

Citizens Advice Response to Ofgem's Future supply market arrangements call for evidence

December 2017



Introduction

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination. Since 1 April 2014, the Citizens Advice service took on the powers of Consumer Futures to become the statutory representative for energy consumers across Great Britain.

The service aims:

- To provide the advice people need for the problems they face
- To improve the policies and practices that affect people's lives.

The Citizens Advice service is a network of nearly 300 independent advice centres that provide free, impartial advice from more than 2,900 locations in England and Wales, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services both in rural areas and to serve particular dispersed groups. There are 23,000 trained, trusted and knowledgeable volunteers across England and Wales. In 2016/17, Citizens Advice service advised 2.7 million people, with 43 million visits to our website.

Since April 2012 we have also operated the Citizens Advice Consumer Service, formerly run as Consumer Direct by the Office for Fair Trading (OFT). This telephone helpline covers Great Britain and provides free, confidential and impartial advice on all consumer issues.

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Summary

Citizens Advice welcomes Ofgem's call for evidence on the supplier hub arrangements. Our priority is to ensure consumer interests are at the centre of the conversations. Consumer protections must keep pace with an evolving market.

Topic 1 - Guiding criteria to evaluate a successful supply market

- Citizens Advice are broadly supportive of the guiding criteria.

Topic 2 - Barriers to innovation

- Citizens Advice have concerns over consumer protections due to the existing low barriers to entry, and emergence of a tiered market.
- Consumers should be able to choose and control who has access to, and for what purposes they intend to use, their smart meter data.
- The current Industry Codes are designed around the existing supplier hub model. The modification and governance processes are complex and are seated in the current traditional market.

Topic 3 - Alternative default arrangements

- Continued price protection for disengaged consumers is essential.
- The option for opt-out switching needs in depth analysis. Consumers should not be exploited, and any existing non-tariff benefits should be protected.
- There needs to remain some form of basic universal supply obligation.
- Future 'Supplier of Last Resort' processes need to ensure that consumers are not exposed to additional costs, and their data remains protected.

Topic 4 - Consumer protection

- Future supply arrangements must address all the areas where there is significant risk of consumer detriments (safety and security, data protections, billing and debt, advice and redress, customer service, and contracts)
- Consumers should be entitled to the same level of protections no matter what route they take to engage with the market.
- Regulation needs to ensure it is joined up and coherent, as boundaries between markets are blurred.
- Citizens Advice are open minded about what form of regulation is most appropriate but feel that a general authorisation regime, or changing the scope of the current licensing arrangements are the best options.
- Ofgem should take lessons from new models that exist in other markets (for example peer-to-peer platforms), and ensure protections are put in place proactively.

Response

New ways of generating, distributing and using energy are set to bring significant benefits for consumers, energy systems and the environment. Citizens Advice welcomes Ofgem's timely review of current and future supply market arrangements. We want to ensure all domestic and small business consumers can benefit from these developments and that consumer protections are established from the outset. Consumer interests need to be at the centre of this conversation. In our draft work plan for 2018/19 we set out our intention to:¹

- Examine what changes to the supplier hub model will mean for consumers, the different ways consumers might engage with new market actors in the future and how they should be protected
- Examine the early experiences of consumers who have engaged with flexibility products and markets and whether consumer protections and regulation are adequate
- Gather early insights and learnings to understand which new supply models might deliver the best outcomes for consumers

The current supplier hub model is coming under increasing pressure due to the growth of new products and services. We think fundamental change may be needed in order to meet the challenges of a fast changing market environment.

The major advantage of the current supplier hub model is the convenience and simplicity of having a single company providing billing, metering and an interface with the energy system. Any new regulatory framework should allow for new services to emerge and deliver benefits to consumers, while ensuring greater complexity does not lead to disengagement, confusion and gaps in consumer protection.

We agree that a successful market is one where both active and disengaged consumers receive good customer service, capture the benefits from innovation and are protected from risks. Building and retaining consumer trust will be key to this, particularly in relation to increasing digitisation. In our report 'Fairness and Flexibility: making personal data work for everyone', we showed that consumer trust is sorely lacking in the online world. There needs to be a trusted,

¹ Citizens Advice, [Consultation on Citizens Advice consumer work plan 2018/19](#), December 2017

safe and fair environment, flexible enough to address people's worries and respond to their expectations.²

We are already seeing gaps in consumer protection as the regulatory framework struggles to keep up with the pace of change. A lack of regulation in the heat sector, for example, means that consumers living in around 446,000 homes supplied by a heat network have no protection from poor service and no means of redress when things go wrong. We also know that complaints processes aren't keeping up and consumers are not always able to access advice and redress when they need it. As we set out under topic 4 (consumer protections), future supply arrangements must address some key areas where there is a risk of consumer detriment:

- Safety and security
- Data
- Billing and debt
- Advice and redress
- Customer service
- Contracts

Topic 1 - Guiding criteria to evaluate a successful supply market

Q1: What are your views on the proposed guiding criteria? Are there other criteria that should guide our assessment of current and possible future market arrangements?

