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Energy-related complaints:
a review of the proposed framework

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Summary of key points

• From April 2008, the landscape for complaint handling in the energy sector will be substantially different, as a result of the implementation of the provisions of the Consumers, Estate Agents and Redress Bill. The current complaint handling role performed by energywatch will cease to exist; Consumer Direct will be expected to take on energy enquiries; a new National Consumer Council (NCC) will have a complaint handling role but this will be more limited than that of energywatch; Ofgem will have a duty to set standards for companies’ complaint handling; and the Bill also introduces a statutory basis for energy-related redress schemes.

• This review focuses on the key issues that need to be considered for the proposed system to work as effectively as possible from the consumer standpoint and, in particular, the implications of the shift from the current inclusive arrangements under which energywatch operates to the more limited remit for the new NCC.

• The review identifies and discusses the uncertainties and potential problems which might arise from the more limited access to independent advice that consumers will have if they need specialist help and intervention with unresolved energy-related complaints.

• One of the central concerns highlighted in this review is the lack of clarity surrounding which consumers may be eligible to seek help from the new NCC with energy-related complaints, described in the Bill as ‘vulnerable consumers’.

• Drawing on other work by CUCL on these issues, the review emphasises the complexities associated with attempts to define consumer vulnerability. Although it is argued that prioritisation of ‘vulnerable consumers’ may give long overdue recognition to the needs of those who may be most at risk, there are inherent problems with this approach. It runs the danger of placing an additional hurdle or barrier in the way of people who need help when things go wrong with this essential service. It raises the fundamental question of who could or should be regarded as ‘vulnerable’ at any one time or in the longer term. And it runs the risk of introducing unfair and discriminatory policies and practices, contrary to both best practice and broad legal requirements.

• The Review also highlights the fact that the proposals place onerous and potentially problematic duties on the new NCC as it will effectively be a ‘gatekeeper’, and will have to determine working criteria for access to its complaint handling service. Similarly, the proposed arrangements will present new challenges to other advice and advocacy agencies in both their dealings with clients and in their relationships with NCC.
It was clear that there is a widespread lack of awareness of the substance and possible consequences of these changes among a number of the advice agencies who were contacted for this work. Without exception, all those contacted had fundamental questions and concerns, not only about how the new arrangements will work in practice, but also to how these changes will affect their clients. Among the key issues raised were the difficulties in defining who might be termed as ‘vulnerable’ and able to be referred to the new NCC, and the possible increased workload and cost implications for generalist advice agencies.

These advice agencies were also concerned about the potential loss of energywatch’s knowledge base, and of its ability to influence energy companies’ practices and policies. In addition, serious concerns were raised regarding the loss of energywatch’s work in rural areas and its brokerage role between local authorities and energy companies.

In the light of these concerns and potential risks of the proposed arrangements, the review outlines a series of steps and initiatives that need to be taken. Key among these is the adoption across all the relevant organisations of well-established principles and standards designed to achieve best practice in complaint handling and redress. Equally all organisations will need to adopt and adhere to current anti-discriminatory and equality legislative requirements.

The review also emphasises the need for the relevant organisations to take into account consumers’ advice-seeking needs and expectations when putting their systems in place, and likewise have full regard to the diverse and varied nature of the advice sector.

The review recommends that steps be taken to avoid confusion among consumers and agencies, and to minimise the possibility of consumers being bounced from one agency to another. Consequently, clear and commonly-understood sets of protocols and agreements will need to be established and operated between all relevant parties. Similarly, information collection and sharing policies and practices will need to be established, and it will be vital for Ofgem to take the lead and be pro-active in establishing and maintaining quality-assured systems.

The review found that a clear decision is needed to determine who takes the lead in publicising the new arrangements to advice agencies and to consumers in general.
I. Introduction

The starting point for discussion is that there are substantial numbers of consumers who seek advice and assistance on energy complaints. The available statistics suggest that around 50,000 go to Citizens Advice, 5,000 to Trading Standards and between 50,000 and 60,000 who complain to energywatch.\(^1\) In addition, energywatch estimates that, in 2005-06, of the 223,000 enquiries they received up to half were complex; that is, requiring direct intervention by energywatch staff with energy companies and not resolved by immediate advice to a consumer or referral to another body or their company. In addition, we do not know the number of people who have gone to other local advice agencies with energy issues and we know that about 40% of the advice sector is locally based.

The assumption behind the proposals in the Consumers, Estate Agents and Redress Bill (for details see Box on page 5) would appear to be that many people do not need expert advice in bringing complaints against energy companies, and may only need an effective redress scheme if complaints cannot be resolved. The proposals assume that those who need advice can be divided into people who can act for themselves on the basis of advice and information from Consumer Direct, and those who will need additional help which may be provided by the NCC – for ‘vulnerable consumers’ (and in certain specified situations such as disconnection).

