



**STRENGTHEN AND STEAMLINER
CONSUMER ADVOCACY:**

**CONSUMERS, ESTATE AGENTS
AND REDRESS BILL**

REGULATORY IMPACT
ASSESSMENT ON THE
AMENDMENT TO PLACE A
DUTY ON REGULATORS TO
PRESCRIBE COMPLAINT
HANDLING STANDARDS

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CONSUMERS, ESTATE AGENTS AND REDRESS BILL (CEAR BILL)

Regulatory Impact Assessment of the amendment to the CEAR Bill to place a duty on regulators to prescribe complaint handling standards.

Purpose and intended effect

1. This simple assessment considers the costs and benefits of the amendment to clause 43 of the Consumers, Estate Agents and Redress Bill, which places a duty on the regulators for energy (Ofgem) and postal services (Postcomm) to prescribe complaint handling standards in their sectors.
2. The Bill provides for these complaint handling standards to apply in relation to all consumer complaints, or consumer complaints of a kind specified in the regulations. In particular, the regulations may specify a kind of consumer complaint by reference to the subject matter of a complaint, or the description of person making a complaint. The amendment is therefore sufficiently flexible to allow each regulator to prescribe complaint handling standards that are tailored and applicable to the needs of their sector. Before any complaint handling standards are imposed, the regulators will be required to consult affected parties on the proposed standards and they have indicated that an assessment of the costs and benefits would form part of this consultation.
3. The amendment includes a provision whereby the Secretary of State can make an order specifying a time after which the duty on the regulator to prescribe complaint handling standards is changed to a power. The Secretary of State can only make such an order after consultation with the regulator, the new National Consumer Council and other persons as he considers appropriate. It is envisaged that any decision by the Secretary of State to remove the duty will be informed by the representations made to that consultation, and in particular the views of the regulator on the continuing need or otherwise of the standards.

Objective

4. The amendment is designed to ensure that the objective of strengthening and streamlining consumer advocacy is achieved. Requiring companies in the energy and postal services sectors to adhere to complaints handling standards will ensure that more customer complaints are dealt with first hand, by the regulated provider, to the satisfaction of the consumer.

Background

5. The CEAR Bill contains measures to strengthen and streamline consumer advocacy. These measures include the creation of a more powerful and coherent consumer advocate (the new National Consumer Council) from energywatch, Postwatch and the existing National Consumer Council, and the extension of redress schemes to the energy and postal services sectors.
6. Alongside the measures in the Bill, the telephone and online consumer advice service supported by the Office of Fair Trading – “Consumer Direct” – will be extended to provide a first point of contact for consumers in all sectors. This avoids consumers with enquiries and complaints first having to determine where to go for help.
7. The amendment in the Bill, to require regulators to prescribe complaint handling standards in their sector, is part of the package of measures to ensure that consumers are treated fairly. Under the new arrangements, consumers with complaints can receive help and advice from Consumer Direct about progressing their complaint with their service provider. More emphasis is then placed on the regulated provider to resolve the complaint satisfactorily first-hand. If the service provider is unable to resolve the complaint, the consumer is then able to take their complaint to a redress scheme.
8. All regulated providers in the energy and postal services sectors will be required by the Bill to belong to a redress scheme. The schemes will consider complaints brought to them only where the provider has first had the opportunity to resolve the complaint themselves. The determinations made about a complaint by the schemes are binding on the regulated provider, and compensation or other forms of redress can be awarded where appropriate. However, the consumer is free to pursue further action (through the courts, for example) if they do not wish to accept a decision.

Rationale for government intervention

9. In competitive markets, companies will compete for business on either price or customer service, or both. Companies who don't take customer complaints seriously can be punished by customers switching to alternative suppliers. The pressure to attract and retain customers should therefore act as a powerful incentive for business to act responsibly and to take complaint handling seriously.
10. The gas and electricity markets were opened to competition in 1988/89, and there is evidence that customers are switching

suppliers to get the best deal. For example, in 2005, 150,000 people on average switched supplier every week¹. However, switching rates are not necessarily an ideal measure of the competitiveness of a market, as it suggests there may be significant differences between the companies in terms of either price or quality of service which would be expected to reduce over time in a perfectly competitive market, as companies compete to win and retain customers.

