

The Citizens Advice Service - Response to CMA's provisional decision on remedies



1. Purpose of paper

Citizens Advice and Citizens Advice Scotland (Citizens Advice Service) have statutory responsibilities to represent energy consumers in Great Britain in accordance with the 2007 Consumers, Estate Agents and Redress Act.

This paper is their joint response to the provisional decision on remedies in the Competition and Market Authority (CMA)'s energy market investigation.

2. Executive summary

The backdrop to the investigation

The public has lost confidence in the energy market.¹ Polling suggests consumer trust in the UK energy sector is lower than in most other UK sectors, and in the same sector overseas.² Consumers overwhelmingly distrust energy suppliers to tell them the truth³ and don't understand what goes in their bills.⁴ Too often basic customer service processes go wrong⁵ and, while complaint levels are starting to drop from their peak, they remain at unacceptable levels. Consumers in distress contact our local network in ever greater numbers.⁶

Energy bills have risen much faster than inflation⁷ and are the number one spending concern of consumers.⁸ But despite there never being a greater need for engagement, over half of consumers have never switched and more than two-thirds are on the expensive standard variable tariffs.⁹ The loss in competitive pressure is resulting in steadily expanding margins¹⁰, steadily decreasing efficiency,¹¹ and the ability for suppliers to pass through increases in costs more readily than they pass through decreases in costs.¹²

¹ YouGov polling in September 2013 found that 56% of people agreed that "energy companies treat people with contempt" while only 7% disagreed. 83% felt energy suppliers maximise profits at the expense of customers <http://tinyurl.com/qbjq3jg>. Subsequent YouGov polling published in April 2014 suggested only 7% of consumers trust the utilities industry to focus on the best interests of its customers and wider society <http://tinyurl.com/ol9amsg>. In November 2013 the Which? Consumer Insight Tracker suggested that only one-in-seven consumers' trust energy companies to act in their best interests. <http://tinyurl.com/nkh7dww>. In a February 2013 uswitch poll, 45% suggested their levels of trust in energy suppliers had decreased in the preceding two years, while just 10% suggested it had improved. <http://tinyurl.com/op59g23>. The 2016 Edelman Trust Barometer found that only 36% of the UK public trusted energy CEOs to do the right thing (vs a global average of 46%). <http://tinyurl.com/zwsb8gc>.

² The 2016 Edelman Trust Barometer, conducted in 28 countries, suggested that the UK came fourth bottom in trust in the energy sector among the general population. The proportion trusting the sector lagged the global average by 14 percentage points (43% vs 57%). Slide 26, <http://tinyurl.com/zwsb8gc>. Within the UK, energy was the second least trusted sector after financial services. Slide 23, <http://tinyurl.com/htpvkcn>

³ In December 2013 YouGov reported that only 3% of the public fully believed suppliers' explanation for price rises, while 30% only partially believed it, and 57% did not believe their justification. <http://tinyurl.com/nucmfom>

⁴ Polling conducted by MVA for Consumer Focus in 2012 suggested that 67% of the public were unaware that social and environmental obligations were paid for through their energy bills (sample size: 798). In separate deliberative workshops conducted as part of the same project, we found consumers had little awareness of the proportion of bills that was attributable to social and environmental policies. "Who Pays?", Consumer Focus 2012. <http://tinyurl.com/hwjue58>

⁵ The Citizens Advice Service monitors and publishes complaint handling statistics for the 19 largest energy suppliers. The most recent league tables can be found on our website, here. <http://tinyurl.com/gvc48mw>

⁶ In 2015 England & Wales Citizens Advice Bureaux advised clients on 69,678 issues in relation to fuel – a 27% increase on the preceding year (54,743). There were increases in price and tariff issues (+19%), switching supplier and selling methods (+211%) and billing/meter issues (+2%). Citizens Advice Scotland has seen demand for energy advice provision grow by 130% since 2011, growing by roughly a third per year and totalling 21,793 issues in 2014/15.

⁷ According to DECC statistics (<http://tinyurl.com/o8zybas>), the average household electricity and gas bills in 2005 were £365 and £317 respectively. By 2015 these had increased to £540 (up 48%) and £714 (up 125%). If these bills had simply tracked CPI inflation they would have been £491 and £427 in 2015.

⁸ See, for example, YouGov January 2015 <http://tinyurl.com/gv5vadj>. Energy prices consistently poll as either households first or second biggest worry in Which? Consumer Insights Tracker. <http://tinyurl.com/jxakq4e>

⁹ The CMA's customer survey found that 56% of consumers had never switched supplier, did not know if it was possible or did not know if they had done so. It is commonly agreed that around 70% of households are on standard variable tariffs.

¹⁰ The Consolidated Segmental Statements show domestic supply margins increasing from 0.9% in 2009 to 4.5% in 2014. <http://tinyurl.com/zncrtzu>

¹¹ Your analysis (table 3.10) suggests a rapid escalation in the degree to which the Big 6 are pricing above an efficient level from 2012 to 2015 (2012: £544m, 2013: £1,683m, 2014: £2,184m, 2015: £2,452m).

¹² In their tripartite March 2014, State of the Market Assessment, the OFT, Ofgem and CMA jointly found that 'large suppliers appear to raise prices more quickly and fully when costs increase than they reduce them when costs fall.' <http://tinyurl.com/gqld3b3>

What would a successful investigation deliver?

In calling for a market investigation referral, we set out four key issues that the inquiry would need to tackle in order to stand a chance of being successful.¹³

First, **ensuring the market works for all consumers, both domestic and non domestic**. The CMA needed to drill down beyond the notional average consumer to look at the circumstances affecting different types of consumer. This needed to include those who differ from the norm for reasons of payment method (such as prepayment meter users), type of metering, type of tenancy, and main fuel source for heating, as well as protected characteristics, vulnerability, region, and consumers in the devolved nations affected by devolved policy.

Energy is an essential service, and the CMA needs to be confident that the market works for all consumers, not simply those in favoured segments. If some vulnerable groups are so disengaged that no competitive remedy is likely to ever reach them, we challenged the CMA to give consideration to whether 'backstop tariffs' or other mechanisms are needed for their protection.

Second, providing assurance on the **delivery of social and environmental programmes**. These account for an increasing fraction of consumer bills. The costs of delivering these schemes have become a disputed matter, particularly around price rise announcements, where they are increasingly blamed by suppliers for price inflation. We were looking to the CMA to see if these schemes were delivered efficiently and bring transparency to their true costs.

Thirdly, **competitive intensity**. Ofgem had identified evidence of asymmetric pass-through of changes to supplier costs – with hikes passed on more readily than drops. Its supply market indicators were suggesting a sustained medium term increase in the profitability of supply activities. Such evidence implied a market characterised by soft competition, with insufficient pressure on suppliers to compete margins away. The CMA needed to identify and tackle the causes of this.

Finally, the CMA needed to improve **trust and transparency** in the sector. The public lacks confidence that the prices they pay are fair. A major contributory factor is the lack of transparency on the underlying cost drivers that move retail prices, which has resulted in frequent public disputes between industry, regulator and government. The inquiry needs to equip the public with the tools to break this cycle. The current lack of trust in the sector means fewer consumers willing to engage in the market, consumers accepting poor or inadequate service as standard and low satisfaction levels, all of which ultimately reduces the competitive intensity of the market.

¹³ They are presented in truncated fashion here for brevity, please see 'A market investigation into the energy market,' Citizens Advice, 23 May 2014 for more details. <http://tinyurl.com/h2jm76k>

Do the provisional recommendations provide solutions to those problem areas?

We broadly recognise the CMA's diagnosis of problems in the market and can provide either qualified or unqualified support for the majority of the remedies it proposes - though we have concerns that a minority of proposals may require significant further work, or could have unintended consequences.

Ensuring the market works for all consumers, both domestic and non domestic

The CMA has effectively articulated many of the problems facing prepayment meter ('PPM') consumers and demonstrated the failure of competition to serve them. We welcome your willingness to consider introducing a backstop tariff as we had asked, and support your proposal to introduce a time-limited regulated safeguard tariff to reduce the detriment PPM customers experience. You estimate that this proposal could reduce the cost burden on PPM consumers by around £300m/year, felt through lower bills. This could make a material difference to the lives of many of the most vulnerable households.

While the CMA's proposals represent a substantial and meaningful improvement on existing arrangements, we think the benefit of the safeguard tariff could be enhanced still further if it were to be targeted at an overlapping, but different, group. The CMA has identified particular structural barriers which mean that there is both less competition and more difficulty associated with PPM consumers switching as opposed to their credit counterparts. But it has also identified certain demographic groups who are materially more disengaged with the market than the average. These include those on low incomes, those living in rented social housing, people with no qualifications, pensioners, the disabled, and on those on the Priority Service Register. These groups are more likely to be on PPMs than the average - but there will be many consumers with those characteristics who are not on PPMs. As a consequence, PPMs are a crude proxy, rather than an exact proxy, for disengagement.

We think that refocusing the safeguard tariff on households that struggle with affordability but are also disengaged from the market would allow the CMA to make significant inroads into tackling fuel poverty while - crucially - better matching the characteristics of consumers you have identified as disengaged. So we suggest that the Cold Weather Payment eligibility group could provide a better basis for targeting the safeguard tariff than simply applying it to PPMs.

We also welcome your proposals in relation to domestic customers on restricted meters, and small business customers.

While the number of consumers on restricted meters is small, the constraints on their engagement in the market are large - and the impacts of these constraints is

particularly acute as they are more likely to be in vulnerable situations than the typical customer. Allowing these customers to access single rate tariffs should open up opportunities for them to save money and discourage suppliers from taking advantage of their historical 'stickiness'. Our analysis has shown that the benefits for these households would increase significantly if they were also allowed the option of switching to Economy 7 tariffs and we urge the CMA to widen this remedy. The Citizens Advice Service would welcome the opportunity to provide these households with tailored advice about their options.

Your proposals to improve competition and transparency in the small business market are necessary and well considered. You identify and propose a range of measures that should reduce both informational and contractual barriers to switching that should open up this market to more vigorous competition.

While we recognise, and applaud, that you have responded to stakeholder concerns regarding restrictive rental contracts and landlord behaviour providing a potential deterrent to switching by conducting some focused research in this area, we would have liked to see a recommendation following on from that analysis. While that analysis highlights that most tenants are aware of their rights and are not discouraged from switching, this picture is not universal. As guardian of the public guidance to landlords on unfair contract provisions, we think there is more you could do to discourage ambiguous or unfair contract terms. Similarly, we would have liked to see a recommendation to suppliers that they waive termination fees when consumers need to prematurely end a fixed term contract due to a home move. This could help encourage tenants, particularly those in the private rented sector, to consider switching to cheaper fixed term tariffs.

The delivery of social and environmental programmes

We warmly welcome the CMA's proposals to improve both the transparency and robustness of the processes by which DECC procures new local carbon generation. The CMA identifies significant potential cost savings that could result from a greater emphasis on competitive procurement processes, and a need for more transparency and robustness in both the allocation of funding for auctioned capacity, and in conducting impact assessments before entering into deals outside the auction framework. We agree with all of your recommendations to improve Contract for Difference ('CfD') allocation processes.

While the CMA has made practical recommendations to improve the efficiency of upstream generation policy spend, it has made little comment in relation to the delivery of downstream policies such as energy efficiency. We recognise that, given we are now at a very late stage in the inquiry, it is unlikely that the CMA would wish to put forward its own proposals in this area, but we believe there remains a genuine question mark over whether suppliers are best placed to cost effectively deliver social policy.

We consider that the recommendations the CMA has made in relation to improved public reporting on social and environmental policy costs are largely positive; we comment on these below.

Competitive intensity

As previously highlighted, we are very supportive of your proposals to improve competition in the small business market, to help consumers on restricted meters to access more deals, and to improve competition in CfD procurement. These should all significantly improve competition in some areas of the market.

However, in other areas there are some risks of failure or unintended consequences that mean we think the CMA's proposals perform less well against this test than against the first two tests.

The CMA's proposals heavily rely on informational remedies to improve engagement, though past experience from both Ofgem's 2009 Probe and its 2013 Retail Market Review ('RMR') has suggested that informational remedies have failed to materially improve levels of engagement. Your proposals to make greater use of randomised control trialling to understand what works and what does not may give an approach based on nudges a greater chance of success this time around - but then again, it may not; it is a big unknown. Your analysis suggests that ~70 per cent of consumers are disengaged from the market and suffering detriment as a result. The retail energy market has been open for 15 years now, so it is likely that consumer behaviour is highly ingrained. So it would be useful if you could set out clearer criteria on what you consider success would look like here - what would be the characteristics of a market with effective consumer engagement? The safeguard tariff should not be removed until those criteria are met.

Proposals to remove existing consumer choices about how much energy usage data they share are also problematic. Not only will this undermine a protection regime that has given consumers and stakeholders more confidence in the rollout of smart meters, it will also eliminate all consumer leverage with the energy industry to ensure that they receive benefits in exchange for sharing more detailed energy usage data. This in turn risks undermining the competitive incentives to generate new services founded upon this data.

The proposal to remove obligations on PCWs to provide a Whole of the Market view to their users could have negative unintended consequences that outweigh its benefits. While we recognise that it could encourage innovation and competition in PCW provision, we think it would do so at the price of increasing the hassle factor in switching. It may also reduce consumer trust in PCWs to act as an honest broker. The Citizens Advice Service will continue to display all tariffs on our non transactional (information only) price comparison tool but we do not intend to compete with, nor would we be able to compete with the advertising spend of the

commercial PCWs. Given the risks associated with this proposal, it will require ongoing monitoring to understand the impact on consumers.

The proposal to share information on disengaged consumers with all other suppliers through a common database on an opt-out basis is a potentially innovative but also highly controversial way of reaching disengaged consumers. Consumer trust in the sector is low, and facilitating bulk unsolicited marketing carries real risks. We have proposed some additional safeguards that will help address some of our concerns.

Trust and transparency

As outlined above, we have concerns that the wider impact of your proposals in relation to removing the requirement for PCWs to provide a Whole of the Market view and in facilitating unsolicited marketing are uncertain and both remedies could have negative effects on consumer trust and engagement that outweigh their benefits. Clear success criteria for these two remedies should be developed and they should be kept under close review by Ofgem in order to monitor the ongoing impact on consumers.

Elsewhere, we are more supportive of your remedies on trust and transparency. The proposals to improve the impact assessment of allocation processes both for auctioned and bilaterally struck deals for low carbon generation should improve public understanding and trust that these deals offer good value for money. We support the establishment of a Strategic Direction for the industry codes, and the introduction of processes to allow for joint work planning of cross-cutting issues by DECC and Ofgem.

We also think that the introduction of a requirement on Ofgem to produce an annual State of the Market Report is an excellent idea. We think that the benefits of this step could be maximised if it provided a vehicle to independently audit the cost and effectiveness of policies and not simply to collate them. That kind of systemised, independent audit is currently missing from the market and its introduction could help to build trust and transparency in what are currently often disputed costs. We look forward to working with Ofgem to ensure these reports provide clear answers to the questions consumers have on the factors that are driving their bills.

While the CMA makes comments on how Ofgem's Supply Market Indicators ('SMI') could be improved *if* they were to be re-introduced, it stops short of making a recommendation on *whether* they should be re-introduced. We think this is an opportunity missed and encourage the CMA to go further and recommend the re-introduction of the SMI. That would fill a transparency gap that will otherwise exist concerning the contemporaneous trend of energy bills and costs.

A more detailed view, and the road to implementation

In the remainder of this submission we make more detailed comments in relation to each of the Adverse Effects on Competition ('AECs') that the CMA has found.

In many cases, while the broad outline of the remedy is known its exact specifications are yet to be finalised. In the majority of cases, the CMA is recommending that Ofgem develops the detailed delivery proposals rather than prescribing them itself in the time remaining to it. We would be happy to discuss any of the issues raised in our submission with either party in more depth, and look forward to working with both as the design details are finalised.

3. The CfDs AEC

11.3 The remedies package proposed to address the CfDs AEC and/or associated detriment is as follows:

(a) A recommendation to DECC to undertake and consult on a clear and thorough impact assessment before awarding any CfD outside the CfD auction mechanism.

(b) A recommendation to DECC to undertake and consult on a clear and thorough assessment of the appropriate allocation of technologies and CfD budgets between pots.

We are very strongly supportive of both of your proposed remedies on CfDs. They are consistent with the core recommendations in our recent Generating Value report¹⁴, and we are pleased to see that you were able to make use of the analysis we commissioned from NERA Economic Consulting¹⁵ ('the NERA modelling') to draw out the cost consequences of differential CfD auction design.

The transition to a lower carbon energy system is an entirely necessary one if we are to mitigate the significant impact of the sector on climate change. But the costs associated with this transition will be very significant. As the CMA itself highlights, on the basis of currently announced energy policies, consumers will see a 37% rise in the retail price of energy by 2020.¹⁶ Funding available through the Levy Control Framework will nearly triple to £8.7bn (in 2011/12 prices) during the course of this Parliament.¹⁷ The LCF does not even cover the full range of policy costs, as some major policies like the Energy Company Obligation and the Capacity Mechanism fall outside its scope - schemes that are also paid for through bills rather than taxation. The scale of the investment challenge facing the energy sector is gigantic: more

¹⁴ 'Generating Value: a consumer friendly generation policy,' Citizens Advice, November 2015. <http://tinyurl.com/ho2vj8o>

¹⁵ 'Modelling the GB Renewable Electricity CfD Auctions - the cost of excluding onshore wind and maintaining separate pots: A project for Citizens Advice - Final Report,' NERA Economic Consulting, October 2015. <http://tinyurl.com/zwr4o5n>

¹⁶ Paragraph 172.

¹⁷ Office for Budget Responsibility, 16 March 2016. <http://tinyurl.com/gwd7ad2>

than half of the UK's National Infrastructure Pipeline relates to energy projects, with over £20 billion of investment per year needed in the remainder of this Parliament.

¹⁸ The potential detriment from this spend is aggravated by more than 95% of it being bill based¹⁹, which will mean a higher proportion of the spend will be paid by the lowest income deciles than would be the case if it was tax based.

In combination, this scale of spend, and the regressive way in which it will be recouped, will present major affordability challenges at a time when many households are already struggling to pay their energy bills. It is therefore right to expect that the DECC will have robust and stringent processes in place to ensure that it gets value for money from the investments it makes on consumers behalf.