In effect, the Bill contains unprecedented proposals to provide advice or advocacy for consumers who are deemed to be unable to pursue energy-related complaints on their own behalf. These provisions might appear to give long overdue recognition to the needs of those who may be most at risk. But the arrangements envisaged by the Bill contain an additional barrier or hurdle for consumers, as the new NCC will have to operate with some form of criteria to determine whose complaint will be investigated. One of the challenges for the new NCC will be to produce a procedure which is accessible to ‘vulnerable consumers’ and is based on some rational criteria for deciding which cases to support and which not to support, given limited resources. This must be done in a way which is consistent with the duties imposed by equality and anti-discrimination legislation and in a manner which does not lead to overtly or covertly discriminatory policies or practices.

Overall the key test for the new arrangements has to be whether there will be an increase in consumer benefit and a reduction in consumer detriment. It is far from self-evident that this will be the result and there are many challenges presented by the proposals for a wide range of organisations and agencies. Consequently this paper aims to delineate the nature and dimensions of these challenges, and to set out some of the crucial steps that need to be taken to minimise the risks. The main focus of the paper is on the duties of the new National Consumer Council (NCC) regarding ‘vulnerable consumers’ and its relationships with other relevant organisations involved in providing advice and advocacy.

If the new arrangements are going to meet the above consumer ‘test’, all the key agencies will need to apply the principles of good complaint handling and redress not only internally but across the whole of the new system. There will also need to be

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\(^1\) We do not know to what extent these populations overlap
effective and clear protocols and procedures that make for smooth transition and referrals for consumers, combined with effective communication between the various parties, including Ofgem. Given the essential nature of the energy service and the potential risk to people’s safety, health and well-being if things go wrong in their dealings with the companies, the last thing consumers want or need is an overly complicated, unclear or otherwise difficult process to sort problems out.

At the time of writing, there continues to be much uncertainty surrounding how the new arrangements will work in practice. This is clear from the discussions we have had with a number of interested organisations for the purposes of this paper. One of the underlying issues is that of the budgets for the new NCC and for Consumer Direct in particular, and also the location of the new NCC’s offices. These matters are outside the scope of this paper but will clearly affect the new complaint handling processes and their outcomes. A critical question will be whether the level of resources given to the new NCC for complaint handling will act as a spur to adopting an expansive and dynamic approach to this service, or alternatively lead it to take an overly-cautious approach. Resource-determined rationing will be an undeniable reality of the new system. While of course such rationing takes place now in energy and in other sectors, it will be a much more pronounced feature of the new system because of the limited, albeit unclear, duties placed on the new NCC.

A pivotal characteristic of the new arrangements – and one that differentiates them from existing practices - is the fact that the new NCC will be a gatekeeper that applies and develops eligibility criteria to determine who will receive advocacy advice or other forms of assistance. As the Centre’s previous paper on consumer vulnerability highlighted (Consumer vulnerability and the energy sector: vulnerable consumers and complex complaints, 2007), this fact makes it even more important for there to be a well-informed understanding of the many complex facets of vulnerability. Similarly there needs to be a shared assumption of responsibility across all relevant organisations not to put any consumers at risk or unnecessary distress as a result.
What the changes will mean

The Consumers, Estate Agents and Redress Bill creates a new National Consumer Council (NCC) by bringing it together with energywatch and Postwatch. There will also be Scottish and Welsh Consumer Councils, and a limited remit for postal services in Northern Ireland. Because one of the major activities of energywatch and Postwatch was handling consumer complaints, the Bill sets out new arrangements for such complaints.

The Bill places a duty on the regulator to make regulations prescribing standards for the handling of complaints by energy companies. The Secretary of State may require regulated providers to be members of a redress scheme which is approved by the relevant regulator or one administered by the Secretary of State. In approving a scheme, the regulator must have regard to the provisions of the scheme, the manner in which it will be operated, the interests of relevant consumers (and this includes consideration of the number of possible redress schemes) and such generally accepted principles of good practice, as it is reasonable to regard as applicable to the scheme. The scheme must be open to all regulated providers, who may not be expelled from membership of the scheme. In order to be approved the scheme must provide appropriate types of redress, including the paying of compensation and also make satisfactory provision, in the regulator’s opinion for certain other matters. These include the provision of information by the redress scheme to the regulator, the Office of Fair Trading, persons operating a public consumer advice scheme supported by the OFT (Consumer Direct), the National Consumer Council and the Secretary of State.

