



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to SMIP consultation on Licence Conditions for a Code of Practice for the installation of smart electricity and gas meters

November 2011

About Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers, and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to consumers' lives.

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Our comments

Question 1: Are the overall objectives set out in the draft licence conditions appropriate?

No.

- We query why this approach has been taken – it seems overly complicated and cumbersome for what it is trying to achieve.
- The proposed wording fails to clearly state and reflect both of the Department of Energy and Climate Change's (DECC) main aims for the Code – notably that it should '*...help to protect consumers during the installation process and facilitate the longer term behaviour change necessary to deliver the benefits.*'¹ Consumer Focus fully supports these aims and thinks they should be clearly stated in the objectives.
- The overwhelming majority of consumer benefits identified in the Impact Assessment (£4.6 billion²) are expected to come from customers being able to use up to date information on their gas and electricity consumption to reduce their energy use and save money on their energy bills. Without this, the business case for rollout is considerably weakened. As the Minister stated at the BEAMA/Consumer Focus parliamentary event on 7 November on realising the energy saving benefits of smart metering, the installation visit is a key touch point. The Code has an important role to play in ensuring quality of service during the installation visit.
- The challenges involved in delivering behaviour change and concerns that customer energy saving benefits identified in the DECC impact assessment will not be realised have been consistently raised. It is therefore especially important that this is a clear aim of the Code. This includes most recently by the National Audit Office³ members of the Public Accounts Committee on Monday 31 October 2011⁴. This key aim of the Code and should be clearly reflected in the objectives of the licence conditions.
- We recognise that the proposed Supply Licence Conditions (SLCs) includes a section on energy efficiency advice and information. While this is welcome, it is only one potential mechanism to help deliver behaviour change. We would expect learning and approaches in this area to develop quite substantially in the coming years. An overarching objective around long-term behaviour change and energy efficiency would encourage suppliers to update their approaches and adopt good practice – effectively future-proofing the approach.

¹ Smart Metering Response to Prospectus Consultation – Rollout Strategy (March 2011)

<http://bit.ly/sQp2wd> p.42. Para 4.90.

Smart Metering Implementation Programme: Licence conditions for the Code of Practice for the Installation of smart electricity and gas meters – a consultation, p.9 also states that the aims of the Code is to '*...set out what domestic and smaller non-domestic consumers could expect during the installation process and would contain measures to facilitate longer-term behavioural change necessary to deliver programme benefits...*'

² Smart meter rollout for the domestic sector (GB) – DECC Impact Assessment (August 2011)

³ <http://bit.ly/uVXXvM>

⁴ <http://bit.ly/vQgW3Q>

- Linked to the above, we strongly recommend the inclusion of an overarching objective linked to ‘facilitating the delivery of the consumer benefits’. This would provide flexibility to capture any new consumer monetised or non-monetised benefits that arise from the future reviews of the impact assessment. For example the distributional impact assessment being conducted in spring 2012 may highlight the need for further supplier activities during the installation visit to help ensure that all customer groups can access the benefits they are paying for.
- Licence condition 10 (LC10) states that the ‘Domestic Installation Code may make further provision in relation to any matters that are designed to secure the achievement of the Objectives’. It is therefore particularly important that the Objectives are broad, clear and the right ones.
- The current draft Code v.27 applies to *pre*, during and *post* installation of Smart Metering Equipment. While the wording of the proposed licence conditions under ‘Content’ potentially captures this with ‘*standards of service for the installation, and activities relating to the installation*’, the proposed wording under the objectives and duty section does not appear to. We encourage DECC to amend this for clarification. In particular, 1 (c) should be amended so customers receive information pre, during and post installation not just ‘about’ and ‘during’. Failure to do so risks weakening the changes that have been made to the draft voluntary Code following consumer representation. We assume this is not the intention.
- We seek clarification that Licence Condition 1 (c) (i) that information is ‘*complete and accurate*’ would include telling customers about any potential disadvantages associated with the introduction of smart metering in addition to the benefits. For example changes in data collection and use or alerting customers to any barriers to switching including any loss of service if they wish to switch supplier or move home. This includes the compatibility of any In-Home Displays (IHDs), in-home communications or any appliances linked to the smart metering system. While the introduction of the Data Communications Company (DCC) is expected to resolve some of these problems, the reality may be quite different.

Question 2: Would the licence conditions as drafted effectively underpin:

- **The respective roles of Ofgem and suppliers in establishing and reviewing Code(s) of practice for domestic and micro-businesses sites?**
- **An appropriate on-going governance regime for the Code(s) of Practice?**
- **The intended arrangements for monitoring and compliance with Code(s)?**

Development/Establishment of the Code

Consumer Focus welcomes industry leading on the development of a *voluntary* Energy Retail Association (ERA) version of the Code, as a way to help safeguard customers and deliver smart benefits, in the interim period before regulation is introduced. However, we do not believe that energy suppliers alone are best placed to progress the development of the mandatory Code and have concerns that, what we see as an inadequate voluntary document will be adopted without appropriate modification and independent consultation by Ofgem.

- While we welcome the intention of proposed licence condition 12, relying on the ERA to ‘consult with and consider any representations made by, the National Consumer Council (Consumer Focus) and any other person or body likely to be affected’ before submitting the Domestic Installation Code it is not sufficient to ensure that customer views are represented in its content. While the ERA has consulted Consumer Focus and other customer representatives and is officially required to take account of our views, they are not obliged to accept our amendments and consequently, where industry disagree these are often simply not taken on board.
- There is no transparency around the reasons for or against modifications. This means that suggestions which are operationally practical, can deliver significant consumer benefit, are in line with the overarching aims of the Programme and in fact are already good practice for some suppliers are not always adopted. This needs to be addressed.
- While we appreciate the ERA’s efforts to date, the whole process has been painfully slow and frustrating because of the need to achieve consensus across so many parties. As any changes have to be agreed by all suppliers (not just the big six) there is inevitably a tendency for it to default to the lowest common denominator rather than strive to achieve good practice.
- We are currently working on version 28 of the Code and the process has been resource intensive and laborious. While the Code has improved it is still far from the standard needed for such an important government programme.
- Consumer Focus believes that voluntary discussions have progressed as far as they can. We are now at the stage where there are number of areas in the Code where a decision is needed by either DECC or Ofgem because there are simply fundamental disagreements between stakeholders as to what should be included.
- We strongly advocate that both Ofgem and DECC take more of a lead role and hope that the newly convened SMICoP Interim Steering Group will be the vehicle to allow this. Ofgem would benefit from greater involvement in the process, particularly when developing the licence conditions around this.
- It is essential that Government or the Authority (Ofgem) independently consults not only on the Licence Conditions around the Code but also the content of the Code itself to ensure consumer views and those of wider stakeholders are properly represented.