11. Despite an unprompted recognition rate of only 4%, energywatch received 136,615 enquiries and handled 70,000 complaints² in 2004/05. In 2005/06, the number of enquiries rose to 222,892, whilst the number of complaints fell to 63,000³. In 2005, after more than 8 years of competition, energywatch made a supercomplaint to the energy regulator, Ofgem, concerning the treatment of consumers by regulated gas and electricity suppliers in relation to billing. Ofgem determined that energy suppliers should establish a scheme to resolve outstanding billing disputes in a fair and independent way. As a result, the Energy Retail Association established the Energy Supply Ombudsman service to handle complaints in relation to billing and changing suppliers.
12. In the postal services sector, the UK's mail market was opened to competition on 1 January 2006. However, in 2005/06, Royal Mail retained a 97% market share⁴ in the regulated addressed letters market. In 2005/06, Postwatch received over 35,000 enquiries and handled 18,295 complaints.
13. Market pressures to improve complaint handling standards may therefore be fairly weak. Instead, the sectoral regulator – Postcomm – has a role to ensure that licensed postal operators, including Royal Mail, meet the needs of their customers throughout the UK.
14. A duty on the regulators to prescribe complaint handling standards is considered to be the clearest and most certain way of ensuring – and demonstrating to Parliament – that the new arrangements for consumer representation in the Bill include the setting of complaint handling standards for companies in the energy and postal services sector.

Consultation

¹ Energy Retail Association website, available at <http://www.energy-retail.org.uk/switchingsupplier.html>.

² Energywatch Annual Report 2004/05, available at http://www.energywatch.org.uk/uploads/Annual_Report_2004_2005.pdf.

³ Energywatch Annual Report 2005/06, available at http://www.energywatch.org.uk/uploads/Annual_Report_2005_2006.pdf.

⁴ Postcomm website, available at <http://www.psc.gov.uk/competition/competitive-market-reviews.html>.

Within government

15. The amendment has received clearance from the Legislative Programme and the Economic Affairs, Productivity and Competitiveness committees.

Public Consultation

16. The public consultation on the measures took place between January and April 2006. The suggestion behind the proposals is that service providers need to assume greater responsibility in dealing with consumer enquiries and complaints.
17. There was unanimous agreement amongst respondents that companies who provide services should have complete responsibility towards their customers, including the resolution of complaints. This was seen as an integral part of a company's relationship with its customer, providing an important source of information on how its services were perceived, and where improvements can be achieved. The majority of respondents agreed that companies could do more to prioritise effective complaint handling, and that many companies were failing to a degree in their responsibilities to their customers in this area.
18. Both Ofgem and Postcomm are opposed to being placed under a duty to prescribe complaint handling standards to be met by their regulated providers. However, consultation with the existing consumer bodies (energywatch, Postwatch and the existing National Consumer Council) over the last year has revealed their strong preference for complaints handling standards to be prescribed by the regulator. This view is based on significant experience of dealing with customer complaints in these sectors and direct contact with the regulated providers to try to help progress consumer complaints. Energywatch responded to the earlier consultation by saying, "Most energy companies lack a complaint handling procedure that conforms to a recognised standard".

Sectors and groups affected

19. The sectors affected are the gas, electricity and postal services industry. Regulated providers in these sectors will be bound by the complaint handling standards prescribed by the sectoral regulator.
20. Consumers in these sectors will also be affected. Consumers will have the assurance that if they have a complaint against their

service provider, that complaint will be handled to at least the minimum standard set by the regulator.