We welcome Ofgem's intention to clearly set out their guiding criteria for evaluating a successful supply market. These should help ensure any future regulatory arrangements deliver the best outcomes for consumers. We think Ofgem's suggested criteria are broadly the right ones. They align well with our own outcomes framework.³

We agree with the intention of point 2. To refine it further, we suggest it should read "Consumers, including those that do not actively engage in the energy market, receive a good quality of service and pay a reasonable price for their energy." This is consistent with point 3, which correctly stipulates that all consumers need adequate protections, and that special consideration is needed to ensure vulnerable consumers are protected. Likewise, all consumers should receive a good quality of service and pay a reasonable price for their energy, but

² Citizens Advice, [Fairness and Flexibility: making personal data work for everyone](#), July 2016

³ Citizens Advice, [Consultation on Citizens Advice consumer work plan 2018/19](#), December 2017

special consideration is needed to ensure this happens for disengaged consumers.

We agree with the wording of criterion 3. In our response to question 4, we have provided a detailed overview of the key risks Ofgem should bear in mind when designing any new consumer protection framework. This includes the need for consumers to be able to access independent advice when they need it, and redress when things go wrong. This should include the requirement for consumers in vulnerable situations to be able to access specialist case handling support from the Extra Help Unit. We would welcome clarification from Ofgem on whether this requirement is covered by the proposed guiding criteria. If not, Ofgem could perhaps consider a separate criterion.

We support the intention of criterion 4, we would also note that consumer control over their data, particularly in the coming era of smart meters and smart homes, will be crucial to ensure consumers trust new services enough to engage with them. Consumer ownership of their data will also help give consumers some amount of leverage to ensure they see a benefit from sharing their data. Data protection regulations exist to protect consumers and should not be viewed as a barrier but rather a necessary bar to clear for new services.

The fifth criterion would benefit from greater clarity. Is it seeking to allow intermediary firms to compete on an equal footing with each other, or with suppliers? If intermediaries are not licensed, it is not clear how their actions can be regulated by Ofgem or another regulator. The use of “intermediary” may not be the right term, as it may imply that all types of new service providers are go-betweens. In practice, some may be substitutes. For example, it is possible that white goods manufacturers or providers may want to contract directly with end users over the value of the demand response they can provide. In that case, they would be an alternative provider of value to an energy supplier and not simply a link between the consumer and their supplier.

While we agree with the need to recover costs in a manner that is broadly cost reflective, we think that a balance needs to be found between cost reflectivity and simplicity. An increasingly smart system will facilitate greater understanding of the costs to serve individual consumers, which may enable more targeted charging. While in theory this should better reflect the actual cost implications of consumer behaviour, there is a risk that excessively granular or bespoke pricing could increase the complexity of engagement in the market. Past research by Consumer Focus has shown that consumers often do not make effective use of simple time of use tariffs,⁴ and increased complexity could

⁴ Consumer Focus, [From devotees to the disengaged](#), 2012

reduce, rather than increase, the quality of decision making. Citizens Advice is currently re-running this survey to understand how the consumer experience have changed in the past five years. We also know that suppliers can find it hard to predict volatile system charges and may add risk premiums to retail tariffs to reflect this uncertainty. In practice a trade off will need to be made between cost reflectivity, simplicity and stability. We would like to see this better reflected in the sixth criterion.

Topic 2 - Barriers to innovation

Q2: What are the most significant barriers to disruptive new business models operating in the retail market? Please draw a distinction between regulatory barriers and commercial barriers (eg there may not be enough potential consumer demand to justify market entry).

As more non-traditional models enter the market, it is essential that the consumers are put at the heart of any regulatory changes. Any removal or reduction in regulatory barriers must be based on evidence that consumers will benefit from the actions and ensure the distributional impacts are understood to avoid unduly disadvantaging different groups of consumers.

Consumer protection under existing regulations

Citizens Advice already has concerns about the low barriers to entry in the current supply market. Many consumers have experienced significant detriment as a result of switching to or moving into a property supplied by a poorly prepared new entrant, despite these companies being subject to extensive regulatory requirements.

We further note that Ofgem is only able to remove a supply licence from a company in very limited circumstances. This is an area which should be reviewed as part of any reforms to the supplier hub, in order to give the regulator greater flexibility to prevent companies causing consumer harm from taking on more customers or, where appropriate, take them out of the market.

Ofgem must also ensure that it has adequate resources to monitor the performance of new entrants with innovative business models.

We think the current Warm Home Discount (WHD) scheme is one example where regulatory barriers have been reduced to the detriment of vulnerable consumers. There are now around 50 suppliers with less than 250,000 domestic customers, meaning they are below the threshold for taking part in the scheme. Eligible consumers who switch to these smaller suppliers from a larger supplier

lose any entitlement to the £140 rebate, potentially cancelling out any savings from having switched to a cheaper supplier. More broadly, we have found that suppliers who have exceeded the threshold for WHD and ECO obligations have a much better 'toolkit' for serving their vulnerable customers.⁵ When they identify a vulnerable customer, they are able to refer into these schemes in order to alleviate the customer's situation. Smaller suppliers are less able to do so. This creates a double standard for suppliers to meet their supply licence obligations towards vulnerable consumers.