Reviewing, monitoring and compliance

The SMICoP Interim Steering Group (SISG) is developing a framework around governance, monitoring and reporting for the enduring Code. Consumer Focus has committed to working with industry and DECC in developing this. However Ofgem must not simply adopt this process particularly given that compliance will be covered ultimately by the Authority’s compliance and enforcement regime. It is essential that the arrangements around the enduring Code, both its content and governance, are subject to full consultation and that there is a robust and visible monitoring regime in place around the Code.

In terms of the proposals outlined we support:

- the proposed licence conditions that the Code set out procedures for its review and revision ‘*which must, as a minimum provide for the making of proposals by the National Consumer Council*’ (LC 11) and that licensees must consult with us and consider any representations that we make when reviewing the Code (LC 12). But as noted below these need to go further.

- approval being sought from Ofgem for any changes and that the Authority can require suppliers to review the Code and make modifications.
- licensees being required to maintain a record of their performance against and compliance with the Code (proposed Licence Condition 14). This is important to ensure that information is readily available so that Ofgem can exercise its monitoring and enforcement functions. We would expect all suppliers to be monitoring customer experiences to ensure their individual programmes are as effective as possible. We would not therefore expect this to place any particular additional administrative burden on small suppliers.
- proposals around availability of the Code, including giving it free of charge to anyone who requests it, making it available on the website, and sending a copy to the National Consumer Council. Availability of hard copies is particularly welcome as according to the latest figures from the Office of National Statistics there are 8.43 million adults in the UK who have never used the internet⁵ and as many as a third of customers do not use or have access to the internet.
- a customer facing Code, clearly outlining the levels of service that customers can expect. This is not currently the case as in many instances it simply refers customers to existing legislation and codes. Many of the documents referenced are hard to locate and challenging to understand. Some are not readily available on websites or available at all, and it is unclear where customers can obtain a copy. Ofgem should therefore require the ERA and suppliers to ensure that wherever possible customers' rights are clearly explained in plain English within the Code not just references made to the relevant regulation. Where references are made – these documents must be easily available on supplier's websites and available in hardcopy on request from suppliers and the ERA. It should be clear in the Code where customers can go to obtain a copy of *all* relevant legislation.

In addition the following issues need further consideration:

- We seek clarification that proposed licence conditions 11 and 12 will also enable the National Consumer Council to raise compliance issues or Code changes which prompt investigation or review, rather than just being consulted as part of a time-scheduled review process.
- We query what mechanisms will be in place to ensure that consumer views are not just 'considered' but also taken on board in practice where appropriate. As noted while we have currently been consulted where there are disagreements between consumer and industry modifications to the content are not made.
- Licence Condition 15 (a) and (b) – Consumer Focus feels that simply relying on licensees '*from time to time*' to take steps to review the Code and obtain views from customers is insufficient given nature of the rollout, challenges and sensitivities. The proposals should require suppliers to systematically review the Code at least annually and take prompt action in cases of breach. The structure must be such that feedback loops are also in place to ensure that there is on-going review.

⁵ Internet users and non-users in the UK, for 2011 Q3 (16 November 2011). By the third quarter of 2011, 8.43 million adults in the UK had never used the Internet. <http://bit.ly/vEJr6s>

- We would expect greater frequency of monitoring in the Foundation Phase given the importance of the experience of early recipients of smart meters in influencing wider public engagement and the success of the Programme. While we appreciate the desire not to place unnecessary administrative burdens on suppliers, as noted, we would expect all energy companies to be carrying out regular reviews of their processes including monitoring complaints and calls anyway as part of their activities to maintain a record of compliance against the Code (LC 14).
- It's critical that monitoring and compliance is carried out in a timely way. Suppliers must gather and use information from customers about their experience of installation to improve the experience of future consumers. Critically, SMICOP steering group members should be able to raise compliance issues which prompt investigation or review in a timely way. We have some concerns about the effectiveness of a self-regulatory approach given the poor performance of existing Codes, in particular the significant failings of the Energy Sure Code in tackling mis-selling.
- Performance – there needs to be a high level of transparency around interim monitoring and audit and the licence conditions should address this to ensure there is a robust and visible compliance programme. The ERA does not have a good track record of reporting against existing codes. Findings are often 'detail light' and not very widely publicised. We would welcome this being addressed. Once the mandatory Code is in place we would strongly recommend that DECC/Ofgem has a formal role in publishing information as part of its annual reporting on smart metering.
- We support member's respective performance results being published once metrics for compliance have been finalised. We see value from comparative ratings, in terms of stimulating competition and the resultant improvements in customer service. Both mystery shopping and report card methods of monitoring would be welcome. Complaint data and the findings of investigations should be in the public domain.
- Representation – the licence conditions should require the SMICOP steering group and governance structure to include consumer representation as well as representatives from Ofgem and DECC. Decision making should be based on consensus approach not majority voting especially where the consumer voice is in the minority. This is important to provide credible and independent oversight.
- Enforcement – we query the approach that will be adopted towards enforcement. We seek clarity as to the process by which enforcement action will take place. For example, will action be taken in any case or a number of cases? What are the triggers? There must be appropriate penalties for poor performance and transparent sanctions in place.
- We welcome customers being made aware of the suppliers' membership of the Code. But as noted they should also be made aware of what standards they can expect as a result of it, and how they can complain and seek redress if they are unhappy. Complaints should also be made to an official body such as Consumer Direct, who should have responsibility for informing the ERA about code infractions. This is to ensure greater oversight.