The CMA correctly identifies that past processes have not been sufficiently robust. You estimate that the cost of supporting an early form of CfDs (under the FIDeR framework) allocated outside the context of a competitive auction is £250-£310m/year higher than it would have been had they been awarded through competitive auctions.²⁰ Both the National Audit Office and the Public Accounts Committee have been similarly critical of the FIDeR framework.²¹ While the largest CfD procured outside a competitive allocation process, that for the proposed £18bn Hinkley Point C power plant, has been granted State Aid clearance, there is some evidence that DECC struggled to achieve value for money through its bilateral negotiations, not least in the European Commission's comments that it was cutting more than £1bn off the cost of the deal through changing the terms of the State Guarantee and improving the gain-sharing provisions in consumers favour.²²

Separately, the NERA modelling suggests that the decision to exclude onshore wind from a single CfD auction allocation round could cost consumers £50m/year for the life of the contracts awarded. The NERA modelling also suggests that design decisions made on whether to run single or multiple pot auctions can have profound impacts on both the nature and cost of low carbon generation technologies brought forward. Despite those implications, the CMA indicates that it has found no evidence that DECC has a coherent methodology in place for determining the allocation of funding between CfD auction pots.²³

In aggregate, these issues confirm the need for more robust processes for CfD allocation. We consider that both the proposals brought forward by CMA here are necessary.

¹⁸ National Infrastructure Pipeline, Spring 2016. <http://tinyurl.com/hq46htg>

¹⁹ See Chart 1.A. <http://tinyurl.com/ho7vbgj>

²⁰ Various, inc paragraph 10.

²¹ 'Early contracts for renewable electricity,' NAO, 27 June 2014. <http://tinyurl.com/z7wkqz4>. 'Early contracts for renewable electricity,' PAC, 3 October 2014. <http://tinyurl.com/m6e7d7l>

²² 'State Aid: Commission concludes modified UK measures for Hinkley Point nuclear power plant are compatible with EU rules,' 8 October 2014. <http://tinyurl.com/oxbwfvq>

²³ 'we have not been made aware of any significant analysis undertaken by DECC on the rationale for its decision on how to allocate the technologies and budget between the pots for the first CfD auction in the manner it chose to do so' - paragraph 2.188.

Regarding proposal (a), we wholly agree with the CMA that DECC should be allocating CfDs through competitive processes by default and should only seek to strike bilateral deals outside that process where there is an objective and compelling justification for doing so. We agree with the CMA that in order to demonstrate that such justification exists, DECC should undertake impact assessments both before entering into negotiations, and after a deal is struck. While recognising commercial sensitivities, in our view these impact assessments should include sufficient detail to allow stakeholders, and particularly consumers, to understand all relevant provisions that could affect future public liabilities, either positively or negatively. For example, in the case of the Hinkley deal, core provisions such as the terms of the construction gain share agreement and the Longstop date on which the contract could be cancelled if the project is delivered late have never been published.²⁴ Such an approach is unsustainable, as these types of provisions can materially affect the value for money that consumers may receive from the deal and are relevant in assessing the value of investing in such a project when compared to investing in alternative projects.

We fully agree with the CMA that the impact assessments conducted should include a distributional analysis of costs and benefits, and should seek to quantify any externalities (positive or negative) associated with the deal. This should include a counterfactual assessment of what alternative investments may be displaced by investing in the project, the trade-offs that it has considered in seeking to bilaterally procure rather than competitively tender, and the evidence it has, both positive and negative, of effects on wider system costs and benefits. These may be direct (for example, security of supply or power system network investment impacts) or indirect (for example, employment or air quality impacts). Where a project may be offered non-standard terms - for example, a longer or shorter CfD than the standard 15 years - the assessments should draw out the rationale for such deviations.

We agree with the CMA, and disagree with DECC, that issuing an initial impact assessment before entering into negotiations is appropriate. Like the CMA, we do not believe that this would prejudice the department's negotiating position as the high level costs associated with new technologies are largely publicly known. Further, we think that there is value in an impact assessment at this stage as it reflects the department's thinking before it has become fully committed to going ahead, or not going ahead, with the deal. In our experience, engagement with stakeholders is usually easier, more open and more meaningful before a decision maker has reached a minded-to position. Finally, we think that establishing high level expectations on the possible quantum of costs relatively early in the process should provide wider investor certainty, and thereby reduce consumer costs, by

²⁴ The most detailed public description of these provisions, albeit heavily redacted, is in the notified State Aid approval. EU Commission, 28 April 2015. <http://tinyurl.com/jpsy8vd>

improving understanding of what proportion of the finite LCF budget a project may consume.

We also support proposal (b). The CMA correctly identifies the profound implications that decisions on funding allocation can have on both short run and long run consumer costs. Obliging DECC to robustly consider these impacts when setting budgets is clearly in consumers' interests. Further, the periodic revisiting of these assessments, and the setting of allocation budgets one year in advance, should improve public understanding of the evolution of costs, and investor certainty on prospective budgets. We note, however, that CfD liabilities may be highly leveraged if wholesale prices differ from forecasts, and that policy cost forecasting has been highly imprecise in the past.²⁵ DECC will need to make sure that it has adequate protections in place in order to avoid the risk that cost forecasting errors result in the setting of budget allocations that are unaffordable.

4. The Locational Pricing AEC

11.4 The remedies package proposed to address the Locational Pricing AEC and/or associated detriment is as follows:

(a) An order (the 'Locational Pricing Order') on National Grid (and amendments to National Grid's licence conditions) that would set out, among other things:

(i) the formula to calculate the transmission loss factors (which ultimately feeds into the imbalance charges) for this purpose;

(ii) an obligation on National Grid to create a load flow model;

(iii) an obligation on National Grid to create a networking mapping statement and collect annually relevant network data;

(iv) an obligation on National Grid to appoint third party agents to collect metered volumes data and to calculate annually the transmission loss factors pursuant to the principles set out in the order and using the models created, and information collected, pursuant to the order;

(v) an obligation on National Grid to direct Elexon, as appropriate, to update the networking mapping statement and carry out other administrative tasks that are necessary to the calculation by the third party agents; and

(vi) an obligation on National Grid to raise any consequential code modification.

²⁵ For example, in its November 2014 Annual Energy Statement, DECC estimated its LCF liabilities in 2020/21 at £6.25bn. Only eight months later, in its assessment accompanying the July 2015 Budget, the OBR estimated LCF liabilities for the same year as £9.1bn (both figures in 2011/12 prices).

(b) A recommendation to Ofgem to support National Grid by taking necessary steps that might facilitate the implementation of the Locational Pricing Order.

We are open-minded on the CMA's proposals in this area. In particular, we note that there are considerable uncertainties in some aspects of the modelled costs and benefits of introducing locational losses.

The CMA has modelled a range of scenarios to support its analysis of the costs and benefits of introducing locational losses. In all of the scenarios, a positive benefit is shown in terms of improved system efficiency, varying between £134m and £159m over the next ten years.

The distributional impacts on generators and consumers are more volatile however. In the reference case - effectively the central scenario - consumer bills would reduce both at GB level and for all the regions within GB. But in its low and high case scenarios, the pattern of winners and losers becomes more complex, with consumers in the majority of regions becoming worse off. In all scenarios, and in all regions, the net impact on end consumer bills is very small - the biggest winners (consumers in North Scotland in Reference case B) would only see £2.66 shaved off their annual bill, while the biggest losers (consumers in North England/Wales in High case B) would see a £1.29 increase in their annual bill. Typical bill impacts across the range of scenarios and regions, whether positive or negative, are usually less than a £1 per year. This level of benefit or detriment is low in the context of a ~£1,300 typical household bill.

We note that the rationale for there being a regional impact on consumers in the B scenarios, in which 100% of losses are applied to generators and 0% to consumers, is not well articulated within either the main report or Appendices 2.1 and 2.2. While generator costs will flow through to suppliers, and onward to consumers, it is not clear why suppliers would regionally apportion wholesale power procurement costs in this way. We would find it helpful if you could provide more detail on why these regional distributional impacts would be manifest.

At GB level, the modelling suggests the aggregate impact on consumer bills could be very substantive, but it is also volatile and highly dependent on scenario assumptions. The reference case suggests an aggregate consumer benefit of around £1.6bn over ten years, but this drops to a figure of £38-279m in the Low case scenarios and flips to become an additional consumer cost of around £200m in the High case scenarios.

We note that NERA, in the modelling contained in Appendix 2.2, puts heavy health warnings on reading too much into the results of the model:

“Our modelling identifies that the effect of the policy on market prices varies materially across scenarios: the change in prices can be positive (beneficial to producers, detrimental to consumers) or negative. The modelled change in costs faced by consumers (and the change in margins earned by generators) as a result of the policy can also be of an order of magnitude larger than the modelled cost savings. For this reason, our modelling provides little information on the scale of the distributional effects of the policy between consumers or producers. We also find that the regional distributional effects, which cause consumer bills and generator profits in some regions to rise or fall by more than in other regions, are small when compared to the total change in bills or generator margins that affects all consumers and producers in aggregate through changes in wholesale prices. Given these uncertainties in the distributional effects, we conclude that they should be given little weight in assessing the effects of the policy.”

Given the complex picture shown of significant consumer benefits both nationally and regionally in the reference scenario but a more diverse pattern of regional, and in some cases national, winners and losers in other scenarios, we could not give unqualified support for this proposal. We recognise however that you may take the view that, on the balance of probabilities, consumers would be better off as a result of the introduction of locational losses. We also recognise that the possible impact of their introduction has been modelled many times through past industry code modification proposals, and that these have consistently shown that consumers, in aggregate, would probably be better off.

The draft order does not make it clear whether the Locational Pricing Order given to National Grid would direct it to introduce a scheme that continues the existing 45%:55% Generation:Demand apportionment of losses or would move to the 100%:0% modelled in the B scenarios. We would favour the latter. The B scenarios generally show a higher level of consumer benefits than maintaining the current split. In addition, we are sceptical that applying locational signals to household demand will result in any behavioural change - the contribution of transmission losses to the average household electricity bill is tiny, and households are not subject to real-time pricing that would allow them to respond to dispatch signals anyway.

Given the historic difficulties in implementing a locational losses scheme through the normal industry code modification, detailed at length in Appendix 5.2 of your July 2015 provisional findings, we support your proposal that the best mechanism for implementing this remedy would be for the CMA to issue an Order to National Grid to make the necessary changes, rather than referring the matter back to Ofgem so that the normal codes process can be used. We agree that proposals (a)(i) to (vi) are likely to cover the key components needed within that order. We

also support proposal (b); that Ofgem should provide any necessary support needed to enable National Grid to implement these proposals.

5. The Electricity Settlement AEC

11.5 The remedies package proposed to address the Electricity Settlement AEC and/or associated detriment is as follows:

(a) A recommendation to DECC to consult on amending the provisions of the Smart Energy Code that prohibit suppliers from collecting consumption data with greater granularity than daily unless a customer has given explicit consent to do so.

(b) A recommendation to Ofgem to:

(i) conduct a full cost benefit analysis of the move to mandatory half hourly settlement, including analysis of costs, benefits and distributional implications as well as mitigating measures;

(ii) start the process of gathering evidence for the analysis as soon as practicable;

(iii) consider the cost-effectiveness of alternative design options for half hourly settlement such as a centralised entity responsible for data collection and aggregation; and

(iv) consider options for reducing the costs of elective half-hourly settlement, including (i) whether any of these options are likely to delay or accelerate the adoption of mandatory half-hourly settlement; and (ii) any challenges that may arise or benefits that may accrue from the existence of two settlement systems, including in particular the possibility of gaming/cherry picking behaviour.

(c) A recommendation to both DECC and Ofgem that they publish and consult jointly on a plan setting out:

(i) the aim of the reform for half-hourly settlement;

(ii) a list of proposed regulatory interventions (including code changes), and the relevant entity in charge of designing and/or approving such interventions, that are necessary in order to implement the half hourly settlement reform;

(iii) an estimated timetable for the completion of each necessary intervention; and

(iv) where appropriate, a list of relevant considerations that will be taken into account in designing each regulatory intervention.

(a) The Citizens Advice Service supports settlement reform to allow a more efficient and cost-reflective system. However, we do not agree with recommendation 11.5 (a) in its current form. While consumer views vary by demography when they are asked what they want, need and expect from data-driven services two requirements are consistently raised: transparency and control. The existing rules on consumption data choices (which are mainly contained in SLC 47 rather than the Smart Energy Code) ensure that consumers retain control over the detail of meter reads their smart meter provides to their energy supplier in the form of an explicit opt-in to share half-hourly data and the option to opt-out down to a monthly meter read should they wish. These choices give some consumers, who may otherwise refuse a smart meter due to privacy fears, the confidence to participate in the rollout. They also have wider benefits in terms of providing consumers with some leverage with their supplier; energy suppliers or other organisations will have to provide a compelling reason, ideally in the form of additional benefits, for consumers to share more of their data. Allowing suppliers default access to the most detailed smart meter data risks undermining the competitive market generated by different companies offering a wide range of services to consumers in exchange for that data.

It should also be noted that consumers who have agreed to have a smart meter installed on the basis of these controls cannot have them removed after the fact. Changing the terms in this way would mean a need for renewed consent to be gained and potentially for existing smart customers to be provided the option to opt out of having a smart meter if the licence conditions in place when they made their decision are substantively changed.

Furthermore, it is not clear that changes to these important choices are required at this point in the timeline for settlement reform. Ofgem is currently working to improve elective half hourly settlement (HHS) for small sites from early 2017. Given that this will not be mandatory, it will not require access to half hourly data for all smart meters. Where suppliers feel there are benefits to using HHS they can attract consumers to take part by offering to pass these through to consumers in return for accessing more of their consumption data.

Alongside the work to enable elective HHS, Ofgem is planning a Significant Code Review (due to conclude in 2018) which will consider a move to mandatory half hourly settlement. DECC have also planned a review of the Data Access and Privacy Framework which will conclude in the same year. We consider that these reviews are the appropriate opportunity to consider the need for any changes to data choices in detail. This is in line with the findings of Ofgem's Electricity Settlement Expert Group, which recommended that more work is required to explore the interactions between settlement reform and data privacy and access rules.²⁶ There

²⁶'Update on electricity settlement project', Ofgem, 28 January 2015. <http://tinyurl.com/jn8vcfh>

may be alternative approaches which mean that it is not necessary to remove the current data choices in order to enable mandatory half hourly settlement. For example, Ofgem's Expert Group has already set out some early options for the use of profiles in cases where HH data is not available.

(b) As we set out in our response²⁷ to Ofgem's recent open letter, 'half-hourly settlement (HHS): the way forward', the Citizens Advice Service agrees that Ofgem should carry out a thorough distributional analysis of mandatory half-hourly settlement. This analysis should consider a range of scenarios for different levels of adoption of new Time of Use (ToU) tariffs, and the implications of these for vulnerable consumers, including the emergence of new vulnerabilities due to the consumers ability to load shift in response to price signals. This could be detrimental to such consumers, either if they sign up for an unsuitable ToU tariff and face higher bills as a result, or if they have inflexible consumption patterns that make it hard for them to avoid using energy at peak times and are consequently unable to benefit from cheaper time of use deals. In trials of smart ToU tariffs up to 40% of consumers were charged more than would otherwise have been the case.²⁸ Work will also be required to understand what information consumers will require to understand new ToU tariffs, and what consumer protections (such as bill protection) may be required to ensure that consumers do not suffer extreme increases in their bills. We agree that Ofgem should begin work on analysis of the impact of mandatory HHS as soon as possible, to ensure sufficient time to build in protections for vulnerable consumers, and avoid negative impacts.

Ofgem should consider whether a mandatory HHS regime should use a centralised entity responsible for data collection and aggregation. However there are some issues which mean that the DCC, which some stakeholders have suggested fulfil this function, may not be able to do so for all profile class 1-4 meters (at least in the short to medium term). The design of the smart meter programme means that many SME consumers (profiles 3-4) may have had an advanced meter fitted under the advanced metering exception, which allows these meters to count towards a suppliers smart meter rollout obligation. These meters will not be enrolled into the DCC, and may require a separate approach to the current HHS regime, which is likely to be unsuitable and expensive. It is worth noting that the Elexon's Settlement Reform Advisory Group has also excluded these non-SMETS meters from their recommendations for the design of an elective HHS regime.²⁹ SMETS 1 meters are currently unable to enrol into the DCC, which is conducting a feasibility study to develop options for how these could be enrolled in future. The scope and timeline for SMETS 1 enrollment will not be clear until this work is concluded. As such, alternative processes (such as those currently under design by Ofgem for elective

²⁷Citizens Advice consultation response. <http://tinyurl.com/z5mcmsz>

²⁸Customer-Led Network Revolution, Progress Report 7, Northern Powergrid, 20th June 2014. <http://tinyurl.com/za84zs7>

²⁹Recommendations of the BSC Panel's Settlement Reform Advisory Group, Elexon, 2016 <http://tinyurl.com/znwqndm>

HHS) may be required under mandatory HHS until these non-enrolled meters reach the end of their lifetime and are replaced with SMETS 2 meters.

Responses to the provisional findings of the energy market investigation show that there is not a consensus within industry over whether an optional or mandatory HHS regime is more appropriate. Ofgem has now published a plan to introduce cost-effective half hourly settlement from early 2017 and set out their expectation that mandatory HHS will be required in future. As part of a phased introduction of mandatory HHS for small sites elective HHS may reduce the risks to consumers as opposed to a large scale change. However, we agree that an optional system introduces the considerable risk that suppliers cherry pick which consumers are settled on a half-hourly basis, which could in turn increase costs for consumers who are unable or unwilling to have their consumption settled this way.

In addition to considering these risks, we further believe Ofgem should undertake the analysis we set out above with regards to mandatory HHS, ahead of the introduction of elective HHS. This will enable stakeholders to identify and understand the risks to consumers, and ensure that adequate protection is in place for early adopters of HHS and new ToU tariffs.

In addition, Ofgem should complete their work considering the information and comparison tools that consumers required to understand ToU tariffs (this work was previously referred to as 'RMR for Time of Use tariffs').³⁰ This work was originally planned for 2015, but was put on hold awaiting the CMA energy market investigation. Research by our predecessor body, Consumer Focus, found that 38% of consumers on traditional ToU tariffs were getting no benefit from their tariff, and that there was an appetite from consumers for information to help them to better understand their tariffs and how to compare prices.³¹³² These issues will need to be addressed in order to give consumers the understanding and confidence to use new ToU tariffs.

(c) We agree that a binding plan for settlement reform is required in order for these changes to be considered and introduced in a timely manner. Initially, DECC and Ofgem should set out more clearly the aim of the settlement reform process going forward; this has not always been the case, for example, it has not been made clear on what basis the decision to introduce elective half hourly settlement was taken. More clarity is also needed on the process for the introduction of mandatory HHS. In December 2015 Ofgem set out plans to conduct a Significant Code Review on mandatory HHS, but since then DECC has published draft legislation giving Ofgem powers to modify industry codes when this is necessary to achieve settlement reform. Ofgem and DECC should set out what impact this is likely to have on the current timeline for settlement reform as soon as possible.

³⁰ Consumer Empowerment and Protection Smarter Markets, Ofgem, 2014. <http://tinyurl.com/nvnmmhg>

³¹ From devotees to the disengaged, Consumer Focus, 2013. <http://tinyurl.com/hmkhpvp>

³² Similar issues of ToU tariff complexity impeding consumer choice may also be felt by consumers with restricted metering. Please see our response to the Prepayment AEC for further detail on that matter.