The new National Consumer Council is given various powers and duties regarding consumer complaints. If the NCC thinks that it is appropriate to do so, it may provide advice to ‘vulnerable consumers’ on energy or postal services and make representations to the supplier on behalf of the ‘vulnerable consumer’. A person is defined as vulnerable if the NCC is satisfied that it is not reasonable to expect that person to pursue the complaint on their own behalf. According to the Explanatory Notes for the Bill “This might apply to persons who are unable to pursue a complaint by reason of a mental or physical disability, a lack of basic skills (such as literacy) or due to their personal circumstances (such as a recent bereavement)”. The NCC is also given duties to investigate complaints about disconnection or threat or disconnection from energy supply and about prepayment meter problems, although there are a number of exceptions to these duties. If, after investigation, the NCC thinks that it is appropriate it may provide advice and assistance for such complaints.
2. Issues raised by advice and advocacy agencies

Consumers go to a wide and diverse range of national and local advice agencies for help with energy-related problems or queries. In some situations, these generalist agencies are able to assist the consumer themselves in resolving the problem with the company concerned. However, advice agencies also frequently refer clients to energywatch under the current arrangements, or they contact the organisation directly because of its specialist expertise.

It cannot be assumed that consumers will always go to a provider first to make a complaint if things go wrong, even though this may often be the case. These issues were explored in the Centre’s previous paper on best practice for energywatch (Complaint handling: principles and best practice, 2007) which discussed research evidence that shows how consumers may be reluctant to do so because of a variety of factors, such as feeling intimidated or fearful. Instead they may go to a local advice agency first.

As energywatch will not be there in future as a referral point, or as a source of expert sectoral advice, generalist advice agencies are going to need to be informed about the role of the new NCC and of Consumer Direct, and to understand the opportunities and limitations which will apply to both organisations. A number of agencies were contacted for the purposes of this work, all of whom took the view that the new NCC needs to take the lead in explaining how it intends to carry out its duties and fulfil its complaint handling role in the energy sector.

The following were among the main points raised by agencies contacted for this paper:

2.1 Defining ‘vulnerable consumers’

All considered that there are potentially great difficulties with the concept of ‘vulnerable consumers’ as laid out in the Bill (and in the accompanying Explanatory Notes). The agencies highlighted the very broad range of situations and circumstances that may cause someone to be regarded as vulnerable.

For example, some agencies consider consumers are vulnerable because of their lack of knowledge or awareness of their rights and/or of the law; or because companies are not sufficiently responsive. In this respect, instances were cited of clients attempting to arrange reduced arrears payments but who were effectively put off from doing so by companies’ insistence on higher payments. The clients were unaware of licence conditions regarding the need to take into account a consumer’s ability to pay in setting repayment rates. Other cases involved consumers who had been wrongly switched between energy suppliers, and who encountered difficulties in rectifying the situation because of lack of knowledge of companies’ responsibilities and practices.
Some agencies regard consumers who are in significant debt as vulnerable, and questioned whether they will be regarded as such by the new NCC. In general, the agencies contacted emphasised that many people who may be at some risk do not regard themselves or wish to be regarded as vulnerable. They also pointed out that a number of older people who have disabilities do not see or describe themselves as disabled. Similarly, it was common for these agencies to express concern about the possibility that people in particular situations could be overlooked or marginalised by the new arrangements - such as consumers with mental health problems, refugees and asylum seekers, those without English as their first language or who have other communication difficulties, and people with low basic skills or learning difficulties.

Interviewees also raised questions as to whether families with young children would be considered to be vulnerable, for example, those living in rented accommodation who are unsure of their rights regarding energy matters.

Some were also exercised by the prospect of what would happen if a client they referred to the new NCC was turned down as ‘not being vulnerable enough’. If the problem continued to be unresolved and/or the client’s situation worsened for whatever reason (such as a deterioration in mental health), they felt it was unlikely that a client would go back again to the new NCC. In such circumstances, individuals and households could as a result be placed at greater risk unless the company resolves the matter. Furthermore it could be argued that consumers in this position may be unlikely to want to go to formal ADR or may find it unacceptable to wait 3 months to do so (unless they have a deadlock letter).

The energy suppliers’ perspective

According to the Energy Retail Association, all suppliers have trained staff to look after ‘vulnerable consumers’ and will provide emergency support if a consumer is at risk for instance, notify social services, visit property, provide temporary heating. Energy suppliers have established links with sector specific experts such as social services, voluntary groups and the health sector, all of whom provide the detailed and specialist care to support the individual by a wider programme of support. The names of these teams varies by supplier e.g. priority team, energy care team, special needs team. The initial contact may be through customer service call centres, social services, CABx, relatives etc, but many circumstances require these teams to visit properties in order to resolve problems people are facing.