Question 3: Should the licence conditions underpinning the domestic Code also be applied to smart-type meters, or should the Government work with suppliers to secure voluntary application of the Code provisions?

Consumer Focus strongly believes that the licence conditions should apply to both compliant and non-compliant smart metering systems. As noted in the consultation document, customers are unlikely to make the distinction between smart and advanced meters. Householders who get their new technology during this early phase should also be able to expect a positive experience and to be protected.

The experience of these early users will be important in influencing the overall success of the smart meter rollout – the rationale for the Code underpinned by a licence condition still applies to smart-type installs and those installed in the foundation period. In addition, while it is expected that fully compliant meters will be available by the end of 2012, there may be some slippage by certain suppliers. There are also expected to be at least 2 million smart meters on the walls by the end of 2012 – many, if not the majority of which, will not be fully compliant. Sizeable numbers of consumers could therefore not see the same level of protections if smart-type meters are not included. Including advanced meters would provide greater simplicity and consistency. It would also be in line with Ofgem's approach to interoperability protections.

Question 4: Would the licence conditions as drafted effectively underpin the policy intention that the costs of the installation of smart meters should be reflected over time in customer's energy bills, with no upfront or one-off charges?

Consumer Focus welcomes the intention that customers should not have to pay a one-off cost or upfront charges for their smart metering equipment. Charges could place an unfair financial burden on some consumers and discourage smart meter take-up, which could result in increased costs overall. However we raise the following issues:

- Do 8 (a), *and* (b) *and* (c) all need to apply before the customer can be charged a one-off or upfront charge or is it intended that the customer can be charged upfront if any either (a), (b) or (c) apply? We support, *all* needing to apply to protect consumers.
- We have concerns that the current wording allows suppliers to charge customer extra (whether a one-off or upfront cost, *or a payment for the new technology over time*) who have to have some kind of 'enhanced equipment' through no fault of their own in order to access the full functionality of smart metering. For example, if the customer has to have an IHD hard-wired because wireless communications don't work in their property or if the gas or electricity meters have to be relocated because the current meter box is too small and new technology won't fit in the same space. We do not think they should have to pay extra in these instances.
- While 7 (b) arguably goes some way towards preventing upfront charging in these instances, as it requires the customer to have been given the option of equipment that is in conformity, it could result in the supplier offering the customer standard equipment which does not give them full access to all functionality that other customers might get from a smart metering system. It also doesn't prevent the supplier from recouping the additional costs over time by for example locking them into a longer-term contract. If (a) – (c) all apply then particular attention will need to be given to suppliers consent processes.
- Linked to above, we have some concerns that the current wording enables costs to be passed onto the individual household that has received a smart meter, or a particular types of customer (eg prepayment meter customers where there are more likely to be additional costs from enhanced displays or hardwired appliances), rather than spreading the costs across the whole customer base as is expected.

For example, we have identified a new issue with one supplier's annual standing charge for its smart meter customers. The company has a standing charge which is well out of line with its competitors at over £200 or £300 per annum depending on the tariff. Its competitor's dual fuel standing charges vary but are generally around £120 per annum for a medium user. We accept that there will be some additional costs associated with the provision of a new smart meter but are unclear whether such costs are ongoing or should be recovered through a standing charge that is paid annually.

Also there is an issue as to whether costs are proportionate and transparent to the customer and penalty charges should they try to leave. Furthermore while a smart meter can lead to reductions in energy usage, the customers are unlikely to be able to reduce their exposure to this significantly higher standing charge. Consumer Focus is happy to share further information on this with DECC and Ofgem.

- As noted in our response to the Consumer Protections consultation October 2010⁶ we have particular concerns that costs passed onto individual households or types of customer could have unintended consequences in terms of who pays more and how rollout is perceived. As mentioned in our response, on balance, we feel spreading the cost across the whole customer base is the fairest approach. If spreading the cost is the policy intention, as we understand it to be, we query why this is not stated explicitly.

Question 4b: Do you agree with the definitions of sales and marketing?

No – we have strong concerns about the definitions and seek urgent clarification.

- The current seemingly 'single definition' appears to allow face to face marketing and a sales pitch to take place in the home without any consent from the customer – written or otherwise – as long as 'the activity of entering into or agreeing to vary the terms of contract' doesn't take place. This appears to run counter to DECC's statement that customers will not necessarily make the distinction between sales and marketing, either in terms of understanding what to expect of an installation visit, or in the personal experience or interacting with sales staff. It also flies in the face of customer feedback in this area. Consumer Focus's survey (2011)⁷ for example found that 79 per cent of consumers said that their supplier should seek their permission and arrange an appointment with them in order to conduct a sales pitch when visiting the home to read their meter or install a smart meter. If this is the proposed approach, we consider it a totally unacceptable definition.
- Consumer Focus also does not consider it appropriate to use the definition of 'goods and services' as included under the Domestic Supply Contracts for gas and electricity. This definition does not cover energy efficiency products or other services such as in home displays, boilers, insurance, or security systems. These are precisely the kinds of products which suppliers will be seeking to sell before and after the installation of a smart meter and precisely the kinds of approaches we are seeking to protect customers from being pressurised to buy. If this approach was adopted it would arguably make the licence conditions close to useless.

⁶ <http://bit.ly/pSigl3>

⁷ All stats from between 3 and 4 May 2011 TNS RI carried out an Omnibus survey of 1,964 adults across Great Britain on their attitudes and experiences of doorstep selling.

- Consumer Focus has consistently raised concerns about the increase in complaints around energy efficiency products and services sold by energy companies. Services offered to energy customers will continue to become increasingly bundled as suppliers offer products that combine telecommunications, energy efficiency and smart home appliances along with energy supply. At present, Trading Standards and the Office of Fair Trading (OFT) can take enforcement action for mis-selling of hardware under the Consumer Protection from Unfair Trading Regulations (CPUTRs) and Unfair Terms in Consumer Contracts Regulations (UTCCR) and consumers can seek advice from Consumer Direct. However, it is often unclear where the customer should go and what their rights are.

