ofgem's proposal to introduce a requirement to provide consumers' with a written quotation and the decision to express this in terms of price per year. We believe that with this proposal Ofgem is taking significant steps towards standardising suppliers' practices and acknowledging consumers' wishes.<sup>12</sup>

Consumer Focus agrees with Ofgem that the quote should identify both the supplier it applies to and the agent who provided it. We consider this requirement as functioning to establish an audit trail, one which might encourage best practice and promote consumer confidence.<sup>13</sup> It is important that where such quotes are based on estimates that a clear warning is provided to consumers.

---

<sup>9</sup><http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf>, p. 26.

<sup>10</sup><http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf>, p. 26.

<sup>11</sup><http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf>, p. 28.

<sup>12</sup><http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf>, p. 29.

<sup>13</sup><http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf>, p. 29.

Finally, we would like to seek clarification as to what consideration Ofgem has given to consumers who experience numeracy and literacy difficulties? These consumers often fall under the definition of a vulnerable consumer, regularly use a PPM and therefore are often susceptible to the possibility of inadvertently switching to a higher tariff. This is a consideration that should not be overlooked, particularly in light of research which suggests as many as 17.8 million over 18s have poor literacy skills, whilst 23.8 million have numeracy skills that are below the level needed to get a good grade at GCSE.<sup>14</sup>

### ***Comparison with consumers' current deal***

Consumer Focus welcomes Ofgem's proposal to require suppliers to provide consumers, prior to the completion of a sale, with a written comparison. Given that PPM customers often have less access to information about their current deal and consumption levels (in comparison to consumers on alternative payment methods) we regard this proposal to be of particular importance. However, we would ask Ofgem to consider expanding this requirement beyond the conditions which they have currently set out within the Probe. Consumer Focus considers the benefits of this requirement to be something which all consumers should benefit from, particularly those on standard credit and flexible payment options, not only those who use a PPM.<sup>15</sup>

Consumer Focus agrees with Ofgem's suggestion that where comparisons are based upon estimation, confirmation of this should be provided.<sup>16</sup> We read with caution however, Ofgem's statement that the practicalities of this requirement will be explored with suppliers and we therefore seek clarification on what is envisaged and how this will be provided.

Consumer Focus has previously advocated for the introduction of a written comparison and argues this requirement should come with a prompt to consumers to seek further information direct from the suppliers and/or advice from independent agencies or the accredited price comparison sites.

### ***Additional Information***

Consumer Focus welcomes, in principle, Ofgem's proposal to introduce a requirement on suppliers to provide consumers with a number of key pieces of information at the point of sale, which supplements the requirement on suppliers to provide an annual statement and better billing information. However it is important that the needs of consumers with literacy of numeracy problems are met and Ofgem should consider further research in this area.

---

<sup>14</sup> House of Commons Public Accounts Committee: Skills for Life: Progress in Improving Adult Literacy and Numeracy (14 January 2009)

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpubacc/154/154.pdf>

<sup>15</sup> <http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf>, p. 30.

<sup>16</sup> <http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf>, p. 30.

### ***Post-sale follow up***

Consumer Focus welcomes Ofgem's decision to strengthen the post-sales follow up process. We consider the proposed requirement on suppliers to obtain positive feedback from consumers to represent a significant step towards reducing the incidence of mis-selling and therefore, build consumer confidence. Research suggests that most consumers switch in the hope of achieving cheaper deals (82%)<sup>17</sup> and consequently, this requirement may go a long way to improving the current levels of successful switching.

However, we read with caution Ofgem's claims that this requirement may take the form of a general principle which suppliers may determine how best to comply with.<sup>18</sup> In order to build consumer confidence we argue this requirement should likewise be standardised. This would make it easier to provide consumer education and empowerment advice as well as making practices easier to monitor, thus providing greater consumer confidence.

### ***Recasting the market licence condition***

Consumer Focus and one of our predecessor organisations energywatch, had repeatedly approached Ofgem regarding the issue of regulation of marketing to domestic consumers and has likewise continually raised concerns about the effectiveness of the EnergySure Code.

Although the EnergySure code has driven significant improvements to direct sales complaint volumes we remain to be convinced that the industry is capable of self-regulating marketing practices. Consumer Focus therefore welcomes Ofgem's decision to reject the option to rely on more industry self-regulation regarding this matter and to instead extend and enhance the current marketing licence condition (SLC 25).

