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Ref: 93/08

Date: 1 July 2008

Dear Colleague,

Complaints handling standards

The Consumers, Estate Agents and Redress Act 2007 (CEAR) places a duty on the Authority to make regulations prescribing complaints handling standards that are binding on regulated providers.

This letter provides Ofgem's final decision on the content of the complaints handling standards Regulations. A copy of the final Regulations' is attached at appendix 1.

Background

Section 43 of CEAR requires the Authority to set complaints handling standards that are binding upon regulated providers. In July 2007 we published an open letter seeking views on the broad options and scope of the standards. In August we commissioned consumer research to understand the views and experiences of consumers, and in November we published our proposals for consultation. In April we published our final proposals and sought views on the proposed complaints handling standards Regulations.

Summary of responses

We received 18 responses to the final proposals consultation, which have been taken into account in our decision on the final form of the Regulations subject to approval by the Secretary of State.

A summary of responses to the consultation and Ofgem's view of those responses has been attached at appendix 2. A copy of each response has been placed on the Ofgem website.

Decision

The key elements which we proposed to include in the complaints handling standards Regulations applying to domestic suppliers have been retained:

- **a common definition of a complaint;**
- **a requirement to record complaints upon receipt and subsequently;**
- **a requirement to have a complaints handling procedure;**
- **a requirement to signpost the complaints handling procedure;**
- **a requirement to signpost the redress scheme;**
- **a requirement to agree arrangements with the new NCC for handling vulnerable consumers and threatened or actual disconnections;**

- a requirement to agree arrangements with Consumer Direct for referrals;
- a requirement to deal with consumer complaints in an efficient and timely manner; and
- a requirement to publish information on complaints.

As indicated in the consultation document, with the exception of the requirement to publish information on complaints, these elements will also apply to complaints made to network companies and complaints made by micro business consumers.

We consider that these elements constitute standards designed to provide effective protection for consumers.

Throughout the process of setting complaints handling standards we have emphasised the need for licensees to improve their complaints function in advance of the changes in consumer representation and in preparation for the introduction of the standards themselves. Nevertheless, we recognise that there will be changes necessary to systems to accommodate the requirements of the standards, and some uncertainty remains in areas such as the definition of micro business consumers.

In our consultation we sought views on the timescales for implementation. Our decision is that the standards will come into legal force from 1 October 2008. This aligns with the timing of the broader consumer representation changes and allows for a single commencement date. However, we expect companies to put in place arrangements to comply with the standards in advance of them becoming a statutory requirement. We are therefore publishing our decision and the Regulations now, a full three months before they come into force, in the expectation that the standards will start to be introduced from 1 July and are bringing forward our independent audit and best practice review to the end of October.

We expect licensees to make the necessary preparations to be fully compliant with the complaints handling standards from 1 October. We will be undertaking an independent audit to ensure that the standards have been introduced and embedded correctly and that suppliers are fully compliant with the requirements. The standards will be subject to the full force of enforcement including the potential for financial penalties up to 10 per cent of turnover to be imposed where a company is in breach from 1 October.

We have made a small number of minor drafting amendments to the draft Regulations and provided greater clarity where necessary. These are noted in the attached appendices.

Next steps

The complaints handling standards Regulations may only be made with the consent of the Secretary of State. The Regulations are now at the final stage where they will be signed by the Authority and submitted to BERR for signature by the Secretary of State.

The introduction of the complaints handling standards Regulations will necessitate a number of amendments to the gas and electricity supply, gas transportation and electricity distribution licences and remove duplication. A number of licence changes will also be required to delete references to the Gas and Electricity Consumer Council and insert details of the new NCC. We consulted on these changes in February and intend to conduct the statutory consultation on all of these licence modifications and consequential changes in August for them to take effect from 1 October.

Yours sincerely,

Maxine Frerk
Director Governance Consumer and Social Affairs

DRAFT STATUTORY INSTRUMENT

2008 No. [INSERT]

GAS AND ELECTRICITY

**The Gas and Electricity (Consumer Complaints Handling Standards)
Regulations 2008**

Made - - - - - ***

Coming into force - - - - - ***

ARRANGEMENT OF REGULATIONS

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The Gas and Electricity Markets Authority^a in exercise of the powers conferred by sections 43, 44 and 46 of the Consumers, Estate Agents and Redress Act 2007^b, after considering the results of research to discover the views of a representative sample of persons likely to be affected and after consultation with persons and bodies appearing to be representative of persons likely to be affected by the Regulations in accordance with section 44(1) of that Act, and with the consent of the Secretary of State in accordance with section 43(4) of that Act, makes the following Regulations:

Part I

General

Citation, commencement and extent

- 1.(1) These Regulations may be cited as the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 and shall come into force on 1 October 2008.
- (2) These Regulations do not apply to Northern Ireland.

Interpretation

2.(1) In these Regulations -

“the Act” means the Consumers, Estate Agents and Redress Act 2007;

“the Authority” means the Gas and Electricity Markets Authority established by section 1 of the Utilities Act 2000^c;

“complaint” means any expression of dissatisfaction made to an organisation, related to any one or more of its products, its services or the manner in which it has dealt with any such expression of dissatisfaction, where a response is either provided by or on behalf of that organisation at the point at which contact is made or a response is explicitly or implicitly required or expected to be provided thereafter;

“complainant” means a person making a consumer complaint;

“complaints handling procedure” means a procedure which complies with Regulation 3 and which sets out how a consumer complaint can be made to, and will be handled and progressed by, each regulated provider;

“consumer complaint” means a complaint, other than a network outage report, which is made against a regulated provider either (a) by a person in that person’s capacity as a relevant consumer in relation to that regulated provider; or (b) by a person acting on behalf of such a relevant consumer;

