

Citizens Advice Response to Ofgem's: "Consultation on DCC's role in developing a Central Registration Service and penalty interest proposals"

The logo for Citizens Advice, featuring the words "citizens" and "advice" stacked vertically in white lowercase letters inside a dark blue speech bubble shape.

**citizens
advice**

Introduction

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination. Since 1 April 2014, Citizens Advice service took on the powers of Consumer Futures to become the statutory representative for energy consumers across Great Britain.

The service aims:

- To provide the advice people need for the problems they face
- To improve the policies and practices that affect people's lives.

The Citizens Advice service is a network of nearly 400 independent advice centres that provide free, impartial advice from more than 3,500 locations in England and Wales, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services both in rural areas and to serve particular dispersed groups. In 2012/13 the Citizens Advice service in England and Wales advised 2.3 million people on 6.6 million problems.

Since April 2012 we have also operated the Citizens Advice Consumer Service, formerly run as Consumer Direct by the OFT. This telephone helpline covers Great Britain and provides free, confidential and impartial advice on all consumer issues.

In the last four quarters Citizens Advice Bureaux have dealt with 84,000 enquiries about fuel debt, while hits to the energy section of our website doubled in October and November, the period during which suppliers announced their price increases last year. Calls to the Citizens Advice Consumer Helpline seeking advice about energy doubled in the same period.

Initial Comments

Citizens Advice welcomes this opportunity to respond to Ofgem's consultation on the development of the Central Registration Service (CRS). This response is not confidential and can be published on your website.

This submission was prepared by the Energy team within Citizens Advice. It has statutory responsibilities to represent the interests of energy consumers across Great Britain.

We regard the creation of a new CRS as a sensible step in the drive towards one day switching, and the DCC as the best party to be responsible. Overall, however, this choice does raise a concern for us over the DCC's track record so far on value for money. At the time of writing the DCC has recently informed stakeholders that it will not be able to meet its Target Response Time for message delivery as set out in the Smart Energy Code (SEC). This is meant to be 30 seconds but in the case of some important message types the DCC has announced that, unless plans change, it will take more than an hour to deliver them. This is a breach of the agreement with potentially serious consequences for future consumers, who for example may not be able to practically access their full data records when using switching sites, but it is our understanding that the DCC does not currently face any penalty for missing this target. Indeed it has been suggested that the target could simply be revised down in the SEC.

This, combined with our concerns about the ex post approach that has been taken so far, expressed in the previous consultation on the DCC price control¹, feeds into a more general concern that Ofgem may not currently be keeping a firm enough grip on the DCC's revenue. We are not disputing the decision to allocate responsibility for the CRS to the DCC, but this makes it all the more pressing to make sure the price control is fair and watertight. We hope this consultation will be a useful step towards that.

¹ https://www.ofgem.gov.uk/sites/default/files/docs/2015/02/cab_response.pdf

Question 1: Do you agree with our proposals to amend SLC 15 of DCC's licence (including the proposed legal changes described in appendix 2)?

As well as requiring the CRS to be 'economical' and 'efficient', 15.3(a) should require the Interim Central Registration Service Objective for the DCC to consider 'the interests of present and future consumers'. We feel that the setting of objectives without explicit reference to the consumer interest has been a problem in the past as it has allowed the emphasis to shift to what is efficient and simple for the industry actors rather than what is beneficial for their customers (see paragraph 13 of our submission on network codes to the CMA²). Making this explicit in the objective would ensure that the consumer interest was kept in mind over the CRS design process.

In the light of the recent problems outlined above with requirements on the DCC not being tightly enough drawn, we would also question whether the proposed wording, that the licensee must comply with the objective by 'contributing the the achievement' of the interim CRS and 'making all relevant preparations', is clear enough. If this approach is taken there should be no loopholes that might lead to intentions not being fulfilled.

Question 2: Should DCC be required to document the design of the CRS (including the new switching arrangements)?

We do not have a view as to whether this should be carried out by the DCC or SECAS.

Question 3: Should DCC be required to draft the required modifications to the SEC and/or other related industry codes?

No. It would be better to give this responsibility to SECAS. Giving responsibility for drafting the required modifications to the same party as is charged with establishing the CRS would run the risk of a lack of transparency, and might not serve the interests of all parties equally.

Question 4: Should the Authority take a broad power to direct DCC on the preparation for the new arrangements, including the ability to stop its activity?

Yes

²

https://www.citizensadvice.org.uk/global/migrated_documents/corporate/attachment-3---improving-the-energy-industry-codes.pdf

Question 5: Do you agree with our proposal to provide guidance to DCC on its licence and the draft content set out in appendix 4?

Yes, though as per our answer to question 1 it might avoid later problems to clarify phrasing such as 'should play a strong role in' (1.11) and 'take all reasonable steps to prepare for' (1.14). If it was decided not to add a consumer objective to the licence condition as per our answer to question 1, this guidance would be another possible and useful location for that objective.