Many of these non obligated suppliers are taking an active decision to remain (or return to) below the 250,000 account threshold to avoid the additional regulatory costs.⁶ These obligation thresholds were not designed to create a tiered market whereby some suppliers remain under the levels to take advantage of the reduced costs. A future regulatory framework should thoroughly consider the impact on consumers of removing or reducing regulatory barriers such as these.

Barriers to intermediaries

A core benefit of intermediaries and a key part of their appeal is reducing the effort consumers need to put into the switching process. Regulation or energy supplier policies that create administrative effort for consumers could act as a barrier to switching managed by an intermediary. Ensuring open access to data from smart meters, without compromising consumers' ownership of their data will be critical to overcoming potential barriers to entry.

Examples of possible barriers include the blocking or slowing of access to key information or data from energy suppliers. Incentives to do so may vary from wishing to steer consumers to their own versions of similar products (and in doing so effectively reducing consumer choice) or a desire to prevent consumers from taking advantage of services which may benefit consumers but are not to the benefit of suppliers.

There may also be prohibitive costs to intermediaries. Smart meter data for example will primarily be available via the DCC, but the costs of becoming a DCC user are significant, especially for newer market entrants.

Policies are already being generated to mitigate these risks. The nature of the DCC should mean that suppliers are not able to become gatekeepers to consumer data, nor should they be able to discover who a consumer has chosen to share their data. The MiData programme also has a part to play in ensuring data portability for consumers. Concerns around prohibitive DCC costs may be

⁵ Citizens Advice, [Good Practice guide](#), December 2017

⁶ For instance, the [Flow Group announcement](#) 30 November 2017

alleviated through the option to acquire data via the Home Area Network (HAN), though in the absence of local Consumer Access Device (CAD) pairing the DCC will still play a role in allowing intermediaries access to these data flows.

The ultimate goal should be to ensure that consumers are able to choose and control who has access to their data and for what purposes. The principle laid out by Dermot Nolan that “Ownership of customer data is key to a more competitive market. Consumers must know - and trust - that they own it, not suppliers” is a good starting point.⁷

Industry Codes

The supplier hub principle is enshrined in supply licences as well as energy Industry Codes. The Codes can be a hurdle, and sometimes a barrier to new entrants and business models, especially in the electricity sector. Ofgem itself has repeatedly given the example of the Master Registration Agreement for metering services and the Balancing and Settlement Code as standing in the way of new business models such as peer-to-peer energy trading platforms working at scale.

Although the Codes can be changed, the modification processes are complex, time-consuming and resource-intensive. It is ordinarily the case that only signatories (eg those already in the market) can raise modification proposals. The governing panels are intended to be independent but it is overwhelmingly the case that panel members come from traditional market participants. In combination, these issues of complexity, resource intensity, inclusiveness, and the perception (whether real or imagined) of pro-incumbent bias may make it hard for new models to be enabled through existing code governance processes.

In our response⁸ to Ofgem’s consultation on Industry Codes Governance in January 2017, we commented that “the codes governance framework needs fundamental reform if it is to be truly fit for purpose in a more dynamic and decentralised energy market. [...] At present, for the vast majority of proposals, the modification process is industry-led. This reflects the priorities of the relatively limited number of market participants that have sufficient resources to engage with what can be cumbersome, complex and time-consuming arrangements. These modification processes can work well for making incremental improvements to the arrangements in a single code, particularly where these relate to the refinement of existing provisions rather than the

⁷ Ofgem, [Dermot Nolan’s speech to the Energy UK annual conference](#), October 2017

⁸ Citizens Advice, [Response to Ofgem consultation on Industry Codes Governance](#), February 2017

introduction of major new concepts. But they are inflexible in catering for profound, strategic changes in direction.”

It is currently possible for customers to directly contract with an Agent to carry out the role of Data Collector, Data Aggregator, Meter Operator Agent and Meter Administrator, and this is a growing trend in the industrial and commercial sector. For years⁹, suppliers have been alerting Elexon, as the Code Administrator for the Balancing and Settlement Code (BSC), of the difficulties they face when working with Agents chosen by the customer, and who they have no existing relationship or contract. Suppliers have reportedly found it difficult to manage Agent performance and therefore deliver against their obligations under the BSC. Although there has been a debate at the BSC whether this is a commercial or regulatory issue, it is one that could become a barrier for new entrants and business models.

Many future energy visions paint a picture of a consumer who is able to appoint a demand aggregator to sell their flexibility to their DSO, a supplier to manage their appliances to use electricity most effectively in line with their dynamic tariff, and a peer-to-peer platform that sells the excess electricity generated through their solar panels. In order to make this vision a reality, better communication and coordination between multiple Agents, suppliers and the settlement system is essential.

Ofgem’s review of Network charges, through the targeted charging review, is intended to be future proofed by considering the appropriate principles that underpin charging arrangements. However this is being done in the context of the current supply arrangements, and so it will be important to consider how future supply arrangements could change as the review continues.

Topic 3 - Alternative default arrangements

Q3: What other supply market arrangements would provide a better default for disengaged consumers, whereby they are protected adequately and are able to access the benefits of competition?