There is no one definition of what is a ‘vulnerable customer’, and a ‘vulnerable customer’ for this purpose, need not necessarily fit the statutory definition, although there would be some overlap. The ERA was told that all business sectors and public services struggle with this challenge. However, all frontline staff (call centre and field based) are trained to ask relevant questions (which could be interpreted as intrusive but is essential) and look for signs that a customer may be vulnerable. There is no precise formula and, as social services advise, a flexible approach and common sense is the best way.
The government’s approach

Lord Truscott HL Debs 18 December 2006 GC 184 “this is a new statute with a new definition. The definition does not have to be interpreted in the light of previous definitions, although they may be helpful. The words have their ordinary meaning. We want to leave it to the council to interpret what is meant by ‘vulnerable consumer’; there is no legalistic framework.”

Lord Truscott, HL Debs, 30 January 2007, Col 151 “we have deliberately not sought to categorise those who constitute vulnerable consumers in the Bill. Our understanding of what makes for vulnerability develops and changes over time and we should be careful not to preclude any particular group of consumers from the possibility of assistance now or in the future. The Bill leaves it to the council to consider who should be regarded as vulnerable.”

Ian McCartney HC Debs 17 April 2007 “Any list of specific examples of vulnerability carries a high risk of leaving out a group of consumers who could be provided with much-needed assistance by the new council. Instead, the Bill leaves it to the new council’s discretion to assist consumers who are in need of assistance. …The vulnerability may be of a long-term or a short-term nature. For example, grief can so overwhelm a person when a close relative dies that they are incapable of dealing with aspects of their life, including issues around gas, electricity, water, postage and so on. They need help, too. I doubt that it would be possible to find a legal, technical definition for what we are attempting to do by including someone like that. The debilitating loss of a loved one and the physical and emotional consequences affect hundreds and thousands of people in Britain each month. There will be people who end up during the course of a complaint with a disability because of a trauma. There must be the ability between the opening up of a complaint and the resolving of it to ensure that an individual whose circumstances change is treated appropriately. …The language is important. Wide discretion is not discretion to do nothing; it is discretion to try to maximise the pool of opportunity for those who need support and assistance for whatever reason, and it is important that we view it in that way. The Bill does not go any further in defining what “vulnerable” means, because there are many ways in which consumers can be vulnerable. It will provide the necessary flexibility for the council to examine cases with the benefit of increasing understanding of what constitutes vulnerability in any given circumstance.”
2.2 Implications for the advice sector

Although the sample of interviewees was small, the organisations contacted represented a reasonable range of the type and sizes of community advice agencies on whom many people rely. Very few were previously aware of the proposed changes (with the exceptions of organisations such as Citizens Advice and Age Concern England). When informed about the proposals in the Bill, all concluded that the workloads for local advice agencies are very likely to increase as a result of not being able to refer relevant clients to energywatch.

The interviewees recognised that there would be a need for their agencies to do more in-depth work and to have greater sectoral expertise around their clients’ issues which are currently referred to energywatch. For instance, Citizens Advice said that at present, CAB clients who have complaints and need advice in dealing with energy companies are frequently referred to energywatch. Many of the issues that Bureaux are asked about in this sector can involve impenetrable licence conditions or difficult to find details in codes of practice that define how that individual company will deliver a licence condition. These kinds of complaints may not always involve clients who may be termed ‘vulnerable’ or concern issues relating to threats of disconnection or prepayment meters but can be very time-consuming for CABx who may well not have the sectoral expertise to make speedy and full use of relevant rules. It does not appear that these categories of complaints will be covered by the new NCC.

In general, the advice agencies contacted could not envisage how their organisations could take on additional volumes of energy-related cases and also increase their expertise in this area without additional resources, including training and information. A number felt that, under the new arrangements, it is likely that there will be more people seeking advice, direction or other help from the Energy Ombudsman (and any other energy-related ADR schemes that may be set up) as they may not be able to find the relevant help and expertise locally. Consequently many may approach the Ombudsman scheme prematurely or inappropriately unless the new NCC is able to help instead.

There was also a general concern expressed about the loss of energywatch’s expertise and knowledge of the energy sector. For instance, some cited the need to understand often complex licence conditions and codes of practice to be able confidently to advise clients. Similarly interviewees remarked on the value of energywatch’s in-depth knowledge of the energy companies’ policies, practices and internal organisation, including who best to contact in particular situations. A critical question is whether funding will materialise for any of this expertise and knowledge to be passed on to CABx, Consumer Direct and/or the new NCC kept up to date.

In addition, Citizens Advice is concerned whether communications from individual CABx on behalf of clients will trigger the same level of acknowledgement, response, and possible escalation, from the companies as those received from energywatch. Their experience is that some energy companies ignore or fail to adequately prioritise complaints from CABx. (This may also be the case with other small advice agencies.)
A number of interviewees stressed that if community advice agencies are to play an effective part in the new arrangements, the NCC needs to take the lead in providing clear information about the changes - particularly the circumstances under which clients can be referred to the new NCC. Citizens Advice commented that the DTI needs to consider running an education programme for advisers on how the new arrangements are meant to work as well as on the knowledge needed to fill any new role.

