

Retail Market Opening Programme
Ofwat
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11 January 2016

Dear sir / madam

Protecting customers in the non-household retail market – a consultation

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to this National Infrastructure Commission consultation.

FSB is the UK's leading business organisation. We exist to protect and promote the interests of the self-employed and all those who run their own business. FSB is non-party political, and with around 200,000 members, we are also the largest organisation representing small and medium sized businesses in the UK.

FSB believes competition in utility markets is the best way to promote customer engagement, raise consumer standards, promote innovation and additional services, and keep prices as low as possible. However, we recognise that the transition to an open water market must also ensure that certain customer groups are not unfairly impacted. FSB welcomes Ofwat's open and ongoing engagement with consumer groups in this regard.

Q1. Do you have any comments on our proposal to introduce a mandatory Customer Protection Code of Practice to protect customers in the non-household retail market?

We welcome Ofwat's acknowledgment that evidence from other sectors suggests that microbusinesses may require additional protections in the market and that their behaviours and bargaining positions may well be more consistent with that of household customers. FSB has been a long-standing advocate of this approach across all utility markets.

In this regard, we support Ofwat's proposal to introduce a mandatory code of practice for retailers to protect customers. However, to be effective, a code of practice must be specific and measurable. Ofwat must provide clear and unambiguous guidance

about precisely how and when such a code would be breached, as well as providing a transparent process for sanctions should such a situation arise.

We remain concerned that there have been failures in other markets, where codes of practice may not have provided the desired safeguard because of a lack of clarity around the point at which these codes are technically breached.

In terms of judging the success of such a code on the new water market, we broadly support Ofwat's criteria that non-domestic customers are; engaged in the market and find the switching process easy, able to make informed comparisons, are treated fairly by companies, and are adequately protected without innovation or competition being stifled. We would also suggest additional overarching criteria for success: that no non-domestic customer is worse off than they were before competition was introduced.

Q2. What do you think we should consider when defining smaller customers (microbusinesses, small businesses and SMEs)?

Smaller firms lack the resources, time or expertise to deal with issues outside of their core business. So Ofwat must pay particular attention to the cost implications for smaller businesses of time spent on such non-core business activities. For many smaller businesses, the cost of spending time negotiating and investigating the relative benefits of competing offers from water retailers will rapidly cancel out any potential cost savings (or other benefits) provided by an improved contract.

In the energy market, FSB has long campaigned for published tariffs for smaller businesses. Many of these customers could potentially get the best deal possible by negotiating a bespoke deal with an individual energy retailer, rather than choosing a quick off-the-shelf tariff. However, the reality is that the time and effort it takes to negotiate – combined with the difficulty of comparing different quotes on a like for like basis – means that the process just isn't worth the effort for many. This leads to market inactivity, despite the potential for moving to an improved deal.

Q3. Should the proposed additional protections for smaller customers apply to just microbusinesses, or small businesses, or all SMEs?

The large diversity of microbusinesses means, wherever a defining line is drawn, some will be excluded that, one could reasonably argue, should not be. As a matter of principle, we would argue that there is little reason to exclude any size of business

from a code of conduct designed to ensure fairness. However, as a matter of practicality, we would prioritise microbusinesses in this regard.

In other established markets, additional protection is provided to microbusinesses as defined by both the EU and the UK Government (the latter via the recent Small Business, Enterprise and Employment Act). This would cover the vast majority of the non-domestic contracts, particularly in relation to the smallest and most vulnerable businesses.

We believe this is an area where Ofwat could follow the good practice in the energy market. Ofgem recently reviewed the protections it provides for microbusinesses, expanding the definition to include more small and medium sized businesses. The new definition included those businesses who qualify as micro enterprises under the EU definition, but also businesses who otherwise use up to 100,000 kWh per year on electricity and 293,000 kWh on gas (which equates roughly to a spend of around £10,000 per fuel on gas and electricity). To qualify as a microbusiness (as recognised by Ofgem) a company only has to meet one of the above criteria. Businesses falling within this expanded definition are also able to access help from the Energy Ombudsman.

We would caveat the above by pointing out that there are a number of 'larger-than-micro' businesses that, despite their size, are still severely limited by a lack of time, expertise and resources. In the energy market, there are clearly cases of such business being unable to take their complaint to the Ombudsman, and having few remaining options beyond an expensive legal route. In terms of the water market, we would like to see a clear strategy for how and where these larger businesses may be advised to seek further help.

Q4. Do you agree with our proposals to use the Customer Protection Code of Practice to protect micro-businesses from certain sales and marketing activities?

