

BERR

Department for Business
Enterprise & Regulatory Reform

**CONSUMERS, ESTATE AGENTS
AND REDRESS ACT 2007:
MEASURES TO STRENGTHEN AND
STREAMLINE CONSUMER
ADVOCACY**

**CONSUMER REDRESS
SCHEMES IN GAS,
ELECTRICITY AND POSTAL
SERVICES**

**GOVERNMENT RESPONSE
TO CONSULTATION**

DECEMBER 2007

URN 07/1737

CONSUMER REDRESS SCHEMES IN GAS, ELECTRICITY AND POSTAL SERVICES

THE GOVERNMENT'S RESPONSE TO CONSULTATION

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1. Introduction

The consultation

1.1 The Consumers, Estate Agents and Redress Act 2007 sets out a new framework for consumer advocacy, including provisions to establish new, statutory, redress schemes to resolve consumer complaints in the gas, electricity and postal services sectors.

1.2 The Department for Business, Enterprise and Regulatory Reform (BERR) launched a public consultation on 5 July 2007 to make proposals and to seek views of interested parties on the scope of the new statutory redress schemes by reference to:

- (a) the regulated service providers who should be required to be members of the schemes;
- (b) the description of complainants who should be covered by the schemes and
- (c) the subject matter of the complaints which should be dealt with by the schemes.

Consultation responses

1.3 The consultation closed on 27 September 2007, and around forty written responses were received from consumer bodies, regulatory bodies, ombudsman organisations, industry, and other parties.

1.4 Responses showed broad support for the Government's proposals, and provided constructive and insightful contributions to the development of the detailed measures.

1.5 This document provides a summary of the main issues raised in the consultation, and outlines the Government's decisions on the points of substance.

1.6 A list of those respondents who did not request confidentiality is attached at annex A.

1.7 We would like to take this opportunity to thank all of those who devoted their time, and who gave so generously of their experience and knowledge, to help shape the Government's views on the issues. These contributions are very much appreciated.

2. Summary of Government decisions in response to the consultation

Regulated providers to be required to be members of a redress scheme

2.1 The regulated providers who will be required to be members of a redress scheme are:

- (a) gas licensees:
 - (i) a person holding a licence under section 7A(1) of the Gas Act 1986 (supply licences)
 - (ii) a person holding a licence under section 7(2) of the Gas Act 1986 (transportation licences)
- (b) electricity licensees:
 - (i) a person holding a licence under section 6(1)(d) of the Electricity Act 1989 (supply licences)
 - (ii) a person holding a licence under section 6(1)(c) of the Electricity act 1989 (distribution licences)
- (c) postal services licensees:
 - (i) a person holding a licence under Part 2 of the Postal Services Act 2000.

Description of complainants who should be covered by the redress schemes

2.2 The description of complainants who should be covered by the redress schemes is as follows:

- (a) for gas consumers:
 - (i) domestic consumers, and
 - (ii) any other consumers whose annual Bill is less than £5,000 (or an analogous consumption threshold)
- (b) for electricity consumers:
 - (i) domestic consumers, and

- (ii) any other consumers whose annual Bill is less than £5,000 (or an analogous consumption threshold)
- (c) for postal services consumers:
 - (i) all recipients of mail carried by licensed postal service providers and
 - (ii) all users of products provided under a licence, excluding consumers who have a written contract with the licensed postal services provider.

2.3 The redress schemes should accept complaints made on behalf of individual consumers by third parties, provided the redress schemes can ascertain that the third party is entitled to act on behalf of the consumer.

Description of consumer complaints which should be covered by the redress schemes

2.4 The redress schemes should consider complaints which have been considered by the service provider and which have not been resolved to the satisfaction of the consumer. The redress scheme should also consider complaints relating to the difficulty experienced by the consumer in making contact with, or obtaining any reaction from, the service provider – an example might be where a consumer is unable to make a complaint to the service provider because their telephone help lines are consistently unavailable.

2.5 For gas and electricity consumers, the complaints should relate to the regulated products and services of the service provider as provided to the complainant.