Moreover, a number of agencies put forward the argument that there are potential risks and dangers in the way the new arrangements will work, especially the new NCC’s limited complaint handling remit. They felt that advice services should be available to everyone regardless of their circumstances, and that the changes contradict the way in which public policy has exhorted advice and advocacy services to be as accessible as possible to everyone.

2.3 Implications for rural areas

The Chief Officer of SPARSE - Sparsity Partnership for Authorities Delivering Rural Services - raised the following points in relation to the potential implications for consumers living in rural areas.

SPARSE is extremely concerned about the possible effects of the proposed changes for people in rural areas and for advice agencies. A major concern is that, as the energy sector is so complicated, generalist advice agencies will find it hard to cope if they are meant to take up consumer complaints which would normally have been passed on to energywatch. A related concern is that defining consumer vulnerability is very complex; for instance, people who don’t have a gas connection are frequently poor – would they be classified as vulnerable and eligible for approaching or being referred to the new NCC?

SPARSE stresses the importance of energywatch’s work from a rural perspective. Poverty in rural areas is frequently hidden and therefore it is vital to do the kind of work at grassroots level that energywatch has been developing. As well as helping consumers individually, energywatch has an essential role in collectively seeking to influence companies and government about the vulnerability of rural communities. Moreover, energywatch has an important ‘brokerage’ role in bringing together local authorities with the companies to achieve solutions for people in vulnerable situations who are often scattered in rural areas. SPARSE is genuinely concerned that this type of work (combining grassroots knowledge with national policy influence) will be lost in future, especially for remote rural communities.

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1 SPARSE is a Special Interest Group of the Local Government Association and currently works with energywatch.
3. **Broader organisational issues**

3.1 **Principles and standards**

**Legal duties**

After the passage of the legislation, the NCC will become a public body which offers services to members of the public, through its power to provide assistance to ‘vulnerable consumers’ and in other cases, such as disconnection. Anti-discrimination and equality legislation places three duties on it; first, a general duty not to discriminate against persons on grounds of disability, race, gender, sexual orientation and religion, secondly, a requirement as regards disabled persons to make adjustments to their service to ensure that it is not impossible or unreasonably difficult for disabled people to have access to the service and, thirdly, a duty to promote equality of opportunity between the specified groups and other persons.

As a public body, the NCC will be required to have an equality scheme in place. Given the major changes in its powers following the legislation, it would seem sensible to strive to embed good practice and quality assurance, including putting in place a programme of consultation with groups representative of the various interests when developing this scheme. Indeed, disability discrimination legislation goes further and requires the involvement of disabled persons in drawing up such a scheme. These duties will be enforceable by the Commission for Equality and Human Rights (due to be launched in October 2007).

When developing its procedures for identifying and aiding ‘vulnerable consumers’ it will also have to ensure that its procedures are appropriately accessible to disabled people and produce a disability impact assessment. For example, a simple telephone answering service would not, on its own, be accessible for deaf people.

Finally, the general duty to promote equality of opportunity has been accepted as being enforceable by individuals against public bodies, unlike the more specific duties which are enforceable by the Commission. The test used by the courts to see whether the general duty has been met has been whether the more specific duties have been complied with.

*Note that to meet the requirements of equality and anti-discrimination legislation, these general legal duties will have to be reconciled with the limited remit of the new NCC (which restricts its duties to certain groups).*

**Standards and best practice**

As outlined in the previous two papers by CUCL for energywatch (on best practice and on consumer vulnerability), all elements of the new arrangements will need to adopt and operate the widely-accepted principles of best practice for complaint handling and dispute resolution schemes, summarised below:

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1. Highly visible procedures – including clear information about how to pursue a complaint; and clear and accurate feedback on how the complaint is processed.

2. Easy and free access – removal of all unnecessary access barriers; provision of 0800 numbers and call back facilities.

3. Effective protocols – to achieve high levels of quality assurance and performance.

4. Fairness and consistency – treating all consumers fairly and with respect; having consistent processes for handling complaints.

5. Responsiveness – clear and appropriate time limits for resolving the majority of consumer complaints and, where necessary, flexibility for dealing with complex complaints together with keeping the complainant informed.

6. Resources – adequate resources for establishing and maintaining a high quality service.

7. Evaluation – regular monitoring and assessment of the effectiveness of complaint handling, including consumer awareness and satisfaction surveys.

Without seeking to prioritise any of the above, in the context of the significant changes that are due to take effect in the energy sector, the provision of highly accessible and clear information about the new procedures and decision-making processes will be critical. Otherwise the potential for confusion amongst consumers and between the various agencies could be considerable and to the detriment of many.