Q5. Do you agree with our proposal to require retailers to provide certain basic information in a standard format to allow micro-businesses to compare deals?

FSB wholeheartedly agrees with this approach (see response to Q2 above).

Q6. Do you agree with our proposal to require retailers to make sure that any TPIs acting as agents on their behalf are aware of, and understand, how the provisions of the Customer Protection Code of Practice apply?

Q7. Do you have any comments on our plan to explore the possibility of requiring retailers to only interact with TPIs that have signed up to a set of standards, either through an accreditation scheme or another voluntary code of practice?

The introduction of competition into the non-domestic retail water market will undoubtedly lead to increased opportunities for TPIs, potentially increasing cross-market activity (particularly water and energy).

FSB believes a good, trustworthy TPI can provide an extremely useful service for small businesses, promoting engagement, empowerment and ability to switch. A proportionate and independent regulatory framework will cut out the bad practice and promote the good, building trust in this important industry.

FSB believes that regulation covering TPIs should be proportionate and risk based. In the energy market, this is an area where there are clear market failings. As such, FSB has worked with Ofgem and others, as part of the TPI Code of Conduct Working Group, to explore options for TPI regulation. We have supported Ofgem proposals to introduce an enforceable code of conduct. This would put the regulatory burden on suppliers who would be required to only work with TPIs that passed self-assessment or audits.

Q8. Do you agree with our proposal to use the Customer Protection Code of Practice to set specific standards of conduct for retailers in relation to contracts with micro-businesses? Do you have any comments on the issues that we propose to cover?

Q9. Do you agree with our proposal to include a requirement in the Customer Protection Code of Practice for retailers to provide certain information to all eligible non-household customers, and additional information to micro-businesses?

We welcome Ofwat's view that smaller business customers require some protection in the water market and will look to other utility markets for examples of good practice.

In the energy market, FSB has worked closely with Ofgem to improve the standards of protection given to small and microbusinesses. We welcome the improvements to microbusiness protection in this market, and the expansion of the definition of a

microbusiness to protect a wider pool of customers. However, we also believe that this is an ongoing process and more needs to be done. It is telling that, despite the improvements to microbusiness customers in the energy market, the Competitions and Markets Authority (CMA) have indicated that they are likely to recommend additional improvements across a number of microbusiness areas when they report later this year.

We also have concerns about where the line is drawn in terms of eligibility for these protections (see Q3 above). It is clear that there are many businesses that, despite falling outside the regulator's definition of a microbusiness, are nevertheless small enough that they remain vulnerable in the market place because of a lack of expertise, time and resource. This should be looked at carefully, particularly in terms of eligibility and access to the complaints processes covered by Ofwat, CCWater and the Water Resolution Scheme (WATRS).

Q10. Do you have any comments on the information that needs to be provided to customers?

FSB welcomes clear contract and billing information, and the provision of helpful information about the switching process. In this regard, there are clearly a number of pieces of information that customers will require to empower their decision making in the water market. We have identified some of these in previous Ofwat consultations on water market arrangements.

However, experience from other markets suggests that it is not just the content of information that is important for customer empowerment, but also the clarity, timing and consistency of this information.

In the energy market, the use of certain terminology has developed in silos and now varies widely across different suppliers. Although this has been recognised as potentially causing customer confusion – and therefore a further barrier to engagement – energy suppliers have so far struggled to retrofit their language and terminology to provide consistency across the industry. Some terminology has been so engrained with certain supplier customer bases over time that changes could now create more confusion than they would save.

It is vital that the new water market avoids this problem from the outset. Ofwat must develop an industry agreed list of consistent terminology that all suppliers are required to provide to customers. This should also bear in mind the potential for cross-utility contracts in future.

Q11. Do you agree with our proposal to require retailers to offer a cooling off period of at least seven calendar days to micro-businesses? Should a cooling off period be offered to all eligible non-household customers, and if so, should customers be allowed to opt out of any such cooling off period?

A seven day cooling off period is reasonable, regardless of size of business, and reduces the risk to the customer, particularly in the early days of the open market. It is unclear what real benefits the provision of an opt-out to this arrangement would be, particularly for smaller businesses. An opt-out would increase the risk of small businesses missing or misinterpreting the small print within contracts.

The exception to this may be for contracts for water usage on an industrial scale where the sheer volume of water requires greater contract security from both the supplier and user.

Q12. Do you agree with our proposal to require retailers to take active steps to confirm that micro-businesses are aware of, and understand, the terms of the contract before they agree to it?