The relevant considerations which are published alongside the regulatory interventions must include the interdependencies with other major programmes (including the smart meter rollout and the next day switching project), and any timeline must be flexible to respond to changes in the delivery of these.

6. The Gas Settlement AEC

11.6 The remedies package proposed to address the Gas Settlement AEC and/or associated detriment is as follows:

(a) A recommendation to Ofgem to ensure implementation of Project Nexus by 1 October 2016 through monitoring closely the progress made by the industry in meeting intermediate milestones and to take (where appropriate) further measures to achieve this objective.

(b) An order on gas suppliers (and amendments to gas suppliers' standard licence conditions) to submit all meter readings for non-daily metered supply points in GB to Xoserve as soon as they become available, and at least once per year, save for non-daily metered supply points with a smart or advanced meter, which must be submitted at least once per month.

(c) A recommendation to Ofgem to:

(i) take responsibility for the development and delivery of a performance assurance framework to increase accuracy of the gas settlement process as soon as reasonably practicable, and at the latest within one year of our final report;

(ii) establish a project plan and allocate responsibility to Uniform Network Code parties to take actions for its implementation;

(iii) supervise its implementation; and

(iv) take appropriate steps to ensure that failure to meet targets under the performance assurance framework are sanctioned.

Remedy 11.6 (a) - Project Nexus Implementation

The Citizens Advice Service agrees with the spirit and intent of the remedies proposed to resolve the gas settlement AEC. However, we are uncertain what the remedies will add to the programmes of work already ongoing within Ofgem and to a lesser extent within the Uniform Network Code (UNC). If the CMA has concerns, particularly regarding the implementation of Project Nexus, that the current actions of Ofgem are insufficient to protect competition, more detail on the content of

“further measures” and the enforcement provisions underpinning them would be useful.

We share the CMA’s concern about the slow implementation of Project Nexus. Consumers stand to gain from the improvements to industry processes facilitated by Project Nexus, and we have been disappointed at the delays in getting industry systems ready, particularly those handled by Xoserve. Closer monitoring by the regulator may help give advanced warning of further delay, but needs to be matched with enforcement provisions if it is to prevent it.

It is largely unclear to us how the CMA intends the remedy to function and, in particular, how it expects Ofgem to make the time frame “binding”. Increasing Ofgem resourcing to track industry’s progress towards completion of Nexus should increase the chances of detecting anything that may lead to a delay. However, the crucial part, left undescribed, is what Ofgem should do in if further delay arises. Given Ofgem has been unable to keep the project on track to date, there remains a reasonable case for CMA intervening directly rather than simply bouncing the matter back to Ofgem.

A structure allowing for financial incentive payments to be levied on gas transporters whose actions lead to a delay in Nexus implementation is currently under review by Ofgem having passed through the UNC code modification process (“Mod 0550”).³³ This proposal would put a financial incentive on gas transporters who may otherwise lack commercial incentives for prompt achievement of Nexus. We encourage the Authority to consider whether it intends that to be supplemented with further enforcement provisions in the event that either (a) the incentives provided for by Mod 0550 are too small to change behaviour, or (b) that the presumed commercial incentives on suppliers to deliver on time are inadequate and they they too should be subject to the possibility of enforcement action.

Remedies 11.6 (b) and (c) - Performance Assurance and Settlement

The Citizens Advice Service welcomes the proposals to develop a performance assurance framework for the gas sector. As Ofgem develops its plans, we encourage it to study the effectiveness of the regime already in place for electricity. We reiterate the usefulness of auditing or spot checks as a means of deterring gaming by industry participants.

We note the development of UNC mod 0570, which proposes to create an obligation on Shippers to provide at least one valid meter reading per meter point into settlement once per year.³⁴ However, given the degree of urgency which the CMA ascribes to this matter, the mod may be unsuitable due to the timing of its grace period before the obligation would come into place. We encourage the CMA

³³ UNC Mod 0550 <http://www.gasgovernance.co.uk/0550>

³⁴ Obligation on Shippers, Gas Governance. <http://tinyurl.com/z24l3ve>

and Ofgem to consider how rapidly such a measure can be brought into place, and to do all that they can to encourage industry to move faster.

We also note that, while UNC mod 0570 provides for the minimum of once a year data supply, it does nothing to address the standard practice part of the Remedy. The wording of the CMA's proposal has shifted since the first round of findings from "monthly updating of AQs" to "submit all meter readings ... to Xoserve as soon as they become available". After the introduction of smart meters, suppliers are likely to be retrieving and processing consumers' meter data far more frequently than monthly. We would anticipate that in this world, 'as soon as possible' implies more frequent than monthly submissions, rather than less frequent than monthly.

7. The Prepayment AEC

11.8 The remedies proposed to address part of the Prepayment AEC and/or associated detriment are as follows:

(a) A recommendation to Ofgem to:

(i) modify suppliers' standard licence conditions to introduce an exception to SLC 22B.7(b) so as to allow a supplier to set prices to prepayment customers on the basis of grouping regional cost variations which are applied to other payment methods within the same core tariff;

(ii) deprioritise potential enforcement action pending the modification of SLC 22B.7(b) against any supplier to a prepayment customer that sets prices to prepayment customers on the basis of grouping regional cost variations which are applied to other payment methods within the same core tariff;

(iii) take responsibility for the efficient allocation of gas tariff pages; and

(iv) take appropriate steps to ensure that changes to the Debt Assignment Protocol are implemented by the end of 2016, and in particular in areas relating to objection letters, complex debt and issues relating to multiple registrations; including setting out clear objectives and a timetable with appropriate milestones, supervising progress against such objectives and milestones, and to take all steps, if and when necessary, to ensure delivery of these changes.

(b) The acceptance of undertakings from the Six Large Energy Firms or, absent such undertakings including the following three components:

(i) a cap on the number of gas tariff pages that any supplier can hold (at 12);

(ii) an obligation for suppliers to provide relevant information for Ofgem to monitor the allocation of the gas tariff codes; and

(iii) a condition that allows Ofgem to mandate the transfer of one or more gas tariff pages to another supplier.

(c) Absent such undertakings, we would recommend that Ofgem introduces a new licence condition in suppliers' standard licence conditions to include the three components set out above.

Gas Tariff Pages

Having raised the issue of gas suppliers holding more tariff pages than they needed in our response to the CMA's second supplemental notice of possible remedies, The Citizens Advice Service is pleased that this issue is now the subject of two proposed remedies. The situation we have currently undermines competition by restricting the ability of new entrants to come into the market, and larger suppliers appear to lack the correct incentives to give up tariff slots that they are not using.

Judging by past evidence of large suppliers holding onto gas tariff pages they were not using, thereby not allowing small supplier access to them, measures to ensure equitable allocation of tariff pages should have a positive effect on competition. In particular, such a move may enable challenger suppliers to bring more competitive deals to the prepay market.

One issue which merits further consideration is how to ensure any cap is futureproofed. If the market continues to grow, it may be appropriate to review the number of gas tariff pages that any given supplier can hold. The CMA proposes to cap the number of tariff pages a supplier can have at 12, although it notes that none of the Big 6 suppliers is currently using more than seven, so there may be scope to transfer more pages that are currently unused. Giving Ofgem the ability to mandate the transfer of gas pages should disincentivise inappropriate retention and acquisition. We would hope that suppliers will behave responsibly, negating the need for Ofgem to have to take enforcement action.

In theory, we agree that giving suppliers the ability to group regional cost variations for prepay tariffs is a sensible way of freeing them to offer a greater diversity of tariffs, and is a proposal which does not appear to come with a high risk of associated consumer detriment. However, we are uncertain as to how this ability would interact with the safeguard tariff, as this cap will vary for each of the 14 regions. Suppliers grouping in this way may be desirable for the safeguard tariff, as

the lack of bespoke variation could prevent them from defaulting to their maximum allowable revenue for each region, an outcome we would be keen to avoid.

Debt Assignment Protocol (DAP)

We believe that the process for switches should be, as far as possible, the same regardless of the consumer needing to evoke the DAP (this is the same approach as that being taken by Ofgem in its Next Day Switching Programme). This would require suppliers to, wherever possible, maintain systems that prevent consumers needing to take additional actions to facilitate the switch, beyond their initial approach.

To achieve the above, suppliers would need to develop a mechanism to maintain live debt flags on customer accounts in order to avoid sending initial objection letters. There would also need to be more timely exchange of debt details between suppliers, again in order to avoid the exchange needing to revert to consumers.

The ultimate goal of this work should be to send the message to consumers that they can switch with debt. Caveats, which are currently all dealt with upfront, should only impinge on the process if absolutely necessary.

Any improvement in the DAP process needs to go hand in hand with better consumer education as to what actually happens to debt in the event of a DAP switch (i.e. it isn't automatically cleared), as we believe there is currently a lot of misinformation around this issue.

8. The RMR AEC

11.9 The remedies proposed to address the RMR AEC and/or associated detriment, as well as part of the Prepayment AEC and the Domestic Weak Customer Response AEC and/or associated detriment are as follows:

(a) A recommendation to Ofgem to:

(i) modify gas and electricity suppliers' standard licence conditions to: remove the following conditions (the 'Conditions'):

- the ban on complex tariffs (SLC 22A.3 (a) and (b));*
- the four tariff rule (SLC 22B.2 (a) and (b));*
- the ban on certain discounts (SLCs 22B.3-6 and 22B.24-28);*
- the ban on certain bundled products (SLCs 22B.9-16 and 22B.24-28);*
- the ban on certain reward points (SLCs 22B.17-23 and 22B.24-28);*
- the prohibition against tariffs exclusive to new/existing customers (SLC 22B.30 and 22B.31); and*

— make any necessary minor consequential amendments; and introduce an additional standard of conduct into SLC 25C that would require suppliers to have regard in the design of tariffs to the ease with which customers can compare value-for-money with other tariffs they offer;

(ii) deprioritise potential enforcement action pending the removal of the Conditions against any supplier that operates in breach of the Conditions;

(iii) remove the Whole of the Market Requirement in the Confidence Code and introduce a requirement for PCWs accredited under the Confidence Code to be transparent over the market coverage they provide to energy customers.

In our December 2010 open letter to Ofgem,³⁵ which called for an investigation into energy tariffs, we said that:

The product is, for the most part, standardised. The quality or reliability of the actual product does not change depending on the supplier or the tariff. Unsurprisingly, this leaves consumers baffled as to why such a standardised product is sold in hundreds of different variations.

Despite the increasing similarities in the sales and marketing of energy supply tariffs to other consumer products and services, energy remains a very different product in the eyes of consumers. It is an essential for life service. All households require energy to heat their houses and cook their food; it is not a discretionary spend. Energy falls into the same essential category as water, where consumers are also facing increasing bills but do not face the choice of having to navigate between hundreds of different offerings from a water supplier, each offering a slightly different price and the associated small print. When a household chooses the wrong energy tariff it can result in substantially increased annual bills.

Ofgem's RMR reforms aimed to address the fact that the market was not working effectively for consumers. This included the complexity of tariff options, the poor quality of information provided to consumers and low levels of trust in energy suppliers. Energy is not just another market, it is an essential for life service.

Ofgem published a number of research reports during the RMR. This chart is a useful summary of consumer behaviour.

Consumer biases and effects on the decision making process³⁶		
Bias	What does it mean?	How does it affect the decision making process?

³⁵Request for investigation into energy tariffs', Consumer Futures, 2010, <http://tinyurl.com/hqwstz7>

³⁶What can behavioural economics say about GB energy consumers?', Ofgem, 21 March 2011. <http://tinyurl.com/zb56hx4>

		Access	Assess	Act
Limited consumer capacity	Consumers have difficulties assessing many different options and large amounts of information about them.	Consumers' awareness of the challenges they face means that they do not search at all.	Consumers adopt filters or shortcuts to navigate the information (eg 'rules of thumb', 'reference points').	Consumers switch to an option that is 'better' instead of the best one for them.
Status quo bias	Consumers prefer the current option.	Consumers do not search for alternative deals beyond their current package and/or provider.	Consumers overemphasise knowledge of existing package and/or provider.	Consumers do not switch away from current package and/or provider.
Loss aversion	Consumers attach more weight to monetary losses than to monetary gains and avoid risk taking behaviour.	Consumers search less when energy prices fall than when they rise	Consumers give too much weight to possible losses relative to potential gains.	Consumers postpone making a decision.
Time inconsistency	Their preference for immediate gains means that they place too much weight on costs incurred now compared to future savings.	Consumers do not search for new or alternative energy deals.	Consumers over emphasise short term discounts.	Consumers do not make a decision.

The CMA's investigation has concluded that Ofgem's RMR reforms are having a negative impact on competition. The CMA notes in Paragraph 8.9 that its proposed remedies package concerning the Domestic AECs is based on the principles of: creating a framework for effective competition; helping customers to engage; and protecting customers who are less able to engage to exploit the benefits of competition. While we welcome many of the individual remedies, we remain concerned that the remedies to protect customers who are less able to engage are drawn too narrowly.

The CMA has rightly identified that certain groups of consumers are less likely to engage in the energy market and of the households who fall into those categories and who do not have a prepayment meter or a restricted meter, the package offers limited practical support to tackle the challenges these households face in engaging. Indeed, the CMA's own research shows that standard credit customers are even less likely to be confident they can select the best deal on a PCW or have access to the internet than PPM customers. Doubtless there are many who report likewise and are currently on direct debit terms.

Whilst we welcome the decision to develop an Ofgem-led research programme to deliver improved energy bills and other key communications, we are not at all confident that a series of Randomised Controlled Trials (RCTs) will be enough to

tackle deep seated problems with engagement and lack of trust in the market amongst the disengaged majority.

For the households who are disengaged because they find the energy market too confusing and the number of choices overwhelming, the removal of the four tariff rule and the newfound ability of PCWs to negotiate bespoke tariffs with suppliers could worsen this problem. Many of these households face both physical and perceived barriers ranging from a lack of internet access, unfair tenancy terms, existing debts to their supplier, lower levels of education, concern about their ability to make an effective decision, etc.

The CMA needs to be clearer about what it would regard as success in changing consumer behaviour and thus levels of engagement as well as the measures that could or should be put in place if the specified outcomes are not achieved.

If the CMA is unable to develop a remedy to provide further assistance to these households then it needs to make a recommendation to the Government to introduce additional support for these households.

Removing the ban on complex tariffs

We have concerns about the proposal to remove SLC 22A.3 (a) and (b) and, whilst we welcome the CMA's proposed new principle for suppliers to ensure their suite of tariffs are comparable, it may not go far enough. We note that the CMA have said in Paragraph 5.441 that more innovative tariffs *"will become increasingly popular, as the continuing roll-out of smart meters and the industry move towards half-hourly settlement will make it easier and more accurate for customers to monitor their energy usage, and easier for suppliers to tailor tariffs to particular customer groups."* We agree that the rollout of smart meters should lead to the introduction of more innovative tariffs. However, we do not necessarily agree that it is in consumers' interests for different suppliers to have widely different tariff structures. For example, it could make the process of price comparison more difficult, and supplier marketing materials more confusing.

If the goal is to encourage a sizeable number of consumers to take up demand side response tariffs, ensuring there is comprehensive information available about the advantages and disadvantages for different households and that offers are comparable across the market will be key to building consumer confidence.³⁷

Regarding the steps taken by suppliers in withdrawing two tier tariffs as a result of the Retail Market Review reforms, our experience was slightly different. Suppliers did have opportunities to offer additional support to their affected consumers and the majority did not take this step until they started receiving numerous complaints and pressures from stakeholders including ourselves, DECC and Ofgem. We would

³⁷'Take a Walk on the Demand Side', Citizens Advice, 2014. <http://tinyurl.com/ne97ddz>

be surprised if many suppliers re-introduce competitively priced two tier tariffs aimed at very low consuming households, as in many cases, they would not be able to recover all of their costs. It remains our view that low consuming vulnerable households were the unwitting beneficiaries of two tier tariffs and not the target audience for such tariffs.

Removing the four tariff rule

The CMA notes in Paragraph 8.18 that increased choice for domestic customers may also raise customers' interest in switching. Past research on this subject shows that increased choice can also turn off many consumers from engaging as they don't know how to make effective decisions.³⁸ The Citizens Advice Service is eager to avoid a re-emergence of the previous tariff proliferation, where suppliers offered multiple variations of the same product such as actively marketing five separate one year fixed price tariffs.

We would be interested in understanding whether the CMA believes that the existing Standards of Conduct, which require suppliers to treat customers fairly, would be an adequate check on supplier behaviour given the previous market issues that Ofgem's RMR reforms sought to address. Suppliers must act responsibly in terms of the number of tariffs on offer and be able to justify that each of their tariff offerings are both demonstrably different and have clear consumer benefits.

Removing the ban on bundled products

We are supportive, in principle, of removing the ban on bundled products. This is based on the assumption that the CMA's proposed new principle on ensuring supplier tariffs are comparable will address pre-RMR issues of confusion marketing by suppliers.

It would be helpful, however, to understand whether the CMA's proposed new principle will go far enough to tackle a growing regulatory challenge as well as how it would interact with Ofgem's proposed new over-arching principle of *not putting consumer outcomes at risk*. In our response to Ofgem's Future Retail Regulation consultation we said that the growing opportunities and challenges presented by smart meters, new technologies and other innovative solutions coming into the energy market, including the growth of bundled energy services and/or non regulated energy products, require more regulatory clarity. It is essential that both suppliers and consumers are clear on the regulatory boundaries between Ofgem, Ofcom and other regulators. This should be a priority for both Ofgem and the UKRN.

For example, it is hard for a consumer to detect if they are suffering financial detriment due to the opacity of a bundled deal in which certain costs are higher than they would otherwise be. This applies also when a service provider insists on

³⁸What can behavioural economics say about GB energy consumers?, Ofgem, 21 March 2011. <http://tinyurl.com/zb56hx4>

bundling unwanted products with desired ones. These services could include products directly regulated by Ofgem and those which are not.

Furthermore, it is our experience that consumers do not differentiate between energy supply, services and products, particularly when a 'supplier' has also been responsible for providing, selling, installing or fitting products and services. We have commented in the past on the confusion that energy consumers face when seeking advice and redress across energy products, services and supply.³⁹

As smart services, appliances and tools proliferate and bring together various in-home services such as energy, telephony and in-home data communications, it will be vital that routes for consumer advice and redress remain clear and consistent. Consumers should have a single point of contact for issues and not be bounced between multiple service providers and subcontractors with whom they have had no previous relationship.

In our response to Ofgem's Future Retail Regulation consultation we said that Ofgem's proposed new principle of not putting consumer outcomes at risk should require suppliers to actively think about, and put plans in place to manage, risks to consumers when developing new products or changing business processes. Innovative new products from suppliers will carry different levels of risk for different groups of consumers, and they will need to have measures in place to mitigate these risks such as enhanced consumer protections, enhanced consideration of whether the product is appropriate for the consumer, and the provision of extra information. Such measures will be particularly important in the early phase of the introduction of such products.

