

**Memorandum of Understanding
between
The Gas and Electricity Markets Authority
and
The Ombudsman Service Limited**

Introduction

- 1.1 The parties to the Memorandum of Understanding (MoU) are the Gas and Electricity Markets Authority (for the purposes of this document, referred to as the Authority) and The Ombudsman Service Limited ("OS"), which administers the Ombudsman Services: Energy (OS:E).
- 1.2 OS:E is an alternative dispute resolution mechanism set up by OS to resolve disputes arising from customers of the participating companies of OS:E.
- 1.3 The purpose of this MoU is to set out the respective roles and responsibilities of each party, the expectations of one another, and agreements on how both will work together.
- 1.4 The Office of Gas and Electricity Markets (Ofgem) works under the direction and governance of the Authority. Where appropriate, references to Ofgem have been included in this document.

Background

- 2.1 The Consumers, Estate Agents and Redress Act 2007 (the CEAR Act) gives the Secretary of State the power to make an Order to require regulated providers (energy providers) in the energy sector to become members of an approved redress scheme. Part 2 of the CEAR Act gives the Authority a formal role in approving redress schemes and in refusing or withdrawing approval for redress schemes in the energy sector.
- 2.2 The Authority provided approval to OS for a statutory redress scheme in the energy sector on 18 June 2008 subject to the then Department for Business, Enterprise and regulatory Reform making an Order of the form indicated in its response document of 21 December 2007¹. On 19 September 2008 the Authority confirmed its approval.
- 2.3 The Authority provided further approval to OS for a statutory redress scheme in the energy sector on 23 September 2015 under the implementation of the European Union Directive on Alternative Dispute Resolution on 9 July 2015 and the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

Roles of each party

- 3.1 The Authority was established through the Utilities Act 2000 and is responsible for the regulation of the gas and electricity industry. More particularly, the Authority's principal statutory objective is to protect the

¹ Consumer redress schemes in gas, electricity and postal services. URN 07/1737

interests of consumers, wherever appropriate by promoting effective competition.

- 3.2 In meeting its statutory duty, the Authority must have particular regard to the needs of vulnerable customers; particularly older people, the disabled or chronically sick, those living on low incomes and in rural areas. It also has duties to help gas and electricity markets achieve environmental improvements as efficiently as possible and to have regard to the principles of best regulatory practice.
- 3.3 OS is a private company limited by guarantee and ensures the independence of OS:E from the industry, the regulatory authorities and the consumers. It has the responsibility to provide an independent and impartial Alternative Dispute Resolution service (OS:E) for the unresolved complaints of its members from domestic customers, and micro business customers defined in the redress scheme Order.
- 3.4 Membership of OS:E is a requirement for all regulated energy providers holding a licence under section 7A(1) and 7(2) of the Gas Act 1986 and section 6(1)(c) and (d) of the Electricity Act 1989 providing services in accordance with their licence to domestic and/or micro business customers.

Aims of the agreement

- 4.1 The joint aims of the Authority and OS in drawing up this MoU are to:
- minimise any potential causes of uncertainty for consumers, or for either of the organisations, by being clear about how potential overlap areas will be dealt with;
 - foster mutual understanding and effective relations generally between the two bodies;
 - ensure each other's ability to fulfil its respective functions is not hampered through action or inaction by the other body;
 - ensure information and views are exchanged with regard to the current and future operations of OS:E; and
 - ensure that information is shared, subject to any legal constraints including the need to respect personal or commercial confidentiality, which enables the organisations to fulfil their respective functions.

Fostering effective working relationships

- 5.1 The Authority and OS will take all reasonable steps to ensure they facilitate the ability of the other to operate effectively. The Authority and OS will nominate primary points of contact between the organisations, although both bodies wish to ensure maximum efficiency and would not wish to limit contact solely to the nominees.
- 5.2 The Authority and OS agree that representatives of Ofgem and OS:E will hold regular discussions to ensure the effective implementation of this agreement and discuss operational issues.
- 5.3 In addition, OS:E and senior officials of Ofgem will meet to discuss major strategy and policy issues, future regulatory issues, and resourcing and future development of the scheme that impact on the service provided by OS: and ultimately upon consumers of gas and electricity at least bi-annually.

- 5.4 The Authority will use all reasonable endeavours to provide OS:E with access to advice and expertise regarding the regulatory framework, and training or advice where training might be sourced.
- 5.5 Wherever possible, the Authority and OS:E will provide advance notice of forthcoming consultations and publications which may impact on the other party. As far as is reasonably practicable, press releases which refer to or call for action from the other party or which otherwise are likely to result in media enquiries requiring a direct response from the other party, will be shared at least one day in advance.
- 5.6 Both bodies will share information on emerging generic issues, in terms of both regulatory developments and consumer representation issues. This will be used by both organisations to ensure that consumer needs are met and the resources of both are targeted to best effect.
- 5.7 The Authority and OS:E will seek to work together where appropriate to deliver information, including concerning the availability of the scheme, to consumers, stakeholders and other relevant bodies.
- 5.8 Both bodies will share information and ideas on the future development of the scheme.
- 5.9 Where OS proposes to make changes to the scheme including changes to rules, procedures, terms of reference, or governance arrangements, it will write to the Authority before the end of the period of 14 days beginning with the day on which the change is made.