“consumer complaints report” means the report which is to be prepared and published in accordance with Regulation 11;

“Consumer Direct” means the body of that name which is funded by the Office of Fair Trading to provide a consumer advice helpline;

“the Council” means the National Consumer Council established by section 1 of the Act;

“domestic consumer” means a person supplied or requiring to be supplied with gas or electricity at domestic premises (but excluding such person insofar as he is supplied or requires to be supplied with gas or electricity at premises other than domestic premises);

“domestic premises” means premises at which a supply of gas or electricity is taken or to be taken wholly or mainly for domestic purposes;

“existing consumer complaint” means a consumer complaint which has been received by a regulated provider and whose details have been or should have been recorded by that regulated provider in accordance with Regulation 4(1);

^a The Gas and Electricity Markets Authority was established by section 1(1) of the Utilities Act 2000 (c.27)

^b 2007 c.17

^c 2000 c.27

“micro business consumer” means any person, other than a domestic consumer, who a regulated provider knows or, acting reasonably, considers falls within the description of consumers who are covered by a Section 47 Order;

“network outage” means an interruption to a relevant consumer’s supply of gas or electricity;

“network outage report” means a complaint or other contact made by a relevant consumer or a person acting on behalf of a relevant consumer to a regulated provider where that complaint or contact consists wholly or primarily in the reporting to that regulated provider of the existence of a network outage;

“Office of Fair Trading” means the body of that name which is established by section 1 of the Enterprise Act 2002^d;

“qualifying redress scheme” means a redress scheme which is approved by the Authority in accordance with section 49 of the Act or which is administered and designated in accordance with section 47(1)(b) of the Act;

“regulated provider” means any one or more of the following as the context requires:

- (a) a person holding a licence under section 7A(1) of the Gas Act 1986^e;
- (b) a person holding a licence under section 7(2) of the Gas Act 1986^f;
- (c) a person holding a licence under section 6(1)(d) of the Electricity Act 1989^g;
- (d) a person holding a licence under section 6(1)(c) of the Electricity Act 1989;

“relevant consumer” means any one or more of the following as the context requires:

- (a) a person who is a domestic consumer or a micro business consumer in relation to gas supplied by a regulated provider;
- (b) a person who is a domestic consumer or a micro business consumer in relation to electricity supplied by a regulated provider;
- (c) a person who is a domestic consumer or a micro business consumer in relation to services provided by a regulated provider;

“resolved complaint” means a consumer complaint in respect of which there remains no outstanding action to be taken by the regulated provider and which has been resolved to the satisfaction of the relevant consumer who made that consumer complaint or on whose behalf that consumer complaint was made;

“section 12 and 13 complaint” means a complaint to which any one or more of section 12(3), section 12(4), section 13(2) or section 13(3) of the Act applies or apply;

“Section 47 Order” means an Order which has been made by the Secretary of State in accordance with section 47 of the Act and which is in effect;

“specified time period” means the time period specified in a qualifying redress scheme as the maximum time period that a regulated provider has to resolve a consumer complaint before the relevant consumer who made that consumer complaint, or on whose behalf that consumer complaint was made, becomes entitled to refer that consumer complaint to a qualifying redress scheme;

“vulnerable consumer” means a person who is vulnerable for the purposes of section 12(2) of the Act; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971^h.

a 2002 c.40

b 1986 c.44: section 7A(1) was inserted by the Gas Act 1995 (c.45), section 5

c Section 7 was substituted by the Gas Act 1995 (c.45), section 5, and amended by the Utilities Act 2000 (c.27), section 76(3) and Schedule 6, paragraph 4

d 1989 c.29: section 6 was substituted by the Utilities Act 2000 (c.27), section 30

e 1971 c.80

Part II

Standards for handling consumer complaints

Regulated providers' complaints handling procedure

3. (1) A regulated provider must have in place at all times a complaints handling procedure.
- (2) Each regulated provider must comply with its complaints handling procedure in relation to each consumer complaint it receives.
- (3) Each regulated provider's complaints handling procedure must:
 - (a) be in plain and intelligible language;
 - (b) allow for consumer complaints to be made orally (by telephone or in person at the regulated provider's business premises) or in writing (including by email);
 - (c) allow for consumer complaints to be progressed through each stage of the complaints handling process orally (by telephone or in person at the regulated provider's business premises) or in writing (including by email);
 - (d) describe the steps which the regulated provider will take with a view to investigating and resolving a consumer complaint and the likely timescales for each of those steps;
 - (e) provide for an internal review of an existing consumer complaint where a complainant indicates that they would like such a review to occur because they are dissatisfied with the handling of that consumer complaint;
 - (f) inform relevant consumers of the names and contact details of the main sources of independent help, advice and information that are available to them. For these purposes a source of help, advice and information shall be independent if it is independent of regulated providers, a qualified redress scheme and the Authority;
 - (g) describe the relevant consumer's right to refer a consumer complaint to a qualifying redress scheme:
 - (i) on and from the point at which the regulated provider notifies the relevant consumer in writing that it is unable to resolve the consumer complaint to the relevant consumer's satisfaction; and
 - (ii) after the expiry of the specified time period; and
 - (h) set out the different remedies that may be available to a relevant consumer under the complaints handling procedure in respect of a consumer complaint, which remedies must include:
 - (i) an apology;
 - (ii) an explanation;
 - (iii) the taking of appropriate remedial action by the regulated provider; and
 - (iv) the award of compensation in appropriate circumstances.
- (4) Those regulated providers who hold a licence under:
 - (a) section 7A(1) of the Gas Act 1986; or
 - (b) section 6(1)(d) of the Electricity Act 1989,

must include in their complaints handling procedure as a remedy the award of compensation to domestic consumers, in appropriate cases, where the domestic consumer has been adversely affected by a failure of that regulated provider to comply with its obligations under, respectively, standard condition 25 (Marketing gas to domestic customers) of the Standard Conditions of the Gas Supply Licence or standard condition 25 (Marketing electricity to domestic customers) of the Standard Conditions of the Electricity Supply Licence.

