



**November 1998**

**Ofgas' Response to the Government's Public  
Consultation Paper on Consumer Councils**

# **Ofgas' Response to the Government's Public Consultation Paper on Consumer Councils**

**November 1998**

## **Contents**

Introduction	2
Functions of the Consumer Councils	2
Relationship between Councils and Regulators	5
Customer Complaints	6
Access to Information and Powers to Publish	7
Organisational Issues	8
Resources	9
Longer Term Arrangements	10

## Introduction

Ofgas welcomes the opportunity to respond to the Government's proposals set out in its public consultation paper on consumer councils.

In the main part of this paper we give Ofgas' comments on each of the specific proposals made in the consultation paper and listed in the Summary section.

Our central concern is how a regulator who wishes to respond to the Government's ambition that regulation should place the consumer at its heart can effectively do so if the principal contact with the consumer is to be channelled via the consumer council. If this is to occur, it will be essential that arrangements between the regulator and the consumer council are established which ensure that the reduced direct contact which will necessarily result from this organisation does not give rise to a reduced understanding by the regulator of the specific needs and problems of consumers. In particular:

- (i) the arrangements must be flexible and capable of amendment by agreement. We therefore see great advantage in avoiding statutory definition of what a Memorandum of Understanding should cover;
- (ii) the provision of information by the consumer council to the regulator will be important. This should encompass the regulator's access to information held by the consumer council, the design of data bases, the statistical analysis of data, and the timely provision of information;
- (iii) it must remain open to the regulator to talk directly to those affected by energy regulation if the particular problems and needs of consumers are to be recognised with the clarity needed, which would be obscured by having to make contact via an intermediary body.

## Functions of the consumer councils

**Paragraph 10. The Government invites views on the functions the consumer councils should perform. Does the text in paragraph 9 represent a comprehensive list of functions? Should functions be added or removed?**

Ofgas agrees that it will be important for the consumer councils to have a defined set of duties and functions.

It will be important for the consumer council in pursuing its function of protecting the interests of customers to do so in a way that takes into account their interests, not only in the short term and particular cases, but also in the longer term and in general. This might be achieved if it were to be tasked with the function of protecting the interests of customers in the way similar to that intended for regulators ie through promoting effective competition wherever possible and appropriate.

Without such a balance the consumer council would not be required to be concerned about the costs associated with any proposals that it might make, for example for licensees to raise standards of service. When making representations to the regulator for changes to the regime, it will be helpful if the consumer council can demonstrate that it has undertaken an analysis of the economic and regulatory impact of its proposals.

## **Representation**

Although representation will be an important feature of the work of the consumer council, it will not be the only body representing customer interests. At present Ofgas receives representation from a number of bodies that represent different aspects of the interests of domestic customers - for example the National Consumer Council, the Consumers' Association, the Public Utilities Access Forum, and the energy efficiency lobbies. Ofgas would expect to maintain direct channels of communication with these and similar bodies to understand the full range of customer needs and gain a balanced view of their interests.

Similarly, Ofgas currently meets regularly with a number of bodies which represent a range of industrial and commercial customers, for example the Major Energy Users Council, the Utility Buyers Forum, the Chartered Institute of Purchasing, and the Intensive Energy Users Group. Ofgas also greatly values regular contact with such organisations, and believes that they value the opportunity to discuss with the regulator issues of importance to their members. It is essential for the regulator to be able to continue to have direct discussions with these organisations, and with the industrial and commercial customers they represent.

In making representations to the regulator, the consumer council may find considerable difficulty in practice in balancing the potentially conflicting needs of the wide spectrum of domestic customers. In Ofgas' view it will be even more difficult for the council to balance the needs and views of industrial and commercial customers with those of domestic customers, particularly if it is charged with the particular role of representing disadvantaged customers.

One recent example of such a conflict is the representations which Ofgas has received from industrial and commercial customers on the issue of whether suppliers should have the right to object to a customer's transfer where the customer has unpaid debt. The right is set out in the standard conditions of supply licences and was intended to prevent domestic customers from skipping between suppliers without paying for their gas. Industrial customers have made representations to Ofgas that the power of the supplier to block transfers is inappropriate for the industrial and commercial market and potentially anti-competitive. In their view the transfer should be permitted and the supplier should pursue any claim for unpaid debt through the court. It is not clear how the consumer council would resolve the very different requirements of the two sectors and what representations it would make to the regulator without the

balance of duties under which the regulator operates. If there is no ability of the customers to approach the regulator directly then it will be very important that the consumer council does not make representations on behalf of one group at the expense of the other.