Dealing with potential overlap areas

- 6.1 Both organisations recognise that domestic and micro business customers of energy suppliers and network operators may be uncertain as to the respective areas of responsibility of the Authority and OS. This uncertainty might lead to confusion about which organisation is best able to assist them.
- 6.2 Ofgem will redirect to OS:E any enquiry made to it about the Ombudsman and the services available to the consumer through the Ombudsman. OS:E will redirect any enquiries or complaints which are outside its terms of reference to the relevant energy provider or appropriate advice service or agency. Ofgem would only expect referrals to be made to it where the customer wishes to complain about its policies.
- 6.3 The Authority and OS recognise their obligations to data subjects under the Data Protection Act 1998. Consumer correspondence will be referred in accordance with the Data Protection Act to enable respective parties to carry out their functions.
- 6.4 Where a complaint relates to a matter that cannot be resolved by the relevant licensee and for which the Authority has the power of determination such as a connection charge dispute, it should be referred in the first instance to OS:E. OS:E will investigate and reach a provisional conclusion regarding the case. If at the provisional conclusion stage either party is dissatisfied with the outcome of OS:E's investigation, and it is within the statutory time limit (within 12 months of the date of final connection for connection disputes), OS:E will advise the relevant party or

parties that they may refer the case to Ofgem for formal determination of the relevant elements before a final decision, where relevant, is taken by OS:E on the case overall.

Regulatory matters

- 7.1 The Authority recognises that OS:E is a major source of information and intelligence on the issues affecting consumers.
- 7.2 OS:E will bring to Ofgem's attention any trends or issues of concern that it considers are arising within the industry. It will also alert the Authority to any problems or patterns of behaviour occurring within an individual energy provider which it has attempted to address directly with that provider without success.
- 7.3 If, following an investigation, it appears to OS:E that a complaint relates to a potential licence breach, other than those which are de minimis (unless part of a broader trend) OS:E will make the Authority aware of the matter.
- 7.4 For the purposes of complying with its obligations under this agreement (including in respect of obtaining, recording, using and sharing information), the Authority and OS:E must comply with any laws relating to data protection and/or privacy.

Provision of performance information

- 8.1 OS will make available certain performance-related data concerning OS:E to the Authority.
- 8.2 At the beginning of each month OS will (where relevant by customer type i.e. domestic/micro business) provide:
- number of contacts to OS:E split by those which are inside and outside the terms of reference of the Service (i.e. nature of calls/contacts/cases);
 - average response times between receipt of complaint form and issue of the Report or the settlement of the dispute (i.e. time taken by OS:E to make provisional rulings on cases or to resolve a case by mutually acceptable settlement);
 - average telephone response times;
 - number of complaint forms returned;
 - number of complaints accepted as a result of a 'deadlock' letter, an eight week letter or by Ombudsman's discretion; and
 - an operational overview report.
- 8.3 At the beginning of each quarter OS will provide, by each participating company:
- a summary of the main complaint types;
 - number of complaints accepted as a result of a 'deadlock' letter, an eight week letter or by Ombudsman's discretion;
 - number of cases resolved by resolution type; and
 - a summary of awards made and actions required.

- 8.4 OS will provide the Authority with the following information annually:
- the number of complaints received about OS:E, analysis of the reasons for the complaint and whether it was upheld or not;
 - the number of cases for which forms are not returned and research on the reasons; and
 - the number of cases where further representations were made, by whom, and whether these made a difference to the outcome of the complaint.
- 8.5 The Authority can, from time to time, request additional performance related data to assess compliance with the scheme criteria or the performance of regulated providers. Timescales for the provision of this information will be a matter of agreement between the Authority and OS.
- 8.6 Prior to undertaking research OS will seek the Authority's view on whether particular additional information should be sought. OS will also provide the Authority with any surveys of customer satisfaction with OS:E that it commissions or undertakes, any research that it undertakes to assess the socio-economic breakdown of consumers using the service and any research to identify and address barriers to access.

Review of the scheme

- 9.1 The Authority will review the impact and performance of OS:E from time to time as appropriate and will share the proposed scope of that review. The Authority will share its findings with OS and discuss with them how any concerns or issues raised by the review might be addressed.

Review of the agreement

- 10.1 This MoU will be reviewed or revoked following any changes to the framework within which the two organisations operate or from time to time as agreed by mutual agreement or at least every three years, whichever is sooner.

Signed on behalf of the Gas and Electricity Markets Authority

Handwritten signature

Date: *4-7-2017*

Signed on behalf of the Ombudsman Service Limited

Date: *Kevin G... G...
6th July 17*