Obviously all relevant parties involved in the new arrangements for handling energy-related complaints – including the energy companies, Consumer Direct, the new NCC, the Energy Supply Ombudsman (and any other ADR schemes) and the regulator – should ensure that information is made available to consumers in as wide a variety as possible of formats and languages. This must include who to contact and how to take forward a complaint.

The first port of call for most consumers will be the energy supply companies. Ernst and Young’s (2007) recent research on complaint handling by financial institutions also provides some interesting insights into the position of utility companies. Utilities and banks attracted the largest number of complaints of the organisations surveyed. Utilities and telecoms companies come at the bottom of the respondents’ list of private sector companies that are easy to complain against and they were also at the bottom of the consumer satisfaction ratings. There are conflicting stories being told about whether or not energy supply companies have improved their complaint procedures in the last year or so. Thus, for example, British Gas complaints have doubled over the last year. Initially, energywatch’s view was that companies have simply bolted the Ombudsman system onto their existing complaints systems, although there have been subsequent improvements by some suppliers. Contrary evidence came at recent Consumer Action Network seminar when the representative...
from Powergen explained the efforts that they had put into improving their complaints systems and the Ombudsman gave its own view of what companies have been doing (Consumer Action Network, News Brief, March 2007).

Overall it is clear there will need to be improvements in company procedures. If we consider accessibility as an example, not all company websites included details of how to complain at the time of writing. For a couple of the others, EDF Energy and Powergen, complaints are dealt with under the “How to contact us” section of the website and no further details of the procedures are provided. Of those who do provide details, at least two of them, Southern Electric and Scottish Power, do not offer an 0800 number. Although they all give e-mail addresses on their website, only one, npower, appears to have an on-line complaints form to fill in (although it is possible Powergen has this as well).

To go further, for instance, although billing information may be made available to consumers in Braille or large type, other important consumer information frequently remains in small type that is inaccessible to people with visual impairment, or to people without English as their first language: this can mean that they cannot access information on how to make a complaint in the first place. There are legal requirements that need to be adhered to, including duties under the Disability Discrimination Acts.

Such issues are also relevant to the new NCC and Consumer Direct in particular and must be taken into account in their budgets. Otherwise, the risk is that these organisations may be reluctant to produce information in different languages or formats, or to publicise the availability of interpreting or translation facilities, because of the cost involved.

Given the substantial changes to the current system and, in particular, the specific duties for the new NCC regarding investigation of complaints from ‘vulnerable consumers’, the organisation will need to plan and implement a strategy that is designed to ensure that its services are actively made known to all those who are likely to be most at risk in terms of energy-related matters, and to relevant agencies. For example, this should include people without English as their first language (such as refugees and asylum seekers), people with mental health problems and/or cognitive impairments, and those with learning difficulties or low levels of basic skills.

This should not only be done to avoid unfairly disadvantaging those most at risk, but also such contact should provide an invaluable resource for the new NCC, which will help it to create a dynamic and reflexive approach to the implementation of its complaint handling duties. Equally such a resource will inform the organisation’s wider policy development, and any actions that may be necessary to represent the interests of consumers collectively, for instance, through making a super-complaint.

This approach will be essential in order to help ensure that the decision-making process, underpinning the complaint handling activity, is robust, rigorous and accountable. In addition, it will provide the new NCC (and relevant partner agencies) with an invaluable source of information about unmet needs, which may need to be highlighted in the organisation’s policy and lobbying work.

* For example, British Gas at house.co.uk
A corollary to this is the obvious need to ensure that its complaint handling staff (frontline and senior managers) are sufficiently and appropriately trained in energy matters and in relation to disability and equality awareness in general. Such expertise has to be built up but also regularly updated and refreshed.

In order for the new NCC to operate transparently and accountably, it will need to have a procedure enabling consumers and agencies to pursue complaints about its decision-making in relation to energy matters. This is particularly vital given that the organisation will have to make and be able to defend decisions about which consumers are assisted and which are not. For organisations with this type of ‘gatekeeping’ role, it is commonplace to have an explicit and well-publicised complaints procedure, including an appeal procedure – perhaps using an independent assessor.

Standards for advice-giving organisations

The new NCC will need to have regard to current best practice for advice-giving organisations in relation to establishing and running its complaint handling service, such as the Quality Mark scheme developed by the Community Legal Service and the Scottish National Standards for Information and Advice Providers. The latter include the following:

“2.1 All service providers must be clear about the remit of their service and the boundaries of their service.

3.1 All service providers must be committed to providing equity of access to services for all.

3.7 All service providers must be able to provide information in a range of formats and community languages that are appropriate to the needs of disabled people and the local community.”

3.8 Services must not disadvantage users whose first language is not English.’

3.2 Working effectively

If the new arrangements for complaint handling and dispute resolution on energy-related issues are to work effectively from the consumer standpoint, the organisations involved will need to take full account of consumers’ experiences and behaviour in seeking advice, and of the diverse nature of the advice sector.