The issue of marketing and mis-selling has become increasingly prominent within the media, among consumer groups and most recently, with the Government's response to the select committee report on the energy market and fuel poverty. Consumer Focus supports the proposal to refocus the marketing license condition on consumer outcomes, rather than supplier inputs. Furthermore, we welcome Ofgem's decision to 'make clear that persistent instances of mis-selling to customers by a supplier will constitute a breach of the licence condition.'<sup>19</sup>

Consumer Focus agrees with Ofgem that through strengthening the rules governing sales and marketing activities that we might witness an improvement in consumer education/empowerment and therefore the switching process; an improvement in the

---

<sup>17</sup> <http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf>, p. 26.

<sup>18</sup> <http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf>, p. 31.

<sup>19</sup> <http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf>, p. 32.

regulatory framework governing sales and marketing activities; and an improvement in consumer confidence within the market.<sup>20</sup>

We ask Ofgem to provide a clear timescale for implementing the proposals which they have laid out within the Probe surrounding the subject of marketing and mis-selling abuses. This has long been a persistent problem within the market and as a result has served as a barrier to effective consumer engagement as well as evidenced consumer detriment.

Finally, Consumer Focus has concerns that Ofgem seem to have largely ignored the telephone and internet as mediums in which marketing and mis-selling practices take place. These are growing channels of direct marketing by suppliers, which are only likely to increase if supplier activity is removed from doorstep selling as a result of the new prohibitions on misleading information and the provision of comparisons. We believe that it is essential for Ofgem to include these two sales channels within its proposals to strengthen the marketing licence condition to ensure that consumers receive adequate protections regardless of the route to market used. It would be unforgivable if the sharp practices that were allowed to persist in the doorstep market, and which have clearly led to a significant number of consumers switching to a worse deal, were to simply 'move' to another area of marketing activity. The industry has a big job on its hands to regain consumer confidence and the opportunity presented here should not be lost.

## Chapter 5 – Helping small business consumers

Consumer Focus welcomes Ofgem's acceptance that there are a number of substantial problems in the non-domestic sector that work against small businesses. The sector is highly dynamic and fast moving so regulatory solutions must be sensitive to adapting conditions on the ground. While we support efforts to improve competition in the business supply market and to enhance small business consumers' participation in, and experience of, the energy market, it is necessary to ensure proposals engage with the reality of the non-domestic sector.

We feel many of the proposals, as set out, hope that simply providing better and clearer information will allow the market to operate freely. We fear that some proposals as currently formed may either be ineffective or lead to unintended consequences for what is a unique segment of the energy market.

Understanding the Small and Medium Enterprise (SME) sector is no easy task. There are a of sub markets, with strong regional characteristics, industry patterns and the competitiveness of each segment may well be dynamic considering the vast changes we have seen in wholesale prices, the scale of the competitive fringe in recent years and the growth of the Third Party Intermediary (TPI) sector.

Ofgem also needs to commit to regular monitoring and reporting on competition in the small business market. The probe provides useful evidence that had previously been missing in Ofgem's analysis. It must ensure this gap does not re-open following the probe remedies.

---

<sup>20</sup><http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf>, pp. 31-32.

What evidence there is across the sector suggests energy costs are growing. The Ipsos MORI National Business Survey reports energy costs to be the largest cost concern for many businesses in the past year (fig1.) and going forward (fig 2.).

### Cost increases – past 12 months

Q Which of the following costs have increased for your business over the past 12 months?

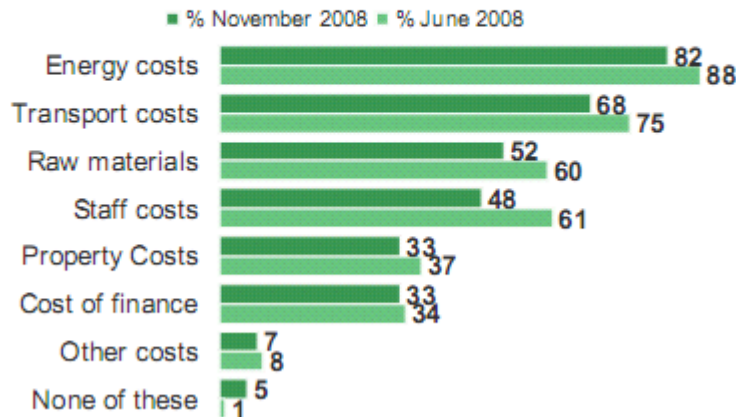


Fig 1.<sup>21</sup>

93. Going forward energy costs are again the number one issue.

### Cost increases – main cost pressure

Q Which of the following costs presents the main upward cost pressure on your business at present?