Recording complaints upon receipt

4. (1) Upon receipt of a consumer complaint a regulated provider must record in a written, electronic format the following details:
 - (a) the date that the consumer complaint was received;
 - (b) whether the consumer complaint was made orally or in writing;
 - (c) the identity and contact details of the relevant consumer making the consumer complaint or on whose behalf the consumer complaint is made;
 - (d) where the regulated provider who receives the consumer complaint holds a licence under section 7A(1) of the Gas Act 1986 or under section 6(1)(d) of the Electricity Act 1989 or both, the account details of the relevant consumer making the consumer complaint or on whose behalf the consumer complaint is made;
 - (e) a summary of the consumer complaint;
 - (f) a summary of any advice given or action taken or agreed in relation to the consumer complaint;
 - (g) whether the consumer complaint has become a resolved complaint and, if so, the basis upon which the regulated provider considers that the consumer complaint is a resolved complaint; and
 - (h) the method for future communication (if any) that has been agreed with the complainant.
- (2) Where any subsequent contact is made with the regulated provider in relation to an existing consumer complaint that regulated provider must, upon receipt of that subsequent contact, record:
 - (a) the date of that contact;
 - (b) whether the subsequent contact was made orally or in writing;
 - (c) whether the complainant making the subsequent contact is the same complainant as, or different to, the complainant who made the original contact regarding an existing consumer complaint and, where different, the identity and contact details of the complainant making the subsequent contact;
 - (d) a summary of that contact;
 - (e) a summary of any advice given or action taken or agreed in response to any points raised in that contact;
 - (f) whether the consumer complaint has become a resolved complaint and, if so, the basis upon which the regulated provider considers that the consumer complaint is a resolved complaint; and
 - (g) the method for future communication (if any) that has been agreed with the complainant.
- (3) All details recorded in accordance with paragraph (2) must be clearly linked to an existing consumer complaint.
- (4) For the purposes of paragraphs (1) and (2) and Regulation 5, a consumer complaint or any subsequent contact shall be treated as having been received by a regulated provider:
 - (a) where the consumer complaint or subsequent contact is made orally (by telephone or in person at the regulated provider's business premises), at the time at which it is received by that regulated provider;
 - (b) where the consumer complaint or subsequent contact is made in writing (including by email) and it is received before 1700 hours on a working day, on the working day that it is received by that regulated provider;
 - (c) where the consumer complaint or subsequent contact is made in writing (including by email) and it is received by the regulated provider after 1700 hours on a working day or at any time on a day that is not a working day, on the first working day immediately following the day upon which it is received by that regulated provider.

- (5) Where a complainant claims to have made a consumer complaint in respect of a matter but it is not possible to identify a relevant existing consumer complaint, the regulated provider must record the fact that it is unable to trace the existing consumer complaint.
- (6) Where a regulated provider has recorded that a consumer complaint is a resolved complaint but subsequent contact from a complainant in relation to that consumer complaint indicates that it is not a resolved complaint, the regulated provider:
 - (a) must record details of this change in the consumer complaint's status in its recording system;
 - (b) must as soon as reasonably practicable after becoming aware of the fact that the consumer complaint is not a resolved complaint:
 - (i) direct the complainant to the complaints handling procedure on its website; and
 - (ii) offer to provide a copy of the complaints handling procedure to the complainant free of charge;
 - (c) must take account of that consumer complaint in any report which it is obliged to prepare and publish in accordance with Regulation 11; and
 - (d) shall not otherwise be entitled to treat that consumer complaint as a resolved complaint for the purposes of these Regulations until that consumer complaint is demonstrably a resolved complaint.

Recording handling of complaints

5. (1) In addition to recording information in accordance with Regulation 4, each regulated provider must keep a written, electronic record of the matters specified in paragraph (2) below for each consumer complaint which it receives where that consumer complaint has not become a resolved complaint by the end of the working day after the day on which the consumer complaint was first received by that regulated provider.
- (2) The matters which must be recorded in accordance with paragraph (1) are:
 - (a) the steps the regulated provider has taken in response to each such consumer complaint, including any steps it has taken to resolve that consumer complaint;
 - (b) the date (if any) upon which any such consumer complaint became a resolved consumer complaint;
 - (c) the date (if any) upon which the specified time period expired; and
 - (d) the date (if any) upon which the relevant consumer who made the consumer complaint, or on whose behalf the consumer complaint was made, was informed of their right to refer that consumer complaint to a qualifying redress scheme in accordance with Regulation 6(3).

Signposting consumers to the redress scheme if complaints cannot be resolved

6. (1) The regulated provider must send a relevant consumer a written notice informing that relevant consumer of the matters addressed at paragraph (2) in the circumstances described at paragraph (3).
- (2) A notice sent in accordance with paragraph (1) must notify the relevant consumer:
 - (a) of their right to refer the consumer complaint to a qualifying redress scheme;
 - (b) that the qualifying redress scheme process is independent of the regulated provider;
 - (c) that the qualifying redress scheme process is free of charge to the relevant consumer and to any other category of complainant;
 - (d) of the types of redress that may be available under a qualifying redress scheme; and
 - (e) that any outcome of the qualifying redress scheme process is binding upon the regulated provider but not upon the relevant consumer or any other category of complainant.
- (3) A regulated provider must send a notice to a relevant consumer in accordance with paragraph (1) on the earlier of:
 - (a) the first working day after the day (if any) upon which that regulated provider becomes aware that it is not able to resolve a consumer complaint to that relevant consumer's satisfaction; and

- (b) the date upon which the specified time period for that consumer complaint expires unless that date falls on a day that is not a working day, in which case the first working day thereafter.