Consumers’ needs

“There is a general lack of knowledge about obligations, rights and procedures on the part of the general public.” (Pleasence, 2007). Not surprisingly then, the research also indicates that, when seeking advice about justiciable problems, people turn to a wide array of sources, not simply those who might be considered the obvious sources of advice, such as solicitors and Citizens Advice, other advice agencies, local authorities, trade unions etc (Pleasence, 2004). The same research indicates that, when people
seek advice, they tend to start with generalist advice givers which lead to them being referred onto specialist advice givers. This gives rise to the “the phenomenon of referral fatigue, whereby the more times people are referred on to another advice service by an adviser, the less likely they become to act on a referral.” (Pleasence, 2007)

In terms of how they obtained advice, the research indicates the importance of being able to contact advisors by telephone. According to a literature survey for the FSA (Wallis 2005) on delivering financial advice, the Community Legal Service see telephone-based advice as vital in meeting what it says is a “a soaring demand for alternatives to face-to-face advice”. It has found its telephone service to be particularly valuable for “people living in remote areas or those with mobility problems or caring responsibilities”. It also found that many people involved in the pilots of the telephone advice service would not have sought help had the telephone advice not been available.

Research by the Department of Trade and Industry found that in launching its telephone advice service, it was essential to keep branding as simple as possible to make it easy for members of the public to know who to contact. This echoes the experience of NHS Direct and the Community Legal Service which emphasises the need both for strong branding (especially where there are multiple advice channels in operation) and a single national number charged at the local rate.

The nature of the advice sector

The organisations involved in the new arrangements, including the new NCC and ADR scheme/s, will need to have an informed understanding of the diverse range of advice and advocacy agencies in communities across the UK and of how they work. These agencies can approach their roles and their work in somewhat different ways, for instance, some do not make a rigid distinction between acting as an advocate for a client and working alongside them to resolve a problem, and giving clients advice on how to solve their problem themselves. Understanding how the various agencies work on the ground should help the new NCC to gauge whether a local agency itself needs advice to work more effectively with their clients, or whether it needs to take up the complaint directly. Both the agencies and their clients will need to be clear about NCC’s role and the type of action, if any, it is able to take.

This logically leads to some basic questions about how the new arrangements will work in practice, for instance, whether the new NCC will only deal with consumers who are referred by other agencies (and, if so, which ones); or whether consumers will be able to contact the organisation themselves. Following on from this is the issue of how the new arrangements will be publicised within the advice sector and externally to consumers, including who will take lead responsibility for doing so and when this needs to commence.
Obviously, Consumer Direct will be one of the key organisations who may be advising consumers in future to contact the new NCC (and/or energy ADR schemes), as Consumer Direct will be expected to handle energy-related enquiries under the new arrangements. This also raises questions about the practicalities of Consumer Direct being able to take on additional volumes of consumer contacts, and whether it will have sufficient staff who are able to handle these volumes and provide appropriate first-tier advice about energy-related matters.

At the time of writing, definite information was not available regarding the budgets for the new NCC and its complaint handling role, and for this additional work for Consumer Direct. This uncertainty is compounded by the proposals in the Varney review for the Treasury (2006). These include proposals which relate to the rationalisation, restructuring and reorganisation of national helpline services, and could potentially have implications for Consumer Direct. The scale of possible changes can be seen from the following extract from the Varney report:

“I recommend that Government explore the scope for providing more coordinated helpline services. This includes converging current helpline infrastructures into one high capacity multi-channel first point of contact national helpline service for several key “help” issues. This could be achieved as a partnership between public, private and third sector providers. As a starting point debt, tax, utility and benefits advice lines could be converged into one phone service, possibly making use of the Citizens Advice service brand and local bureaux infrastructure.”

A streamlined framework

It is clearly in the interests of all relevant organisations and agencies – private, public and third sector – for the new arrangements to work effectively and provide the best possible quality of service for consumers. For this to happen, it will need to be underpinned and guaranteed by some working agreements, such as protocols and memoranda of understanding.

The new NCC is likely to need various agreements with a number of organisations, such as Consumer Direct, Citizens Advice, and Trading Standards Departments, in terms of the way in which referrals are made and handled. As an example, we understand that Consumer Direct currently has protocols agreed with all Trading Standards Departments. These are aimed at ensuring that consumers who are referred by them to Trading Standards are contacted by the latter within 5 working days and are not lost in the system. This type of approach is important as research evidence shows that consumers are more likely to drop out of complaints processes if there are too many referral points.