It is particularly important to address this confusion given the challenges customers face in terms of seeking redress⁸. Such an approach would also be in line with the Department of Business, Innovation and Skill's (BIS) commitment and current proposals to simplify and modify consumer law.

- We strongly recommend that DECC aligns its approach with the upcoming Consumer Rights Bill (including definitions of goods and services) and considers how this legislation could benefit energy customers. This Bill is expected to go before Parliament in the next parliamentary session and be in place at the latest by the end of 2013. As utility-specific legislation is expected to take precedence over national legislation it is particularly important that the proposed licence conditions are robust, else energy customers could end up with weaker protections than in other sectors.
- Before final decisions are made in this area, we strongly recommend that DECC maps out the consumer journey in terms of protections, rights and redress to properly understand where not only the gaps are, but the challenges from a customer point of view. For example, we are unclear if products with a value of less than 50 Euros will be covered by the new Consumer Rights Bill. If they aren't and the proposed definition of goods and services is adopted, it could enable energy companies to sell any number of low cost products and services without customers receiving adequate protection. We seek clarity as to which rules will apply where a customer's consent has been sought in advance – solicited or unsolicited sales rules etc.
- Consumer Focus supports separate definitions for sales, face to face marketing hard copy marketing and energy efficiency advice. These should be defined as discrete activities with different levels of protections attached to them. For the purposes of the smart metering installation we suggest:
 - Sales is defined along the lines of 'a purchase or commitment to purchase (eg by contract) a good or service, including tariffs'. This should not include the provision of free products and services that are available to certain groups of customers who are vulnerable or on low incomes at no additional cost to them. It is important that any definition does not inadvertently preclude referrals onto social assistance and energy efficiency programmes that could benefit some customers.
 - Face to face marketing means *verbal* interaction with the customer/s during the installation visit and activities relating to the installation which are designed to lead to the sale of goods or services; generate leads for the sale of goods or services; and/or includes information about specific products and services available to the customer which would involve a purchase.

⁸ See our recent report *Making the Connection* on the advice, complaint handling and redress framework for energy consumers <http://bit.ly/vfagLs>

- Energy efficiency advice means ‘provision of information on behavioural changes, and *generic* products, services or building changes that can reduce energy consumption or better manage their energy use (ie in the case of vulnerable consumers, ensuring an adequate heating regime). Under these definitions an installer mentioning that loft insulation can reduce your energy bills but not company x’s insulation can reduce your energy bill would be considered advice not marketing. Energy efficiency audits could be included under this.

Question 5: Do you agree that prior written consent should be required for any face to face marketing and sales activity during the installation visit?

Sales activity

Consumer Focus does not support sales – that is the customer purchasing or committing to purchase by verbal or written agreement, a product, service or tariff – during the installation visit or associated activities. The focus of the installation visit should be on safely installing the smart metering equipment and ensuring customers have the information and support they need to access the benefits of smart metering. While we have some sympathy for the idea that some customers may find it easier to purchase energy efficiency or safety products during the visit, on balance we do not feel able to support sales, at this time, even with prior written customer consent. Our full reasons for this and evidence were outlined in our October 2010 response to the smart metering consultation⁹. The following is a summary of our key arguments:

- Rollout is a government mandated programme – smart meter rollout will be seen as a Government programme. Some consumers may feel the Government has somehow endorsed sales and marketing activity and be more likely to accept approaches – care must be taken to avoid this blurring of lines between a state and commercial activities.
- Customer attitudes – Consumer Focus research (May 2011) found that 64 per cent of consumers were opposed to meter replacement visits or visits to read a meter being used to sell other products and services. 82 per cent had a negative view of doorstep sales. 68 per cent of consumers said they would not be comfortable if their supplier used a visit to read or exchange their meter to sell them products or services. 61 per cent said they would not be comfortable with this approach even if the products and services would save them money.
- Industry has an appalling track record on mis-selling – it is not improving. Ofgem is currently investigating four of the big six energy companies for potential breaches of supply licence conditions. SSE was recently found guilty of unfair trading with door to door sales agents using misleading scripts by Surrey Trading Standards. DECC should start with a cautious approach with a view to relaxing this once the industry has proved itself.
- Customers are often not offered the most competitive deals on the doorstep – while existing protections (SLC25) prohibits suppliers selling PPM consumers a more expensive product than their existing one, no such protections exist for credit customers and suppliers are not required to offer customers their most competitive deal. No supplier currently sells its cheapest online tariff during door-step/face to face sales.

⁹ <http://bit.ly/pSigl3>

- Unfair competitive advantage – Energy companies already have a significant competitive advantage in the energy services and products market, with the responsibility for rollout and given their existing carbon reduction responsibilities eg CERT and upcoming ECO. We query how legitimate it is for Government to give energy companies a further competitive advantage.
- In-home displays – Consumer Focus has concerns that suppliers being able to sell enhanced displays during the installation visit, will discourage them from investing in a good-quality basic display as a competitive differentiator. Also that customers who purchase displays and other products during the installation visit may be encouraged to sign up to longer-term contracts so that they pay off the cost of the new technology over time (ie as with mobile phones). While this helps to avoid upfront costs consideration needs to be given to the implications of this¹⁰. Consumer Focus believes that many customers would also benefit from time to experiment with their basic IHD so they can properly understand what they use, don't use, like and dislike before upgrading.

Written consent

- *If* the sale of products and services is allowed during the installation visit, we agree that it should be with prior written consent as a minimum and the additional safeguards outlined in Question 6. Consumer Focus research found that more than three-quarters of consumers (79 per cent) felt that energy suppliers should get the permission of consumers and arrange a prior appointment if they wanted to sell products or services during a visit to install or read a meter. 63 per cent of consumers wanted permission to be given in writing before a sales presentation was carried out¹¹.
- Consumer Focus believes the proposed wording of the licence condition 9a (i) needs strengthening. It should specify that the visit is not undertaken without 'the *informed* consent of the domestic customer which is given in advance of the date of the installation visit and in writing'. Indeed, as the consultation document states – 'Government is mindful that suppliers will be seeking and receiving access to people's homes and that, as a basic principle, people should fully understand, and be in control of the activities that will take place during the visit'¹². For example, we would consider it inappropriate for a supplier to simply ask customers to tick a box that says – *I would like information on products and services that could help me save money on my energy bill during my home visit*. It needs to be clear to the customer that they are signing up to a sales pitch in their home. Further work will be needed by Ofgem/DECC on the processes suppliers put in place to achieve informed consent. We recommend that good practice from privacy consent mechanisms is reviewed and considered.