Allocation and maintenance of adequate resources for complaints handling

7. (1) Each regulated provider must:

- (a) receive, handle and process consumer complaints in an efficient and timely manner; and
- (b) allocate and maintain such level of resources as may reasonably be required to enable that regulated provider to receive, handle and process consumer complaints in an efficient and timely manner and in accordance with these Regulations.

Section 12 and 13 complaints

- 8. (1) A regulated provider must, after discussion with the Council, put in place appropriate arrangements to deal effectively with section 12 and 13 complaints.
 - (2) If the Council refers a vulnerable consumer or a consumer complaint relating to a vulnerable consumer to a regulated provider, that regulated provider must take such additional steps as it considers necessary or appropriate with a view to, as appropriate, assisting that vulnerable consumer and resolving the relevant consumer complaint in an appropriate and prompt manner.

Referral of consumers from Consumer Direct

- 9. (1) Each regulated provider must, after discussion with Consumer Direct, put in place appropriate arrangements to deal effectively with referrals to it from Consumer Direct of consumer complaints and, if appropriate, complainants.
 - (2) The arrangements required by paragraph (1) must set out a process by which Consumer Direct may make such referrals to the regulated provider.

Part III

Supply of information to consumers

Information to be provided to consumers

- 10. (1) Each regulated provider must ensure that its complaints handling procedure appears at a clear and prominent location on its website.
 - (2) Where a consumer complaint has not become a resolved complaint by the end of the first working day after the day the consumer complaint was first received by a regulated provider, the regulated provider must as soon as reasonably practicable (unless it has already done so in respect of the relevant consumer complaint):
 - (a) direct the complainant to the complaints handling procedure on its website; and
 - (b) offer to provide a copy of the complaints handling procedure to the complainant free of charge.
 - (3) Each regulated provider must, at least once in every twelve-month period, inform all of its domestic consumers (or arrange for all of its domestic consumers to be informed) of the existence of its complaints handling procedure and how a relevant consumer may obtain a copy of it.
 - (4) A regulated provider must provide a copy of its complaints handling procedure, free of charge, to any person who requests a copy.

Publication of information on complaints

11. (1) Regulated providers who hold a licence under section 7A(1) of the Gas Act 1986 or a licence under section 6(1)(d) of the Electricity Act 1989 or both, must:
- (a) publish annually a consumer complaints report at a prominent location on their website; and
 - (b) provide a copy of their consumer complaints report, free of charge, to any person who requests a copy.
- (2) A consumer complaints report is a report in relation to the twelve-month period ending with the month immediately preceding the month in which the report is published which contains the following information:
- (a) the number of consumer complaints which the regulated provider received from domestic consumers during that period which had not become resolved complaints by the end of the first working day after the day the consumer complaint was first received by the regulated provider;
 - (b) that the regulated provider has a complaints handling procedure;
 - (c) how a copy of that procedure may be obtained;
 - (d) the existence of these Regulations; and
 - (e) how and from where a copy (including a hard copy) of these Regulations may be obtained.

The seal of the Gas and Electricity Markets Authority here affixed is authenticated by the signature of

[DATE]
I consent

[NAME]
A member of the Gas and Electricity Markets Authority

[DATE]

[Malcolm Wicks]
Minister of State for Energy
Department for Business, Enterprise and Regulatory Reform

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe standards for the handling of consumer complaints by regulated providers and for the supply of information to consumers about the prescribed standards and levels of compliance with those standards.

The Regulations come into force on 1 October 2008.

Regulation 1 provides for the citation, commencement and extent of the Regulations and Regulation 2 provides for the interpretation of the Regulations.

Regulation 3 requires regulated providers to have a complaints handling procedure for handling all consumer complaints from receipt through to resolution. The requirements differ amongst regulated providers, with some being required to award compensation in specific circumstances, where appropriate.

Regulation 4 specifies the information about consumer complaints that must be recorded by regulated providers upon receipt of such complaints.

Regulation 5 specifies the information that must be recorded by regulated providers about consumer complaints that have not been resolved by the regulated provider by the end of the next working day.

Regulation 6 requires regulated providers to inform consumers in writing of the consumer's right to refer the consumer complaint to the redress scheme on the earlier of (1) when the regulated provider realises that the consumer complaint cannot be resolved to the satisfaction of the consumer, or (2) the expiry of the time period that the regulated provider has to resolve the complaint.

Regulation 7 sets out how regulated providers should deal with consumer complaints and requires that they allocate sufficient resources to enable them to do so.

Regulation 8 requires regulated providers to establish arrangements to deal with the investigation of vulnerable consumer complaints and the investigation of complaints relating to disconnection of gas or electricity. Regulated providers should also take necessary or appropriate additional steps to resolve consumer complaints that involve vulnerable consumers.

Regulation 9 requires regulated providers to establish arrangements for the referral of consumer complaints or, where applicable, complainants from Consumer Direct to the regulated provider.

Regulation 10 requires regulated providers to make information concerning their complaints handling procedures available to consumers in particular ways and at particular times.

Regulation 11 requires regulated providers who hold supply licences to prepare and publish an annual report concerning their complaints handling procedure, mentioning the existence of the Regulations and setting out certain details concerning the consumer complaints they have received from domestic consumers during the relevant period.

An impact assessment that took the Regulations into consideration, has been prepared and was included in the full Impact Assessment which accompanied the document 'Consumers, Estate Agents and Redress Act 2007; Measures to Strengthen and Streamline Consumer Advocacy.' A copy is available from the Department for Business Enterprise and Regulatory Reform, Victoria Street, London SW1H 0ET and can also be found at <http://berr.gov.uk/files/file43215.pdf>

Summary of responses

Below is a summary of responses to Ofgem's proposals notice and consultation together with Ofgem's reply on those issues raised. This document starts with general comments raised by respondents on the timing of commencement and on the arrangements for the audit and best practice review. It then addresses the more detailed comments on the Regulations themselves in number order.