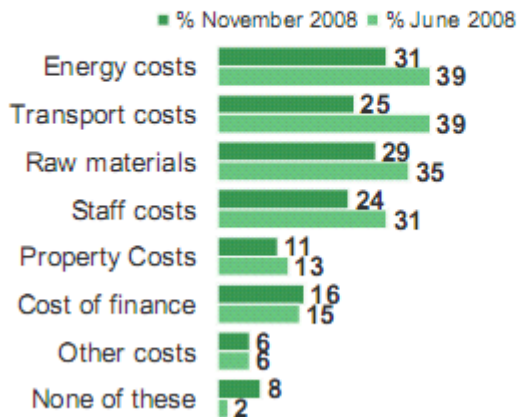


Fig 2.<sup>22</sup>

<sup>21</sup> Ipsos MORI, The National Business Survey (January 2009) p.23  
[http://insighteast.org.uk/WebDocuments/Public/approved/user\\_9/Final%20National%20Report%2026-01-09.pdf](http://insighteast.org.uk/WebDocuments/Public/approved/user_9/Final%20National%20Report%2026-01-09.pdf)

<sup>22</sup> Ipsos MORI, The National Business Survey (January 2009) p.24

Research on SMEs tends to focus on the bigger SME players. In the Npower Business Index SMEs are defined as companies with around 100 employees or fewer. The data this research, and others like it, tend to gather focuses on the large players in the sector.

Rising energy bills appear to be a bigger concern for larger players as energy bills make up a greater percentage of total costs than for smaller players.<sup>23</sup> Nevertheless, the Npower data shows that for the last two years energy costs for both large and small users have increased as a percentage of expenditure.

The smaller the business, the fewer resources there are available to devote to either energy efficiency measures or indeed to shopping around. Only 30 percent of SMEs feel they have time to devote to energy efficiency.<sup>24</sup> This data mostly represents larger SMEs so for micro-businesses the data will be even more pronounced. As the MVA report about micro-businesses adds: 'Micro-enterprises don't have the flexibility (nor the time) to switch suppliers, and don't know what else is available to them, eg in terms of the ranger of energy suppliers and competitive deals.'

Research produced by FDS for Ofgem is perhaps the best guide as to small businesses experience of the energy market.<sup>25</sup> It is scathing in its analysis of energy suppliers, their customer service performance and manipulative sales practices.

Similarly, research by the Forum of Private Business (FPB) found poor standards of service with a noticeable recent deterioration and a growing number of exploitative practices.<sup>26</sup> Consequently, there appears a clear need for regulatory action across the smaller end of the SME market.

Ofgem has decided to limit the regulatory measures to the current definition of a 'micro-business'. BERR defines a 'micro-enterprise consumer' as an enterprise with a headcount of less than 10, and an annual turnover and/or annual balance sheet that does not exceed €2 million.

There appears to be extensive problems far exceeding this measure of vulnerability.<sup>27</sup>

But equally within this measure, there will be a big difference between the need to protect a sole trader from a firm with nine employees.

The current measure captures a great deal of the market. According to Cornwall Consulting:

'It is difficult to know what fraction of the economy is captured by this definition, but if we use the consumption thresholds (which is realistically the only metric suppliers will have to hand) by referring to data available from BSC modification P124 we see that in 2003 there were nearly 1.9mn out of 2.6mn electricity business meters (profile class 3-8 and half-hourly meters) that had an estimated annual consumption of 50MWh a year

---

<sup>23</sup> Npower Business Energy Index, winter 2007-2008, p6; Npower Business Energy Index 2009, p.11

<sup>24</sup> Npower, 2009 Business Energy Index, p3.

<sup>25</sup> <http://www.ofgem.gov.uk/Consumers/CF/Documents1/small%20business.pdf>

<sup>26</sup> Forum of Private Business, The performance of utility companies and their impact on small and medium size enterprises (4 March 2009)

<sup>27</sup> As the mva, Mori Ipsos, FPB research indicates.

or less. From market share assessments we estimate that around half of the 850,000 or so gas metered businesses consume 200MWh a year or less.<sup>28</sup>

Any demarcation between a micro-business and the rest of the SME market will always be a difficult one. The difficulty in any measurement is capturing those who are vulnerable while allowing the rest of the non-domestic market to operate without hindrance. Consumer Focus recommends further research, with an inclination towards a narrower definition of micro-business or vulnerability but with extensive regulatory support for that sub-sector.