This links closely with our earlier comments on the CMA's proposed new principle. It is also important that tariffs are broadly comparable across the market. Not all households can or will use price comparison websites to compare energy suppliers.

Removing the ban on certain reward points

The Citizens Advice Service was supportive of Ofgem's decision to impose stricter controls on the use of reward points and cash discounts. Suppliers had previously used such tools to steer some households towards poorer value tariffs - effectively taking advantage of consumers' likelihood to prioritise hyperbolic discounting. If this ban is lifted, we want reassurance that a re-emergence of similar behaviour would be considered a breach of the standards of conduct.

Removing the requirement to offer all tariffs to new and existing customers

The CMA states in Paragraph 5.389 that suppliers said they had made all tariffs available to new and existing customers prior to the introduction of the RMR rules. It is worth emphasizing that this was not always the case and existing consumers of

³⁹Knowing who can help: The future for energy consumer advice and redress', Citizens Advice, 2015. <http://tinyurl.com/haqvrlp>

a supplier could be told that in order to benefit from a particularly competitive tariff, they would need to switch to another supplier and then apply for the tariff offered by their original supplier.

We agree that industry moved to introduce these changes ahead of the formal RMR reforms taking place but it should also be noted that these proactive changes by industry were made at a time of intense political interest in the sector and when the direction of travel for the RMR programme was already clear. We want reassurance that the Standards of Conduct would be applicable if there was a re-emergence of poor supplier practices.

Removing the Whole of the Market ('WoM') Requirement in the Confidence Code and introduce a requirement for PCWs accredited under the Confidence Code to be transparent over the market coverage they provide to energy customers

The proposed remedies for PCWs represent a fundamental shift in current practices. To date, the approach taken to energy PCWs has differed from similar sites in other markets. A reason for this difference has been the recognition that energy is an essential utility and that energy bills constitute a substantial proportion of GB household expenditure.

Efforts made by Government and Ofgem in recent years have ensured that consumers have access to accurate and unbiased information about energy tariffs. The proposed remedy reverses the decision advocated by the Energy and Climate Change Select Committee last year for PCWs to show all tariffs as default, which was reflected in a revision to the Confidence Code in March 2015.⁴⁰ The CMA proposal to remove the whole market requirement in the Confidence Code would bring energy PCWs in line with other markets.

We think the argument that this remedy would generate competition within the energy market is not as strong as the CMA suggests. In practice, removing the Whole of Market (WoM) requirement would increase, not reduce, the hassle associated with switching, as consumers would now need to check multiple PCWs to be confident they are getting the best deal. It may also degrade trust that PCWs are acting in consumers' best interests both in the deals they present and in how they present them.

We suggest that removing the whole market requirement risks compromising the existing quality of accredited sites. This may make them more prone to practices observed in other markets⁴¹ to the detriment of consumers, such as only featuring tariffs which extract highest commission or introducing parity agreements which prevent energy suppliers offering cheaper tariffs on other platforms.

⁴⁰Protecting consumers: Making energy price comparison websites transparent', Energy and Climate Change Committee 24 March 2015. <http://tinyurl.com/zg8lsmc>

⁴¹ E.g. exclusive deals, parity agreements, transparency failure as in the case of private motor insurance market: <http://tinyurl.com/nf9xt5y>

We believe the impact of this remedy will need to be kept under close review by Ofgem. If it becomes clear that the removal of the WoM requirement is having a negative impact on consumer confidence in the market, then Ofgem should consider re-introducing the WoM requirement.

Engaging consumers (Paragraph 4.41)

We support the intention to enable third parties to more readily engage domestic energy customers. However, we question how successful the proposed remedy may be in achieving this, and especially for particular consumer groups. The provision of more competitive energy prices will inevitably engage some consumers. Deals offered will be predominantly accessible to online consumers, and even more so to those who are already engaged and proactive. However, we identify that there may be a risk of excluding the consumers who don't access online information about energy prices, which is likely to include consumers who are more vulnerable.

The profile of non-switchers in the CMA's customer survey⁴² closely match the characteristics of people who do not use the internet. Low income, low qualifications and pensionable age are all strong indicators of both categories. For example 79% of people over the age of 65 have not switched in the last three years⁴³ but nearly half (46%) of that age group do not regularly use the internet, rising to nearly three quarters (73%) of those over 75.⁴⁴

Clearly the more that the consumer benefit depends on access to the internet, the greater the detriment suffered by those who do not have access. Whilst this should not of course preclude solutions that others can benefit from, consideration must be given to how those that will lose out can be supported, especially when those groups are already in a detrimental position with regards the market.

Transparency (Paragraph 4.47)

Evidence⁴⁵ collected as part of the CMA investigation indicates that transparency alone cannot be an effective substitution of the whole of market requirement. We share this concern, and suggest that the proposed remedy may provide a lower level of transparency than the whole of market requirement currently does, and this may impact negatively on consumer confidence, trust and engagement in the market.

The Citizens Advice Service has advocated for consumers to have access to a complete view of energy deals across the market, and to be able to control how to filter the available choices based on their own preferences.⁴⁶ The proposed remedy

⁴²Energy Market Investigation, CMA, February 2015. <http://tinyurl.com/j8hurqu>

⁴³ibid.

⁴⁴Internet users dataset, ONS, 22 May 2015. <http://tinyurl.com/jakf4wp>

⁴⁵Appendix 6.1, CMA. <http://tinyurl.com/jrkyvln>

⁴⁶'Protecting consumers: Making energy price comparison websites transparent', Energy and Climate Change Committee 24 March 2015. <http://tinyurl.com/zg8lsmc>

will mean that consumers using accredited PCWs will no longer have the guarantee they can view all available tariffs. The changes to the Confidence Code would require PCWs to ensure transparency over their market coverage, the clarity of which will be essential. It will be important to maintain a high standard of transparency of all PCWs, which is consistent with consumers expectations. We would want Ofgem to have some form of a role in monitoring and approving the wording provided by PCWs regarding their market coverage.

We understand the introduction of a non-transactional PCW that lists all tariffs, is viewed as the alternative to existing PCWs providing a whole of market view. The suggestion that the Citizens Advice Service's non transactional PCW could fulfil this role seems sensible when considering the existing role of the organisation as the statutory consumer champion for energy consumers as well as our impartiality. As our site is non transactional or information only, we will not be in competition with commercial PCWs.

We have information gathering powers (Section 24 powers) and are able to request details of new tariffs from suppliers. This process can be subject to delays if suppliers refuse to provide us with the details or in a timely fashion. It also presents challenges with new suppliers where we do not have existing relationships and where a delay in establishing relationships and receiving the data could result in our PCW being unable to display all tariffs in a timely fashion. One possible route to address this gap could be for the CMA to issue an interim order requiring suppliers to share their tariff data with us to ensure our PCW partner is able to provide a complete list of all tariffs. Another solution would be to mandate a new requirement on suppliers to officially notify the regulator and/or Citizens Advice that they are 'going live' in the market. No such requirement exists at present. This would ensure that we could issue new suppliers with an immediate Section 24 request for their tariff information.

In order to effectively fulfil the goal of this remedy we anticipate other changes will need to be made. A key issue to address is the current visibility of the Citizens Advice Service PCW and how the site will be effectively marketed in order to ensure consumers know where to go in order to obtain a whole of the market price comparison. This could include, for example, providing the URL of the Citizens Advice Service PCW information on all energy bills and supplier websites in line with the existing regulatory requirement for suppliers to signpost to the Citizens Advice Consumer Service. The url address should also be included on commercial PCWs to ensure consumers know where to go in order to carry out a whole of the market comparison.

We would also be interested in highlighting to consumers the differences in PCWs' comprehensiveness and could display a rating on our price comparison tool or in the consumer advice site on our website. We would also be interested in exploring how to develop a process whereby consumers could transfer from our non

transactional website to each of the accredited transactional PCWs in order to complete their switch. We would welcome the opportunity to speak to Ofgem and the CMA about this in more detail.

Impact on new entrants

The CMA has published limited information about how the removal of the whole market requirement may impact new entrants to the energy market given the disparity in market power between large PCWs and newly established suppliers. For example, how accessible will the increasingly competitive environment be for these suppliers? How able will new and especially smaller suppliers be in dealing with high levels of demand? Will Ofgem have a role in ensuring that new entrants are able to genuinely compete with more established suppliers in what is now the most popular sales channel?

We also suggest that Ofgem should require all PCWs operating in the market to be accredited under the Confidence Code, once the changes are implemented.

Impartiality

One of the problems with the functioning of PCWs in energy and other markets, evidenced in research is their lack of impartiality.⁴⁷ PCWs market themselves as consumer champions, and subsequently most consumers assume they are unbiased. However, evidence suggests that PCWs' commercial incentives are not always aligned with those of consumers.⁴⁸ We have concerns that the proposed remedy may only increase this issue. If the proposed remedies do have an impact upon the motivation of PCWs, as their relationship with certain suppliers inevitably alters, the impact on consumers needs to be considered.

The issue of impartiality of energy PCWs has also been paramount to energy regulators in other EU countries, and the Council of European Energy Regulators (CEER) which brings together National Regulatory Authorities for energy. CEER has developed self-regulatory Guidelines of Good Practice on Price Comparison Tools to improve PCWs practices and increase consumer trust in the sector.⁴⁹ Alongside national accreditation schemes, some energy regulators in EU countries also run their own price comparison services for energy consumers.⁵⁰ On this basis, the proposed remedy represents a fundamental shift in the current approach taken by energy regulators in other EU countries, which may risk undermining work carried out so far to ensure consumers get the best energy deals.

⁴⁷Study on the coverage, functioning and consumer use of comparison tools, European Commission, 2013 <http://tinyurl.com/zwf2q7p>; Comparison Tools, European Consumer Summit, 2013, <http://tinyurl.com/jlzn8hj>; Price Comparison Websites, Citizens Advice, 2015 <http://tinyurl.com/ju52sfg>; Comparing comparison sites, Consumer Focus, 2013, <http://tinyurl.com/j7twmjt>

⁴⁸ Ibid.

⁴⁹ Guidelines of Good Practice on Price Comparison tools - Council of European Energy Regulators (CEER), <http://tinyurl.com/je5eqxf>.

⁵⁰ Comparison Tools, European Consumer Summit, 2013, <http://tinyurl.com/jlzn8hj>.

We understand the interdependency on removing the whole market requirement along with the simpler choices component of the RMR rules, in creating an incentive for parties to negotiate exclusive deals. However we are not convinced that this will automatically translate into more competition in the energy market. Evidence from the insurance sector indicates breaches of competition rules where cases of exclusive deals with parity agreements between PCWs and insurance firms were found.⁵¹

9. The Prepayment AEC and the Domestic Weak Customer Response AEC

11.10 The remedies proposed to address part of the Prepayment AEC and part of the Domestic Weak Customer Response AEC and/or the associated detriment are as follows:

(a) A recommendation to Ofgem to establish an ongoing programme (the 'Ofgem-led programme') to identify, test (through randomised controlled trials, where appropriate) and implement (for example, through appropriate changes to gas and electricity suppliers' standard licence conditions) measures to provide domestic customers with different or additional information with the aim of promoting engagement in the domestic retail energy markets, including a recommendation to conduct randomised controlled trials concerning the following shortlist of measures:

(i) changes to the information in domestic bills and how this is presented including a market-wide cheapest tariff message;

(ii) changes to the specific messaging that domestic customers receive in bills once they move, or are moved, on to an SVT and/or other default tariffs; and

(iii) changes to the name of the default tariffs.

(b) Either the acceptance of undertakings from gas and electricity suppliers to participate in the Ofgem-led programme, or, absent a satisfactory number of undertakings being agreed with suppliers, either:

(i) a recommendation to Ofgem to modify gas and electricity suppliers' standard licence conditions to introduce an obligation on suppliers to

⁵¹Private motor insurance market investigation, CMA, 24 September 2014. <http://tinyurl.com/pkyzcc6>

participate in the Ofgem-led programme or requiring the provision of prescribed information;

(ii) an order on gas and electricity suppliers to participate in the Ofgem led programme or requiring the provision of prescribed information, (including associated amendments to suppliers' standard licence conditions); or

(iii) a recommendation to DECC to introduce legislation imposing a requirement on suppliers to participate in Ofgem-led research programmes.

(c) An order on Gemserv to give PCWs access upon request to the ECOES database on reasonable terms and subject to satisfaction of reasonable access conditions.

(d) An order on Xoserve to give PCWs access upon request to the SCOGES database on reasonable terms and subject to satisfaction of reasonable access conditions.

(e) A recommendation to DECC to make the following changes to the current specifications of Midata phase two:

(i) Participation in Midata is mandatory for all gas and electricity suppliers.

(ii) The scope of Midata is expanded to include the following data fields: meter type, Warm Home Discount indicator, consumption data and time-of-use for those customers on Economy 7 meters or other time of use tariffs.

(iii) PCWs are given the ability to seek customer consent on the frequency with which they can access the customer's data through Midata; are required to present at least two options to a customer when seeking consent to access Midata (including one option concerning access on an annual or ongoing basis); and are given the ability to send updated tariff comparison information based on any subsequent access granted to a customer's Midata.

(f) An order on gas and electricity suppliers requiring the disclosure to Ofgem, subject to certain use restrictions, of (i) certain details (the Domestic Customer Data) of their domestic customers who have been on one of their standard variable tariffs (or any other default tariff) for three or more years (the Disengaged Domestic Customers), and (ii) updated Domestic Customer Data every six months, for the purposes of a creating, operating and maintaining a secure cloud database containing the Domestic Customer Data and allowing rival suppliers to access and use the data for the purpose of postal marketing. The order would also require suppliers, prior to disclosing the Domestic Customer Data to Ofgem, to send a prescribed letter to each Disengaged Domestic Customer, explaining the proposed use of the customer's details, and including an opt-out mechanism for the domestic customer, at any time, to object to and prevent the proposed disclosure and use of their details.

(g) A recommendation to Ofgem to (i) create, operate and maintain a secure cloud database for the purposes of holding the Domestic Customer Data; (ii) hold the

Domestic Customer Data; (iii) enter into agreements with suppliers including, access to, and use restrictions concerning the Domestic Customer Data; and (iv) provide access to the Domestic Customer Data by any rival supplier that has entered into such an agreement.

(h) An order on gas and electricity suppliers with more than 50,000 domestic customers (and amendments to suppliers' standard licence conditions) (i) requiring such suppliers to make all their single-rate electricity tariffs available to all (existing and new) domestic electricity customers on restricted meters, and (ii) prohibiting such suppliers from making their single-rate electricity tariffs available to domestic electricity customers on restricted meters conditional upon the replacement of their existing meter.

(i) An order on gas and electricity suppliers (and amendments to suppliers' standard licence conditions) requiring suppliers to (i) remind their domestic electricity customers on restricted meters, in their regular communications with them, that they have the option to switch supplier or to switch to a single-rate tariff without having to change their meter or incur replacement costs, (ii) provide their domestic electricity customers on restricted meters contact details for Citizens Advice, and (iii) provide, on a timely basis, Citizens Advice with the information it may reasonably require concerning customers on restricted meters in the format specified by Citizens Advice.

(j) A recommendation to Citizens Advice to become a recognised provider of information and support to domestic electricity customers on restricted meters.

(k) An order on gas and electricity suppliers (and amendments to suppliers' standard licence conditions) requiring suppliers to ensure that the annual bills paid by prepayment customers (assuming a pre-determined consumption level) do not exceed a specified benchmark reference level, for a period until the end of 2020.

Domestic weak customer response remedy

While the Citizens Advice Service welcomes the direction of this remedy, we also have some reservations about its likely effectiveness, depending on interaction with other proposed remedies.

We agree that there is scope to simplify both bills and other communications. We also agree that any changes made to bills and related communications should be made only on the basis of evidence of effectiveness. However, evidence shows that:

- understanding of bills and therefore market engagement is very closely linked to tariff structure and complexity,⁵² and

⁵²As identified by Ofgem, for example in the RMR initial findings: <http://tinyurl.com/jk9jlcp>

- while clear information is (for most consumers) a necessary precondition for effective engagement, information alone is not sufficient on its own to deliver engagement.⁵³

We expand, below, on our views of the detail of this remedy.

Changes to information on domestic bills

As set out in our 2015 report *The Lost Decade*,⁵⁴ a significant number of changes have been introduced to energy bills, most notably through the Energy Supply Probe⁵⁵ and the Retail Market Review.⁵⁶ We recognise that the intention behind the majority of changes, in line with this remedy, has been to increase participation by energy consumers in the market – and indeed many of the changes made by Ofgem were supported by consumer organisations, including our predecessors at the time. For example, it was only as a result of the Energy Supply Probe that bills provided the full name of consumers' current tariff, together with their annual energy use and cost – information which is essential to effective switching decisions.

However, the long term perspective and analysis in *The Lost Decade* shows that, although the majority of individual changes had clear rationales, their combination has resulted in bills which are longer and more complex than was originally the case. Further, there do not appear to be clear connections between changes to billing information and market engagement as measured by switching rates - the fact that your investigation is again considering this issue illustrates that the overall result, in line with our research, has not worked as intended.

Following from this discussion, one of the key recommendations from *The Lost Decade* is directly relevant to this remedy:

Ofgem, in collaboration with the Consumer Bills and Communications Roundtable Group (CBCRG) created by Ofgem to advise it, should develop and conduct a research programme to investigate consumer views on the range and presentation of information in bills and annual statements. Specifically, research should draw on and extend previous work carried out as part of the Energy Supply Probe and RMR, and should start from the position of asking consumers what information they want presented at different times and in different formats. Research should also be open to the idea that different groups of consumers may want a different balance of content, given research findings on the extent to which consumers access digital as opposed to print information.

We would also point to panel research carried out by Ofgem which shows that consumers have different perspectives on what bills are for.⁵⁷ In the view of the majority of those involved, the key pieces of information are around how much

⁵³Information remedies taken forward by Ofgem after both the Energy Supply Probe and Retail Market Review did not materially increase switching rates.

⁵⁴'The lost decade', Citizens Advice, 2015. <http://tinyurl.com/h85omju>

⁵⁵Energy Supply Probe - Summary of initial findings, Ofgem, 2008. <http://tinyurl.com/hmvf6yy>

⁵⁶Domestic Retail Market Review, Ofgem, 2014. <http://tinyurl.com/njgxs2z>

⁵⁷Consumer First Panel, Ofgem, 2009. <http://tinyurl.com/gwlpdg2>

they owe and the timing of payments, rather than information on switching or other issues. In contrast, separate communications (such as annual statements) were seen by panellists as providing more of an opportunity to promote longer term actions, such as switching or energy efficiency measures.

Overall, we agree that consumer-facing research is needed and welcome the proposal that implementation of any changes should be made on the basis of effectiveness. However, we would strongly recommend that a clear baseline is established of consumers' current views of supplier communications, so that any changes can be set against the existing position.

