

Raising the bar

How a new Consumer Duty could improve standards in the retail energy market





Executive Summary

The retail energy market is facing the most challenging times since liberalisation in the 1990s.

- Suppliers serving 4 million households have failed since August 2021, adding over £2.6bn to our energy bills
- Regulatory failures by Ofgem allowed risky business models into the market, with many companies offering poor service
- Energy prices are at a generational high, heaping financial pain onto millions of families

This has shattered consumer confidence in the market at the worst possible time. Looking ahead, we need more participation in the market and smarter energy products and services that deliver more consumer value and help us decarbonise.

Ofgem needs to urgently restore consumer trust. In the short term it must ensure compliance with existing rules, but an upgrade of retail regulation based on the FCA's new Consumer Duty could deliver higher service standards and protections for the decade ahead.

Current Ofgem rules

- ✗ Focus on companies treating customers fairly, rather than delivering good outcomes
- ✗ It can be hard for customers and the regulator to hold suppliers to account for poor service
- ✗ Protection gaps for new products and services based on smart tariffs and technology

Consumer Duty

- ✓ Puts onus on companies to achieve good outcomes and support people with their objectives
- ✓ It should be easier for the regulator to monitor and enforce, and prevent harm in the first place
- ✓ Ensures people using more complex products and services have appropriate protections

Why we need change in the energy market

Over recent years we have seen a number of alarming trends in the retail energy market:



29 energy suppliers have failed since August 2021. We urgently need to rebuild consumer trust in the market.



There has been declining satisfaction with service - particularly telephone services¹ - and there continue to be poor billing practices for too many consumers.²



Energy has consistently been the lowest rated for customer service of any of the essential services (water, broadband, financial services).³



Some suppliers have not complied with key Ofgem rules that protect customers - including those that ensure their services work for customers with a range of needs.

Looking ahead, the market will need to work for everyone as an essential service, while also delivering new products and services:



As prices rise people will rightly expect decent service, and more people will need support from their energy supplier.



Smart energy services will continue to develop and may be bundled with technologies. These should deliver value and help us decarbonise, but also create some new risks.⁴



Suppliers will serve people with a growing range of service needs over coming years - from digital natives, to people who are digitally excluded or have low digital skills.⁵

In 2013 Ofgem introduced an overarching requirement for suppliers to treat customers fairly.⁶ Since then it supplemented this with principles-based rules on informed choices, communications, and vulnerability. While these have led to some improvements, they haven't done enough to improve outcomes, and there are significant protection gaps as new products emerge.



What can we learn from financial services?

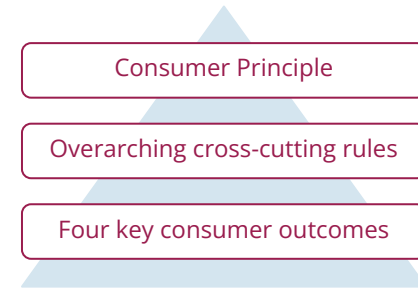
Like Ofgem, the Financial Conduct Authority (FCA) currently has a requirement to treat customers fairly, but is upgrading these protections in financial retail markets with a new Consumer Duty.⁷ These reforms are based on behavioural insights about consumers and why they don't always get the outcomes they expect, including:

- Ability to make good decisions being impaired by information asymmetries, confusion or behavioural biases
- Digital services which offer more choice and convenience, but also more complexity and risk
- Vulnerable circumstances, which can add additional risks

The FCA says that while many firms offer good services, some are exploiting these behaviours by providing misleading information, selling products which don't benefit customers or provide fair value, and having service that acts as a barrier to good outcomes.

The new Consumer Duty should **improve the culture of firms**, and make sure they focus on real world consumer outcomes. It should also make it easier for the regulator to monitor compliance and **quickly tackle poor practice before it becomes widespread**.

The Consumer Duty will be structured around a high level principle and key target outcomes.



In energy this approach could build on existing protections by putting more onus on suppliers to raise standards, and improve protections where there are gaps. We may also see products emerging which combine financial and energy services, so aligning approaches could simplify regulation.

An energy Consumer Duty would need to recognise the essential nature of the service, and could be accompanied by stronger backstop protections in key areas of service.



The overall approach would raise standards

	Current Ofgem rules	FCA proposals	Benefits of FCA approach
Topline rule	<p>Suppliers must treat customers fairly, including those in vulnerable circumstances⁸</p>	<p>A firm must act to deliver good outcomes for retail clients</p>	<ul style="list-style-type: none">● It is more focused on the outcomes that customers experience, rather than whether they were treated fairly at each stage of their relationship with the company.
Cross-cutting rules	<p>The energy supplier Standards of Conduct are to:</p> <ul style="list-style-type: none">● behave in a fair, honest, transparent, appropriate and professional manner● provide information to enable informed choices● ensure customer services are thorough, complete, transparent, fit for purpose● identify and take account of vulnerabilities	<p>Firms must:</p> <ul style="list-style-type: none">● act in good faith● avoid foreseeable harm to customers● enable and support customers to pursue their financial objectives	<ul style="list-style-type: none">● The FCA's cross-cutting rules are designed to set high level expectations of behaviour and to help firms interpret the rules. <p>Ofgem's Standards of Conduct already do this to an extent, but the FCA goes further with requirements to 'avoid foreseeable harm'. This could include harms that occur when suppliers fail, which Ofgem is seeking to tackle.</p> <ul style="list-style-type: none">● It also adds a focus on supporting customers pursue their objectives. In energy, these could include lower costs, higher comfort levels and lower carbon emissions.