Protecting disengaged consumers

Citizens Advice is pleased that Ofgem has recognised the need to provide price protection for households in vulnerable situations. The majority of these households are unlikely to be the initial beneficiaries of future innovation if it is primarily reliant, as expected, on purchasing additional products and services.

⁹ In 2013, npower raised [Issue 50](#) “Customer Appointed Agents” and in 2016 SmartestEnergy limited raised [P332](#) “Revisions to the Supplier Hub Principle”

Continued price protection will be essential as reforms to the supplier hub model could further disadvantage these households.

One alternative under consideration by Ofgem is an opt out switching scheme. This could retain market pressures while delivering a more competitive price to disengaged consumers. Based on an agreed methodology, possibly linked to the database remedy from the CMA, groups of consumers would secure an energy supply price set in a reverse auction. However, it is important to note the significant logistical challenges in agreeing and then implementing such a scheme. The size of the segment of consumers who are disengaged is significantly larger than any other collective switching scheme (both opt in or opt out schemes) so there are limited opportunities to share best practice from, for example, US 'municipal aggregation'. A recent assessment of collective switching as a solution to consumer inactivity highlights that no single opt out switching scheme is without challenges.¹⁰ Any exploration of this option would therefore require an inclusive consideration of the risks and benefits.

Furthermore, we note that there are additional risks if Ofgem is unable to easily exclude companies with limited experience or a poor track record in customer service from bidding for these disengaged consumers. Ofgem would also need to consider what protections are needed to ensure that those consumers who are switched under such a scheme are not subsequently exploited because of their 'sticky' nature. It should also consider the compatibility and interactions of such an approach with policy cost exemptions and the availability of non-tariff benefits to consumers (such as whether or not the supplier offers the Warm Home Discount).

Universal Service Obligation

Any shift away from the universal service obligation (USO) must be carefully considered. A company with a USO obligation will face higher operating costs than one without and this would need to be addressed by any future licensing or charging regime. It must not be used as a way to avoid costs associated with providing consumers with appropriate support and assistance if they're in debt, financial difficulty or have some form of vulnerability.

It is Citizens Advice's view that some form of USO would need to remain in place, as domestic consumers must be able to access a supply of electricity as well as gas, for those households connected to the grid.

We note that alternative models exist in other European countries whereby consumers are billed separately for supply and network costs.

¹⁰ Centre for Competition Policy, [Collective Switching and Possible Uses of a Disengaged Consumer Database](#), August 2017.

Non domestic consumers could face additional risks as there is no equivalent duty to supply. Certain types of businesses may find themselves unable to obtain a supply or access additional products and services.

In future it may be necessary to define a basic energy 'package' consisting of a supply and other essential energy products or services. In the case of aggregation services, for example, any default arrangement would need to take into account:

- the particular risks to the consumer of the service ceasing - for example, exposure to high charges
- the requirements on the consumer if the service continues - for example, in terms of access to their data or control over their property

For instance, in cases where a consumer moves into a new premise where the previous occupier hired a demand aggregator to automatically switch appliances on and off, it could be deemed unreasonable to allow the service to continue without first gaining the new consumer's consent. However, if removing the aggregator's actions would expose the consumer to very high charges, then it may be preferable to default to a less "risky" tariff (after informing the consumer) rather than ceasing the service entirely. Similar considerations would apply in cases where a contract with an aggregator comes to an end and the customer does not actively renew it.

Protecting consumers when a supplier exits the market

With the growth of innovative products and services some new business models will fail. Any changes to regulation will need to ensure that consumers are not left without a supply and are able to quickly move to a different provider without facing excessive costs.

In the recent Supplier of Last Resort (SoLR) process Co-operative Energy requested almost £15 million from the Last Resort Supply Payment for costs such as emergency fuel purchasing and IT systems integration.¹¹

Anyone who bids for SoLR customers must be able to handle the influx of customers and obtain the best possible deal for them. Consumers should not be exposed to additional costs due to the SoLR not being active in certain market segments.

In future, any SoLR or equivalent may be required to take on responsibility for other services that are deemed necessary. For example, they may need to

¹¹ Ofgem, [Last Resort Supplier Payment Claim from Co-operative Energy](#), November 2017

provide aggregation services if it becomes necessary for all consumers to respond flexibly to price signals in order to participate in the energy market or avoid very high charges.

Moves toward mandatory half-hourly settlement may bring opportunities to improve the SoLR process and other default arrangements. However, these moves should not place consumer control over their smart meter data, or the commitments made in the smart metering privacy framework, at risk.

Consumers have responded positively to the ability to choose how much of their smart meter data is shared and this control has spurred suppliers and other industry bodies to offer consumers better services in exchange for it. Changing this model unilaterally could significantly undermine consumer faith that they are in control in a world of new data-driven services.

Topic 4 - Consumer protection

As the energy supply market grows more diverse, and increasingly blurs boundaries with other consumer markets, it is essential that strong consumer protections are in place and it is clear which body is responsible for delivering the products and services as well as which regulator is responsible for enforcing any breaches. We will work with Ofgem to ensure the following key risks are addressed.