¹⁰ Longer contracts typically offer customers cheaper up-front charges and lower monthly tariffs, but can be significantly more expensive over the life of the contract and limit consumers' ability to switch, putting a brake on competition in the market. We understand that in May 2011 new EU regulations have limited contract length for mobile phones to 24 months, which will stop consumers being tied in 36 month deals. This is a welcome development, and reflects an acknowledgement at EU-level that long-term contracts are not always beneficial to consumers.

¹¹ Consumer Focus commissioned TNS to survey 1,878 consumers in May 2011, in face-to-face interviews, about their views on doorstep sales.

¹² P.21 Para 10. of the Consultation.

- Where consent is provided in written form (email or letter), members must ensure that it is fully auditable including being recorded and retained for a period of at least 12 months or as long as the contract lasts. We also strongly advocate that customers should be signposted to independent sources of advice on any products being sold to them prior to and during the home visit, to encourage them to shop around and seek further information. We query therefore whether text message is an appropriate medium.
- We welcome the proposal that consent must be sought 'in advance of the date of the installation visit' but consideration should be given as to whether there should be a minimum time frame, to give customers a chance to find out more information, contact a third party to be with them, shop around, read the privacy charter etc. As we understand it Guaranteed Standards 4 (EGS4 – Regulation 12) requires suppliers to give a notice period of just two days before a home visit. We have concerns that given the different nature of a smart meter installation this may be insufficient. We recommend therefore that consent is obtained at least a week prior to the visit to allow the customer time to reconsider their decision having consulted friends and advisers etc.

Face to face marketing

If face to face marketing is allowed during the installation visit we agree that this should only be where the customer has given explicit informed written prior consent. Consumer Focus's survey (2011)¹³ found that 79 per cent of consumers said that their supplier should seek their permission and arrange an appointment with them in order to conduct a sales pitch when visiting the home to read their meter or install a smart meter.

We recognise that some customers may want to use the time set aside for the installation visit to explore how wider energy-related products and services could bring them benefits. But we have to question whether the installation visit is the best time to talk about specific products and services. The focus of the home visit should be on providing customers with the support and advice they need to effectively use their smart metering system and reduce their energy use.

If face to face marketing is allowed the additional protections outlined in Question 6 are needed.

Question 6: Are any other measures required to protect consumers' interests in relation to sales and marketing during the installation visit?

Yes.

- We strongly believe that all customers should be sign-posted to *independent* advice on any products and services that are being sold or marketed prior to the visit and during the installation visit eg signposted to switching sites (both verbally and in written information). This is important to encourage the customer to shop around and find the best deal for them. It would also help to counter the significant competitive advantage suppliers have from rolling out the smart meters as part of a Government programme and being allowed to sell at the same time.

¹³ All stats from between 3 and 4 May 2011 TNS RI carried out an Omnibus survey of 1,964 adults across Great Britain on their attitudes and experiences of doorstep selling, marketing and advice.

- We strongly believe that all customers should be sign-posted to independent and free sources of advice on energy efficiency and saving money on their energy bills (both verbally and in written marketing material). This is important to help maximise customer energy savings. Our online survey of 2,000 customers (March 2010) reported that only 23 per cent of gas customers and 26 per cent of electricity customers trust their supplier to give them help and advice on cutting their energy bills and going green¹⁴. Our May 2011 research found 66 per cent of consumers wanted advice on how to cut bills and go green during the smart meter installation visit. However, only 31 per cent of consumers said they would trust the information given by their supplier.¹⁵
- We strongly support there being a cool-off period between any marketing lead generation and the purchase or signing of contracts to prevent sharp practice eg the installer stands over the customer while they are encouraged to phone the call centre to conclude a deal or the sales person turning up on your doorstep barely before the installer has left. The draft voluntary Code proposes a two-day cool off period except where the customer agrees to less. We have concerns about the robustness of this. We encourage DECC to look at good practice in the financial sector around cool-off periods.
- The smart meter installer should not be incentivised to generate leads or conclude sales as this could lead to a hard marketing or sales pitch which could intimidate or aggravate customers.
- We recognise there may be some value in customers being left with hard copy marketing material especially if this complements the Government's consumer engagement campaign. We do not propose any restrictions at this stage. However, the supplier must not leave hard copy material if the consumer asks them not to and the content of this material and customer satisfaction levels must be kept under review. This is particularly the case as Consumer Focus research (May 2011) found that 63 per cent of consumers want their supplier to get written permission from them in order to provide them with marketing materials during a visit to read the meter or install a smart meter.
- Suppliers should not knowingly sell products that customers could get for free or at cost elsewhere. For example, network operators can provide customers with carbon monoxide detectors at cost, while at least one leading supplier offers these products at a 50 per cent mark-up.
- Security/safety products should be from a clearly defined list. For example it would not be acceptable for suppliers to sell a home security system during smart meter installation.
- Consumers' explicit informed prior consent will be sought before sending marketing messages via the IHD and information will be left on how to opt out at later date. Consumer Focus research found that less than 15 per cent of customers were happy with information about new products and services being sent via the IHD. Key reasons against included not wanting spam (12 per cent); feeling like they were being bombarded in their own home (12 per cent); view they are a nuisance (12 per cent); not interested (18 per cent); feels like big brother (6 per cent). We are happy to provide further information on this.

¹⁴ This was an online survey of 2,048 consumers aged over 18 years conducted by ICM on behalf of Consumer Focus. Full findings will be available in November 2010.

¹⁵ May 2011 TNS RI carried out an omnibus survey of 1,964 adults across Great Britain on their attitudes and experiences of doorstep selling, marketing and advice.