Benefits

21. The Consumers, Estate Agents and Redress Bill will make it a requirement for regulated providers in the energy sector to belong to a redress scheme. The standards to be prescribed by the regulators will be part of a package for consumers, together with the extension of redress schemes to resolve complaints where the regulated provider has been unable to do so. This package of measures is designed to ensure that consumers with complaints are dealt with fairly by service providers in the energy and postal services sectors.
22. Bringing forward a complaint is often stressful for the complainant. Not being dealt with adequately by the service provider can leave consumers feeling frustrated and angry. Requiring regulated service providers to meet a particular standard of complaint handling should ensure that consumers have full assurance that complaints would be handled effectively by service providers in the first instance, prior to referral to the redress schemes.
23. Further, service providers with good consumer service will benefit in terms of their reputation, helping to win and retain customers. The amendment to the Bill does not prohibit the best performing service providers from maintaining complaints handling standards which are higher than those prescribed by the regulator. This might be a way of further distinguishing the company from any competitors.
24. The levels of compliance with the new standards by regulated providers will be made available to the public by the new National Consumer Council, which has the duty under clause 45(2) to publish such information. Consumers will then be able to use this information to inform their choice of supplier, where there is a choice.
25. The extent of the benefits of the amendment will depend on the level of the standards prescribed by the regulator. Clause 44(2) requires the regulator to give reasons why it proposes to prescribe particular complaints handling standards. Both Ofgem and Postcomm have indicated that the decision about what standards to prescribe would be made after consultation; and that an assessment of the benefits of the proposed standards to be prescribed would form part of that consultation.

Costs

26. The cost of the amendment will crucially depend on two factors. First, the level of the complaint handling standards prescribed by the regulator for each type of consumer complaint (in terms of subject matter or description of person making the complaint) to be covered by the standards. Each regulator is required to consult before prescribing the proposed standards. Second, the cost to individual providers will depend on their current standards for handling complaints, and the cost of improving those to meet the required standards.
27. The best performing providers in terms of the handling of complaints will face the lowest costs to adhere to the prescribed standards. Providers with the poorest complaint handling standards will conversely face the highest costs.
28. The purpose of the amendment to the Bill is to ensure that all service providers have in place at least a minimum standard of complaint handling in order to treat their customers fairly. Indeed, the amendment allows for the standards to be removed in the future when the duty on the regulators may be changed to a power. It is envisaged that this may be appropriate where competitive pressures result in this standard being met by all regulated providers, for example, without the need for regulation in this area.
29. The sectoral regulator is required under clause 44 of the Bill to undertake research to discover the views of a representative sample of persons likely to be affected by the proposals; to consult on the proposed complaint handling standards; and to give the reasons why the regulator proposes to prescribe those standards. Both regulators required to prescribe standards by the Bill – Ofgem and Postcomm – envisage that they will consider and consult on the cost to industry in their sector of achieving the proposed standards for complaint handling.

Small Firms Impact Test

30. The duty provided for by the amendment requires regulators to prescribe complaint handling standards. Prescribing standards, as opposed to procedures for complaints handling, provides firms with the flexibility to meet those standards in the most cost effective way for their particular business model. Different providers may employ different procedures, but all must comply with the standards.
31. To the extent that there may be some degree of economies of scale for larger companies to provide a high level of customer service to

meet the standards prescribed, small firms could potentially face proportionately higher costs. However, smaller firms may be less able to compete on price with larger suppliers, and their standards of customer service may create an alternative way of gaining a competitive advantage. Requiring all firms to meet the same standards as a minimum will ensure that all firms face the cost of meeting those standards, whilst still allowing smaller firms to differentiate themselves through even better customer service.

32. However, regulators will need to ensure that any complaint handling standards prescribed take account of the impact on small firms in the sector.

Competition Assessment

33. It could be argued that a minimum complaint handling standard with which all regulated providers in a sector must comply reduces the ability of those firms relying on good customer service to compete. However, the standards prescribed by the regulator should be seen as a minimum standard – service providers are free to continue to differentiate themselves through providing a standard of service higher than that prescribed by the regulator.
34. Further, ensuring that all providers in the sector meet minimum standards should increase competition, as consumers considering switching supplier are assured of a certain standard of service from whichever provider they may chose.

Enforcement, sanctions and monitoring

35. Clause 44(2)(a) of the Bill provides that the regulator must set out how the complaint handling standards will be enforced.
36. Schedule 5 of the Bill provides the mechanism for monitoring the compliance of regulated providers with the standards, which will be undertaken by the sectoral regulators.
37. Further, the regulator must make the complaint handling standards that it has prescribed for the sector available to the public under clause 43(5) of the Bill. The new National Consumer Council then has the duty under clause 45(2) to publish such statistical information as it considers appropriate relating to the levels of compliance with the standards achieved by regulated providers.