2.6 For postal services consumers, the complaints should relate to their receipt of mail from a licensed postal services provider, or to their purchase of licensed products and services.

2.6 Where there are established alternative routes for resolution of a particular class of complaint, the consumer should be able to refer the matter to the redress scheme in the first instance, and the redress scheme should establish agreements with the relevant other parties on how these complaints are progressed.

2.7 In postal services only, complaints where there is no supporting evidence should be handled by the service provider in accordance with an established standard or code of practice. Complaints referred to the redress scheme may concern perceived failings by the postal services provider to meet the standard or to follow the code of practice.

3. Redress schemes under the Consumers, Estate Agents and Redress Act 2007

3.1 It is worth re-iterating the provisions in the Act which set out the role of the Secretary of State. The Act gives the Secretary of State the power to require “regulated providers” of specified services to belong to a “qualifying redress scheme”. This is explained in the Act as follows:

- (a) regulated providers are licensed electricity suppliers, electricity distributors, gas suppliers, gas transporters, postal service providers; and – perhaps in future – water undertakers, sewerage undertakers, or licensed water suppliers;
- (b) a redress scheme means a scheme under which consumer complaints may be made to, and investigated and determined by, an independent person;
- (c) an independent person is one who is independent of the regulated provider and the relevant regulator for the sector
- (d) a qualifying redress scheme is one which has been approved by the relevant regulator for the sector, or one which is administered by the Secretary of State.

3.2 Redress schemes provide consumers with the means to obtain resolution and redress for complaints in cases where the regulated provider has not been able to resolve the complaint to the consumer’s satisfaction. The Act specifies a minimum range of forms of redress which must be available to a complainant, comprising provision of an apology or explanation; payment of compensation; or taking such other action in the interests of the complainant as the independent person may specify.

3.3 Redress schemes do not provide any additional, duplicated, sets of rules against which the performance of service providers are judged. The requirements on regulated providers are already set out in a number of ways, examples of which are given below:

- (a) primary and secondary legislation;
- (b) licence conditions;
- (c) multi-lateral agreements or codes of practice, which may be required under licence conditions;
- (d) contracts;
- (e) voluntary codes of practice established by business sectors or by individual regulated providers,
- (f) standards of performance set out in regulations;

(g) internal procedures adopted by regulated providers to provide service to their customers.

3.4 Although the redress schemes will not create new rules for the performance of functions by regulated providers, the process of resolution of complaints by the redress schemes will provide valuable feedback for the regulated providers. This feedback should inform their own internal policies and procedures, enabling regulated providers to avoid similar difficulties with other consumers and improve both their own commercial performance and, importantly, their general standard of performance to consumers.

4. Defining the regulated service providers who should be required to belong to an approved redress scheme

4.1 In the consultation document, we noted that section 42 defines the range of regulated providers of services in the gas, electricity and postal services sectors who might be included within the scope of the requirement to be members of a redress scheme as:

- (a) persons holding a licence under section 7(A)1 of the Gas Act 1986 (gas suppliers)
- (b) persons holding a licence under section 7(2) of the Gas Act 1986 (gas transporters)
- (c) persons holding a licence under section 6(1)(d) of the Electricity Act 1989 (electricity suppliers)
- (d) persons holding a licence under section 6(1)(c) of the Electricity Act 1989 (electricity distributors)
- (e) persons holding a licence under Part 2 of the Postal Services Act 2000 (postal services providers).

4.2 We asked whether there was a case for omitting any class of regulated provider from the list of those proposed to be included in the requirement to be members of a redress scheme. There was broad agreement among respondents that the list was appropriate.

4.3 The Government concludes that the range of regulated service providers set out in 4.1 above should be required to be members of a redress scheme.