We would emphasise, however, that different groups of consumers respond in different ways to existing information. Omnibus research carried out for the Citizens Advice Service as part of The Lost Decade⁵⁸ found that:

- Disadvantaged consumers were somewhat less likely to report that they understood all aspects of their bills than other groups - and understanding of unit costs and of potential gains from switching were already the aspects less understood by all consumers
- Disadvantaged consumers, as well as PPM users, those who rented their homes and those from ethnic minorities, were all much less likely to check their bills were accurate
- However, disadvantaged consumers were less likely than better off groups to report that they found energy bills more difficult to understand than other bills which contain less detailed information. This may be because disadvantaged consumers are concentrating only on the key aspects of bills - how much I have to pay / how / by when - rather than looking at more detailed information.

Taken together, we believe this means remedies based on information alone are more likely to enhance the ability of engaged consumers to switch effectively on successive occasions, than to encourage disengaged consumers to switch in the first place. This is backed up by observed evidence on switching rates - Ofgem tracking data⁵⁹ shows that 12-14% of electricity consumers and 11-13% of gas consumers have switched annually in recent years, and these figures do not include consumers changing tariffs with their existing suppliers. As some 70% of consumers are on SVTs, this implies that a minority are switching relatively often, with the majority switching much less often.

The Ofgem report also shows that the main reason for consumers switching tariff or supplier was, overwhelmingly, to save money, and did not appear to be linked to an external trigger - only 1% reported that they had switched as a result of communication from their supplier. This again emphasises the scale of the challenge which your remedies need to address.

⁵⁸The lost decade', Citizens Advice, 2015. <http://tinyurl.com/h85omju>

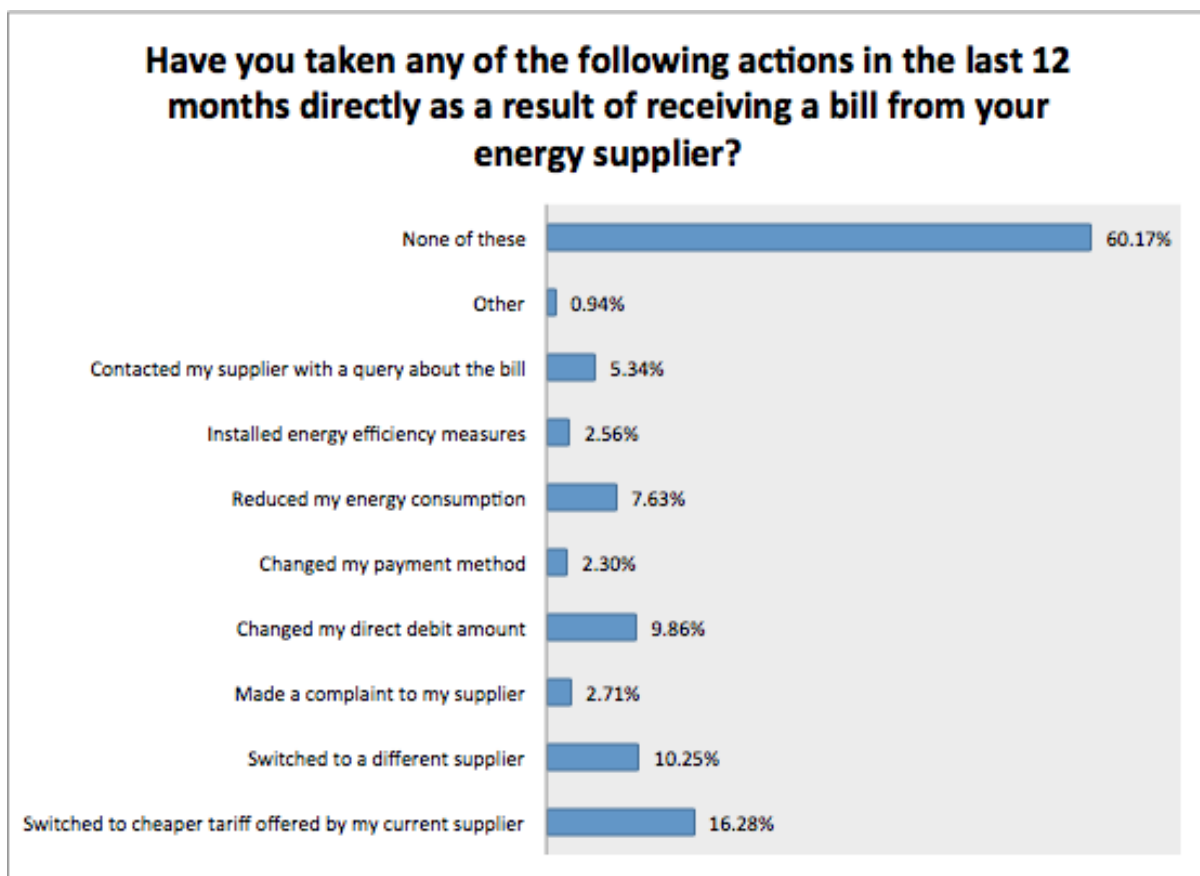
⁵⁹Consumer engagement with the energy market, Ofgem 2015. <http://tinyurl.com/jgnyy7q>

Smart Meters and Understanding of Bills

We note that the CMA cited in Paragraph 4.77 that SEGB's February 2016 Smart energy outlook survey highlighted that consumers with a smart meter were more likely to understand their energy bills, think they have the information they need to choose the right energy supplier and the right tariff. While we agree with the CMA that smart meters have the potential to have a positive impact on competition and engagement, we are less confident that the results from this survey (online survey of 10,119 people of which approximately 300 participants had a smart meter) will be replicated across the wider population. The number of participants with a smart meter is relatively low and given where we are with the rollout, is more likely to consist of engaged, early adopters with higher general market awareness who actively requested a smart meter.

Market-wide cheapest tariff messaging

There is evidence from Ofgem's RMR monitoring consumers were more likely to take some action after seeing the existing cheapest tariff messaging, such as checking their current tariff details (38%), comparing it with others (31%) and switching tariff or supplier (25%).⁶⁰ This finding was also reflected in the Citizens Advice Service's Omnibus research carried out by GfK in August 2015, with 26.53% of consumers stating they had switching tariff or supplier after receiving their energy bill.



GfK survey of 8,050 consumers in August 2015 for the Citizens Advice Service

⁶⁰Retail Energy Markets in 2015 (page 25), Ofgem, 2015. <http://tinyurl.com/zqcf2qq>

Thus there is some evidence that the current cheapest tariff messaging is having a positive impact on consumer engagement levels. It seems reasonable to investigate, before any changes are made, whether consumers do indeed use current information, and what would be the implications of changing it.

While we appreciate the intention behind a move to a market-wide cheapest tariff message, we do not consider that your proposals make it clear how this might work in practice. We note that a number of suppliers say that the changes you propose would make it impossible for them to provide cheapest tariff messaging for their own tariffs only; if it is difficult for an individual supplier, a clear and detailed proposal of how this might work across the whole market would be needed before we could endorse any changes.

We also identify two specific concerns:

- As Ofgem's report *Beyond Average Consumption*⁶¹ shows, both average and median consumption vary considerably away from the median with house type and household composition, and clearly individual basis households will again vary within each segment. Messaging will have – at the very least – to be accurate for different groups of consumers if it is to be effective. It is not clear to us what mechanism could provide this at present.
- Restrictions by payment method – messages need to reflect both current and (for PPM and standard credit) best available tariffs, including any associated costs of meter changes in the short term; we note the timescale for this remedy may mean that the smart meter rollout affects these concerns.

SVT messaging

Previous Ofgem research⁶² suggests that end of fixed term letters can be effective in generating consumer engagement. However, this is in the context of triggers for switching generally being limited when compared to perceptions of barriers and likely benefits. It is also likely that the fixed term letters are more effective partially due to the group which receives these letters being more engaged to start with. As above, it would be helpful to consider whether current information on the effectiveness of these letters provides a sufficient baseline against which future action can be judged, and take action to enhance that baseline if not.

Changes to the name of SVT / default tariffs

We appreciate the intention behind this remedy, and would be keen to be involved in the development of pilot projects to test it. As above, we would want to ensure that all pilot projects reflect the full range of consumers, including especially those who would benefit most from switching because they are on low incomes. The Citizens Advice Service's research⁶³ suggests that consumers in receipt of Cold Weather Payments represent a good proxy for low income consumers who are

⁶¹Beyond Average Consumption, Ofgem, 2014. <http://tinyurl.com/hfwhy47>

⁶²Ofgem Consumer First Panel - Year 4 Second workshops, Ofgem, 2012. <http://tinyurl.com/jueopev>

⁶³Energy tariff options for consumers in vulnerable situations, 2015. <http://tinyurl.com/hdf6m9b>

unlikely to switch. We would also want to see trials conducted with consumers who are in debt to their suppliers.

Requiring Participation by Energy Suppliers in Trials

We consider that the inclusion of changes within licence conditions would be the most effective way of delivering this remedy. There is otherwise a risk, implicit in your identification of this question, that some suppliers may not participate, undermining the delivery of the remedy.

More widely, we appreciate your intention that the various remedies interact with each other to deliver change. However, for any single test to be informative, an assessment of its effectiveness is clearly needed. This in turn implies that a clear intended outcome and therefore agreed measures of success are agreed in advance of any individual trial; given that you clearly identify current consumer detriment of the order of £1.7bn pa, it would be helpful to give an indication of what target reduction in this figure or in the proportion of consumers switching away from SVTs would constitute success over different time periods.

As previously stated, it would also be helpful for the CMA to clarify what actions you would propose in the event that these targets are not met.

PCWs obtaining access to ECOES and SCOGES

We are supportive of this remedy on the basis that it should improve the switching experience for some consumers by helping to avoid erroneous transfers. But we also regard it as essential to guarantee that permitting PCWs access to the ECOES and SCOGES databases would not have any detrimental impact to consumers.

Consistently high standards should be expected of companies granted access to the databases. It will be necessary to define proper usage of the data, and consider having a formal standard for PCWs to follow. We would strongly suggest that Confidence Code accreditation be a necessary requirement for PCWs to be granted access to the databases.

It would be sensible to monitor how the data is being used, without becoming a burdensome process, to ensure it is being used appropriately and with a positive impact for consumers. A reasonable approach for identifying and addressing improper use of the data should be considered.

We would also suggest the importance of ensuring a high level of transparency by PCWs/suppliers regarding their use of the data, to ensure consumers understand where their data is held and for what purposes.

Changes to the MiData Programme

Mandating all energy suppliers to participate in MiData seems a reasonable approach, where suppliers have not already done so voluntarily. We would be supportive of increasing the scope of the MiData programme data fields, with the

caveat that “consumption data” will need significant clarification, particularly where the consumer has a smart meter.

The Citizens Advice Service and its predecessor Consumer Futures have been involved in the MiData programme since its inception and have consistently advocated for a more joined-up approach between MiData and Smart Metering practices regarding consumer data. The CMA review provides an opportunity to ensure that this happens. This issue has several elements:

- 1) Ensuring that MiData remains fit-for-purpose and relevant in a smart world where far more data is available.
- 2) Ensuring that the protections and best practice established in both the MiData and smart programmes are drawn from to generate a consistent and optimal experience for the consumer and the competitive market.

Regarding the second point, it should be noted that the DCC, which PCWs and other third parties are expected to become users of would provide similar functionality to what is proposed via MiData. There are however some critical differences that will need to be considered:

- 1) Sharing MiData information requires an energy supplier to have access to a consumer’s data to provide it to a consumer or third party. Consumers with a smart meter have access to detailed usage information in their Home Area Network (HAN) that neither their energy supplier nor third parties will have default access to. In the future consumers with a (SMETS2 or DCC-enrolled SMETS1) smart meter will be able to choose to grant third parties access to their data via the DCC (or via a CAD) without that data also being made available to their energy supplier. The role of consumer-as-gatekeeper is a critical aspect of smart metering and a competitive market for services founded upon smart data being able to thrive and must not be undermined.
- 2) The latest discussions within MiData indicated that a digital, open-source “security token” would be used to confirm that a consumer had given a third party their consent to collect their MiData information from their energy supplier. This is a system that should be imported to the smart meter rollout as currently the DCC has no mechanism by which it confirms that a DCC user has a consumer’s consent to collect data. This lack of a consent check has the potential to allow DCC users to access consumer data they do not have permission to collect either maliciously or in error with no mechanism to provide consumer transparency or control. This is an area where smart metering would benefit from MiData processes for consent-handling to improve consumer trust as well as the robustness of the system.
- 3) The smart metering framework for data access and privacy which is reflected in the licence conditions for smart meter customers provides vital protections for consumers and lays out clear consent models for different levels of data sharing. It also lays out clear requirements for companies to

provide regular updates to consumers on what data they are sharing, at what frequency, in what detail and a means for consumers to change their mind. These principles will need be reflected in MiData's consent mechanisms to avoid the creation of a loophole that undermines existing protections.

It will be vital that a situation is not created whereby one route to consumer data provides companies with a way to avoid protections or processes provided by the other. Consistency will be critical. Consumers should also be made aware that granting a third party access to their detailed usage data need not involve sharing it with their energy supplier too if they choose to provide it through the DCC rather than a MiData request.

A worst case scenario if these issues are not addressed will be that the licence condition protections regarding smart data are undermined as energy suppliers are allowed to collect detailed data from a consumer's energy meter to comply with a MiData request when the consumer could have shared this data directly with the third party via the DCC or via a Consumer Access Device (CAD) without their energy supplier serving as a middle-man and gaining access to valuable data without offering a consumer benefit in return. The corollary of this would be a situation where there is no consumer consent check for detailed smart meter data communicated via the DCC while there is for the less detailed data shared via MiData.

Disengaged domestic consumers database

The CMA have referred to the example of a French gas database, which has been in operation since January 2015. There are a number of differences between the French and the GB markets. For instance, France is still in the process of phasing out regulated prices. There is also a vastly higher percentage of households who are still with the incumbent supplier in France.⁶⁴ Given the limited amount of time that the French database has been in operation and the significant differences between the two markets, it is difficult to draw any firm conclusions about what the likely effectiveness of this remedy will be in the GB market.

Whilst the Citizens Advice Service continue to have concerns about consumer perceptions of the database as discussed in our previous responses,⁶⁵ we draw comfort from the controls that the CMA has laid out. We were pleased to see that consumers will only be able to receive postal communications from companies they do not have a relationship with, unless they explicitly opt in and consent to receiving communications via other channels. Further to this, we believe use of the

⁶⁴ See page 281, ACER Market Monitoring Report, ACER, 2015. <http://tinyurl.com/hv8s76s>

⁶⁵ Second supplemental notice of possible remedies (<http://tinyurl.com/h45v2r7>) and Supplemental notice of possible remedies (<http://tinyurl.com/z8yonro>) consultation responses, Citizens Advice.

database should be restricted to active, licensed suppliers as opposed to the all parties which hold a supply licence.⁶⁶

It must be easy for consumers to opt out of having their details placed on the database. The Citizens Advice Service would be well placed to design a tool that could help consumers exercise their rights to opt out from marketing communications. It must also be easy for consumers to complain if they feel they they have been hassled or misled as a result of receiving marketing communications. Therefore the contact details for the Citizens Advice Consumer Service should be available on the marketing communications so consumers are aware where any concerns should be reported. Including the url for the Citizens Advice Service's price comparison tool on the marketing communications would ensure consumers are aware how to carry out a comprehensive price comparison.

The CMA should introduce further protections whereby the use of the database should be temporarily restricted if a supplier is experiencing significant customer service problems (to be assessed by Ofgem). The impact on consumer confidence in the market could be severe if a consumer is persuaded to switch supplier after receiving an unsolicited marketing message only to experience delays and problems with their switch or receiving regular bills. We are aware of suppliers who have previously continued to actively market and take on new customers despite experiencing significant difficulties in providing adequate service to their existing customer base.

We note that the CMA's specification includes telephone numbers. It is our assumption is that this is purely for the build specification of the database, in case some consumers opt in to receiving phone calls in the future, and that telephone details will not actually be routinely made available to suppliers. If this is not the case, we think there is a real risk that some suppliers could misuse the data on the basis that the vast majority of people would not report receiving a cold call and thus their activities might not be detected.

The CMA have proposed that the database is updated on a six monthly basis. We note that the CMA considered whether the database could be updated more frequently given that consumers who have moved off a SVT immediately after the last update could receive further and inaccurate marketing messages for a further six months. We are concerned that this may impact consumer engagement in future. The French database cited by the CMA is updated on a monthly basis.

There is a separate issue around the accuracy of the database and we are unclear whether suppliers using the database will know whether the consumption information is based on actual or estimated meter readings. If it is based on the latter, this could have a significant impact on the eventual success of the prompt.

⁶⁶ibid.

The CMA states in Paragraph 8.80 that the combined impact of the remedies will mean that there is more competition and innovation between suppliers and domestic customers become more aware of the potential benefits of shopping around and of the tools available to help them to do so. While we agree that the combined suite of remedies should help encourage further households to engage in the market, it is important to note that this is a market that has been open to competition for over 15 years. Our biggest concern with this remedy is that it is the main remedy targeted at the 70% of the market on SVTs, excluding the minority of households on PPMs or restricted meters, and it may have very limited impact on consumer behaviour. Within that 70% figure, there will be extremely vulnerable households who are far less likely to respond to this type of messaging. We are concerned that these households will continue to be at risk of financial detriment..

The Citizens Advice Service would like the database remedy to be accompanied by more explicit incentives on suppliers to encourage their customers to move off the SVT. The different approaches taken by the Big Six are apparent when comparing the number of customers they have on SVTs. More could and should be done by the suppliers themselves. We would like to see the CMA introduce a new requirement in this area in order to create an effective incentive on suppliers. If the CMA does not take action, the Citizens Advice Service will explore what we can do by use of reputational regulation but this will have a more limited effect.

Restricted Meters

We welcome the focus on the particular circumstances facing consumers using restricted meters. While the number of households affected is relatively small, Ofgem's research⁶⁷ shows that they are more likely to be in vulnerable situations, and both we and our predecessor organisation have highlighted their exclusion from the market and associated detriment in recent years.

Overall, our view is that your proposed remedies will undoubtedly provide some assistance for some of these consumers, and we therefore welcome the direction of travel. However, our review of the impact of the remedy, based on current pricing information, suggests that:

- A change to a single rate tariff will not offer any advantage for PPM consumers on a restricted tariff, given the lack of competition in the prepay market segment; and
- Depending on the individual consumer's pattern of use of electricity, a change to Economy 7 followed by switching to the cheapest such tariff could offer significantly larger savings than a change to a single rate tariff. This holds true for all payment methods, and is the case even where significantly more electricity than suggested by Ofgem research is used on the higher priced day rate.