Consumer Focus undertook extensive research into the nature of micro-businesses. The research was commissioned in September 2008 to help Consumer Focus better understand the different needs of micro-enterprises as consumers, and the role we can play in representing their interests. Research concluded that currently, micro-enterprises are uncertain as to whom they can, or should, go to when they have problems with their supply, often trying to cope with the problem alone, with no additional support or independent advice.<sup>29</sup> The main gaps in representation that currently exist, as perceived by micro-enterprises and stakeholders, are three-fold:

- no dedicated organisation set up to assist with individual micro-enterprise complaints
- adequate legal protection against sharp practice of suppliers
- micro-enterprises' knowledge of service, quality and price options, nor the support systems currently available to them

With the large amount of evidence available about falling service quality, increasing prices and reduced redress mechanisms, Consumer Focus agrees it is now time to categorise micro-businesses as having the same needs as domestic consumers. This also means equalising all the legislative protections in the domestic sector to micro-businesses.

At the larger end of the non-domestic market, customers have sufficient resources to ensure they can manage their contracts effectively. According to Cornwall Consulting<sup>30</sup> the market in the larger end of the SME sector is also in a healthy condition and needs little additional protection.<sup>31</sup> For those medium size firms, who are aware of contract renewals, have strong relationships with TPIs and manage their energy needs intelligently they need no extra help even if service standards are deteriorating.

Therefore, we understand Ofgem's concern about not extending the regulation too far that would in all likelihood tend to favour the 'Big six' with their extra resources to monitor and influence extra regulatory burdens more than the smaller suppliers, leading potentially to another round of consolidation in the sector.

There are however concerns for those firms outside the definition of micro-business who have struggled from complexity and exploitation as the various reports into the sector demonstrate. The Federation of Small Businesses (FSB) Small Business Poll reveals that more than half of small businesses in the energy market (57 per cent of 1,000 small

---

<sup>28</sup> Cornwall Consulting, Energy Spectrum, Issue 182 (11 May 2009) p.3

<sup>29</sup> Mva, pii

<sup>30</sup> Energy Spectrum, Issue 182 (11 May 2009) p.4

<sup>31</sup> An estimation would be those with more than 50 workers. However, the variation is large and created hard and fast rules between differing segments of the market.

business owners surveyed) made complaints to their energy companies. Consequently, we do believe for those firms within the 10-50 employee sector additional help is needed. Consumer Focus proposes a two tier approach to regulation, Ofgem needs to focus heavily on protecting the micro-consumer in the current recession while providing an overall framework that helps the wider non-domestic customer.

### ***Increasing availability, clarity and transparency of information***

We support clear and transparent contract terms for all consumers and we welcome Ofgem's commitment to ensuring non-domestic consumers are adequately informed. Ofgem has decided to only extend this obligation to the 'micro-business' segment of the SME sector. As stated above, the market is incredibly varied, complex and dynamic. While large SMEs are likely to be better equipped to deal with suppliers not all will, as those just over the threshold maybe be just as vulnerable, if not more so, than certain savvy micro-businesses. It does not appear onerous for suppliers to provide clear information and in most industries it would be a pre-requisite for any contract. Therefore, we feel that this should be a standard requirement on all SME contracts.

Suppliers should be required to vastly improve the quality of information to aid comprehension and potential comparison to future alternatives and to allow SMEs to be aware of how energy use equates to expenditure. While we doubt this will lead to more SMEs buying energy individually,<sup>32</sup> it is surely a necessary component of a functioning industry.

Recent research undertaken by Consumer Focus has found the majority of contracts to small businesses to be obscure, confusing and in tiny fonts with many hidden punitive terms. We agree that contract details must be clearer; important terms and conditions, including contract windows, termination penalties etc., should be on the front page and written in plain English.

We support the idea of an annual prompt, advanced notification of fixed-contract expiry and the minimum period of one-month to respond to a letter from a supplier. We believe once again this should be implemented for the entire sector, not just for micro-businesses. No business should be caught out due to hidden restrictive terms or complicated transfer windows.

Consumer Focus does support the point that there are different needs across different segments of the non-domestic sector and these must be addressed separately. But extending these regulations industry-wide would not penalise responsible suppliers at all, while protecting SMEs, whatever their size, who currently do not get information and are effectively bounced into renewal. The guidelines Ofgem proposes are straight forward and should not add undue regulatory burdens on competent suppliers.