## **Complaints**

To date both the Gas Consumers Council and Ofgas have had responsibility for handling complaints from customers. In its consultation paper the Government stated its intention that the consumer council should deal with all customer complaints, not only in the domestic market but also in the industrial and commercial sector. However, the document focused particularly on the role of the consumer council in relation to the domestic customer, and did not address the issue of it would handle the very different nature of complaints which arise in the industrial and commercial market. In Ofgas' view it is right that the consumer council should be focused on assisting domestic customers to resolve complaints which have not been dealt with by the licensee to the customer's satisfaction. It is likely that small commercial customers have a similar need for assistance in dealing with licensees but in Ofgas' view larger industrial and commercial customers do not have need of such an advocacy service and will neither appreciate nor utilise it.

It may be sensible therefore to raise the threshold of where the consumer council's exclusive jurisdiction lies from the current definition of domestic customer at eg 2500 therms in gas to, for example 10,000 therms. It would then be open to larger customers to seek the assistance of the council in resolving disputes, but it would also be open to them to approach the regulator directly. In practice, if the regulator is to deal with a variety of problems that will continue to arise in connection with licence conditions, we will need to have direct contact with the customers most affected.

If the consumer council is to have the role of acting as advocate on the customer's behalf in disputes between customers and licensees, then it may be difficult for it also to fulfil the mediation role suggested in paragraph 9 of the consultation paper.

Ofgas welcomes the proposal that the consumer council should provide information and advice on consumer matters to the MMC/Competition Commission when it is investigating licence modification references.

## **Researching and publishing information**

Ofgas currently publishes a wide range of booklets and factsheets which provide customers with information on issues of concern to them in the competitive market. The Gas Consumers Council has also published its own material. There have been occasions when the views of the two offices have not coincided. For example when Phase I first opened the Gas Consumers Council recommended that customers waited until "all suppliers" had entered the market before

switching. Ofgas on the other hand recommended that customers should consider switching to one of the nine companies which were then licensed, on the basis that all of these offered considerable savings over BGT's tariffs and that customers who subsequently received a better offer could switch again with 28 days notice. If the Gas Consumers Council had been the only source of advice available then it is possible that individual customers would have been reluctant to make the decision to transfer to a new supplier and would not have enjoyed the benefits of lower prices which the competitive market has brought.

In Ofgas' view it would be inappropriate for the consumer council to be the only source of information on the outcome of regulatory matters. In the case of price controls for example it should be for the regulator to explain and defend key decisions directly. On the basis of its statutory functions the consumer council may not always support the ultimate decision of the regulator and it should quite properly have the right to make independent comment on the outcome. In such circumstances it would be inappropriate for the consumer council to be the sole source of information in relation to such matters.

If the consumer council were to be the only source of customer related information it would be important for the advice that it gives to be accurate and balanced and to take into account its impact on both customers in particular and the development of the market in general. It would also be important for the regulator to have the facility to bring to the attention of customers issues which it believes are of particular importance, for example the impact of the standard conditions of the supply licences in cases of change of tenancy. In matters of interpretation of the licences the regulator must have the final say since it is the body charged with issuing and enforcing them.

As in other areas, the Memorandum of Understanding will be important for setting out the detailed arrangements between the two offices.

## **Relationship between councils and regulators**

**Paragraph 13. The Government seeks views on the most appropriate framework for collaboration between consumer councils and regulators. It would particularly welcome views on whether there are any aspects of the relationship between council and regulator which are of such key importance that they need to be set out in the primary legislation.**

Ofgas welcomes the proposal that the regulator should be required to consult the consumer council on specified regulatory decisions. Ofgas has a tradition of consulting widely on the regulatory decisions that it takes, and the Gas Consumer Council's views have been valuable in representing the impact of particular decisions on domestic customers. Ofgas would expect to consult on a similar basis when considering its strategic forward planning. It will be important for the rights to operate in both directions, particularly if the consumer council is to be the only source of information available to the regulator about some range of customer complaints.