Safety and Security

Consumers need to be guaranteed a continuity in their supply. When they switch between supplier (or alternative supply model) they should not experience a break in supply. Consumers need protection in place in case of disconnections, it needs to be clear who to contact in case of an emergency, and where the responsibility lies to ensure the consumer is reconnected.

Consumers need to trust that the electricity network is reliable. At the heart of reliability is the constant balancing of demand and supply. It is essential for the balancing process that National Grid System Operator (SO) or future Distribution System Operators (DSOs) receive robust forecasts for how much electricity will be consumed and generated in every half-hour. With a greater diversity of market players, balancing potentially gets more difficult. For example, depending on how peer-to-peer energy trading platforms are designed, it should be assessed whether and how they will affect the balancing process. It is important for consumers to be able to trust in the reliability of the network and that balancing costs are as low as possible.

Data

Smart meters will play a key role in the step-change in the availability of consumer data, which will catalyse new services. We are supportive of new services emerging that can empower consumers to better navigate the energy market or simply make their lives more convenient. However, consumers should always retain control over their data and be able to choose who has access to it and for what ends. This will not only increase consumer trust but also incentivise market participants to offer compelling offers in exchange for receiving consumer data.

In an interconnected and ever more online world, consumer protections need to extend beyond a consumer's personal safety and the physical services they receive to include less tangible assets like how their data is stored and used. This will create significant challenges for regulators as traditional responsibilities are blurred.

Security must be taken seriously and built in from the outset for new data-derived services. While some new entrants may have digital backgrounds and be accustomed to these issues, Citizens Advice also expects legacy energy and control companies to enter the market. All players must be able to ensure products and services have robust security. Consumer trust will likely hinge on security and early breaches could significantly harm take-up by consumers. Companies should also commit to a presumption of how services will work rather than delivering products "as is" and seeking to limit their liability.

Smart meters will enable new products and services to interact with the data flows they generate. While key consumer protections and principles are enshrined in smart meter regulations, consumers are left with only the provisions of the Data Protection Act and soon the General Data Protection Regulation (GDPR) for other key provisions. For instance, gaps may emerge around the interoperability and interchangeability of equipment as well as consumer choice as to who can access their data and for what purposes once data is shared more widely (for example by using a CAD). The provisions of the GDPR around data portability may help with some interoperability issues, but work is likely to be needed to ensure these markets are consistent. Consumers are unlikely to appreciate the nuance of where issues would fall within the regulatory remit of Ofgem versus the Information Commissioner's Office.

As energy flows and data flows combine, Ofgem is increasingly being called upon to provide data as well as energy related expertise. A recent example is Ofgem's evaluation of privacy impact assessments. As the barriers between

markets continue to blur for consumers, regulation will have to keep pace and be considerably more joined-up in future.

Advice and redress

Consumers may need advice to help them navigate the market and understand their options. If things go wrong, they need to know their rights and be able to access redress. Traditionally, suppliers and network companies have been the main route for direct complaints, with a range of other organisations delivering energy advice and redress. With non-traditional supply models and more diverse products and services entering the energy market, the market will become more complex. As a result energy consumers may find it more difficult to know how to make a complaint or to who or how to access advice and redress when they need it.

There are already gaps within the existing arrangements for advice and redress within traditional and new energy markets, which we explored in our 2015 report 'Strengthening and streamlining energy advice and redress'.¹² These gaps are likely to increase with the growth of new products and services and BEIS will need to consider what the future customer journey should look like.

Customer service

Ofgem rightly acknowledges that consumers may experience harm from intermediaries entering the market and not providing appropriate levels of service or care. Consumers should be guaranteed a good quality customer service, even if this is provided differently in the future. The challenge will be to define what this looks like as new models emerge and the traditional relationship between supplier and customer changes. For example, consumers might reasonably expect to be able to contact their service provider easily, whatever form this takes.

A lot of progress has been made in the domestic market in ensuring suppliers are better at identifying vulnerable consumers and adapting services to meet their needs. Ofgem should ensure this progress is not lost as the supplier model evolves.

Contract issues

Under the traditional supplier hub model, consumers hold a single contract with their supplier. Under emerging models, consumers may contract with a third party or hold multiple contracts with different service providers. We already see many contract issues with brokers in the non-domestic market (see our response to Q4). Consumer protections will need to keep pace with any issues

¹² Citizens Advice, [Strengthening and streamlining energy advice and redress](#), October 2015

arising from these new contractual arrangements. It is essential that consumers understand what they are signing up to and are able to access support and advice if they need it. Key issues are likely to include:

- agreeing a contract
- exit conditions
- complexity

For example, higher levels of bundling may increase consumer convenience, but risk contract tie-ins. A consumer with renewable generation who has been selling through a peer-to-peer platform may decide to move house and the new occupier may not wish to use the platform. Contracts should not lock the generation unit into a long-term obligation to sell against the will of new owners.

As smart home technology and data-based services become more prevalent we are increasingly concerned about the potential for consumers to find themselves 'locked in' to particular services. While some service providers, particularly new entrants, value interoperability, others base their business models on keeping consumers in their own - often proprietary - 'walled garden' of services. This allows them to exert control over what services a consumer can access by restricting access to their own products or by charging fees to any other parties who may wish to connect.