---

<sup>32</sup> As expressed elsewhere in this response, the TPI domination of energy buying will continue for many reasons.

For micro-businesses, there needs to be far more radical reform than the provision of reminders and clearer information. The FDS report<sup>33</sup> indicates that their inertia to engage with market structures is more profound.

The British Chambers of Commerce proposes and Consumer Focus agrees that there needs to be more robust practices in alerting micro-enterprises to contract renewals/changes, eg recorded delivery for such contract notices. One positive outcome of Ofgem accepting that micro-businesses are in the same class as domestic consumers is it allows examples of regulatory or engagement practices from the domestic sector to be taken into account. In this instance a good example of alerting vulnerable consumers can be found in energywatch's work with the National Housing Federation, promoting switching to housing tenants.

This work focused on persuading reluctant consumers through advice sessions. The success of such projects depends on persuading people that the advice is impartial, unbiased and not provided by those with financial gain in mind.<sup>34</sup> Other requirements include the quality of advice, accessibility and relevancy.

Consequently, Consumer Focus recommends further action to vastly simplify the market for micro-business consumers. Ofgem should consider adjudicating whether contract terms for micro-businesses are 'fair'. Ideally, Consumer Focus believes Ofgem should consider standardised terms and conditions for micro-businesses that resemble as far as possible protections for consumers in the domestic sector.

### ***Code on Objections***

We strongly support the proposal to introduce a code of practice on objections and switching but for the entire non-domestic sector. This will help small businesses who wish to switch as well as small suppliers who are attempting to gain market share against the incumbent 'Big Six'.

It appears to many stakeholders in the SME sector that efforts to delay switching rest on the premise that delaying and complicating the process will lead to customers losing the will to continue the process.<sup>35</sup> The Code should therefore not only lay out the procedure for objecting but limit the grounds for doing so. Objections should only be for clear breaches of readily comprehensible contracts. Far too frequently objections are being raised on obscure clauses in contracts, with overly complicated termination procedures or minimal amounts of debt accumulated.<sup>36</sup>

As mentioned above, we wish to see the array of contract terms radically simplified for micro-businesses. If implemented, this should remove the problem of obscure contract terms catching out vulnerable micro-businesses.

---

<sup>33</sup> FDS report, p.Sii

<sup>34</sup> Energy Switching Toolkit, NHF, energywatch, p.5.

<http://www.housing.org.uk/default.aspx?tabid=288&mid=835&ctl=Details&ArticleID=1893>

<sup>35</sup> For example, the FPB paper on Utilities.

<sup>36</sup> This follows discussions with industry stakeholders such as the FPB and FSB.

### ***Eliminate ability for contracts to be automatically rolled over***

Consumer Focus supports the idea that micro-businesses customers should not be prevented from switching from restrictive termination and switching practices. However, we are unsure how this reform will work in practice. The package appears to propose putting micro-businesses on 'deemed rate' contracts, where they can switch at any time. There are two major concerns we have.

Firstly, deemed rate contracts are consistently far higher than 'in-contract' rates ostensibly in order for suppliers to cover the additional costs of supply. By buying energy at the last moment energy suppliers claim they have to pay very high rates on the open spot market. Consequently, without the security of long term contracts, the price to the consumer is likely to vastly increase. By allowing micro-businesses the ability to switch at any stage after the end of the fixed period the costs to suppliers, and in all likelihood, the price charged to the customer, will potentially be far higher.

Consumer Focus has concerns that 'deemed rate' contracts are not fully justified, in relation to the costs incurred. We have seen examples of prices trebling due to the apparent extra costs incurred under deemed rates.<sup>37</sup>

Suppliers will of course be compelled to alert customers to their rights and obligations under the new system, but as has already been discussed, many consumers pay no regard to such correspondence. For example, research suggests energy contract renewal reminders are often mistaken for direct marketing, and unlikely to be given urgent attention by micro-enterprises. This, in turn, leads to many failing to realise that their contract rolls over for another x-number years, etc.<sup>38</sup>

Under the proposed changes, this would leave micro-businesses potentially paying far over the odds for gas if they still continue to not engage with the supplier. The cure could be worse than the disease. Ofgem needs to think carefully about this proposal and the likely consequences for pricing.

Separately, should automatic roll-over be banned, it could also hurt competition. While the larger players are barely affected, small supplier's access to credit to run their business efficiently maybe impaired, as they require steady cashflow to gain access to finance. Thus, the frail competition in the non-domestic sector could be further eroded. Ofgem should also undertake an assessment on the impact of this proposal on small suppliers.