5. Description of complainants to be specified in the Order

5.1 The consultation proposed that the description of complainant who should be specified in the Order as those in respect of whom service providers would be required to belong to a redress scheme should be domestic and micro-enterprise consumers, where:

(a) domestic consumer means an individual who purchases, uses, or receives, in Great Britain, goods or services which are supplied in the course of a business by a regulated provider, or an individual in Northern Ireland who purchases, uses or receives postal services from a regulated provider; and

(b) micro-enterprise consumer is an enterprise with a headcount of less than 10, and whose annual turnover and/or annual balance sheet total does not exceed €2 million.

5.2 There was agreement among respondents that the definition should cover domestic consumers, and that small businesses should also be eligible to take their unresolved complaints to redress schemes. There were, however, some concerns from respondents over the definition of small businesses proposed in the consultation – the “micro-enterprise” definition. In particular, it was apparent that it would not provide the necessary degree of certainty for consumers, service providers, and redress schemes. Industry respondents in the energy sector pointed out that they would be unable to easily assess whether a small company had fewer than 10 employees or a turnover of less than £2 million per year. They suggested that usage thresholds would be more meaningful in the gas and electricity sectors.

5.3 For the gas and electricity sectors, we propose to replicate the original proposal for small businesses as far as possible, by re-casting the criteria for the threshold. The upper threshold for action in a small claims court is £5,000, as is the threshold for a claim to the Telecommunications Ombudsman Scheme. It is appropriate to set a similar level for gas and electricity consumers, but having due regard to the practicalities of implementation. For that reason, in the preparations for drafting the Order, we propose to enter into further discussions with energy businesses, Ofgem, and Energywatch with a view to establishing whether there are consumption thresholds which provide a practical proxy for consumers whose annual bill is £5,000, and whether that consumption threshold would provide a practical and preferable alternative to the annual bill.

5.4 In the postal services sector, it is difficult to make a case to distinguish the position of recipients of mail by size, and we therefore plan to establish that all recipients of mail from licensed postal services providers should have access to a redress scheme.

5.5 For purchasers of postal services, it is appropriate to exclude those who have a written contract with their provider, and to focus on the products and services provided under licence. This acknowledges that – as with other sectors – regulated businesses will from time to time establish premium or complementary products or services which fall outside the scope of their licence.

5.6 The description of complainants who should be covered by the redress schemes in each sector is as follows:

- (a) for gas consumers:
 - (i) domestic consumers, and
 - (ii) any other consumers whose annual Bill is less than £5,000 (or an analogous consumption threshold)
- (b) for electricity consumers:
 - (i) domestic consumers, and
 - (ii) any other consumers whose annual Bill is less than £5,000 (or an analogous consumption threshold)
- (c) for postal services consumers:
 - (i) all recipients of mail from a licensed service provider, and
 - (ii) all users of products provided under a licence, excluding consumers who have a written contract with the licensed postal services provider.

5.7 As proposed in the consultation, there is general agreement that the redress schemes should accept complaints made on behalf of individual consumers by third parties, provided the redress schemes can ascertain that the third party is entitled to act on behalf of the consumer.

6. Complaints to be specified in the Order

6.1 The consultation proposed that the complaints to be specified in the Order should be those:

- (a) which have been considered by the service provider, and not resolved to the satisfaction of the consumer;
- (b) relate to the regulated products and services of the service provider, as provided to the complainant, unless there is an established alternative route for resolution of the particular class of complaint;
- (c) which relate to the way in which the regulated provider handled the initial complaint;
- (d) where there was no evidence to support the complaint, but which were not handled by the regulated provider in accordance with any established standard or code of practice.

6.2 There were a number of very helpful responses, which were instrumental in assisting us in refining this definition. It was generally agreed that the service provider should have the opportunity to address complaints in the first instance. It will be important that the service providers keep accurate records of first contact with consumers who register a complaint, and are scrupulous in adhering to any timescales for the issue of “deadlock” letters, where the provider and the consumer have been unable to agree resolution of the complaint.

6.3 There was also general agreement that the complaints should relate to the regulated products or services of the service provider as provided to the complainant.