One of Ofgas' concerns about the Government's proposal that the consumer council should be the principal organisation responsible for direct contact with customers has been that the regulator will be forced to rely on the consumer council for information on trends and issues. Effective regulation is critically dependent on early identification of relevant issues and trends in the activity of licensees and rapid and appropriate response to issues which are identified.

Ofgas is pleased that the consultation recognises that it is important that the regulator and the consumer council work together so as to reduce the regulatory burden on licensees.

Ofgas welcomes the Government's proposal to formalise the relationship between the regulator and the consumer council by requiring the two parties to agree a Memorandum of Understanding. This will enable us to build upon the Concordat which Ofgas and the Gas Consumers Council have agreed under existing legislation. Ofgas believes that while the requirement for a Memorandum of Understanding should be set out in primary legislation, the details of its provisions should be left to the two parties to agree. It will be important to retain a flexibility of approach that responds to developments in the market. Ofgas' experience of the current concordat leads it to believe that there is no part of the detailed Memorandum of Understanding that needs to be set out in primary legislation.

## **Customer Complaints**

**Paragraph 25. The Government invites views on the complaints handling procedures outlined in paragraphs 17-24. It specifically seeks views on whether consumer councils should have a role in monitoring companies' handling of complaints, and whether the councils should, in addition have a formal right to audit companies' complaints-handling procedures and to publish the results of the audits.**

Dealing with unresolved domestic customer complaints will be a large part of the workload of the consumer council. It will therefore be important for the council to understand how individual suppliers handle complaints and the facilities they have in place to resolve them. Ofgas' experience in the gas market suggests that although some licensees are willing to make such information available to the consumer council on a voluntary basis, others are less forthcoming. It is therefore sensible for consistency for the consumer council to have a formal right to audit licensees complaints-handling procedures and to publish its findings. Such information will be important for customers when selecting a particular supplier.

The Memorandum of Understanding will be the appropriate vehicle for agreeing the type of information to be gathered by the Consumers' Council on behalf of the regulator and the frequency of transmission of that information between the two organisations.

## **Access to information and powers to publish**

**Paragraph 37. The Government invites comments on the information requirements of the consumer councils. It would particularly welcome comments on:**

- (i) Whether the consumer councils should have independent rights of access to information held by the utility companies, or whether requests for information should always be routed via the regulator. If the latter, does the Gas Act model provide a suitable precedent for extension to the other utility sectors?**
  
- (ii) If councils are given independent right of access, should these rights be limited to information needed in respect of certain specific functions of the councils? What safeguards should there be for companies against unreasonable requests?**

If the consumer council is to be seen to be independent of the regulator then it will be important for it to be able to obtain information in its own right. As suggested in the consultation, it will be necessary to define the type of information to which the consumer council should have formal right of access. The first is the right to information on an ongoing basis to monitor performance against standards. Second, if the consumer council is to be given the power of investigation of complaints as a potential licence breach, then it will need to be given rights to information similar to those of the regulator. As recognised by the consultation this could amount to a significant new burden for the licensees. This could be balanced by the imposition on the consumer council of a general duty to consider the effects of their actions on competition in the domestic market, and in particular cases to demonstrate that it has taken into account the need to consider the effects on the licensee of its information request.

It is inevitable that cases that are referred by the consumer council to the regulator will involve some degree of re-investigation and duplication of information requests. The Government will need to consider whether licensees will be exposed to at least some degree of double jeopardy.

In respect of the suggestion that the consumer council should be entitled to publish information provided by the licensees, Ofgas believes that the government should make it clear on whom the burden of proof will rest as regards the question of "commercial sensitivity" and "substantial harm". When the regulator is considering the question of disclosure of information he will be bound to consider the full range of his duties. The consumer council should have a similar balancing requirement to assess in the round the benefit of publication.



## Organisational issues

**Paragraph 51. The Government invites views on the most appropriate regional structure for the consumer councils, and on the ideas outlined in paragraphs 42-50. In addition, responses to the following specific questions would be welcome.**

**(i) What is the most appropriate structure to ensure that the national councils have sufficient regional intelligence to fulfil their remit?**

**(ii) To what extent will different arrangements be appropriate of the different utility sectors?**

**(iii) Should there be a formal, statutory obligation on the consumer councils to open offices in Scotland and Wales?**

**(iv) Is it realistic to think in terms of a single national call centre handling all customer complaints for each utility sector (backed up, where necessary by regional offices)? Would such an arrangement be acceptable to consumers?**

Ofgas recognises the need for the consumer council to establish offices in Scotland and Wales that will develop a relationship with the new legislative bodies in those countries.

