

Retail Market Opening Programme
Ofwat
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Dear sir / madam

Customer protection code of practice consultation

The Federation of Small Businesses (FSB) is the largest organisation representing small and medium sized businesses in the UK. We exist to protect and promote the interests of the self-employed and all those who run their own business.

We believe 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.

We welcome the many opportunities that Ofwat has provided for FSB and other stakeholders to shape the way the new water market protects consumers and promotes healthy competition. We believe that the market will only function if customers are empowered to make an informed judgement about competing offers, with clear terms and conditions that can be compared quickly and easily. The market also needs to promote trust. In this regard, we acknowledge the significant progress made on the issues of sales and marketing, contracts and information, switching, billing and back-billing, data quality, complaint handling and dispute resolution.

Q1. Do you agree with our proposed approach to the governance of the code of practice?

FSB has consistently supported Ofwat proposals to give microbusinesses additional protections in the market on the basis that their behaviours and bargaining positions are more akin to household customers.

Eligibility

We support Ofwat's proposal to introduce a mandatory code of practice for retailers, underpinned by licence conditions. However, we remain unconvinced about the relative benefits of restricting the code of practice to microbusinesses, rather than

extending it to all SMEs. The issues that the code covers – fair contract terms, transparent language, unfair commercial practices, written agreement for rollover contacts etc. – should be applicable for all business sizes. Ofwat argue, quite reasonably, that bigger businesses don't rely on the protections provided by a code of conduct. However, FSB would like to see a clearer explanation about why expanding this code to cover all business sizes, regardless of whether or not bigger businesses really require it, would cause harm to the market.

This is important because many small businesses that fall just outside the current microbusiness definition will be left without the protections of the code of conduct, while still being small enough that they remain vulnerable in the market. As it is currently drafted, 96% of customers would be captured by the microbusiness definition anyway. So FSB is seeking reassurance about the relative benefits and drawbacks of restricting this protection to just 96% of customers, compared to simply expanding it to cover 100% of customers. It is worth noting that expanding the code of conduct to cover 'small' businesses (e.g. fewer than 50 employees) would cover 99% of the market.

Enforcement

In previous consultations, FSB raised concerns about the extent to which the proposed code of practice would be specific and measurable, particularly in the context of a principles based approach. This is important in terms of how Ofwat recognises and acts upon breaches of this code. We welcome Ofwat's most recent proposals for ensuring that the governance model for the code is effective and their commitment to closely monitor how well the code of practice works as the new market evolves. However, we continue to seek clarity on how the effectiveness of the code of practice will be monitored and reported on, particularly with regard to code breaches and associated sanctions, both in their timeliness and proportionality.

Third Party Intermediaries (TPIs)

We acknowledge that Ofwat have identified an 'outstanding area of work' to understand and monitor the role of TPIs in the water market. However, FSB remains firmly of the view that a regulated TPI market would benefit customers, as well as those TPIs operating to a good standard. This has been a long-standing issue in the energy market which Ofgem, consumer groups, TPIs and energy suppliers have been working together on to explore solutions. There is great pressure on Ofgem to return to this area now that the Competitions and Markets Authority has chosen not to intervene directly following its wider energy market review.

From this point of view, Ofwat's current proposal that 'retailers take reasonable steps to make sure that any TPIs acting as agents on their behalf are aware of the provisions of the Customer Protection Code of Practice' (Proposal 4) does not go far enough.

The poor practices of some TPIs in the energy market has provoked considerable strength of feeling amongst a wide range of market stakeholders. Therefore, we believe that Ofwat's proposed light touch approach to TPIs in the water market is misjudged and represents a missed opportunity to resolve an issue that, on the evidence of other markets, will only become more contentious and difficult once the water market matures.

With regard to a voluntary or industry-led approach, there are examples in the energy market of suppliers requiring TPIs they work with to adhere to strict standards. Although we welcome attempts by individual suppliers to maintain TPI standards, these schemes only work if these standards are applied consistently across the industry, minimising the opportunities for TPIs to simply avoid working with those who enforce them.

Finally, we note Ofgem's suggestion that they could make a distinction between a TPI that is acting on behalf of the customer and a TPI that is acting on behalf of the retailer. FSB is not fundamentally opposed to this approach but, again, our experience from the energy market is that TPIs are an extremely diverse and difficult group to define and categorise. Regardless of the clear administrative difficulties of making such distinctions between TPIs, we question the value of potentially exempting any TPI, regardless of whom they are representing, from a duty to simply act fairly and in good faith.

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

Yours sincerely,



Allen Creedy
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Federation of Small Businesses