1. General comments

1.1 Timing of the commencement of the complaints handling standards

In our consultation document we said that we expected the Regulations to come into force from 1 July but sought views on the time that would be needed for implementation. We acknowledged that some elements of the standards such as the requirement for arrangements with new NCC, could not come into force until 1 October.

Summary of responses

Industry respondents expressed considerable concern about an early implementation of the complaints handling standards. Some suppliers suggested that the IT changes needed to implement the standards would be significant. Many suppliers also expressed concerns that a phased introduction of the standards would not provide for a seamless transition to the new arrangements. In particular, it would require suppliers to revise their complaints procedures twice in a very short period: firstly to respond to the standard from the date it is implemented; and again to introduce new NCC and Consumer Direct into the arrangements from 1 October. Similarly, training would need to be given in two phases. Suppliers also highlighted the continuing uncertainty about a number of key aspects of the new arrangements, in particular the need for BERR to confirm the definition of micro businesses.

Network companies have also expressed reservations about an early introduction of the standards. However, their concerns largely centre on arrangements being in place with new NCC and Consumer Direct, and the micro business definition being decided. energywatch cautioned against assuming that processes required under the new standard could be established and delivered quickly.

Ofgem response

We noted in the course of our visits to suppliers earlier this year that some suppliers might need to make significant investment in their IT systems to meet the requirements of the standards. The breadth of the standards, particularly in relation to the recording of complaints, will also require significant procedural changes and training for staff. Whilst we understand these issues, we are not wholly sympathetic to the concerns that have been raised given that suppliers have been aware of the requirements for some time.

Nevertheless, it is important that the standards are introduced in a seamless way which provides effective protection for consumers. Therefore, we have decided that the standards will come into force from 1 October. In confirming the content of the Regulations now we are providing companies with early notice of the changes they will need to make to be compliant with the standards. We expect that the necessary changes will be in place to meet the standards fully from 1 October.

To ensure that the standards have been introduced correctly we intend to bring forward our independent audit to the end of October. Where companies fail to comply with the standards from 1 October we have the power to impose financial penalties of up to 10 per cent of turnover.

1.2 Audit and best practice review

In our consultation we confirmed that we would carry out an audit and best practice review of suppliers performance under the standards to provide assurance that the Regulations have been introduced and embedded appropriately and consistently, and to identify and share best practice.

Summary of responses

One consumer respondent suggested that the audit and best practice review should be a regular feature of monitoring compliance with the standards until Ofgem could be satisfied that they had been properly bedded down. energywatch was concerned that Ofgem itself might undertake the audit and best practice review, questioning its expertise to do so. One supplier asked what the post audit remedies might be and what time would be given to companies to resolve the problems the audit identified.

Ofgem response

It is our intention to undertake an audit and best practice review before the end of October, and to do the same in 2009. Once we have done so and analysed the results we expect to be in a position to consider whether further audits and reviews are necessary and if so, at what frequency. It has never been our intention that Ofgem should undertake this work and we will be engaging independent experts to do so. While it is impossible at this stage to anticipate what action will be taken in the light of the findings of that audit, as we have made clear above we expect companies to be compliant with the new standards from 1 October and will not hesitate to take enforcement action where there is a clear breach of the standards.

1.3 Publication of information

In our consultation we said that a clear definition of a complaint and a requirement to record complaints on receipt would assist in overcoming concerns about consistency. We explored some of the areas for which performance information might be useful to consumers and committed to working with new NCC to consider this further.

Summary of responses

Suppliers expressed the desire for new NCC to act proportionately and focus on collecting information that is relevant and which they can use to look across sectors. They asked that any data published be accurate and put into context. Some were concerned about possible inconsistencies in interpretation of the complaint definition and asked that only post-audit data be published.

There was concern that data collected by Consumer Direct might be published when data for other sectors was not, and data published on disconnections by new NCC would be based only on one viewpoint. They suggested that publication of such data could provide an inaccurate picture of performance and customer service and affect consumer confidence. Some suppliers were concerned that publishing data on complaints not resolved by the end of the following day would encourage swift but inadequate resolution. A business supplier considered that publishing information on micro business complaints would give an incorrect assessment of performance and could potentially be damaging to competition. A number suggested publishing redress scheme data instead.

Some consumer groups asked for consistency in categorisation of complaints across companies and possibly with Consumer Direct. energywatch suggested that the speed of resolution of complaints be explored further. Another respondent expressed concern that not publishing information on complaints resolved before the end of the following day might lead to an emphasis on speed over quality. One consumer group asked that information be published more frequently than annually. energywatch considered that information on micro business complaints should be published.

Ofgem response

New NCC has a duty to publish information on compliance with the standards and a duty to publish statistical information on complaints. They have shared their latest thinking on how they intend to comply with these duties at the recent Customer Journey Working Group. New NCC is now in the process of gathering views from suppliers and other stakeholders regarding what information it would be useful to collect and publish on behalf of consumers and with what frequency. Ofgem also has a duty to collect information on compliance with the standards. It is our intention to align our information requirements as far as possible with new NCC to ensure that there is not an unnecessary additional burden on suppliers.

We are keen to ensure that consumers have confidence in the new arrangements and that suppliers are reassured that there is consistency in interpretation of the standards. As noted above, we intend to provide a level of assurance to both consumers and suppliers through an early audit and best practice review. We would expect to publish an initial set of complaints data following the audit.