FSB supports this in principle as long as the process is not too time consuming. Many businesses will want the switching process to be as simple and straight-forward as possible.

Q13. Do you agree with our proposal to require retailers to obtain a copy of written confirmation that a TPI is acting on behalf of a customer, before sharing any details about that customer with the TPI?

FSB supports the requirement for retailers to obtain a copy of written confirmation that a TPI is acting on behalf of a customer. However, unless the TPIs are operating in a regulated market, there will remain a real risk that this process can be abused by some.

15. Do you have any comments on the proposed timeframe of 6 to 20 working days for the switch to take place, with a retailer and customer able to agree a named day for the switch?

FSB is happy with this as a starting point at market opening. However, we would like to see the switching process speeded up quickly as the market develops. Businesses shouldn't have to wait 4 weeks to switch.

Q16. Do you agree with our proposal to use the Customer Protection Code of Practice to require retailers to take all reasonable steps to ensure they have a valid contract with the customer before they request a switch?

FSB agrees with this proposal. The switching process will only promote an open market if it is efficient as well as quick.

Q17. Do you agree with our proposal to require an outgoing retailer to inform the affected customer of the reason for any cancellation of the switching process, and advise the customer on the process and timeframe to resolve the issue?

FSB agrees with this proposal. Businesses must be empowered to resolve issues so they can be fully engaged in the market.

Q18. Do you have any comments on whether or not outgoing retailers should be allowed to cancel a switch on the basis that the customer has an outstanding debt?

With reference to Q17 above, it is reasonable for retailers to recover their debts. However, we would suggest that Ofwat could set a reasonable threshold which would both enable small debtors to switch whilst minimising retailer risk. This would help maintain a fluid market and benefit both customer and retailer in the long run.

Q19. Do you have any comments on our proposal to monitor the use of the switching process, including use of the erroneous transfer and cancellation processes, after the market opens?

This is an important process for monitoring the market and identifying solutions to problems.

Q20. Do you agree with our proposal to require retailers to issue at least one accurate bill each year to micro-business customers and, for metered micro-business customers, to take a meter reading at least twice a year?

Accurate billing is absolutely critical for small business trust in a market. Without it, businesses can get into debt through no fault of their own. In some cases this can

spiral into additional problems, particularly for businesses with small turnovers or reserves.

Q21. Do you agree with our proposal to require retailers to issue a final bill to microbusinesses within six weeks of the customer's transfer or end of contract?

In a fully functioning market, six weeks should be the absolute maximum time for a final bill, regardless of business size.

Q22. Do you agree with our proposal to require retailers to base their final bill on the transfer read provided by the incoming retailer?

We agree with this approach in principle. However, it is important that small businesses do not face a delay in their water supply due to failed transfer reads of the incoming/outgoing retailers.

Q24. Do you have any comments about the information that should be provided to customers on their bills?

See Q10 above.

Q25. Do you agree with our proposal to use the Customer Protection Code of Practice to prevent retailers from back-billing eligible non-household customers unless the customer has behaved inappropriately?

Yes. See Q20 above.

Q26. Do you agree with our proposal to require retailers to offer micro-businesses a reasonable payment plan with any back-bill, to allow the customer to pay the bill in a number of instalments?

We agree with this proposal. However, a reasonable payment plan should be provided for a business of any size.

Q27. Do you have any comments on our proposal to take no further action in relation to refunds (other than to make sure that customers have access to a quick and effective dispute resolution process)?

We would like to see further clarity around business access to the Water Redress Scheme. In the energy market, larger-than-micro businesses do not have access to the Ombudsman, yet many still face the same resource and expertise challenges as their microbusiness counterparts. Although we welcome Ofgem's expanded definition of a microbusiness, we would urge Ofwat to acknowledge that the Water Redress Schemes will be relied on by some larger businesses.

Q29. Do you agree with our proposal to use the Customer Protection Code of Practice to require all retailers to have an effective complaint handling process in place?

We agree with this in principle, but we would seek further clarity around what Ofwat defines as an 'effective complaint handling process'.

Q30. Do you agree with our proposal to use the Customer Protection Code of Practice to require all retailers to join the WATRS water redress scheme, if they have not already done so?

FSB agrees with the establishment of a mandatory redress scheme.

I hope this helps to adequately clarify FSB's position. If you would like any further information or input from FSB, please do contact our energy policy advisor, Andy Poole, at andrew.poole@fsb.org.uk.

Yours sincerely,



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