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.

---

<sup>37</sup> The 'Big Six' buying power, credit facilities and vertical integration means that any cost increase for them under deemed rate contracts is likely to be minimal.

<sup>38</sup> Mva consultancy report for Consumer Focus, Micro-enterprises as Consumers (December 2008) 5.4.3

### ***Extending the accreditation scheme (confidence code) to price comparison site for non-domestic customers***

The Confidence Code, run by Consumer Focus, currently operates just for domestic switching sites. This has been very successful in promoting greater consumer confidence in price comparison sites. Whilst Consumer Focus understands Ofgem's reasons for wanting to extend the Confidence Code to non domestic sites, currently we would have to advise that this move is delayed until some of the more fundamental issues within the non-domestic market are solved.

Initial discussions internally at Consumer Focus on extending the Confidence Code 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. Additionally, as elaborated above, many of the problems with the sector lie in punitive terms, extreme rollover price increases and restrictive windows to terminate contracts.

These will not be included in any price comparison but can have serious consequences about prices following the fixed period. No price metric can incorporate these costs. Although Ofgem is consulting on ending automatic roll-over and clearer transfer information the outcome will be uncertain as discussed elsewhere. We still feel that the price metric will not accurately inform consumers of the real costs within each contract.

Thirdly, TPIs have a growing influence in the non-domestic market, trading on their independence and market experience; they can switch supplier as wholesale prices fluctuate and also the buying strategy. The wholesale market is volatile and complex, TPIs are able to alter buying patterns with which a price comparison site could not begin to compete. TPIs control the market through 'flexible-non-fixed price contracts'.<sup>39</sup>

Although TPIs can have a useful role in the market, stimulating consumer interest where otherwise a variety of evidence suggests it is lacking, there are some significant dangers as will be discussed further in the below section.

However Consumer Focus is happy to work with Ofgem to help try to resolve these issues and look to how Confidence Code could eventually be extended to the non-domestic sector.

### ***Strengthening the Code of Practice for Third Party Intermediaries***

As suggested above, there are various reasons for the growing role of TPIs in the sector yet there is growing evidence of bad behaviour among certain operators. With the complexity of the market, tied to the apathy of the consumer, unscrupulous TPIs have developed an opaque and potentially questionable remuneration policy.

Anecdotal evidence from suppliers suggests that the TPI margins may be far in excess of the suppliers. TPIs may receive bonuses from suppliers, which incentivise them towards more

---

<sup>39</sup> This issue is discussed in detail in Cornwall Consulting's *Energy Spectrum*, Issue 170 (16 February 2009) p.3 and p.15

expensive tariffs for non-domestic customers, which they are unaware of as well as taking commission from the consumer. Often the TPI commission can be far larger than the savings made by the consumer.

Indeed, the relationship between TPI and consumer can be stronger than between the supplier and the consumer. This is a major reason why customer service is so weak, as purchasing decisions are not made by the actual consumer of the energy so there is little consequence to the supplier of poor customer service.

The Utilities Intermediaries Association (UIA) has sought to become the trade representative for the TPI sector, using its code of practice and redress scheme as the basis for building confidence and propriety in the sector. However, despite their best efforts, coverage is still far too sparse across a sector with too many unscrupulous operators who take advantage of the vulnerability of small businesses to siphon off vast commissions. While the UIA's efforts must be welcomed, Ofgem must instead look to more practical routes to solving this problem.

It is perhaps worthwhile to look across to the domestic sector, to see how mis-selling has been dealt with.

a) Blacklists for Mis-selling

One principal reason for this was the system of 'black-listing' those agents found guilty of sharp-practices, in order for other firms to avoid hiring them. This system could quite easily be transferred to the non-domestic sector. If a supplier had had a bad experience with a certain TPI, this name could be added to the database and then no supplier would agree to then offer business to that firm subsequently. For example, British Gas Business has already started this practice by sidelining troublesome brokers and only agreeing to work with them again if they signed a contract that pledged standards of conduct and transparency on commissions.

b) Cooling-off Periods

The Ofgem proposals specifically exclude the concept of 'cooling-off' periods due to the negative effects to small suppliers and therefore the fledgling competition in the non-domestic sector. However, Consumer Focus believes it is vital to the non-domestic sector to have a mechanism whereby a customer can reflect on the deal, if after checking the small print the deal is not as good as advertised due to dishonest claims or partial information. If Ofgem accepts that many micro-businesses are indeed in the same category as domestic consumers, and that non-domestic contracts are complicated and that some TPIs are deliberately misleading customers, then there must be a mechanism for providing extra time to allow consumers to assure themselves of the quality of the contract. It is an accepted practice in the domestic sector and therefore should also cover micro-businesses.