We believe that the requirement on suppliers to publish data annually on complaints not resolved by the end of the next working day rightly focuses attention on those complaints which suppliers have had the opportunity to resolve but have not done so. There will also be much less subjectivity involved in interpretation of the complaints definition and hence the results will be more comparable between suppliers. It does not appear to us to be in suppliers' best interests to provide inadequate solutions to customer complaints in order to reduce the numbers they have to report. These complaints will be treated as unresolved from the initial first point of contact and thus be captured by the annual reporting requirements. In addition, it is possible that information collected by new NCC and Ofgem will include measures of speed of resolution and numbers of complaints which have been closed because the company believes it has been resolved, but the customer comes back to the company to say that this is not the case. Going forwards we would expect new NCC to publish information on a more frequent basis than annually to provide consumers with an up-to-date picture.

In the consultation document we expressed concern that publishing information on numbers of micro business complaints could be a disproportionate burden particularly on small suppliers and might have an adverse impact on competition. Similarly, only publishing micro business complaints received by the big six suppliers might give the impression that there is no competition beyond those suppliers. We remain of the view therefore, that there should not be a requirement on suppliers to publish micro business complaints. However, it remains open to new NCC to collect and publish information in this area.

2. Part I – General: Interpretation (Regulation 2)

2.1 Interpretation - complaint

Summary of responses

Suppliers were concerned that the definition of a complaint gave companies scope to interpret contacts differently.

Ofgem response

We remain of the view that a broad definition of a complaint and reporting on those complaints which are not resolved by the end of the next working day will encourage improvements in customer service and consistency of practice. Our audit and best practice review later this year will provide an opportunity to identify any inconsistencies amongst suppliers.

2.2 Interpretation - Micro business consumer

Summary of responses

Respondents noted that BERR had not yet confirmed the definition of a micro business and expressed concern about the delay this would cause to their plans for designing an appropriate system to handle these complaints.

Ofgem response

It is our understanding that BERR is proposing a definition which is an annual bill of £5,000 per fuel (to be expressed as an equivalent usage measure) or <10 employees or turnover of €2m. We recognise the difficulty some companies may have in identifying micro businesses which fall within the BERR definition and thus who will be subject to the complaints handling standards. Therefore, in defining a micro business consumer for the purpose of the Regulations we have stated that it should cover those consumers who the company 'knows or acting reasonably considers falls within the description of consumers who are covered by a Section 47 Order' (i.e. within the BERR definition). The Regulations have been amended accordingly.

We are keen to promote a workable approach here and the definition in the Regulations gives network companies flexibility to agree a reasonable proxy for identifying micro business consumers such as profile class. We are working with BERR to identify an analogous consumption figure for the purpose of the Order, which should assist suppliers to identify micro businesses falling within the definition. Although suppliers will not always know what a customer's consumption will be, for example when they acquire a new customer, they should be able to take a view on what that consumption might be given they will normally consider it as part of their contract negotiations.

For suppliers we would expect the main focus to be on usage level but if, over time, it becomes clear that there are individual customers or groups of consumers who meet other elements of the BERR definition but not the usage level then they should be treated as micro businesses for the purposes of the standards.

2.3 Interpretation - 'network outage/report'

Summary of responses

One respondent suggested that the drafting of the regulation excluded all calls and complaints relating to an interruption, for example a complaint about a planned interruption, and was inconsistent with reporting under the guaranteed standard of performance applying to gas transporters.

Ofgem response

We disagree with this interpretation. The definition of a network outage and report should be read in conjunction with the definition of a 'consumer complaint'. The definitions are designed to specifically exclude calls reporting a loss of supply. In the example given of a planned interruption a customer call to report a loss of supply would be counted as a network outage but a call to complain that they had not been told about the planned interruption would fall outside that definition and hence be considered as a complaint.

2.4 Interpretation - Relevant consumer

Summary of responses

One respondent was concerned that the definition would include any non-distribution business activities conducted within the 'de minimis' limits specified in their licence.

Ofgem response

We disagree with this interpretation. We have reviewed the definition of 'relevant consumer' and believe that 'de minimis' activities fall outside of the scope of the standards.

2.5 Interpretation – Resolved complaint

Summary of responses

One consumer respondent suggested that further guidance on what is a resolved complaint would be useful.

Ofgem response

We are not persuaded that further guidance is necessary. We have explained in the consultation document that we do not consider that a complaint can be considered to be resolved unless the promised action has been taken so that the supplier can be confident that the consumer is now satisfied, and accompanied this with an example. If there are particular issues or concerns we are happy to consider them through the Customer Journey Working Group. The audit and best practice review will also help ensure consistency of approach.

3. Part II – Standards for handling consumer complaints

3.1 Regulated providers' complaints handling procedure (Regulation 3)

Summary of responses

Industry respondents were concerned that two revisions of their complaints handling procedure would be required if the standard was introduced before 1 October - firstly to respond to the standard from the date of introduction, and again to introduce new NCC and Consumer Direct and micro businesses into the arrangements from 1 October. Some suppliers considered the requirements to be more prescriptive than the current licence condition and viewed it as a retrograde step following the supply licence review.

Network companies were unclear which advice agencies should be included in the procedure and asked whether the obligation should apply only to suppliers. One small supplier was concerned that it may be time consuming to maintain information about advice agencies and suggested that Consumer Direct should be the keeper of such information instead. Some consumer groups wanted to see greater accessibility through freephone and low cost telephone numbers.

One supplier suggested that the obligations in Regulations 3, 4, 5 and 6 which require compliance in all individual cases and are enforceable on that basis, should be changed to an obligation to make adequate arrangements.

Ofgem response

The need for companies to revise their complaints handling procedure twice in a short space of time was taken into account in our decision on the timing of the introduction of the standards, noted earlier in this document.