In relation to complaints handling, there are two issues to be considered - the need for customers to meet face to face with the staff handling complaints and the need for those staff to meet face to face with the licensees. Ofgas has no evidence that customers value the opportunity to meet with representatives of complaints handling bodies face to face, nor that there is any need for the staff dealing with complaints about a particular company to be based in the same geographical location. If customers do require face to face contact with an adviser then there is a wide range of existing organisations who fulfil this remit, for example the Citizens Advice Bureaux.

Ofgas' experience with the opening of the domestic gas market to competition is that a single national call centre handling all customer contacts (complaints and enquiries) is an efficient and effective means of communicating with customers. The overwhelming majority of customers value the ability to make complaints or seek information during the wider hours possible with a national telephone call centre. Ofgas also notes that as competition develops in the energy supply market, licensees are increasingly moving to outsourced specialist call centres which can offer such a level of service. These call centres serve a national customer base, and are often geographically distant from the supplier's local regional customer base. In such a market regional concerns and views will have a decreasing relevance.

A single call centre could also deal with regional issues (eg in relation to gas transportation) provided they were given the appropriate information.

In Ofgas' experience it is also possible for staff dealing with complaints to travel from a single location to meet regional consumer groups, Trading Standards Officers etc to discuss local issues. Meetings with licensees to discuss issues that have arisen would take place in either the central consumer council office or the offices of the licensee.

In Ofgas's view it is essential that customers get consistent information and advice. In our experience this has proven difficult enough for suppliers' (and our own) call centre's to achieve when staff are working from a single location. The problem is exacerbated when such information is being promulgated from a number of offices, and it becomes increasingly difficult to manage and monitor the nature of the advice given. Similarly, it is increasingly difficult to monitor issues and trends and to make comparisons between licensees behaviour.

**Paragraph 54. The Government seeks views on the approach to accountability and transparency outlined in paragraphs 52-53.**

Ofgas believes that transparency is a key guiding principle for an effective regulatory regime, which enhances the quality of decision-making and contributes to the legitimacy and predictability of the regime. Ofgas supports the proposal that this transparency should extend to the consumer council. There will be occasions however when it will be appropriate for the council to meet in private so as to protect the personal confidentiality of, for example, individual customers and the commercial confidentiality of, for example, larger customers and licensees.

## **Resources**

**Paragraph 60 . The Government seeks views on the four principles for resourcing the consumer councils set out in paragraph 55.**

Ofgas supports the Government's proposals for the resourcing of the consumer councils. It will be important that, in agreeing bilaterally with the consumer council what its budget should be for any particular year, that the appropriate mechanisms are in place to enable the regulator to raise the necessary funding for the consumer council through the licence fees.

**Paragraph 63. The Government seeks views on the extent to which the consumer councils will need to collaborate on multi-utility issues, and the extent to which resources could be pooled to address these issues.**

Ofgas agrees that as the utility markets open up to competition, customers will encounter problems of a multi-utility nature, for example dual fuel contracts. It will be important to ensure that the consumer council will have the resources

necessary and the legislative backing to enable them to deal with such issues and to give appropriate and correct advice to customers and to the regulators.

### **Longer Term Arrangements**

In the Government's response to the consultation on the Green Paper on Utility Regulation, it left open the possibility that in the longer term, as competition becomes fully established, the need for statutory consumer councils may diminish and that alternative mechanisms may become appropriate. In Ofgas' view it will therefore be important that the arrangements setting up the consumer council should be predicated on a future point at which the councils are no longer required. It would be appropriate therefore for a "sunset" provision to be set out in legislation, which would allow for the councils' activities to be reduced and alternative arrangements, such as an "Ombudsman" type scheme, funded directly by the energy supply industry, to be put in place. At that time, it will be for the Government to discuss with industry the appropriate structure - whether there should be one Ombudsman to deal with all licensed activities; different Ombudsmen for different activities or whether there remains a need for a consumer council to deal with issues surrounding the irreducible core of monopoly energy activities.