- We continue to have concerns about the sale of tariffs, especially time of use (TOU) tariffs during the installation visit and that existing protections are not sufficiently robust. We welcomed the recognition in the Summer Prospectus in 2010 that TOU tariffs could result in particular consumer detriment if customers signed up to a deal that they do not fully understand or are unable to shift their demand patterns. We seek clarify as to how existing protections will safeguard customers and address issues experienced overseas.
- We continue to recommend that no new tariffs are introduced at the same time as smart meters. This gives customers the time to adjust to using the new technology. Before time of use tariffs are sold to customers the following protections should be in place:
 - Consumers should be provided with projected bills based on their actual past energy use before signing up to new tariffs. In the same way that you are given projected payments with a variable rate mortgage with different scenarios outlined. This should be based on the customer's actual energy consumption information – preferably a full year. This is to ensure customers have an accurate understanding of their consumption patterns during the day across all seasons, and are able to make informed decisions. Anecdotal reports from industry trials suggest that customers often do not know when during the day and night they are using energy and underestimate baseline usage at night in particular. We understand that PG&E are trialling this approach in the US.
 - Suppliers should be required to provide information as part of their marketing material on the advantages and disadvantages of new tariffs; as is the case for customers switching to prepayment meters. This should be at the point of signing the contract. Also advice on how people can best change their behaviour to take advantage of new deals.
 - Consumers must be able to opt out of contracts if it is clear that they do not benefit from them. They should not be locked into long term contracts or face onerous contract termination fees if they leave.
 - Customers participating in trials of new tariffs must be given a 'lowest price guarantee' (based on consumption over a year) so that they do not end up paying more than they would have done had they stayed on their original tariff. This should remain until mandated rollout and protections are in place. Some suppliers, such as EDF Energy as part of its Low Carbon Network Fund trials, are already doing this.

Protections around time of use tariffs are particularly important significant benefits identified in the Impact Assessment are expected to come from consumers shifting their energy use. The Impact Assessment estimates that one in five of us¹⁶ will take advantage of TOU tariffs including intraday multiple rate tariffs and critical peak pricing in addition to those already on simpler versions of them eg Economy 7.

Vulnerable consumers

Care must be taken in the wording of the licence conditions to ensure that it does not preclude the provision of free products and services to vulnerable and low income consumers without prior consent. The smart meter installation visit provides a unique opportunity to raise awareness about existing social assistance and energy efficiency schemes that could benefit some consumers. In particular, this is a unique opportunity to access hard to reach groups, who do not respond to other marketing approaches.

¹⁶ Ibid, page 28

Our initial thinking is that we would not expect suppliers to get prior consent from customers before telling them about their social assistance programmes, or referring them to products and services under the Carbon Emissions Reduction Target or future Energy Company Obligation, Warm Front or other schemes. There must be flexibility so customers can be immediately referred onto assistance programmes in instances where appliances such as boilers or cookers need to be condemned and replaced but the customer may not be able to afford to pay for it. This should result in less time off supply and less customer inconvenience. Suppliers should be encouraged to promote these programmes, with the appropriate safeguards around reliability of information and transparency.

Where there is a change in the customer's contract terms or any kind of additional cost, whether upfront, or spread over time to the customer we would expect protections to apply and prior consent to be sought. So for example, marketing of tariff changes, even to a social tariff would not be possible without prior written consent, nor would switching payment method from standard credit to Direct Debit. This is to prevent a pressured sale and allow the customer time to shop around to see if they can get a better deal.

Further consideration needs to be given to the needs of vulnerable consumers so as to not preclude opportunities to deliver benefits.

Question 7: Would the licence conditions as drafted and/or existing rules deliver the policy intentions on customer information and advice, vulnerable consumers, avoiding undue inconvenience and complaint handling?

(e) Protecting vulnerable customers (CC 9 (d))

- We support the licence condition requiring suppliers to *identify* vulnerable consumers. Consumer Focus and Ofgem's 2009/10 joint fast-track review of vulnerable disconnections found that suppliers' information about vulnerability was often out of date¹⁷ – customers' circumstances changed and people moved homes. This should encourage energy companies to have appropriate mechanisms in place to identify vulnerability prior to and during installation. Suppliers should have regard to best practice on vulnerability checklists and train installers in identifying vulnerability.
- We welcome the inclusion of not just domestic customers but also 'occupants of the domestic premises' as this appears to recognise that some vulnerable customers may be reliant on a supply of energy provided to a business eg householders living above a shop.
- We welcome suppliers being required to meet the 'needs' of vulnerable customers in line with the objectives of the Code. But believe that for this to be effective the objectives of the Code must be clearer and the link between the two more specific. As stated, the objectives of the Code should be, not only to protect customers during the installation visit *and associated activities*, but also to set minimum standards for suppliers to ensure that customers can access the *benefits* of smart metering'.¹⁸

¹⁷ <http://bit.ly/g51kal>

¹⁸ Smart Metering Response to Prospectus Consultation – Rollout Strategy (March 2011) <http://bit.ly/sQp2wd> p.42. Para 4.90.

Smart Metering Implementation Programme: Licence conditions for the Code of Practice for the Installation of smart electricity and gas meters – a consultation, p.9 also states that the aims of the Code is to '...set out what domestic and smaller non-domestic consumers could expect during the installation process and would contain measures to facilitate longer-term behavioural change necessary to deliver programme benefits...'