We note the comments regarding the prescriptive nature of the standards particularly in the light of the supply licence review. However, Ofgem has a duty to set complaint handling standards. The standards we propose have been developed following research and full consultation with a wide range of stakeholders including industry participants and consumer representatives. We believe that the regulations as drafted provide an appropriate balance between effective protection for consumers and the need to allow suppliers to differentiate their service in a competitive market.

We consider that the requirement to provide consumers with information about other agencies who may be able to give advice and assist consumers such as Consumer Direct, Citizens Advice Bureaux, Age Concern, and others is relevant to customers contacting network companies and therefore should apply to them and to all suppliers.

We note the comments regarding enforcement in individual cases and the possible action for failure which may ensue. We consider that the requirements in Regulations 3, 4, 5 and

6 as drafted are appropriate and place a clear obligation on companies. Enforcement of the complaints handling standards Regulations will be in line with Ofgem's Enforcement Guidelines¹. In particular, under our prioritisation criteria, we would not expect to take action for breaches of the standards in individual cases.

Ofgem does not intend to include a requirement on suppliers to provide freephone or low cost call numbers. Whilst we would encourage suppliers to consider introducing such measures, it is a matter for each company to decide whether to differentiate their service in this way.

3.2 Recording complaints upon receipt (Regulation 4)

Summary of responses

Some suppliers highlighted that significant system changes were necessary to meet the requirements of the regulations. Staff also needed to be trained on the new processes. One noted that BERR's decision on the definition of micro business was needed to identify what further system changes were required for those complaints. Suppliers expressed concern that it may be difficult to record written complaints upon receipt if the letter or e-mail has been sent to the wrong address for correspondence, and cited the inherent delays in sorting and distributing mail. One respondent suggested that it was not proportionate to include complaints made in person in the Regulations.

One small supplier suggested that complaints from customers who had switched and those who had not should be recorded differentially to take account of the additional complaints from switchers that a small supplier might receive. It also expressed concern about the burden this obligation will impose, although it also acknowledged that it was good practice to record information.

Network companies noted that they would not be able to comply with the requirement to record customers' account numbers as they had no access to this information. A network respondent expressed concern that the Regulation did not take account of repetitive and vexatious complaints, and it was not helpful to refer such complaints to the redress scheme just to close them.

One consumer group asked that we reconsider the decision not to require companies to accord a reference number to each complaint noting that some suppliers' agreements with Consumer Direct may provide for this. There was also a request for guidance on what is considered a 'repeat contact'.

Ofgem response

The need to undertake system changes, training for staff, and to have a decision from BERR on the micro business definition was taken into account in our decision on the timing of the introduction of the standards as set out above.

It is important that companies provide their customers with contact information to minimise the number of letters and e-mails which are sent to the 'wrong' address. We believe that companies should be able to establish processes for dealing with written and e-mail complaints in a speedy manner. Nevertheless, we recognise that some customers will not write to the correct address for correspondence. Recording written complaints immediately on receipt may not be possible if the complaint has not been received in the relevant complaint handling department. Therefore, we have removed the requirement to record 'immediately' on receipt but expect companies to ensure that arrangements are in place for ensuring that written complaints received at the 'wrong' address are dealt with in a timely way. We consider that for completeness it is correct to include in the Regulation complaints made in person.

¹ Enforcement Guidelines 232/07 published 28/09/07

We do not agree that it is necessary to differentiate in recording complaints the number of switchers and non-switchers, although suppliers may wish to keep this information for their own analysis should they wish to do so.

We acknowledge that network companies will not have access to customers' account numbers and have amended the Regulations accordingly. In terms of repetitive or vexatious complaints, we do not consider it necessary to make particular reference to such contacts in the Regulations. The redress scheme has the discretion to refuse to accept or to terminate consideration of a complaint (and presumably a decision on whether the complaint is repetitive or vexatious will form part of this consideration).

We are not persuaded of the need to require companies to give a unique reference number to each complaint. As noted in the complaint handling consultation document, we consider this to be an area where suppliers might decide to provide a reference number in order to differentiate their service or for operational efficiency to assist in the retrieval of information. If suppliers want to use this as a further identifier for referrals from Consumer Direct then this is a matter for agreement between the two parties.

We assume that the reference to 'repeat contacts' means 'subsequent contact' as referred to in Regulation 4 (3) (now Regulation 4(2)) and 4 (6). Regulation 4 (3) is designed to ensure that any contact made by the complainant after (subsequent) to making the complaint in Regulation 4 (1) is recorded. Regulation 4 (6) is designed to capture those contacts where the complaint has been closed because the company believes it has been resolved, but the customer comes back to the company to say that this is not the case. The contact should be recorded and the complaint treated as a continuous complaint (i.e. from date of receipt of the original complaint – Regulation 4 (1)). *For the purposes of clarity, we have reordered Regulation 4.*

3.3 Recording handling of complaints (Regulation 5)

Summary of responses

One supplier sought clarity on what the date in paragraph 5 (2)(iv) referred to.

Ofgem response

We have clarified the wording of this Regulation (*now 5 (2)(d)*) to make it clear that it applies to recording the date on which the consumer was notified of their right to go to the redress scheme (as required under Regulation 6 (3), i.e. deadlock or when the time limit has expired).

3.4 Signposting consumers to the redress scheme if complaints cannot be resolved (Regulation 6)

Summary of responses

Two respondents suggested that the drafting of the Regulation implied that signposting was required at both deadlock and when the time limit was reached.

Ofgem response

We have reviewed the wording of this Regulation and are satisfied that no amendment is necessary as suggested above. The wording of 6 (3) makes clear that signposting is required at the earlier of deadlock and when the time limit is reached. However, additional text has been added to 6 (3)(i) (*now 6 (3)(a)*) to provide for a notice to be sent on the first working day after the day on which the company becomes aware that it is unable to resolve the complaint to that consumer's satisfaction. Similarly, text has been added to 6 (3)(ii) (*now 6 (3)(b)*) to provide for the notice to be sent on the first working day when the time limit is reached.