⁶⁷Dynamically Teleswitched meters and tariffs, Ofgem, 2014. <http://tinyurl.com/zq7x7zh>

As you note, the Citizens Advice Service has agreed to provide advice to consumers using restricted meters. We consider that it would be most advantageous for these consumers to have the option to a) move either to a single rate tariff or b) an Economy 7 tariff, or c) stay on their existing tariff.

We believe that energy suppliers should provide appropriate technical support, including rewiring where necessary to allow the electricity meter to be changed, given the combined benefits to suppliers of having enjoyed profits without the risk of losing these customers since liberalisation.

Access to single rate tariffs – Likely Benefits

We appreciate that the change from their current tariff to the best available single rate tariff will generate some savings for many consumers on restricted tariffs or meters, and we therefore welcome the proposal to provide that option for them. In particular, this is likely to be useful for consumers who use a limited proportion of their electricity during lower cost periods.

We also note that your research identified a limited number of consumers who recorded no use on their off peak meter. Our predecessor highlighted this issue some years ago⁶⁸, and we continue to support their recommendation that suppliers should proactively identify these consumers now and offer to move them to a single rate tariff.

In order to better understand the implications for broader group of consumers who use time of use tariffs with electric storage heating, however, we tested the likely effects of the proposal.

In one of our earlier submissions, we highlighted the example of DTS consumers in the north and south of Scotland, Scottish Hydro's and Scottish Power's home regions respectively. We based our calculations on information in Ofgem's report Beyond Average Consumption,⁶⁹ which gives figures for mean consumption for electric heating consumers of:

Appliances	1,633 kWh / year (18% of total use)
Heating	7,516kWh / year (82% of total use)
Total consumption	9,146 kWh

Using these consumption figures, we previously explored current costs and options for Scottish Hydro and Scottish Power DTS consumers. In summary, for Scottish Hydro DTS consumers (brand name Total Heat Total Control, THTC) we found that:

Total annual cost for THTC	£1,110.59 - £1,154.18 (DD-PPM)
Total annual cost SH E7, estimate	£1,083.08 - £1,126.67

We concluded that a very limited saving might be possible from a move to Scottish Hydro's Economy 7 tariff. However, any saving would depend on the exact pattern

⁶⁸From devotees to the disengaged, Consumer Focus, 2013. <http://tinyurl.com/hmkhpvp>

⁶⁹Beyond Average Consumption, Ofgem, 2014. <http://tinyurl.com/hfwhy47>

of electricity use, and given barriers associated with the uncertainty of time of use of electricity and disruption as a result of meter change and possible rewiring, it seemed unlikely that many consumers would switch. However, as we previously stated:

....moving to economy 7 would have the advantage that it would enable the example household to compare – much more accurately – economy 7 tariffs. Using the information above, the comparison website www.UKpower.co.uk suggests that savings of around £275 are currently available for an Economy 7 direct debit consumer. For a PPM consumer savings are more limited, but still significant, at around £132.⁷⁰

To test the detailed impacts of your current proposal, we compared prices for the same usage pattern and postcode, this time including single rate tariffs.

We also widened the scope of our approach to include Scottish Hydro's economy 10 tariff, for which the standard costs, on the same low rate / peak rate pattern as above are:

Direct debit	£1,259
PPM	£1,299

We found that switching⁷¹ to the most competitive Economy 7 tariff using Ofgem's pattern of use data above gives total costs of:

Online direct debit	£785 (with Scottish Power)
PPM	£965 (with EDF)

In contrast, moving to the best available single rate tariff gives annual costs of:

Online direct debit	£993 (with GB Energy)
PPM	£1,340 (with Green Star).

As your modelling found, a move to a single rate tariff would generate savings for the majority of both THTC and E10 consumers who are able to pay by direct debit. However, the move would not benefit consumers on these tariffs who use PPMs.

As we stated in our earlier submission, we accept that the validity of the comparison between DTS (or any other ToU tariff) and Economy 7 tariffs depends on knowledge of the time at which consumers use electricity. It therefore seems reasonable to test whether savings would still be available in the event that the change of tariff would mean the balance of use of electricity were to tilt more towards peak rate.

Our test showed that, even if the balance of use in the above case were to change so that the household used the GB median of 3,100 kWh at peak day rate and the balance at off peak rate, the best Economy 7 tariff online DD tariff for a Scottish

⁷⁰This is an example of the lack of competitive pressure for the PPM market which we have previously highlighted in our earlier submissions to the CMA.

⁷¹ Using data from Uswitch on 23/03/2016

Hydro ToU consumer would still only cost £899 (Scottish Power). The corresponding figure for PPM would be £1,108 (Green Star), which we accept is a more marginal saving – but still a saving.

Although there is obviously variation in the precise sums involved, the above pattern of costs and savings seems consistent for consumers in the South of Scotland and East Midlands regions.

We conclude that the proposed extension to access single rate tariffs for consumers currently using a restricted tariff is a partial solution, but not one which is likely to benefit PPM consumers under current conditions. In contrast, having the option of moving to Economy 7 tariff would extend the range of options available to all ToU tariff consumers to a greater extent.

The situation is somewhat different for Economy 10 meters. Although we have not looked at this in detail, we have found indications that a number of suppliers offer the tariff directly, or are prepared to offer Economy 7 rates⁷² at equivalent times. Off-peak times themselves are fixed in each region⁷³ and so, within regions, comparison between suppliers should be possible. On this basis, it seems that comparison websites could cover Economy 10 tariffs, but do not do so, presumably because the number of consumers likely to use the service would not make it economic.

Comparison sites for time of use tariffs

Following from the above, we consider that current comparison sites are wholly inadequate for consumers currently using restricted meters – our testing exercise involved multiple iterations and data re-entry, rather than the relatively simple process needed to compare Economy 7 tariffs directly. Further, we recognise that the likely benefits to a private sector provider of developing such a site are, at present, negligible:

- a) As you note, Economy 7 consumers form the bulk of time of use tariff households. We agree that they already have access to a comparison service comparable to those using mains gas, but;
- b) Suppliers do not appear to compete with any vigour for non-Economy 7 tariffs, and this is reflected in comparison site approaches⁷⁴ as well as the evidence submitted to your investigation;
- c) This, in turn, may reflect that consumers using restricted tariffs are more likely to be in vulnerable situations⁷⁵ and hence also more likely to be disengaged from the market.

There is currently a lack of clarity on the options which will be available to consumers using restricted meters and ToU tariffs. On checking with DECC, we've

⁷² Economy 10 information: <http://tinyurl.com/jmf6s3w>

⁷³ See, for example https://en.wikipedia.org/wiki/Economy_10

⁷⁴ See, for example, <http://www.uswitch.com/gas-electricity/guides/economy-10/>

⁷⁵ See, for example Dynamically Teleswitched meters and tariffs, Ofgem, 2014. <http://tinyurl.com/zq7x7zh>

been informed that a variant SMETS2 meter will be needed to match DTS tariffs. As this meter has not yet been developed, it seems unlikely that associated tariffs will be available for quite some time. Our preference would be that, like others in the competitive part of the market, restricted tariff consumers should have a full range of options, including the options to move to single rate or Economy 7 tariffs or to retain their current tariff should they wish to do so.

It is therefore likely that this position will change over time, as smart meters linked to next generation time of use tariffs are introduced. The Citizens Advice Service appreciates that such tariffs have the potential to provide benefits to consumers, as long as they are introduced with appropriate safeguards and support⁷⁶.

Although the number of consumers involved is limited, the complexity of the conversation required is considerable, especially given the evidence that consumers involved are more likely to be in vulnerable situations⁷⁷. It would therefore be helpful, as far as possible, for there to be a specific comparison website which automates the above process, and which – critically – compares options available to all time of use tariff consumers. We consider below the information required and functionality which would be needed from such a website.

Information needed by the Citizens Advice Service

In order to determine the best course of action for any individual consumer, our advisers would need to know:

- The balance between the consumer's current peak and off peak electricity use, which is provided on consumers' bills.
- The times during which off peak electricity is most commonly available (accepting that this varies on a day to day basis for DTS) – this information would need to be provided for all restricted tariffs by all suppliers which offer them;
- The consumer's payment method.

In addition, our adviser would need to understand the consumer's pattern of demand for electricity, in order to know whether a different time of use tariff would offer the most cost effective option. This in turn will be influenced by the consumer's heating system and appliance use. It is very likely that a detailed conversation will be needed with many consumers before the adviser could then determine the options open to the consumer, although some consumers may be able to use a bespoke comparison website to support their decision.

In some cases, the best option may involve physical works in consumers' properties. We consider that this is likely to create significant barriers for many consumers. To help overcome this barrier, we would wish to see any rewiring necessary to allow a meter change being carried out by representatives of energy

⁷⁶ Citizens Advice response to Ofgem open letter on half-hourly settlement, <http://tinyurl.com/z5mcmsz>

⁷⁷ Dynamically Teleswitched meters and tariffs, Ofgem, 2014. <http://tinyurl.com/zq7x7zh>

suppliers, at no cost to consumers, so that they are able to benefit from access to existing competitive markets. We believe that there is a case for this intervention because:

- energy suppliers have clearly benefited from stable profits from these consumers since market liberalisation;
- The Citizens Advice Service has agreed to provide the necessary advice for the consumers involved – in effect a task which we believe that suppliers should already provide themselves; and
- rewiring may in any case be necessary to install a smart meter in these circumstances.

Implications for the Citizens Advice Service

Based on our analysis and the specific advice and support needs we feel will be required, whilst considering our current energy programmes, this may mean additional materials, delivery methods and the creation of a new pricing database to meet those needs. Consequently, there may be a requirement for additional funding in order to reach those specific clients and deliver this advice. We would welcome the opportunity to discuss this further with the CMA to explore all options.

Conclusion

We welcome the consideration your investigation has given to consumers on restricted tariffs, and we recognise that the option to move to a single rate tariff without meter replacement will bring at least some benefits to many such consumers. However, our exploration of the detail of your proposed remedy suggests that:

- It will not benefit PPM consumers – already identified in both our experience and your investigation as the group least well served by the current market; and
- Depending on patterns of electricity demand, existing time of use tariff consumers – regardless of payment method - could be better off moving to an Economy 7 tariff, for which we agree there is already clear competition;
- The process of determining the best option for individual consumers is not straightforward; while the Citizens Advice Service has agreed to provide advice for these consumers, we recognise that physical works may be necessary, and energy suppliers should cover any such costs.

PPM safeguard tariff

The Citizens Advice Service broadly welcomes the PPM safeguard tariff proposal. The CMA estimates that this could reduce the collective expenditure of the four million households on PPMs by around £300m/year. For all of those households it should mitigate the detriment experienced as a result of the failure of competition to serve that segment of the market. In many cases, it will also help to mitigate the

suffering caused by fuel poverty, which is more prevalent among PPM users than among the wider population.

Targeting

While the CMA's proposals represent a substantial and meaningful improvement on existing arrangements, we think the benefit of the safeguard tariff could be enhanced still further if it were to be targeted at an overlapping, but different, group. The CMA has identified particular structural barriers which mean that there is both less competition and more difficulty associated with PPM consumers switching as opposed to their credit counterparts. But it has also identified certain demographic groups who are materially more disengaged with the market than the average. These include those on low incomes, those living in rented social housing, people with no qualifications, pensioners, the disabled, and on those on the Priority Service Register.⁷⁸ These groups are more likely to be on PPMs than the average - but there will be many consumers with those characteristics who are not on PPMs. As a consequence, PPMs are a crude proxy, rather than an exact proxy, for disengagement.

Given the CMA's publication states that the tariff serves to provide direct protection to those 'on low incomes or otherwise vulnerable' and that one of the aims of the tariff is to 'ensure that energy prices are affordable (or, in other words, are maintained at a reasonable level)' it seems somewhat incomplete not to extend the tariff further than the PPM market. There are particular structural barriers which mean there is both less competition and more difficulty generally associated with PPM customers switching as opposed to their credit counterparts. However, the detriment associated with not being able to afford energy - living in a cold home, being unable to perform routine household tasks or needing to ration energy - apply whether a consumer uses a PPM or not. In addition, the CMA's own research highlights that many aspects of the Weak Customer Response AEC including low propensity to shop around and high average age affect greater numbers of standard credit customers than PPM customers. This leads to questions over the rationale for selecting price controls to benefit one group and not the other.

Our view, as stated in our previous responses to this inquiry, is that any price intervention should forensically target households that have affordability issues and struggle to engage with the energy market. Our proxy for such households is the Cold Weather Payment (CWP) cohort, previous research we have undertaken demonstrates that group's difficulty in engaging with the energy market - 66% have never switched - and low incomes - 59% are in the bottom fifth of earners. Taken in combination, the factors mean CWP eligible households are suitable candidates for intervention, and they can easily be targeted due to the data matching that has already been carried out to establish their suitability for the CWP.

⁷⁸ 'Appendix 8.1: CMA domestic customer survey results,' July 2015. <http://tinyurl.com/gmfywsb>

If the CMA does not consider that it can broaden the safeguard tariff recipient group on competition grounds, but recognises that a broader set of consumers might benefit from being able to access it on social grounds (i.e to alleviate fuel poverty), we would welcome it providing a recommendation to government that it should consider its wider application for those reasons.

Headroom and Pricing Strategy

In terms of the benefits to households switched onto the safeguard tariff, the level of potential discount, at well over £100 for dual fuel customers, is sufficient to make a material difference to energy affordability and for this reason is very welcome. Given the high prices energy suppliers charge PPM customers, which are well above the additional burden they bear to maintain associated infrastructure, this is a welcome reality check and validation of the Citizens Advice Service's long held belief that this part of the market suffers from a lack of competitive pricing.

Whilst sympathetic to the CMA's rationale for including an allowance for supplier 'headroom' of £25 per fuel, we would be keen to understand more what effect suppliers' so called 'implicit' headroom will have on any profit derived from the safeguard tariff. If it is the case that overly generous inflationary calculations and supplier efficiencies serve to ensure they can deliver the safeguard and operate at a profitable level without headroom, we would favour the allowance being scrapped. This is not least because, as stated in our previous response, far from being discretionary we expect headroom to become an automatic pass through cost from suppliers, who will be keen to maximise their profit from a broadly inactive group of customers.

Equally, we would be interested to understand whether all suppliers will be permitted to charge headroom. Given that the constituent parts of the tariff are based on the efficient costs of two suppliers, it would seem strange should those suppliers be allowed to charge headroom, and might be viewed as a de facto admission that they are permitted to charge above the efficient price.

Should the CMA believe that its cap already has some built-in flex over what is deemed to be an 'efficient' price, then there should be no need for this additional headroom, which represents the cost of about two weeks' energy use for an average household and so a material benefit should it accrue back to consumers. If not possible to establish currently, matter could be returned to following the first year of the tariff's operation.

Equally, we understand the need to avoid the additional costs and volatility that would be created by regular reassessments of the tariff cap. However, wholesale prices in energy are continuing to fall and we believe an equitable balance needs to be struck between stability and affordability. Should a cap be set and commodity prices precipitously fall thereafter, or a dramatic shift in government policy mean

that those costs are slashed, it could be that the PPM tariff starts to represent a far better deal for suppliers than consumers. Therefore, we suggest some form of threshold be set for triggering a more timely review. This could be formulated with reference to minimum variations (either by percentage or in absolute cash terms) in tariff components - wholesale costs, network costs, policy costs, etc. - as set out by the CMA. Such a mechanism will ensure the tariff represents value on an ongoing basis and in a timely manner.

Timing, Smart Meters and the Sunset Clause

We wholeheartedly encourage suppliers to implement their safeguard tariff earlier than the planned mandatory date, and welcome the CMA making explicit that this is permissible. Suppliers making such a move would clearly be signifying their commitment to charging fair prices and helping to improve the market.

In previous responses, the Citizens Advice Service has backed the tariff being tethered to the rollout of smart meters. We continue to hold this view. However, we would be cautious about writing a specific date into legislation at this point for a number of reasons: The 'go live' date for the Data Communications Company is not due to occur until autumn this year, having already been put back twice, and the power of the Secretary of State for Energy and Climate Change to intervene in the rollout is scheduled to be extended to 2023⁷⁹. This indicates that the period of rollout could potentially be elongated. Secondly, even if the rollout is well on the way to completion by 2020, there will still be a large number of consumers (est. up to five million⁸⁰) still in possession of SMETS1 meters. The analysis of whether, and if so how, those meters will be allowed to communicate with the DCC is not due to be completed until the end of this year so there is no guarantee when, or even if they all will, be adopted. Thirdly, there will be a small but significant group of consumers who will never be able to have smart meters, and also many consumers have signalled that they will refuse smart meters.

Before the full rollout begins it is difficult to estimate how acute these problems will be. For all of these reasons, writing a sunset clause into the tariff could backfire in so far as the rollout will not be as advanced as expected by 2020, and therefore be of more limited benefit at that time to competition in the prepay market.

Even if the rollout is near completion in 2020, the existence of smart meters is of itself no guarantee that prepay customers will enjoy a more competitive market. It is possible that customers on prepay tariffs will still have generally lower incomes, be more likely to be repaying an energy debt and overall be less engaged with their energy supplier. In other words it is quite possible that their characteristics may not have changed dramatically. Therefore it is important that the mid term safeguard tariff review look not only at the numbers of smart meters but the competitiveness of PPM tariffs, the propensity of consumers on those tariffs to

⁷⁹ P7, Draft Legislation on Energy, HMG, January 2016. <http://tinyurl.com/hlqy8vl>

⁸⁰ Statistical release and data set: Smart meters Quarter 4 2015. <http://tinyurl.com/gph23ty>

switch and the ease with which PPM consumers can access the market. Only through assessment of a range of metrics will it be possible to judge whether the prepay market has in fact become more competitive because of smart meters.

Other Issues

In addition to the safeguard tariff, the CMA has set out a raft of remedies to ensure easier entry for smaller suppliers into the traditional gas PPM market. These include giving easier access to gas tariff pages, freeing up more of these pages that currently are not being used and allowing suppliers to batch tariffs for multiple regions. Given the safeguard tariff will be set individually by region, this would imply that, unless two or more regions have identical price caps, some regional tariffs in each batch are likely to be priced below the price cap for that region. If this were to happen, it would be advantageous for consumers in those regions. But given that these consumers are inherently likely to be sticky, suppliers may be reluctant to forego revenue in this way. The CMA may therefore wish to consider whether there is some tension between the safeguard tariff remedy and gas tariff pages batching remedy - specifically, that the application of the former may somewhat deter the use of the latter.

10. The Microbusiness Weak Customer Response AEC

11.11 The remedies package proposed to address the Microbusiness Weak Customer Response AEC and/or the associated detriment is as follows:

(a) An order on gas and electricity suppliers (and amendments to suppliers' standard licence conditions):

(i) requiring suppliers to disclose the prices of all available acquisition and retention contracts to non-domestic customers falling within a defined category (the 'Proposed Segment') either through an online quotation tool made available on their website, or through one or more third party online platforms (and including a web link on their own website to direct non-domestic customers to such third party online platform(s));

(b) A recommendation to Ofgem to make any necessary minor consequential amendments to the suppliers' standard licence conditions.