- If suppliers are required to meet the needs of vulnerable customers in order to achieve the objectives of the Code, this would arguably cover safeguards such as ensuring a carer or third party is present where appropriate; not installing smart meters in sheltered housing without the Warden's permission etc. It would also require suppliers to ensure that information and support provided to customers pre, during and post installation meets their needs.
- We recognise the advantages of a high-level licence condition at this stage. We believe that significant further work is needed to ensure that vulnerable consumers are not only protected but can access the benefits of smart metering for which they are paying. We strongly welcome DECC's commitment to carry out a distributional analysis of the impact of smart metering in spring 2012. It may be that this will highlight further changes that are needed to the Code to help protect low income customers and different social groups. The DECC funded research with NEA on vulnerable and low income consumers may also highlight necessary changes to the Code. A flexible approach is therefore required.
- We query why the wording 'meet the needs of specific Domestic Customer groups – including in particular Domestic Customers... who are of...' has been chosen. We seek clarification that this is not an exhaustive list of customers who might receive additional help. This is particularly important in the case of customers who might not be officially disabled, or view themselves as disabled and are therefore not covered under the provisions of the Equality Act 2010.
- In order to enforce the Code it will need a workable definition of a 'vulnerable customer'. There are significant differences between how suppliers interpret this. Most notably, disparity in the way that energy suppliers define 'child' in a vulnerable household. This currently ranges from one supplier defining a 'child' as under five years old and in a financially insecure household as vulnerable, to another supplier defining a child as under 18 years old, with or without financial insecurity as a contributing factor. While we are aware of the difficulties that the energy industry faces in agreeing a minimum definition, this disparity will erode the protections that the Code seeks to guarantee for those households who are most in need.
- Given that children are not afforded specific protection under the electricity or gas supply licences (the exception is children living in a household with no working age adults), we believe it is essential that this Code offers further protection.
- A workable consistent minimum definition for vulnerability should be adopted across all suppliers for the purpose of this Code. It is our view that, as an absolute minimum, it should include all families on means-tested or disability benefits with children under 16 years old (plus all families with children under 12). Consumer Focus continues to advocate for all children to be protected, not least to meet the requirements of international legal standards regarding the welfare of children.

We strongly support possible new arrangements being considered through the Programme's consumer engagement strategy, such as the potential provision of additional advice and support. Consumer Focus looks forward to continuing to work with DECC in the development of this.

(f) Avoiding inconvenience to customers (CC 9 (b))

We welcome the licence condition to ensure that suppliers take all reasonable steps to ensure that no undue inconvenience is caused to customers, as a result of any smart metering visit. We have particular concerns that poor operational management could result in multiple home visits and unnecessary time-off supply.

The Energy Networks Association has reportedly estimated that up to 22 per cent of installations could be non-standard, potentially requiring network support and the possibility of at least one additional visit.

Customer information and advice (9 (c) (i), (ii) and (iii))

- We welcome domestic customers being given clear and accurate information that will enable them to make informed judgements about the way they can improve the efficiency with which they use the electricity of gas supplied to them.
- The licence condition should state that this information should be provided face to face as well as via hard copy information. Research from Sheffield University found that 22 per cent of 16 to 19-year-olds in England are functionally innumerate, and 17 per cent of 16 to 19-year-olds are functionally illiterate¹⁹. Thus emphasising the importance of direct interaction to help ensure some of the most excluded groups engage with their new technology and understand how to change their behaviour.
- The advice should be tailored to meet the customers' needs ie vulnerable customers must be told the importance of maintaining an adequate heating regime so as to prevent them under-heating their home.
- We also support customers getting clear and accurate information about sources from which they can obtain information or assistance about improving their energy efficiency. But we strongly advocate that this should include a requirement to signpost customers to *independent* advice and sources, not just other companies with which they may have a deal or their own alternative sources of information. Our May 2011 research found 66 per cent of consumers wanted advice on how to cut bills and go green during the smart meter installation visit. However, only 31 per cent of consumers said they would trust the information given by their supplier.²⁰ This independent advice should include any kind of central information line, signposting pre and during the installation visit and verbal sign-posting. Information should be provided in a variety of media so customers with and without internet access can benefit.
- In addition to information about the advantages of smart metering equipment, customers should be made aware of any significant changes or challenges prior to installation. For example, changes in data collection and use or alerting customers to any barriers to switching including any loss of service if they wish to switch supplier or move home. This includes the compatibility of any IHDs, in-home communications or any appliances linked to the smart metering system. While the introduction of the Data Communications Company (DCC) is expected to resolve some of these problems, the reality may be quite different. It is important that customers are able to make informed decisions.

(g) Complaint handling

It seems sensible that the Government is not making bespoke complaint handling arrangements in the case of smart metering. However:

¹⁹ <http://bit.ly/b3IMFX>. Functionally innumerate is defined as: '...maths skills are limited to little more than basic arithmetic', functionally illiterate is defined as: '...they cannot handle much more than straightforward questions'.

²⁰ May 2011 TNS RI carried out an omnibus survey of 1,964 adults across Great Britain on their attitudes and experiences of doorstep selling, marketing and advice.

- Consumer Focus has raised concerns that the existing complaint handling and redress arrangements are not fit for purpose given the transition to an energy services market²¹. As noted, Government should review the framework given the increasing bundling of energy supply with products and services.
- We would welcome an obligation on suppliers to ensure that pre, during and post smart metering Installation customers have access to ‘a free dedicated phone line – calls should be free from mobiles as well as landlines. This should be available at least four hours after the completion of the last scheduled smart meter Installation. There should also be a dedicated email contact and postal address for queries. A free-phone number including free from mobiles or offering well publicised free call-backs alongside is important, as 14 per cent of households only have a mobile phone. These mobile-only customers tend to be disproportionately on low incomes²². This should be included in the Code as a minimum.
- Calls to customer service help-lines are likely to increase, at least in the short-term. Suppliers should put in place dedicated complaint handling and redress systems with well-trained staff ahead of rollout. Inadequate complaint handling and customer service was identified by the Californian regulator as a key contributory factor to the public backlash against PG&E smart meters in this US state²³. This should be included in the Code.

Question 8: Do you agree that, for the purposes of the non-domestic code, the sites to be covered should be defined as business with no more than 10 employees or their full time equivalent, an annual turnover that does not exceed Euro 2 million, or consumes less than 50MWh or electricity a year or less than 200MWh of gas a year?

Yes for consistency of redress and representation reasons. However, we would expect installers to be flexible with this definition if necessary – energy suppliers do this already with small businesses so that some that just fall out of the definition are covered.

Question 9: Would the licence conditions as drafted effectively underpin the policy intentions with respect to non-domestic customers on customer information and advice and undue inconvenience?