3.5 Allocation and maintenance of adequate resources for complaints handling (Regulation 7)

Summary of responses

One respondent sought reassurance that this Regulation would only be applied for systemic problems rather than individual cases.

Ofgem response

As noted in the consultation our aim in introducing this element was to allow us to address significant or systemic problems.

3.6 Section 12 and 13 complaints (Regulation 8) Referral of consumers from Consumer Direct (Regulation 9)

Summary of responses

Industry respondents were keen to have clarity on the respective roles of new NCC and Consumer Direct so that they could develop their referral protocols with those bodies as requested under the standards. One supplier expressed concern about the possible imposition of unreasonable terms in the referral agreements suggesting that the obligation should be for the company to use reasonable endeavours to reach agreement or that there should be an appeal mechanism to Ofgem. Another commented that there should be a mechanism for reviewing the agreements.

Some consumer groups suggested that Ofgem should require suppliers to agree referral processes with third party agencies, whilst another was concerned that suppliers may withdraw existing voluntary agreements for helplines with third party agencies.

Ofgem response

We are mindful of the key roles that new NCC and Consumer Direct will play in the new consumer arrangements. It is therefore important that appropriate arrangements are put in place to ensure that contacts between these organisations and suppliers/network businesses are handled effectively. At the same time, we recognise industry respondents concerns that the requirement might lead to the imposition of unreasonable terms. We have therefore amended the Regulation to recognise that appropriate arrangements must be put in place following discussion with new NCC / Consumer Direct. We expect all parties to work collaboratively to ensure that they do so successfully.

In our consultation document we expressed the view that the new arrangements should not alter the relationship between suppliers and third party agencies. The complaint handling standards require suppliers to give customers information about other sources of help, which we would expect would lead to a strengthening of relationships. We have sought to identify ways to improve these voluntary arrangements through the Customer Journey Working Group and understand that ERA is in the process of agreeing arrangements with Citizens Advice and Age Concern, and will look to identify other agencies who might also benefit from such agreements. Nevertheless, as part of our audit and best practice review of the standards we will seek views on how the standards are working including whether relationships between third party agencies and suppliers are functioning successfully. It remains open to us to amend the Regulations in future should the voluntary arrangements stop working.

4. Part III – Supply of information to consumers

4.1 Information to be provided to consumers (Regulation 10)

Summary of responses

Industry respondents were concerned that directing the customer to the complaints handling procedure at the end of the next working day following receipt would serve only to

confuse customers, particularly if they were content to wait for a resolution of their complaint.

One respondent asked for clarity on the terms used in the Regulation in relation to ensuring that the procedure is in a 'clear and prominent location' and what 'direct' means, whilst another noted that ex-Public Electricity Suppliers (PES) also had a guaranteed standard of performance regarding charges and payments^J.

A network company thought it unnecessary to prescribe this requirement for network businesses, whilst another highlighted that it would have to rely on the goodwill of suppliers in order to comply with the obligation to inform domestic consumers once every 12 months of its complaints handling procedure.

Ofgem response

Signposting the complaints handling procedure at the end of the first working day following the day of receipt is consistent with our reporting requirements and ensures that where a complaint will take time to resolve the customer is clear about the procedure. We had envisaged that if the person handling the complaint was aware at the initial contact that the complaint would not be resolved by the next working day, they should be able to inform the customer at that point about the complaints handling procedure. In most cases we would not expect a separate contact to have to be made. However, in reviewing the drafting of the Regulation we acknowledge that this may not have been clear. Therefore, we have amended Regulation 10 (2) to require the company to direct the consumer to the complaints handling procedure by the end of the first working day following receipt 'if they have not already done so'.

We do not consider it necessary to provide guidance on the terms used in relation to the location of the procedure on the website and directing consumers to it.

We intend to consider the requirements of the guaranteed standard of performance applying to ex-PES's and whether it remains necessary following introduction of the complaints handling standard when we undertake our audit and best practice review.

We consider it important that customers should be informed about the existence of a complaints handling procedure for their network company. Within the standards of performance regulations there is an obligation on suppliers to forward the notice of rights information to domestic customers. In our consultation document we said that we expected network companies to use this notice of rights mechanism to inform customers annually about the complaints procedure. As this existing process appears to work successfully we do not consider it necessary to include a specific obligation within the complaints handling standards to require suppliers to pass on this information to customers. However, should we receive information in the future that the process is not working as envisaged we will consider making this a formal requirement on suppliers within the Regulations.

4.2 Publication of information on complaints (Regulation 11)

Summary of responses

One respondent asked why it was necessary to inform consumers about the existence of the Regulations and how and where to get a copy. One network respondent, whilst recognising that Regulation 11 did not apply to network companies, commented that the drafting of Regulation 11 paragraph 1(i) made it impossible to publish a complaints report in the first year of operation.

^J Regulation 14 requires ex-PES' to respond to a customer request for a change in payment method or a query as to the correctness of an account within five working days. Where the supplier's reply states that the customer is entitled to a refund that payment must be made within five working days. Failure against any of these deadlines attracts a payment of £20.

Ofgem response

The Consumers, Estate Agents and Redress Act 2007 requires Ofgem to make arrangements for ensuring that the Regulations are available to the public by whatever means it considers appropriate. We consider that the requirements in Regulation 11 (2)(iv)(v) (*now 11 (2)(d)(e)*) are the most appropriate.

We have added text to Regulation 11 (2) so that it is explicit that the annual complaints report will not be published until after the end of the first twelve month period.