(c) A recommendation to Ofgem to establish an ongoing programme to identify, test (through randomised controlled trials, where appropriate) and implement measures to provide microbusiness customers with different or additional information with the

aim of promoting engagement in the microbusiness segments of the SME retail energy markets.

(d) An order on gas and electricity suppliers requiring the disclosure to Ofgem, subject to certain use restrictions, of (i) certain details of their microbusiness customers that have been on a default contract for three or more years (the 'Microbusiness Customer Data'); and (ii) updated Microbusiness Customer Data every six months, for the purposes of creating, operating and maintaining a secure cloud database containing the Microbusiness Customer Data for the purpose of postal marketing.

(e) A recommendation to Ofgem to (i) create, operate and maintain a secure cloud database for the purposes of holding the Microbusiness Customer Data; (ii) hold the Microbusiness Customer Data; (iii) enter into agreements with suppliers including, access to, and use restrictions concerning the Microbusiness Customer Data; and (iv) provide access to the Microbusiness Customer Data by any rival supplier that has entered into such an agreement.

Increased price transparency

The Citizens Advice Service supports this remedy, however, we note that it has a potential flaw in that it will not cover all micro-businesses as per of the definition of Standard Licence Condition (SLC) 7A. Aside from the detriment resulting in some of these consumers not being covered by the remedy, it also adds complication for suppliers in terms of the differing definitions they will be conducting business under (the costs of which will be passed onto all non-domestic consumers). As you acknowledge, the current definition of a micro-business in SLC 7A is intentionally broad and we cannot see any advantage in not using it consistently and therefore as the basis for this remedy.

Aside from the scope of the Proposed Segment, we have long supported the concept of micro-businesses being able to access online tariff information. In an omnibus survey⁸¹ conducted to investigate the CMA's findings on our behalf by Populus in Summer 2015, 83% of consumers were in support of suppliers listing their prices on their website⁸². We do not agree that it would be "cumbersome" to update price lists frequently as suppliers will already hold digital registers of prices. We also consider it would be complementary to any online tool rather than being a substitute.

The key aspect of this remedy will be the exact design of the online tool itself. We fully support of your idea that postcode and consumption should be sufficient to obtain at least a guideline price band from any supplier. Ease of use is imperative - in the Populus research when we cross-tabulated questions on choice with one on

⁸¹ Hereafter "the Populus research" and submitted to the CMA as additional evidence in September 2015.

⁸² Omnibus survey of micro-businesses, Citizens Advice, 2015. <http://tinyurl.com/zxf78tg>

the ease of comparing prices there was a clear positive correlation. 52 per cent of respondents who said they had found it “easy” (to compare prices) also said they had “lots” of choices; 62 per cent of those who found it “difficult” (to compare prices) had “not many” choices. Those consumers who find it harder to engage, for whatever reason, also consider they have fewer choices.

We also agree that any “secondary information” submitted will allow a more accurate quote to be generated but this must be a clearly separate step and only if the consumer wishes it. This would then be an “opt-in” process for already engaged consumers but would not become time consuming and difficult and thus put off their less engaged counterparts who are only interested in obtaining a broad range of potential prices from several suppliers. The remedy consequently promotes engagement for all levels of consumers.

It is possible that the Citizens Advice Service may be able to assist in the broad development of the outline design of this online tool using our expertise in such systems. We are aware of work by the Federation of Small Businesses (FSB) in developing a PCW-type tool and as a trusted source of information (for both their members and business generally) it could make sense for them to be at the forefront of this work as well. In the Populus research, just 18 per cent of respondents used one of the existing PCWs when looking for a new contract. In addition, consumers preferred seeing a supplier’s prices directly rather than go through a third party by a margin of 58 to 29 per cent. In that case the latter option needs to be as user-friendly as possible if it is to become a natural choice for semi-engaged consumers.

One final point to consider is how exactly Ofgem, or another organisation, will undertake mystery shopping or monitoring work to ensure that suppliers are directing users to the cheapest of multiple prices for the same contract on different third party platforms as you propose⁸³. This will require detailed analysis if it is not to be gamed by recalcitrant parties; we would suggest that any such programme starts with elements of Ofgem’s (existing domestic) Confidence Code where at all possible.

Increased transparency of out of contract and deemed contract prices

The Citizens Advice Service was under the impression that deemed contracts (as per the Ofgem definition) were already published on suppliers’ websites⁸⁴. This is perhaps a consequence of general confusion among market participants regarding the exact definition of the terms used in this report regarding non-contract tariffs. However, it is clear from the remedy as described that it covers all such contracts being published online and this is something we have long believed is essential to increase transparency, promote engagement and, perhaps, provide an incentive to

⁸³ In the Populus research, Ofgem themselves were the first choice of a small majority (52 per cent) of respondents when asked who should run a theoretical non-domestic PCW. 1 in 5 preferred a commercial body or Citizens Advice respectively.

⁸⁴ Under the interpretation of SLC 7.7.

ultimately put downward pressure on these prices. The published contract prices on suppliers' proposed online comparison should include OOC and deemed contract prices. Some suppliers have already begun to offer more flexible offerings to new and existing small businesses and consumers would benefit from being able to compare all available contract prices.

Auto-rollovers

This is a very pro-competition remedy in the view of the Citizens Advice Service and it has our support. We are particularly pleased that it is retroactive and will thus cover all contracts as soon as it is put into place - previous tweaks on limits in this area (by Ofgem, most significantly in their RMR) had suffered from a long lag-time as multi-year supply contracts stopped these consumers from enjoying the benefits of the new rules.

It is particularly positive that notification periods will be essentially removed by this remedy as these have become the "new" rollover in response to Ofgem's RMR tweaks to this area. Significant consumer confusion has resulted due to changes to supplier policies in not employing auto rollovers, but with consumers then subject to a thirty day notice period. The Populus research suggested that for the market overall this was the first choice of only 2 per cent of respondents, yet we understand that rates vary significantly across suppliers.⁸⁵

The Citizens Advice Service's general view on auto-rollovers is that this is a complex area where simply banning the practice would have unintentional consequences given current deemed pricing by suppliers.⁸⁶ 16 per cent of respondents to the Populus research did not know whether their contract had an end date. All of these consumers are potentially at risk of being rolled-over, so making it as simple as possible not to be is key.

High rollover figures are ultimately a result of disengaged consumers. They also allow suppliers to lock in customers by fiat rather than through providing them with a compelling offer. We therefore fully support these remedies which remove all of the blocks on consumers after contracts end where they are currently disadvantaged.

Use of termination notices and fees

We support this change. The Citizens Advice Service has long had concerns regarding the nominal pricing of such rollover contracts and whether they are fair given the broadly known risk profile of the rolled over consumer. Similarly, given that the consumer is already being charged often punitive rates termination fees are inappropriate; indeed that is how suppliers charging these rates justify their

⁸⁵ Discussions with TPIs and our analysis of individual suppliers' Consumer Service cases

⁸⁶ Arguably this occurred after the RMR changes with suppliers adopting different and often complex to leave "rollover equivalents" e.g. expensive deemed rates.

current level. Clearly if the consumer is blocked from leaving the same principle applies.

Given all of this, it would be particularly unreasonable if that consumer was then put on even more expensive rate because they did not give notice in a prescribed period for the second time. Taken together these remedies will incentivise suppliers to offer new, attractive contracts to such consumers rather than exploiting their rollover characteristics.

While the Citizens Advice Service considers that there are already no termination fees on what much of the market considers an “evergreen” contract in the strictest sense, the use of a binding licence condition is appropriate. As detailed above, consumers should not pay higher non-contract prices which are designed to reflect the risk of them leaving and also pay any type of charge (whether described explicitly as a “termination fee” or not) when they move to another contract or new supplier. We therefore fully support this remedy.

Minor amendments to suppliers’ standard licences conditions

Aside from monitoring for explicit violations of what will be the new licence conditions that arise from the CMA’s proposed remedies, there is a significant role for the Standards of Conduct to play as well. These have now bedded-in the non-domestic market successfully⁸⁷ and it is arguable that for the auto-rollover issue, in particular, many suppliers’ current behaviour in terms of pricing and (not) releasing consumers easily is not compatible.

The licence conditions protect consumers only if they, and other Ofgem powers, are complied with. We have previously called for Ofgem to undertake a review of non-contract (especially rollover) prices charged by suppliers as we were not convinced that they are fair, competitive and accurately reflect risk. Ofgem had previously signalled that it was planning to review deemed contract rates when publishing its RMR documents in 2013. We felt, at the time, that further investigation was needed to establish whether the prices were sufficiently transparent and reasonable. We have not seen any evidence that suggests that the situation has improved in the interim. The CMA could suggest that Ofgem undertake this process now.

Use of randomised control trials

We support this remedy.

However, one associated measure that is not explicitly referred to into the remedies document is that of “signposting” to independent consumer advice and redress schemes including the Citizens Advice Consumer Service and Ombudsman Services: Energy. There is no obligation on non-domestic suppliers to signpost the

⁸⁷<https://www.ofgem.gov.uk/publications-and-updates/investigation-bes-and-its-compliance-its-obligations-under-gas-and-electricity-supply-licences-standard-licence-conditions-7a-7b-7-14-and-21b-and-consumer-complaints-handling-standard-s-regulations-chsr-2008>

contact details of these bodies on their consumers' bills, despite all consumers, both domestic and small non-domestic, paying for these services indirectly via these bills.

The consequence of this is a clear gap in advice provision for microbusinesses, with a much narrower range of sources of information on energy for them to consult. Many microbusinesses do not immediately associate the Citizens Advice Service with advice for non-domestic consumers, despite the Citizens Advice Consumer Service offering a range of advice to microbusinesses broadly equivalent to their domestic counterparts. In terms of existing advice and redress and their underuse, cases to our Extra Help Unit (EHU) have fallen considerably, from 1,224 in 2012 to just 750 in 2015 – in a context of many more domestic cases and therefore a significant drop from 24% of all cases in 2012 to just 8% in Q1 of 2016.

We have, on several occasions, attempted to get suppliers' voluntary agreement to signpost to the Consumer Service on bills, but around half of all suppliers are not doing so. Furthermore, some of the suppliers with the worst performance on complaint handling are those that do not signpost to the Consumer Service.

We thus consider that signposting should now be obligated on all suppliers via an Ofgem licence condition in the same fashion as for their domestic counterparts.

Disengaged Microbusiness Customer Database

The Citizens Advice Service is more positive regarding this remedy on microbusiness customers than for their domestic equivalents. Given the former's nature as, in the main, businesses, the privacy implications are significantly minimised. In addition, microbusinesses are habituated to receiving marketing information from a range of sources.

In addition to the domestic points, one specific non-domestic point to consider would be the inclusion on this database of consumers who have never switched supplier over a period of three years, regardless of what type of contract they are on. A consumer staying with one supplier in a market of more than thirty is unlikely to be accurately termed "engaged", even if formally contracted, and could benefit from a prompt in the same way as their equivalent on deemed rates. The Populus research showed a significant minority of respondents (15%) renewing with their current supplier as the default choice when their contracts came to an end. Indeed there are likely to be cases of consumers who when, say, a two-year contract ends, spend an additional year on one of their incumbent supplier's deemed contracts. Even when a consumer has re-contracted twice again (with their incumbent) there are likely to be gains from switching and no indication of existing market engagement.

It is not undue to extend the target group to ensure its original aim can be fulfilled in the broadest scope possible. We thus recommend that the database contains all

microbusiness consumers who have not left their supplier for three years, regardless of what form of contract(s) this has taken.

Use of microbusiness database

One additional element that might enhance the remedy's usefulness would be its incorporation into Third Party Intermediaries (TPIs) directly. It is not clear from the document whether these bodies would also receive the relevant customers' details for marketing purposes. If this is the case it is a somewhat inefficient way of proceeding as most suppliers will, presumably, pass on the information they receive to their brokers if necessary anyway. Whilst not proposing it for the domestic market, we are minded to consider giving (suitably accredited) TPIs and PCWs direct access to the database given the nature of the non-domestic market but this requires more consideration before a definite decision can be reached.

This apparent non-inclusion of (accredited) TPI encouragement as a way of promoting consumer engagement also leads into your decision not to proceed with a specific TPI remedy. In essence your reasoning seems to be that Ofgem has committed to including the relevant points from the CMA's initial document in their draft code of practice. We would argue that is far from certain; partly because the code of practice has been undertaken for more than five years and various drafts of the code have been discussed and analysed.

We also considered that the CMA's very useful role in this area was to enhance any existing Ofgem code and so was complementary; the remedies document describes your role rather as a substitute and thus creator of a duplicate code. The former is clearly more appropriate and we had supported your thoughts on market transparency and commission payments with that in mind. Indeed, respondents to the Populus research suggested that TPIs (already used by 17 per cent) would be more popular (and thus more likely to be used) if they were required to disclose cheaper deals than they could offer (92 per cent) and reveal any preferential relationships they had with suppliers (54 per cent) - essentially what the CMA proposed in your initial document.

Our concern, shared with other market participants, is that this apparent reversal may result in further delays to Ofgem's development of a comprehensive accreditation code for TPIs and may therefore undermine consumer engagement. We would like to see a formal remedy in this area.

11. The Governance AEC

11.12 The remedies package proposed to address the Governance AEC and/or the associated detriment is as follows:

(a) A recommendation to DECC to initiate a legislative programme with a view to:

(i) deleting paragraph 1C from both sections 4AA of the Gas Act 1986 and 3A of the Electricity Act 1989; and

(ii) set up a clear and established process for Ofgem to comment publicly, by publishing opinions, on all draft legislation and policy proposals which are relevant to Ofgem's statutory objectives and which are likely to have a material impact on the GB energy markets.

(b) A recommendation to DECC and Ofgem to publish detailed joint statements concerning proposed DECC policy objectives that are likely to necessitate parallel, or consequential, Ofgem interventions, setting out (i) a proposed action plan for the regulatory interventions needed and responsibility for these, (ii) an estimated timetable, and (iii) where appropriate, a list of relevant considerations in designing the policy.

We oppose recommendation (a)(i) but support recommendation (a)(ii).

We continue to oppose the proposal to delete clause 1C from both sections 4AA of the Gas Act 1986 and 3A of the Electricity Act 1989. The evidence to support such a deletion is extremely weak. The stated rationale of this change is to 'remove any constraint (actual or perceived) on Ofgem's ability to pursue its principal objective (protecting the interests of existing and future consumers) by promoting effective competition' but neither the provisional decision nor the relevant Appendix (10.1) gives any examples of decisions where those clauses have impeded Ofgem's ability to pursue its principal objective. Indeed, neither the provisional decision nor the relevant Appendix provide any evidence of those paragraphs influencing regulatory decisions at all, whether for good or ill. This absence of evidence of practical harm was also the case when the CMA published its Provisional Findings in July.

The CMA appears to have put heavy weight on Ofgem's evidence in putting forward this remedy, with several references suggesting the regulator had expressed concern that its decision making may be unhelpfully constrained by these statutory provisions. But the case for this constraint appears entirely theoretical. Reviewing its evidence submissions does not bring to light any practical examples of decisions, either from the past or those that it anticipates making in the future, where these clauses have caused, or could cause, problems.

Even the theory itself appears flawed. As we highlighted in a previous submission, the relevant provisions do not obligate Ofgem to prioritise non-competition remedies over competition ones, simply to consider whether they exist during its decision making processes.⁸⁸ If, following this consideration, it considers that a

⁸⁸ Page 70. <http://tinyurl.com/q735amx>

competition remedy is most appropriate, it is not precluded from taking that path. Further, the removal of these provisions would not fundamentally change this position, with Ofgem still able to consider and implement non-competition remedies where it considers these the most effective way to achieve its principal objective.⁸⁹

While we do not accept that there is evidence that the introduction of the disputed clauses have materially affected Ofgem decision-making, for good or ill, it does not follow that we would consider their removal a placebo. This is because any change to the regulator's principal statutory duty creates stakeholder uncertainty on how this may affect its future decisions. Statutory duties should not be changed lightly, and in the absence of a clear rationale for change, the introduction of such uncertainty is unmerited. We also think it would be at best inadvisable, and at worst inappropriate, to start seeking to redraft primary legislation through market investigations. It is, in our view, a matter for Parliament to define a regulator's statutory duties, and not a matter for either the CMA or the regulator itself.

We support recommendation (a)(ii). You note that Ofgem already provides such opinions to DECC but usually on an ad hoc, private basis and that this is not in the interests of transparency and an informed public debate.⁹⁰ You also note that because public statements by Ofgem are currently rare, their significance could be overstated in the public debate - in turn, creating a deterrent to making such statements.⁹¹ To counter these problems, you propose systemising the publication of regulatory opinions on relevant draft legislation and policy proposals. Paragraph 10.109 suggests this would not simply cover DECC policy, but also that of Treasury or any other government department generating relevant policy.

We agree with the underlying thrust of the CMA's argument - that exposing any challenges or technical difficulties with draft legislation and policy proposals to public scrutiny should help both to improve the quality and robustness of the final proposals, and aid stakeholder understanding of their impacts and consequences. In recognition that government has a democratic mandate and sector regulators do not, we think that the scope of the opinions should be constrained to the practicalities of implementation, including whether there are alternative proposals that could deliver the same, or better, outcomes more effectively, and should not also consider the desirability of the policy itself. In a nutshell, that the opinions should only critique the 'how', not the 'why'.

You suggest that there may need to be a materiality threshold to ensure this remedy remains manageable, for example by limiting the requirement on Ofgem to comment to those proposals with a 'substantial impact on the GB energy markets.' We support this view. We consider it likely that most, if not all, changes to primary

⁸⁹ As you acknowledge in paragraph 10.68, 'in certain circumstances the best way of protecting consumers' interests may be achieved by a means other than through competition.'

⁹⁰ Para 10.105.

⁹¹ Para 10.106.

or secondary legislation would merit this form of scrutiny but that many - probably most - policy proposals that do not require legislative changes would not. The bar to trigger the production of a formal opinion should be relatively high as a low bar may simply create inefficiency in the process; diverting regulatory resources away from higher priority matters. We support the proposal that DECC should ordinarily respond to any comments in the government response to consultation responses. This appears less onerous than providing standalone responses.

Although supporting this proposal, we consider that there are some unacknowledged weaknesses that will prevent it from wholly succeeding in its aims, but that these are features of the existing baseline arrangements (eg that this proposal does not make these problems worse, it simply may not resolve them).

The first of these is that while Ofgem is statutorily independent, it will be conscious of the need to maintain a positive working relationship with both government and politicians. So there is likely to remain a strong incentive on the regulator (and indeed, the department(s) it is interacting with) to resolve delicate or controversial matters in private. In view of this, a problem you identify with existing arrangements - that Ofgem's officials may 'err on the side of caution by keeping both technical and substantive comments private' - may at least in part remain.