Ofgem and other regulators should work to avoid scenarios in which consumers feel unable to switch or move services because of concerns about interoperability or data portability. This will become especially important where service providers have been able to build up years of profile data on which their service offering is based. Consumers should be able to move their raw data to other providers who can then offer a tailored service rather than forcing the consumer to start from scratch. While a company will own and sell products based on the efficacy of any analytical tools they use to provide tailored feedback, raw data should remain the property of the consumer.

Billing and debt

We anticipate that issues around accurate billing and debt collection will continue to be key in any future market arrangements. Consumers need to be able to tell whether they are being charged correctly and whether they are getting a good deal. Where a consumer has multiple service providers, this will become increasingly complex. It is also vital that consumers are protected from poor debt collection practices and that new market players learn from existing good practice. There may be important learnings from other sectors, such as financial services, around how best to regulate this aspect of the market.

In peer-to-peer models, the issues are likely to differ slightly. For example, consumers may want to set a limit of how much they are prepared to pay to purchase electricity through the peer-to-peer platform and when they may want to fall back on the wholesale market.

Q4: How big an issue is it that we do not currently regulate intermediaries in the energy market? Is there a case for doing so? If so, how would we best do it? We are especially interested in frameworks that enable a wider variety and increased number of market participants to provide supply.

Citizens Advice has been concerned for some time about the lack of protections for energy consumers who engage with third party intermediaries (TPIs). Until now, the majority of problems have related to brokers in the non-domestic market. As we start to see other types of TPI enter the market, and more domestic consumers engaging with their services, there is an ever more pressing need for regulation.

Existing market issues

In the 12 months between November 2016 and October 2017, the Citizens Advice Consumer Service energy helpline received 249 contacts relating to third party intermediaries or broker complaints. The majority (69%) were from non-domestic consumers. We identified eight areas of consumer detriment:¹³

Behaviour	Examples leading to detriment
Aggressive sales	Repeated cold calling and bullying
Lack of transparency	Not clearly presenting fees/charges or specifying how much of the market searched to find price; consumers not being offered the best deal
Misrepresentation	Failing to identify themselves as an intermediary, e.g. "I'm calling from Meter Registrations", "I'm calling from your supplier" and unfair contracts
Mis-selling	Selling consumers unsuitable contracts, presenting something as best deal based on their commissioning and consumers with contracts that do not meet their needs

¹³ [Citizens Advice policy on non-domestic Third Party Intermediaries](#), July 2017

No clarity on licensee	Bill aggregators act in a supply-like capacity and consumers may not receive information; harder to switch/complain
Failure to deal with complaints	Complaints left for suppliers to deal with; disengagement and lack of trust
Fraud	Faking phone recordings/contracts and erroneous transfers
Misusing industry systems	Using ECOES data for marketing purposes and consumers receiving unwanted contact

In many cases:

- The TPI claims to be from government/other official body/current supplier when they make unsolicited contact. Calls are often very frequent - many consumers report being called multiple times in the same day.
- The TPI may claim the switch is technical/necessary or that the consumer is not initiating a switch but just agreeing to receive more information.
- The TPI is not clear about their relationship with the supplier they recommend or how much of the market they have looked through.
- When the consumer does see what they have agreed to, the contract details are not same as described, either in price and/or duration.
- The call was not recorded which means the alleged mis-selling is extremely hard to prove. Consumers are reliant on supplier goodwill to leave the contract.

Case study

The consumer had just taken up a new tenancy and felt bombarded with energy brokers trying to set up an account with them. The consumer finally agreed to a contract due to the pressure. The broker said he was from the consumer's previous supplier but this was not the case. The consumer is now in a four year contract and the supplier refuses to cancel it.