6.4 Where there are other, established, routes for redress, such as compensation schemes or scope for determination of certain issues by a sectoral regulator, for example, there were divergent views on how best to proceed. In these circumstances, the important objective is to ensure that the consumer is properly directed to the most appropriate form of redress for the complaint, and for this to be accomplished without the need for the consumer to be aware of – or to need to pursue independently – these other forms of redress. Government takes the view that there should be agreements put in place between service providers, regulators, and redress schemes to ensure that the consumer needs only to refer to the redress scheme in the first instance, and that the redress scheme should be able to pass the complaint to the appropriate party for action and resolution.

6.5 Respondents pointed out that complaints may also arise because consumers are unable to contact their service provider in order to register a complaint. Service providers must ensure that there are adequate and appropriate resources in place to enable consumers to make enquiries and to register complaints. Where consumers are experiencing sustained difficulty in contacting their service provider, they should be able to seek redress from the relevant redress scheme.

6.6 In postal services, complaints may arise where there is no supporting evidence. This should be dealt with in the first instance by the relevant postal services provider, in accordance with an established standard or code of practice. The redress scheme should be able to handle complaints from consumers who consider that the postal services provider has not handled their complaint in accordance with the established standard or code of practice.

6.7 Government considers that consumer complaints to be covered by the redress schemes should be those which:

- (a) have been considered by the service provider and not resolved to the satisfaction of the consumer, or

(b) relate to sustained difficulty by the consumer in registering a complaint with a service provider, and which

(c) relate to the regulated products and services of the service provider (in the case of gas and electricity); and to the licensed products and services (in postal services) as provided to the complainant;

(d) may be substantively covered by other, established, forms of redress, and which should be passed on to the relevant party for resolution by the redress scheme;

(e) in the case of postal services, relate to a perceived failure by a postal services operator to adhere to an established standard or code of practice for dealing with complaints which have no evidence base.

7. Multiple redress schemes

7.1 Government has made it clear that it considers that the consumer benefit is best served by having only one redress scheme established in each of the postal services and energy sectors. This offers the greatest simplicity for consumers and the prospect of the maximum cost efficiency for service providers. It is recognised that service providers of different sizes and types within each sector will need to be accommodated in an appropriate manner, and Government will look to the industries and to the regulators to deliver a fair and effective outcome.

7.2 Some respondents to the consultation were concerned that complaints referred to the redress mechanism would have serious cost implications. It will be up to the industry to design the redress schemes, according to criteria published by the respective regulators. They will be able to determine the balance between annual subscription fees for membership to the scheme and the cost of individual cases.

7.3 Whilst the Government would prefer a single scheme in each sector, if members of the industry deem an approved scheme to be too expensive, or to disadvantage them in some way, they will be able to present a counter-scheme for approval. The Government also retains the power to set up and require membership to a scheme if the industry is unable to form their own.

8. Next steps

8.1 In setting out this response to the consultation, Government seeks to convey the key elements of any Order to be made by the Secretary of State defining the scope of the redress schemes. This is to enable the regulated providers in the gas, electricity, and postal services markets to complete the preparations for their schemes.

8.2 Once the Secretary of State is satisfied that a qualifying redress scheme is available for regulated providers in a sector he will make an Order requiring them to join the scheme.

Annex 1 – List of respondents

Bizz Energy
British and Irish Ombudsman Association
British Gas
Changeworks
Citizens Advice Bureau
Consumer Council for Water
Council of the Ombudsman Service
E.ON UK plc
East of England Trading Standards Association
EDF Energy
Energy Action Scotland
Energy and Water Ombudsman (Victoria)
Energy Networks Association
Energy Retail Association
Energywatch
Federation of Small Businesses
Good Energy
Home Builders Federation
Mail Competition Forum
Northern Gas Networks
Ofgem
Ofwat
Opus Energy
Postcomm
Postwatch
Royal Mail
RWE npower
Gary Urquhart (Individual respondent)
Scottish Power
Scottish and Southern Energy
South Ayrshire Council Trading Standards
Trading Standard Institute
United Utilities
Utilities Intermediaries Association
Welsh Language Board
Western Power Distribution