The second is that relevant legislation or policy may directly affect Ofgem itself, and not simply the energy market in general. For example, it may affect its statutory roles and duties, its budget, or even its existence.⁹² We do not believe this should preclude Ofgem from commenting on such proposals as its views on the practicalities of implementation may remain highly relevant. But it is important to recognise that in some circumstances it may be commenting on proposals where it is subject to a conflict of interest.

Because of this potential for conflicts of interest, and to reflect that government has a democratic mandate for policy making, we consider that any opinion offered by Ofgem to government should only carry the status of advice and should not be binding on government. We would be concerned if Ofgem advice had the capability to frustrate DECC's ability to deliver policy, for example by creating judicial review risk for the government. This risk will need to be carefully managed.

Joint Statements from DECC and Ofgem

This proposal seems sensible to us. It should allow for a more co-ordinated approach to delivering policy changes that straddle both departmental and regulatory briefs. In particular, it should help in the advance identification of bottlenecks or contingencies allowing both bodies to better plan. This should aid the expeditious and efficient delivery of policy. It may also help stakeholders to anticipate and allocate their resources more effectively.

⁹² For example, the Labour party's 2015 election manifesto committed it to abolishing Ofgem and replacing it.

(c) A recommendation to Ofgem to:

(i) publish annually a state of the market report (the 'State of the Market Report') which would provide analysis regarding issues such as (i) the evolution of energy prices and bills over time, (ii) the profitability of key players in the markets (eg the Six Large Energy Firms), (iii) the social costs and benefits of policies, (iv) the impact of initiatives relating to decarbonisation and security of supply, (v) the trilemma trade-offs, and (vi) the trends for the forthcoming year;

(ii) create a new unit (eg an office of the chief economist) within Ofgem, which would build expertise across the different areas of the energy markets with a view to publish annually the State of the Market Report; and

(iii) modify the licence conditions of the Six Large Energy Firms' generation and supply licences by introducing requirements to:

- *report their generation and retail supply activities on market rather than divisional lines;*
- *report a balance sheet as well as profit and loss account separately for their generation and retail supply activities;*
- *disaggregate their wholesale energy costs for retail supply between a standardised purchase opportunity cost and a residual element; and*
- *report prior year figures prepared on the same basis.*

We are broadly supportive of all the recommendations contained in proposal (c), though we think the absence of any recommendation in relation to contemporaneous cost reporting is a weakness that should be addressed through an additional recommendation to reinstate the Supply Market Indicators (SMI).

Elements of recommendation (c)(i) are already in place, but are delivered through multiple different vehicles which frustrates the ability of stakeholders to form a holistic view. In some areas, the current reporting vehicle may be the wrong one.

For example, DECC has committed to producing an annual assessment of the impact of social and environmental policies. These have been published roughly every 18 months⁹³, and have provided a very useful insight into aggregate medium term (2020 and 2030) policy costs and their distributional impacts. But given the policies it is assessing are its own, these publications have been open to accusations that DECC is 'marking its own homework.' Indeed, in areas we have concerns that the approach taken has not been methodologically robust. For example, the exclusion of historic, now defunct, policies like CERT and CESP from the 'without policies' calculation lacks credibility, because they will be in place no

⁹³ In the last Parliament, four were published: in July 2010, November 2011 [16 months later], March 2013 [16 months later] and November 2014 [20 months later].

matter what policies are pursued from this point; in effect their inclusion in only one of the two scenarios creates a false counterfactual. This approach will have the effect of masking the full impact of current policies - and it is the effectiveness (or not) of current policies on which the department should be judged.

If DECC's policy cost assessments provide a steer on one set of cost drivers affecting bills - those resulting from policy - stakeholders have to refer to different sources to understand the evolution of other costs. For network costs, Ofgem's RIIO documentation can be used as the basis for medium term forecasts (to 2021 for transmission and power distribution, and to 2023 for gas distribution). For recent past profitability and wholesale costs, the Consolidated Segmental Statements (CSS) can provide some data, though we recognise that there are limitations to the CSS that you are seeking to tackle through a different remedy. For short term wholesale price trends, stakeholders are currently dependent on market reporting agencies like ICIS since the suspension of the SMI.

The creation of a single source that tries to draw together these various strands of costs drivers into a single analytical assessment of where we are now on costs and profits, and their direction of travel in the short to medium term, would be extremely useful. In particular, credible independent scrutiny of the costs and effectiveness of social and environmental policies would be valuable, given that these will come to form an extremely substantial tranche of the total consumer bill.

⁹⁴ We agree that, of the existing institutions, Ofgem is best placed to deliver this State of the Market report and that it may be disproportionate to set up a wholly new body to carry out this function.

We were a little surprised to see the recommendation ((c)(ii)) that Ofgem should establish a new Chief Economist's office to fulfill this role. Ofgem is, by its nature, an economic regulator. It should also be tracking the majority of these cost trends anyway. But if the purpose of the office is to create a firewall between the team producing the State of the Market analysis and the remainder of Ofgem (whose estimates it may be critiquing) then the creation of this new office may be justified.

While most aspects of the costs and benefits that the State of the Market reports will be considering are outside Ofgem's control, in the area of network costs, where it sets the price controls, this will be less true. You, or Ofgem in its development of your recommendation into a formal process, will need to ensure that the design of the Chief Economist's office role is demonstrably sufficiently independent that stakeholders can have confidence that it can robustly critique any under or over-performance by the network companies.

We would like to see the publication dates for the State of the Market reports fixed and published in advance. It may be appropriate to do this by recommending that Ofgem set a KPI in each of its annual business plans that commits it to publish in an

⁹⁴ You highlight in paragraph 172 of your provisional recommendations that on the basis of currently announced energy policies, consumers will see a 37% rise in the retail price of energy by 2020.

exact month in the coming year, coinciding with the anniversary of the previous year's report. The benefit we see with this is that it mitigate the risk that 'annual' slips and they are published less regularly, as has been the case with DECC's policy cost updates. That would be unacceptable given how rapidly energy costs are evolving and the need to improve public understanding on what is driving bills. By committing to a firm date in advance, it also reduces the risk that the report can be moved around within the year to accord other areas of the regulator's work a higher priority. As a stakeholder, we regard improving transparency and understanding of costs as one of the highest priorities for the regulator, and think that flexibility on publication is an area where regulatory flexibility should be curtailed rather than allowed.

We would also like to see the State of the Market report seek to interrogate the credibility of policy cost estimates created by DECC and not simply slot these estimates into its modelling. The benefit of this is that it would provide an independent regular third party audit of this major area of costs that currently does not exist.⁹⁵ This scrutiny should help to improve the transparency and robustness of DECC's own impact assessment processes.

While you envisage the State of the Market report including a projection of the trends for the coming year, we would like to stress that this would not make the report an adequate substitute for the SMI. There is considerable public interest in understanding whether price movements, particularly price rises, are fair and justified. It is also in the public interest that suppliers can be held to account where margins are rising unchecked. Energy costs can rapidly change within year, and a more contemporaneous projection of ongoing trends is needed. We would therefore like to see the reinstatement of the SMI. We recognise that the picture presented by the SMI has historically been disputed by suppliers, though it is not clear to us that their grounds for dispute are legitimate - particularly given the CMA's conclusions that consumers on standard variable tariffs have been getting a raw deal. The CMA has suggested improvements that Ofgem could make to the SMI if it chooses to reinstate them⁹⁶, but we would like it to go further and recommend their reinstatement.

We support all four of your proposals to improve the CSS as outlined in recommendation (iii), in three cases without reservation. Reporting on market, rather than divisional, lines should make the data more comparable from firm to firm, and help Ofgem to better assess the state of competition in the market. The introduction of balance sheet reporting is necessary in order to calculate the return on capital of these businesses, particularly in the case of generation which is extremely capital intensive. Reporting prior year figures on the same basis as

⁹⁵ We note that ad hoc independent assessments may be undertaken by some combination of the National Audit Office, the Public Accounts Committee and parliamentary committees such as the Energy and Climate Change Committee. These may look at policy costs in the round, or only in certain areas, and their timing is uncertain.

⁹⁶ Paragraph 10.284.

current year figures should help in developing trend analysis. These measures should improve the value of the CSS

While we understand the logical basis of the recommendation to disaggregate wholesale energy costs between a standardised purchase opportunity cost and a residual element, we have found it difficult to understand exactly how the latter will be calculated and communicated to users of the CSS. Paragraph 10.265 implies that the standardised purchase opportunity cost for the majority of customers, those on standard variable tariffs, would be calculated approximately a month ahead of delivery. Our understanding is that large suppliers hedge their SVT customers over a very considerably longer timescale of several years - indeed, this is the most frequent justification we hear to support claims that wholesale price falls cannot be passed through to consumers. This suggests that the residual element that is calculated could be substantial. It will be important for stakeholders to be able to understand figures reported for those costs are derived if they are to give confidence; this is something Ofgem will need to give thought to in its implementation processes.

12. The Codes AEC

11.13 The remedies package proposed to address the Codes AEC and/or the associated detriment is as follows:

(a) A recommendation to Ofgem to:

- (i) publish a cross-cutting strategic direction for code development (the 'Strategic Direction');*
- (ii) oversee the annual development of code-specific work plans for the purpose of ensuring the delivery of the Strategic Direction;*
- (iii) establish and administer a consultative board that would bring stakeholders together for the purpose of discussing and addressing cross-cutting issues;*
- (iv) initiate and prioritise modification proposals that, in its view, are necessary for the delivery of the Strategic Direction;*
- (v) in exceptional circumstances, intervene to take substantive and procedural control of an ongoing strategically important modification proposal, as appropriate; and*
- (vi) modify the licence conditions of code administrators to introduce the ability for the administrator to initiate and prioritise modification proposals that, in its*

view, are necessary for the delivery of the Strategic Direction or to improve the efficiency of governance arrangements.

(b) A recommendation to DECC to initiate a legislative programme with a view to:

(i) giving Ofgem the power to modify industry codes in certain exceptional circumstances; and

(ii) making the provision of code administration and delivery services activities that are licensed by Ofgem and specifying that such licence conditions will include appropriate targets to incentivise code administrators to take on an expanded role to be able to deliver pursuant to the Strategic Direction.

We recognise and are largely in agreement with the CMA's diagnosis in relation to the industry codes, although there are areas in which we think its proposals could be further improved.

At present, for the vast majority of proposals, the modification process is industry-led, reflecting 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 moderately 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 introduction of major new concepts, but they are inflexible in catering for profound, strategic changes in direction. In our view, this is most pronounced where either the materiality and distributional impact of such changes is such that some parties have a vested interest in ensuring reforms do not successfully make it through the industry-led process, which, as you have noted, has been the case with locational losses, or where party interests and consumer interests may not clearly align, as appeared to be the case with cash-out reform.

The introduction of the Significant Code Review (SCR) process by Ofgem in 2010 was an attempt to provide a vehicle for the regulator to step in and take such issues forward but, while in itself an incremental improvement on previous arrangements, does not appear to have provided a systemic solution to allow the regulator to tackle the major systemic challenges that the sector faces. The SCR process has proven cumbersome, with significant lag times between the initiation of reviews and the implementation of change.⁹⁷ It also appears to us to be often inefficient, with issues that appeared to have been considered and resolved during the Ofgem-led part of the process being reopened again in the subsequent industry-led

⁹⁷ See Table 1 of 'Further review of industry code governance,' Ofgem, 15 May 2015. <http://tinyurl.com/pj5t685>

part of the process.⁹⁸ Further, it is questionable whether Ofgem is best positioned to analyse or project manage major industry code changes as it is more distant from the underlying IT systems, working practices and detailed procedural rules that may govern an industry process than the code administrators are.

We are wholly supportive of proposals (a)(i),(ii) and (vi) - to establish a cross-cutting Strategic Direction for the codes, for the development of annual code-specific plans setting out how they will work to deliver that Strategic Direction, and to allow the code administrators to initiate and prioritise modification proposals to deliver the Strategic Direction. In combination, we think these should provide a vehicle to drive forward strategic changes in the sector by allowing the regulator to establish a roadmap for where it wants to get to, and by obligating the code administrator to develop the route plan to get it there. The regulator should further be empowered to take steps against the code administrator if it fails to deliver, which is envisaged by remedy (b)(ii).

We are also supportive of remedy (a)(iii) though we think it would provide only minor improvements to existing arrangements. While no explicit consultative board for cross-cutting code issues currently exists, the consideration of cross-code issues already frequently arises in the context of major regulatory reforms; cross-code impacts are frequently discussed in the various industry fora we attend. So in effect, we think it would replace an implicit ad hoc process with an explicit formalised one, rather than create a wholly new discipline. In order to maximise the benefit of this remedy, thought should be given to how it can be ensured that the recommendations or findings of this new consultative body are acted on - how will it ensure that it adds value?

We are less convinced of the merits of proposals (a)(iv), to allow Ofgem to initiate modifications and (a)(v), to allow it to step in to take over modification processes. We think there is a better alternative to the former, and that the latter is effectively already in place.

Regarding proposal (a)(iv), we simply think that it creates an unnecessary duplication with (a)(vi). If Ofgem is already empowered to set a Strategic Direction (under (a)(i)), signs off on the code specific plan to deliver that Strategic Direction (under (a)(ii)), and the code administrator is expected to raise modifications that deliver it (under (a)(vi)), then the regulator should not need to initiate these proposals itself (under (a)(iv)). Allowing it to do so may indeed have the unintended consequence of slowing down reform, because it may create uncertainty on whether the code administrator or the regulator will be initiating any given strategic proposal. Indeed, it is possible that code administrators may prefer to leave proposals they perceive likely to be unpopular to the regulator to raise. Rather than giving two different bodies concurrent powers to raise the same modification,

⁹⁸ For example, the PAR value put forward at the conclusion of Ofgem's electricity balancing SCR was subject to change in the subsequent industry code modification process.

it may be preferable to restrain this to one in order to ensure there is clear ownership of who should take proposals forward. Given the code administrators have most direct responsibility for the systems, processes and rules that may be subject to change, they may be better placed than Ofgem to fulfill that role.

Regarding proposal (a)(v), we note that there are already a range of licence powers allowing Ofgem to step in and try to tackle procedural failings in the ongoing development of a modification proposal. It has significant pre-existing powers to exercise quality control over modification processes.⁹⁹ Those powers will be further bolstered by your proposals to make code administrators directly licensable (through proposal (b)(ii)) which would expose them to potentially significant financial sanctions where they failed to comply with those licences. While we do not object to this proposal, we are not clear what tools it would add to the regulatory toolkit that would not already exist through a combination of existing quality control powers and the proposed introduction of a licensing regime for code administrators.

We support the introduction of that new licensing regime (proposal (b)(ii)). Code administration is already technically a licensable activity, as all of the code administrators are owned by licensees who are subject to both generic licence obligations (for example in relation to efficiency) and to specific ones in relation to the content and form of codes. But this existing licensing regime is indirect, and may not work well where the licensee has established an arms length relationship with the code administrator it appoints. For example, while the licence obligations in relation to the Balancing and Settlement Code sit within National Grid's licence, its code administrator, Elexon, is functionally independent and not directly controlled by National Grid. It may also not work well where a code administrator is owned by multiple licensees, such as is the case with the Joint Office of Gas Transporters - one would imagine that taking collective enforcement action would be even more difficult than taking enforcement action against individual licensees. Making code administrators directly licensable, and subject to performance incentives through those licences, should improve Ofgem's ability to ensure they perform to a high standard.

On the final recommendation here, (b)(i), allowing Ofgem to raise modification proposals in "certain exceptional circumstances" we have not been able to form a view in the absence of detail on what kind of circumstances you envisage. Ofgem already has powers to require National Grid to raise proposals through the SCR process, and you are separately proposing to allow it to both raise proposals itself directly (proposal (a)(iv)), or indirectly (proposal (a)(vi)), in order to deliver its Strategic Direction. This would seem to cover a wide range of circumstances and we are not clear on what exceptional circumstances would not be covered by it. We

⁹⁹ We detailed these in significant depth in our response to July's provisional findings report. See pages 74 and 75. <http://tinyurl.com/q735amx>

would welcome further detail on what gaps you think this proposal would fill when you issue your final decision.

We think there are additional, relatively easy to implement steps that the CMA could take that would further improve the industry codes processes.

Firstly, we think there would be significant value in allowing a single modification group to consider modifications with a cross-code dimension. This would have greatly helped when considering past proposals to introduce half hourly settlement that necessitated changes to multiple codes (Balancing and Settlement Code ('BSC') and Distribution Connection and Use of System Agreement) that made sense in combination but did not make sense in isolation. That fragmentation was a causal factor of the BSC Panel recommending rejection of P272, causing knock-on delays to its implementation. Similarly, it would be useful to amend the industry code objectives to enable code panels to recommend implementing a proposed amendment to a code where, in combination with changes to other codes, it would deliver consumer benefits. At present, they are precluded from making assumptions that contingent changes will take place - again, this was a constraint on P272, where the BSC Panel did not consider that it was allowed to assume that distribution charging rules needed to make that modification work would be brought in, as those changes were outside its remit.

Secondly, we think it would be useful to give consumer representatives the same rights to raise modification proposals in relation to the Uniform Network Code ('UNC') as they have in relation to other codes. The Citizens Advice Service is able to propose modifications to any aspect of most industry codes, but has no equivalent right in the UNC.¹⁰⁰ This means that consumer-led reforms to the gas arrangements are not possible. This may impede improvements in the industry arrangements that would improve competition in the market. For example, elsewhere in your package of reforms you propose introducing a quality assurance regime in the UNC that is similar to that which exists in the BSC. It is worth reflecting that the successful BSC regime was put in place by a modification raised by our predecessor body, energywatch.¹⁰¹ Neither energywatch nor the Citizens Advice Service would be able to put forward similar proposals to the UNC under current rules.

Finally, we think it would be hugely beneficial if the industry codes each contained a consumer impact objective that both the working groups and code panels would assess changes against. The introduction of a consumer code objective could facilitate engagement with the codes by a wider range of stakeholders through making the codes more accessible and relevant. The Citizens Advice Service are currently usually the only consumer representative to meaningfully engage with industry codes processes. Other consumer groups do not attend code panels, and

¹⁰⁰ See section 6.1 of the UNC modification rules. <http://tinyurl.com/j64utlg>

¹⁰¹ 'P207: Introduction of a new governance regime to allow a risk based Performance Assurance Framework (PAF) to be utilised and reinforce the effectiveness of the current PAF.' <http://tinyurl.com/jidcqco>

rarely provide consultation responses or attend working groups. Based on the feedback we receive from other consumer groups and interested third parties we perceive the barriers to be driven by lack of resourcing and the unintelligibility of both the codes themselves and their change processes to a casual user. It should not have to be this hard. A consumer code objective could help to draw out a plainer English explanation of why rule changes matter, and help to facilitate engagement with the end users who will have to pay for, and see the service they receive or costs/benefits they face, change as a result of them. It could also help to ensure that modifications are more robustly assessed before they are delivered to Ofgem for decision by encouraging more demand-side participation in the assessment process.