Switching and billing intermediaries

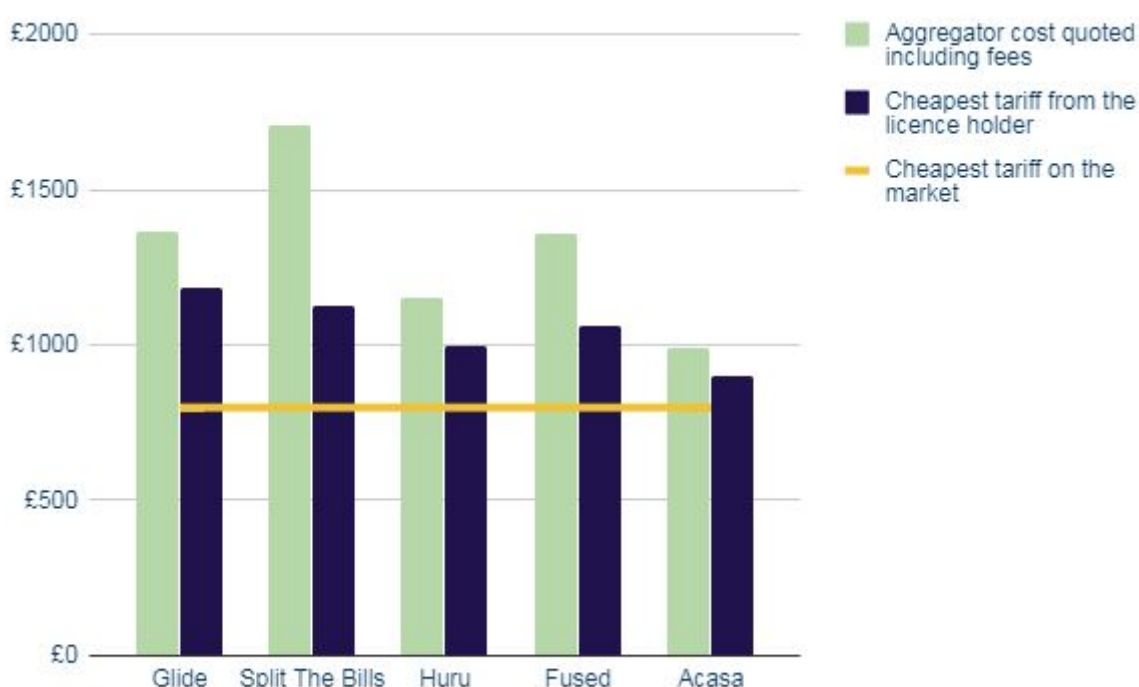
New types of intermediary have the potential to bring many benefits to domestic and non-domestic energy consumers. Switching intermediaries, for example, can help consumers switch to cheaper tariffs and reduce (or shift) their energy

consumption. However, we are concerned that consumers are not adequately protected from the current and potential risks these new business models pose.

For example, aggregated billing services are appearing in the market. There are a number of bill-splitting companies targeting student households and the private rented sector. These service can be beneficial in helping consumers budget, by allowing tenants to pay for multiple services via a weekly or monthly payment. However, Citizens Advice is concerned that consumers may be unintentionally making large trade offs between convenience and value.

Some of these bill-splitting companies have opaque pricing and marketing practices. These can disguise significant price mark-ups and leave consumers with the impression that members of the household are not jointly liable for their electricity and gas bills. Given these companies target consumer segments who may be less experienced or who have not been responsible for bills before, these consumers will face significant issues if the bill aggregator fails or they find themselves having to pay for the whole household.

Estimated annual energy tariff costs for 3 tenants through billing aggregators and suppliers¹⁴



¹⁴ Prices taken 16th November 2017, based on 3 tenants sharing in London with Ofgem medium TDCV's for dual fuel. Aggregator costs obtained via the quote function on their respective websites. Licence holder tariffs obtained via Energylinx.

Another recent development has been the growth in intermediaries that offer automatic switching services. These services could switch consumers to sub-optimal tariffs, which could be due to faulty software or programming, or because consumers have changed their pattern of usage. Ofgem should consider what protection is necessary to avoid and compensate for erroneous switches.

Enabling easy switching through one portal also opens up the possibility of controlling multiple households at once. This may be of interest for landlords with multiple homes but could also allow households to manage energy of behalf of others. Protections will need to keep pace with the technical possibilities, to prevent this becoming an area of harm for the tenants or relatives who have relinquished control to another person or organisation.¹⁵

As new intermediaries make switching easier and if switching levels significantly increase, it is likely that the differential between the cheapest tariffs and standard tariffs would narrow. How these savings are presented to consumers will be crucial.

Demand aggregators

Independent or third party demand aggregators have become intermediaries between large non-domestic consumers and National Grid's Balancing Service and the Capacity Market, allowing consumers to earn money for being "flexible". In terms of consumer protections, customers of demand aggregators are covered by the economy-wide provisions on data protection and contract law, and consumer protection regulations (including Consumer Protection from Unfair Trading Regulations).

Another possible element for non-domestic consumers specifically are the Business Protection from Misleading Marketing Regulations (BPMMRs), which, among several bodies, Ofgem has the ability to employ. We would argue that aggregators are an advanced form of the Third Party Intermediaries (TPIs) covered by these regulations. However, Ofgem itself currently has limited tools to protect consumers who contract with independent demand aggregators. Consumers are therefore at risk from behaviours or offers that are unfair, misleading or unclear. Given demand aggregators have a large amount of information as well as possible control over consumers' energy usage and appliances, the potential for detriment is significant. A first step in the right direction is the voluntary Code of Conduct currently being drafted by the

¹⁵ Citizens Advice, [Disrupted Decade](#), November 2016

Association for Decentralised Energy¹⁶ which will cover demand aggregators operating in the non-domestic space.

Peer-to-peer trading

Another new type of intermediary are peer-to-peer (P2P) energy trading platforms. The first business models and trials have sprung up in GB in recent years, including the platform Piclo run by Open Utility together with the supplier Good Energy¹⁷, and Verv 2.0 run by Green Running¹⁸. Such platforms enable individuals and businesses to buy and sell electricity, rather than going through the wholesale market and a supplier. Benefits of P2P trading include giving consumers a greater degree of choice over where their energy comes from and the ability to earn money for excess electricity generated by their homes and businesses.