c) The necessity of a License Condition on Commissions

Ofgem should also implement a license condition to help suppliers gain traction on the TPI sector like it imposed on domestic suppliers to ensure reputable action by agents. These TPIs put contractual terms onto supplier contracts that prevent

commission information being disclosed. To support suppliers, this license condition should state that any supplier engaging in a commercial contract with a TPI must ensure there is commission disclosure to both supplier and customer as part of the sales paperwork. This would create a level playing field for all suppliers and if sat alongside the black-list and mandatory cooling-off periods would provide several mechanisms for weaning out the worst practices in the sector.

If these measures fail we agree that Ofgem should revisit this issue and consider alternative approaches, including legislative and enforcement routes.

## **Chapter 6 – 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. It is our view that the other (purely retail market-based) remedies will have only a marginal impact if suspected problems further up the energy chain are not addressed, and thus chapter 6 of the proposed remedies is essential work that if followed through on will be of significant benefit to consumers.

Thus we broadly support the overarching approach Ofgem proposes in the consultation document, specifically the increased reporting of financial information from the ‘Big Six’ and the expanded depth of information said companies provide regarding retail statistics. We also support the publication of the quarterly report regarding wholesale and retail energy prices, though we have several problems with its current approach and analytical base.

### ***Improving transparency of supply and generation***

Consumer Focus is happy that Ofgem has recognised that the fundamental problem with the current vertically-integrated structure of the energy market is the lack of separate information on supply and generation and transparency regarding transfer prices.

We believe that although there is no evidence that firms are abusing their position as generators, no regulator should simply rely on profit-maximising firms’ goodwill to ensure anti-competitive behaviour is not being pursued. Indeed the complete lack of a competitive fringe in energy supply suggests substantial barriers to entry given the potential profits on offer under other circumstances. Concerns about cross-subsidisation between generation and supply have been particularly pronounced in recent years because of high retail prices, but such concerns will always be present if there is not vastly more information supplied to the regulator. Both consumers and would-be entrants to the energy market deserve better than the assumption of good behaviour by incumbent suppliers.

Indeed such transparency is crucial to ensuring the energy market operates in a more efficient fashion. This is considered such an important aim, by Consumer Focus and others, that Ofgem should not be afraid of imposing on companies comparatively onerous reporting requirements.

Furthermore it would be concerning if the bulk of the information Ofgem would be requesting was not already being recorded by the 'Big Six' for internal business reasons. We believe that very little resources will be needed in giving Ofgem the relevant information beyond that of collation and sending.

On costs, we reject the assertion that in improving transparency Ofgem will be guilty of creating an 'arbitrary allocation of some costs as (Ofgem's) requirements would not necessarily reflect'<sup>40</sup> how the 'Big Six' run their businesses. Similar to our approach to differentials regarding pre-payments and other methods of retail payment, we believe that Ofgem's focus should be on the efficient costs, and if this figure is less than the actual cost it is the relevant company's problem, not the regulator's.

Furthermore, the argument that disclosing detailed financial information to Ofgem would be 'commercially damaging and/or could lead to anticompetitive behaviour'<sup>41</sup> is only applicable if Ofgem publishes this information explicitly, rather than assessing it internally before delivering a non-numerically specific public response, either for the 'Big Six' individually and/or for these firms collectively. The regulator should not allow this debate to become focused on such concerns as is it is only tangential to the real question of the regulator probing company's internal pricings.

Based on the position above Consumer Focus thinks that the proposed Option 1 for financial information reporting is too simplistic and its use would not come close to adequately improving market transparency. Simply using "averages" determined at the suppliers' discretion would not be transparent enough and a "broad" description of transfer pricing is totally insufficient in trying to ascertain whether anti-competitive behaviour is being undertaken. Such an approach would not improve measurably on the current situation as it gives suppliers the dominant position.

While Option 2 is a clear improvement on Option 1, it too does not demand enough from suppliers regarding transfer prices. The proposal to 'allow...companies to provide this information without distinguishing transactions between their affiliates and the open market' neuters one of the central points of the remedy in attempting to establish whether would-be suppliers are deterred from entering the energy market by generators abusing their vertically-integrated position and pricing significantly higher externally than internally.