Agreements will also be required between other organisations involved in the new arrangements, including the Energy Supply Ombudsman (and any other ADR schemes), the new NCC and Ofgem. These need to cover the processes for referrals, and procedures for flagging up cases that may involve a breach of a licence condition or may otherwise be of wider significance.
Such agreements between these parties must also include the regular exchange of information about companies’ complaint handling performance and service failures. This will be especially important as the new arrangements effectively place a great deal of emphasis on the role of the companies in resolving consumer complaints in the first place. Moreover, the new NCC will require this information in order to help fulfil its duties and possibly exercise its powers regarding representation of consumers’ interests in general. This also reinforces the need for robust formal standards to be set by Ofgem for the companies’ complaint handling processes, including a common definition of a complaint, and for there to be regular monitoring and enforcement of such standards.

Various types of information will clearly be needed in order to evaluate how well the new arrangements work, and to help direct improvements if necessary. The new NCC and the ADR service/s will need to record and analyse the numbers and types of contacts from consumers, and the reasons why cases were not taken forward. In addition, it will be necessary to analyse to what extent the new arrangements are succeeding in reaching and helping consumers in general, and those in vulnerable situations in particular. These organisations will therefore need to find ways of analysing which consumers are contacting them and being helped, which ones are turned down, and whether there are significant differences, for instance, according to ethnicity, gender, age or socio-economic status. Consumers’ experiences and views should be actively sought in order to test the appropriateness and accessibility of the organisations’ processes and procedures. All these various types of information should be routinely placed in the public domain in order to ensure transparency and accountability.
4. Conclusions

The new arrangements for consumers with energy-related complaints can be crudely described as consisting of the supply companies and the Ombudsman, with some limited help available from the new NCC. Consumers with a complaint will be told to take their issue to the company at first instance and, if they are dissatisfied with the company response, they will have the option of going to the Ombudsman – unless they are considered to be ‘vulnerable consumers’ by NCC.

Where will consumers be able to get advice about their complaints, which is independent from the company? It is not clear to us that generalist advice providers, such as Citizens Advice Bureaux, will be able to offer much help because this work will inevitably take a low priority, relative to other demands, and because of the potential complexity of the area. Consumer Direct will not be equipped to offer more than general advice and, presumably, directing ‘vulnerable consumers’ to the new NCC. The most likely outcome of an approach to a generalist advice provider will be a referral onto someone else: the Ombudsman, Ofgem and, for ‘vulnerable consumers’ and disconnection cases, the NCC.

Ofgem will presumably not offer advice to consumers about complaints and will simply make a referral either to the company or, in appropriate cases, to the new NCC. It will require some protocol to distinguish ‘vulnerable consumers’, who should be referred to NCC, from ‘non-vulnerable consumers’, who should be referred to Consumer Direct or the company. But Consumer Direct cannot take up complaints directly with providers on behalf of consumers.

It seems to us that the result will be that many consumers with questions will end up contacting the Energy Supply Ombudsman – for comparison in its last Annual Report; Otelo reported that it has about 90,000 enquiries, as distinct from complaints, in a year. The vast majority of these enquirers were told to go back to the company with their issue. It is not clear whether Otelo staff advised them about their particular case, although there does seem to be some element of this happening, judging from the information in the most recent customer satisfaction survey. Again, under the new arrangements, the Ombudsman will have to have procedures for identifying ‘vulnerable consumers’ who should be referred to NCC.

The NCC will have to develop criteria to identify ‘vulnerable consumers’ and criteria for when they will be willing to provide help. The first question is a legal, jurisdictional one, are we entitled to help them? The second question is more of a policy issue. For example, given limited resources and assuming we cannot help all ‘vulnerable consumers’, how do we decide between them? These legal and policy issues will have to be developed in the light of the various anti-discrimination duties the NCC is subject to and its duty as a public body to promote equality of opportunity. They will then have to be communicated to the generalist advice sector, Consumer Direct, the Ombudsman and Ofgem, so that they can advise people properly.

Our overall conclusion is that, if we assume an April 2008 start date for the new arrangements, there is a large amount of work that will need to be done quickly by all those concerned, as well as a number of issues surrounding coordination of effort.
The most appropriate body to push the work forward would seem to be Ofgem, given that it will approve the external redress scheme and set standards for company complaint procedures, among other things. However, whilst stressing the need for such work to be undertaken as quickly as possible, it is equally important to underline the complexities and challenges that need to be understood and tackled by all parties involved if the new arrangements are to be effective and not cause consumer detriment.
References and contacts

1. References


2. Organisations contacted

Advice UK
Advice Services Alliance
Age Concern England
Birmingham Settlement
Citizens Advice
Consumer Direct
Energy Retail Association
Manchester Advice Service
Merton Council, Principal Environmental Health Officer/HECA Officer
Money Advice Scotland
Money Advice Trust
National Consumer Council
Rnib
Rnid
Scottish Executive, Communities Scotland
Southwark Somali Refugee Council
Sparsity Partnership for Authorities Delivering Rural Services