We have not yet received any reports of consumer detriment related to P2P energy trading platforms. The future popularity of P2P isn't predictable and Ofgem should be proactive in anticipating and monitoring potential issues in order to put the necessary protections in place.

Lessons can be learned from online marketplaces such as eBay, Amazon Marketplace or Gumtree that act as an intermediary, allowing people to trade with each other. Innovators in the energy space are envisaging a similar marketplace for electricity whereby consumers can directly trade electricity facilitated by Blockchain technology, cutting out middlemen such as suppliers. Most consumer rights do not apply when individuals buy from other private individuals.

Citizens Advice estimate around 10.7 million people a year encounter problems when buying goods through an online marketplace. This includes faulty and misdescribed goods as well as scams and fraud. In addition, a sizeable minority (14%) of these consumers are unable to resolve these problems. As well as a lack of consumer protections, awareness rights which do apply is low - less than half of people know that they have fewer rights when buying from an individual than from a business.¹⁹

In addition, by cutting out suppliers, or replacing them with unregulated P2P trading platforms, consumers are also losing the rules and processes that govern supplier activities to the benefit of consumers. For example, over the years, suppliers have taken on an increasing amount of obligations including

¹⁶ The Association for Decentralised Energy, [Demand Side Response Code of Conduct Consultation](#), July 2017

¹⁷ [Piclo](#), Open Utility

¹⁸ [Verv](#), Green Running

¹⁹ Citizens Advice, [Peer problems](#), 2015

accurate billing, data protection, paying out Warm Home Discount, having a Priority Services Register, or facilitating Government programmes such as ECO and FiT. Similar obligations would not exist for unregulated trading platforms.

Options for regulating intermediaries/other models

As the lines between markets are becoming increasingly blurred, with new models being data or communication driven and bundled products on offer, it is essential for joined up and coherent regulation across markets. Citizens Advice believes there are current gaps in protection for consumers who use TPIs. This gap is likely to increase as new business models are launched.

We are open minded about what form of regulation is most appropriate but feel that a general authorisation regime, as exists in the communications and financial services sector, or changing the scope of the current licensing arrangements are the most appropriate options. It is our view that simply relying on wider consumer protection powers may prevent Ofgem from being able to take timely and effective action, or dictate the appropriate form of redress for consumers, in certain circumstances.

The Financial Conduct Authority (FCA) operate a high level principles approach. A model similar to this could be considered as an option. The FCA authorise firms and individuals, acting as the gateway for those who want to operate in the financial market. The FCA states that it is vital that firms and individuals offering financial services run their businesses in the best interests of consumers and uphold the integrity of the financial services industry. They are responsible for authorising, supervising and taking action where needed against firms and individuals who undertake financial services activities.

Options for regulating demand aggregators

We would be in favour of introducing a general authorisation regime with a code of practice to regulate demand aggregators. Relying on voluntary codes of practice may give too little ability to intervene on behalf of the consumer (for instance, as recently seen with the back billing principle).

In our response to the smart and flexible call for evidence²⁰ we mention that licensing currently appears disproportionate to the size of the aggregator market and the types of customers that use them. We currently lack evidence on the performance (good or poor) by demand aggregators to justify this level of regulation.

²⁰ Citizens Advice, [Response to Ofgem/BEIS call for evidence on a smart, flexible energy system](#), January 2017

A code of practice or general conditions for demand aggregators should cover the following issues:

- Transparency: consumers will need to understand how DSR works, and their obligations and rights in the process. Costs and implication of future costs if settings are changed should be made clear to consumers.
- Data protection: code(s) could build on BEIS' smart metering data access and privacy framework which ensures that consumers must opt-in for the most detailed collection of their data and that they are well-informed about who accesses their data for what purpose. Equally, aggregators will need to be able to demonstrate how they ensure to securely transmit and store consumers' energy usage data.
- Vulnerability: DSR may not be appropriate for all consumers especially those with health concerns. Aggregators will need to adequately assess the appropriateness of an offering to consumers and also how they will deal with any changes to a consumer's circumstances (given vulnerability levels do change).
- Charging: there is a case for guidelines being set out for how consumers are charged generally and how to factor in potential impacts of network movements that could incur costs to all consumers.
- Standards: as per the recent Bonfield Review²¹, if an aggregator installs equipment or energy saving measures as part of their delivery to a provider of reduced demand then this must meet minimum standards and provide consumers with access to redress should things go wrong.

Options for consumer protections in peer-to-peer models

The regulatory approach to P2P energy trading platforms will need to be mindful of the different business models these platforms may adopt. More consumer protections are in place where platforms operate through a supplier, whereas a trading platform where consumers directly buy and sell energy with each other will expose consumers to greater risks and may necessitate a tougher regulatory regime.

Our 2015 report on P2P online marketplaces²² recommended ensuring there are appropriate feedback systems, monitoring and verification processes, and access to Alternative Dispute Resolution services. We also found there should be greater access and signposting to statutory rights for consumer to consumer rights.

²¹ Dr Peter Bonfield, [An Independent Review of Consumer Advice, Protection, Standards and Enforcement for Energy Efficiency and Renewable Energy](#), 2016

²² Citizens Advice, [Peer problems](#), 2015