Furthermore, the lack of 'explicit disclosure of transfer price arrangements'<sup>42</sup> means the regulator cannot assess whether said arrangements are fair or not. Similarly, Option 3 suffers from being a weaker version of Option 2, in that it does not require suppliers to release information regarding their generation business, the contents of which are crucial to enable the market to work better.

Consumer Focus believes that Option 4 is the only option proposed by Ofgem which seeks to obtain sufficient information regarding transfer prices (using a market-based method specified by the regulator and not, crucially, the relevant company) for a fully transparent

---

<sup>40</sup><http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf> p 41

<sup>41</sup><http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf> p. 41

<sup>42</sup><http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf> p 44

approach to the wholesale energy market to be made. Only with the parameters and level of detail described for Option 4 can Ofgem hope to make firms' behaviour more transparent and thus assess whether or not they are behaving anti-competitively.

### ***Enhancing market monitoring***

Consumer Focus welcomes any attempt by Ofgem to enhance its market monitoring. We have long been critical of the regulator's reliance on switching rates as an indicator of competition and, ultimately, consumer welfare. This is, as is conceded in this consultation, is a very 'broad indicator' and thus an attempt to look at the quality of switching, and a breakdown of switching across different payment types and tariffs, is long overdue.

As stated above in relation to transfer pricing disclosure, we believe the costs of providing such information for firms is much less than they suggest and that the benefits of having this information in the public domain is far larger than any additional resource costs to companies. In particular they will enable Ofgem to assess whether or not the other remedies proposed in this consultation are having a desirable impact or not.

### ***Examining the link between wholesale and retail energy prices***

Consumer Focus continues to welcome the idea of Ofgem producing a Quarterly Wholesale/Retail Price Report to increase transparency in this relationship. However we have several objections to the first report's presentation and, especially, its analytical approach. We believe that these problems are significant enough that the first report failed in its stated aim of providing 'clearer information and analysis for customers'<sup>43</sup>. However the comments that follow are intended to be constructive criticisms that we hope the regulator will bear in mind when writing subsequent reports. The regulator might like to consider whether the reports aim to merely improve consumer confidence, or to actively increase their understanding of energy markets, as at the moment their precise purpose seems unclear. In our view most consumers are not passionate about understanding intimately the nuances of how energy markets work; rather, they do not want to be ripped-off. Thus increasing confidence, not necessarily knowledge per se, should be Ofgem's aim.

Chief among our objections to Ofgem's approach is the regulator's reliance on the forward curve as a singularly appropriate marker for wholesale costs, which given the extent of vertical integration seems a large oversimplification. In particular, the difference between the forward curve and supplier's actual contracts are particularly pronounced in times of high volatility in traded prices, the type of volatility the wholesale market has experienced in recent years and which in part prompted the report's publication. In addition, some stakeholders would contend that the 'Big Six' attempt to 'beat' the forward curve via their hedging strategies, rather than following it as the report suggests.

Consumer Focus also believes that the hedging model currently used by Ofgem is not the same as suppliers' actual hedging strategies; furthermore, influential factors like storage

---

<sup>43</sup><http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20proposed%20retail%20market%20remedies.pdf>, p 47

costs, interconnector flows and legacy contracts are ignored in the Report. The lack of discussion on wholesale margins is also worrying, again given the extent of vertical integration. The lack of high and low user figures (in the Consumer Focus range of user levels), instead relying on 'average' medium figures in analysis, is not helpful as low users face disproportionate charges from the cost of metering, CERT and so forth. And given that the retail market is essentially based around dual fuel (with most switches to it), it seems a significant oversight that this was not considered in the report. In our opinion the report also overstates the alleged range of options consumers have to manage risk; essentially this really amounts to fixed or capped tariffs, which can leave consumers worse off.

On presentation, we believe that the shorter 'consumer-friendly' version of the report was not actually very accessible to consumers (or indeed journalists, hence the lack of significant press coverage despite enormous media interest in energy prices in general) given its length and use of language.

### ***Improving EU energy market transparency***

Consumer Focus is pleased to see Ofgem committing to playing a full part in increasing transparency in EU energy markets, particularly as a partner in the Agency for Cooperation of Energy Regulators. Ofgem has played a positive role in promoting transparency so far and we have no reason to think this will change now that the Third Energy Package is being implemented. The monitoring of markets across Europe will, as Ofgem rightly assert, have positive impacts on UK markets and consumers and we thus look forward to work here in the future.