Question 6: Do you agree with our preferred option that DCC should recover costs through the existing ex post price control framework?

No. As stated in our response to the previous consultation on the DCC's price control, we would prefer to see a more rigorous ex ante price control for the DCC developed. We accept that there is a high degree of uncertainty that must be accommodated by either approach. Our concern is that at the most basic level the existing ex post approach places the risk from this on the DCC's funders and hence ultimately on consumers, whereas an ex ante control would make the DCC more responsible for its own risk. Necessary expenditure may not be fully predictable, but work has already been carried out for the section of the consultation on 'materiality of costs'. We would suggest that making this the basis for an ex ante control, would be a better approach.

Question 7: What are your views on introducing an ex ante control for the procurement costs?

We would support this. We agree with the point raised in the consultation document that benchmarking should be possible here as this is a standard procedure, though this is presumably also the case for much of the DCC's workload.

Question 8: Do you agree that DCC should be able to recover costs it incurs for participation in the transitional phase 2015/16?

Allowing a new category of costs for a period of the ex post control that is already underway would be moving the goalposts, and it does not seem that the DCC will incur material costs from taking part in an industry working group. Allowing costs for this to be recovered would be an example of the risk of one-sidedness in the ex post control: it is possible to make the case for extra revenue in the case of minor changes like this one, but changes the other way, reducing DCC's workload, would not necessarily be reflected. Therefore we would favour option 1 as laid out in the consultation for 2015/16, no change.

Question 9: What are your views on introducing incentives in relation to the activity DCC takes under LC15, particularly its procurement activities?

Introducing incentives could be an effective tool to drive efficiency. In the past, however, we have found that incentives applied to network price controls have often not provided value for money for consumers, largely because they have been disproportionately upside-only, have been set at too low a performance level that all actors tend to exceed, and have rewarded actors for what they would have done anyway. We would support incentives for the DCC under LC15 only if consistent with the best practice laid out in our recent report *Many Happy Returns? The Consumer Impact of Price Controls in Regulated Networks*³:

Incentive programmes should, at the very minimum, abide by these six principles:

- 1. They should encourage companies to take decisions that are in the long-term interests of their customers: they should be **beneficial**.*
- 2. They should encourage firms to do things they would not have done otherwise: they should be **additional**.*
- 3. They should reward firms with the amount of money required to get them to change their behaviour, but no more than that: they should offer **value for money**.*
- 4. They should encourage improvements in performance – and not reward standing still. So improvements made by firms in one price control should not be further rewarded in the next. Those improvements should be treated as standard actions going forward: they should be **bankable**.*
- 5. It must be possible for regulators and third parties to assess performance against clear and objective criteria: they must be **measurable**.*
- 6. Companies should provide regular updates on their progress towards meeting their incentives measures, to enable appropriate scrutiny from the regulator and third parties, and release of this information and its accessibility should be a criterion on which performance is assessed: there should be **regular reporting**.*

Question 10: Do you agree CRS should be a mandatory business service?

Yes

³

[https://www.citizensadvice.org.uk/Global/CitizensAdvice/Corporate%20content/Publications/ManyHappyReturns-NewBrandEdition%20\(2\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Corporate%20content/Publications/ManyHappyReturns-NewBrandEdition%20(2).pdf) (Page 7)

Question 11: Do you have any views on the proposed changes to the Licence and SEC?

No

Question 12: Do you agree there should be no changes to the charging methodology and this should be considered as part of the industry working group for the enduring framework?

Yes

Question 13: Do you think it is appropriate to direct some form of penalty interest rate?

Yes. Insofar as the current arrangements are liable to put DCC users at a disadvantage by causing them to lose out on the interest on any overestimated payments they are required to make to the DCC, we would expect these users to pass the disadvantage on to consumers. A penalty interest rate should redress this and make it less likely that the DCC over-collects its revenues in the first place.

Question 14: Do you agree with the proposed preferred options? If so, do you think one is preferable to the other? If not, please explain your views.

We agree with the proposed options. Of the two, we would regard option B, to direct any penalty, as preferable. This would provide certainty and send a clear signal to the DCC, whereas the option to report and direct would leave room for doubt and disagreement. Introducing an element of judgement in this way would create the risk that in the event the decision would be put off or dropped altogether, on the grounds that it could be too difficult. The consultation states that the option to direct any penalty could be 'less transparent', but in fact setting a fixed rate of penalty interest and sticking to it could be more transparent than taking a case by case decision, without a clear framework, on whether to apply a penalty rate at all.

Question 15: What do you think appropriate penalty interest rate is?

The proposed approach of using the network precedent of a penalty rate 3% above the Bank of England rate seems sensible.

Question 16: What do you think an appropriate threshold of tolerance should be for over-recovery of charges?

Again, using the network precedent of 110% seems a sensible approach.