- **Objectives of the Code** – we have the same concerns about the Objectives of the supply licence condition for small business as we do for domestic customers. The overall aims of the Code should be to protect micro-businesses and facilitate them accessing the benefits of smart metering outlined in the impact assessment. This is not reflected in the current wording.
- **Avoiding inconvenience to customers (DD 5 (a))** – we welcome the proposed licence condition but further protections are needed. We have specific concerns, shared with our micro-business representation partners, that the potential for high disruption to trading has not been considered sufficiently. Even a few hours off-supply can be extremely onerous if occurring at a time of above-average demand, for example a restaurant whose slot runs over into lunchtime. These impacts will vary across different types of business but they are, financially far in excess of the equivalent for domestic consumers.

²¹ <http://bit.ly/vfagLs>

²² <http://bit.ly/aE2W5v>, page 338

²³ [PG&E Advanced Metering Assessment Report](#) commissioned by the California Public Utilities Commission. Prepared by Structure. September 2010. <http://bit.ly/bRghiH>

With that in mind, DECC should consider the need for a compensation system, both to incentivise efficient installation (eg one visit for both meters at non-busy time) and to cover any loss the relevant business might endure as a result of poor installation practice, non-attendance by the installer or any other cost.

- **Metering coverage** – we are uneasy about this proposal. We seek clarification from DECC as to what proportion of small businesses they expect will have fully compliant smart meters and therefore what proportion of consumers they expect to be appropriately protected and get access to the benefits of smart metering. Consumer Focus believes that the licence conditions should apply to both compliant and non-compliant smart metering systems. Businesses who get new technology during this early phase should also be able to expect to be able to access the full benefits and to be protected.
- **Customer information and advice** – as per domestic customers we welcome the proposed licence conditions, particularly around providing customers with energy efficiency guidance. But we also believe that micro-business customers should be signposted to independent sources of advice and made aware of any potential changes in contract terms (ie increased collection of data) or challenges such as barriers to switching should be highlighted. This is particularly important as one in ten of the calls to Consumer Direct about smart meters are reported problems with switching.

Example customer calls to Consumer Direct from small business customers:

Consumer tried to join company x via broker, agreed deal, then x said they could not honour it as they did not know a smart meter was involved – pointing out that this is covered in their Terms and Conditions. Consumer has discovered that it looks as though he will have to take a more expensive contract with his original supplier.

Consumer's contract with company 7 ends on 03.04.11. Consumer sent cancellation notice within renewal period in November. Y confirmed cancellation. Consumer found x via Uswitch. Y installed a smart meter in Nov 2010. Consumer has 2 electricity meters. X claim they cannot support smart meter but were able to take over the other meter. As a result consumer will be placed onto 'out of contract' rates. The consumer has complained to Uswitch as they should have known that x couldn't work with a smart meter.

The consumer's contract with y is due to end and notice has been given, they have agreed a contract with company b however b are unable to support the smart meter that Y have installed. The consumer feels that this is very unfair to consumers as he is unable to go to another supplier if they cannot support the smart meter system.

- **Sales and marketing** – we question why DECC considers it acceptable for suppliers to 'subject small business to *unwelcome* sales or face to face marketing during any visit to their premises for the purpose of installing Smart Metering Equipment'. While we accept that the precise protections around sales and marketing may vary between domestic and non-domestic sectors we struggle to understand why the principle would not apply to all customers. This is particularly the case as existing protections for business to business marketing are more limited (eg no cooling off period exists) and we are already aware that small businesses experience detriment as a result of mis-selling by suppliers and brokers.

- **Provision of an energy display** – where a smart meter is installed, a choice of energy display should be offered to micro-businesses at no additional cost eg online display, via mobile phone or an IHD. We understand that the Government expects part of the savings for smart meters to come from small businesses changing their behaviour and signing up to demand response deals. We have concerns that failure to provide a ‘free’ display will act as a barrier to small businesses being able to access these benefits and delivering the cost savings identified in the impact assessment.

Consumer Focus’s information request found that several suppliers do not enable non domestic customers online data access to information from smart metering and where they do frequently charge customers. This cost can be up to 52p a day to access information via an online portal. Thus the consumer has advanced metering installed but is not able to access the information to reduce consumption or costs. Charging small businesses can act as a barrier to engagement.

Carbon Trust research has reportedly found that that smaller non domestic users have a higher propensity to reduce gas consumption by responding to information feedback. Failure to provide a display is arguably a missed opportunity. Information needs to be available at no upfront cost in an easy to use format. Non-domestic users have a higher average consumption per premise than domestic users, increasing the value of any percentage saving derived from the use of smart or advanced metering.

While some businesses may prefer to see their consumption data via websites or mobile phone apps many small businesses (eg rural businesses such as farms, small manufacturing and small scale retail) may not have constant access to the internet. In such cases an IHD would be an essential tool for helping businesses use their consumption data to manage and reduce their usage.

- **Upfront charging** – We believe that micro-business should also be exempt from one-off or upfront charges related to the installation of a smart meter. The Government is expecting that the smart meter rollout will lead to cost and carbon savings in the business sector. Any additional costs associated with the installation of a smart meter, may be a barrier to small businesses taking them up. Therefore we would recommend that micro businesses have the associated costs recovered via their energy bills in the same way as domestic consumers. This would help businesses experiencing cash flow problems as well as ensuring the increased take-up of smart meters particularly among less engaged businesses.

Figures from the Federation of Small Businesses show that many small businesses suffer from cash flow issues, particularly in the current climate. For example 4,000 businesses closed in 2008 due to poor cash flow issues. Therefore some small businesses may find it hard to meet some upfront costs demanded.

During our conversations with small businesses representatives, it is clear that awareness of smart meters is very low in the small businesses community with those businesses aware often sceptical of the benefits associated with smart meters. Charging an upfront cost for the supply of a smart meter during a mandatory roll out may result in resentment amongst small businesses and risk a backlash. Small businesses such as the local church hall, hair dressers and local publicans can be key opinion formers in the local community so the impact of their experience on wider consumer engagement should not be underestimated.



Consumer Focus response on the Smart Metering Implementation Programme: Licence Conditions for a Code of Practice for the installation of smart electricity and gas meters

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