The detailed rules could tackle specific risks

Detailed outcomes

Current Ofgem rules

Ofgem has rules that are designed to enable consumers to make informed choices⁹

Price is excluded from overarching requirements to treat customers fairly, but there are detailed rules related to price and value including the default tariff price cap, payment methods, and 'green' tariffs¹⁰

FCA proposals

Products are fit for purpose, meet customer needs and are targeted at those who benefit

Products must offer fair value

Benefits of FCA approach

- The FCA approach goes further than focusing on informed choices by requiring companies to ensure products actually meet customer needs and monitor customer outcomes. In energy, this approach could reduce risks from people buying and using smarter products and services that don't deliver value for them.
- The FCA approach could provide an overarching framework for the price cap and any future price protections, as well as recognising other types of 'value' to consumers, like environmental outcomes.
- If energy technologies and services are bundled together it could be underpinned by new rules to separate these to an extent in the contract, with clear information to help people understand the value of the combined service.

Current Ofgem rules

Ofgem requires customer communications to achieve outcomes around informed choices, assistance and advice¹¹

Ofgem requires suppliers to make it easy to contact them and resolve issues, and to provide extra help for people in vulnerable circumstances

FCA proposals

Consumers are given the information they need, at the right time, and presented in a way they can understand

Firms provide a level of support that meets consumers' needs, so they can realise the benefits of services they buy and are supported with their objectives, without unreasonable barriers

Benefits of FCA approach

- Ofgem rules are broadly in line with the FCA proposals, but the Consumer Duty framework could ensure better testing and monitoring. In energy, inaccurate billing remains a particular challenge. This outcome could be underpinned by prescriptive rules to guarantee more accurate bills.
- The FCA approach of seeing customer service as a way of supporting customers achieve their objectives should improve standards, including meeting the needs of those with vulnerabilities.
- An energy version of this outcome would need to recognise the essential nature of energy as a key objective. It could also mean different types of support for newer products, for example, flexibility in longer energy contracts if people's needs change.

The impact of the new Duty

The FCA has set out how it expects companies to act in response to these rules - including a greater focus on monitoring outcomes to address issues.⁷

Firms will need to be able to demonstrate how they are monitoring outcomes and addressing harms, and explain how they reach decisions on interventions.

Energy companies should already be doing this to some extent, but as products become more complex and digitalised it will be vital that they make full use of all available data to understand consumer impacts. This can build consumer confidence and enable the market participation we're likely to need to get to net zero.

Interventions - Consumer Duty, cross-cutting rules and key outcomes

Firm actions - firms focus on acting to deliver good outcomes, considering customer needs at every stage

Outcomes - consumer confidence increases and products which aren't fair value are removed from the market

Harms reduced - reduced stress and harm for consumers, enhanced participation, better competition and more innovation

Firms **monitor outcomes** experienced by customers and address problems by amending products and processes

```
graph TD; Interventions[Interventions - Consumer Duty, cross-cutting rules and key outcomes] --> FirmActions[Firm actions - firms focus on acting to deliver good outcomes, considering customer needs at every stage]; FirmActions --> Outcomes[Outcomes - consumer confidence increases and products which aren't fair value are removed from the market]; Outcomes --> HarmsReduced[Harms reduced - reduced stress and harm for consumers, enhanced participation, better competition and more innovation]; HarmsReduced --> Monitoring[Firms monitor outcomes experienced by customers and address problems by amending products and processes]; Monitoring --> Interventions;
```




Implementing a Consumer Duty for energy

There is a pressing need to safeguard consumers hit by rapidly increasing prices, as well as improving the resilience of companies to shocks and putting the market on a more stable footing.

Changes to introduce a new Consumer Duty would take time - but we think they could be the focus of Ofgem's planned retail strategy. It would help future proof consumer protections ahead of important market reforms, including completing the smart meter rollout and introducing market-wide half hourly settlement, which will enable smarter products and services.

Timeline of FCA reforms⁷

- May 2021 - Initial consultation on a new Consumer Duty
- December 2021 - Second consultation with changes in response to initial feedback
- July 2022 - Final decision published
- April 2023 - Proposed deadline for implementation of new Consumer Duty

The FCA thinks the Consumer Duty should mean it can identify and stamp out poor practice more quickly. While it develops a new Consumer Duty, Ofgem must also protect consumers in the short term by ensuring compliance with existing rules.

Our research showed that Ofgem previously failed to ensure all companies were meeting requirements on providing decent service and support for consumers in vulnerable circumstances.¹² Addressing these regulatory failures is vital to ensure that the recent market turmoil won't happen again.

We've called for an independent review to consider these issues and guide improvements. We think this should include changes to Ofgem's approach so thresholds for acting against firms are appropriate, and for its compliance and enforcement functions to be appropriately resourced.

Improvements to monitoring and enforcement will also be an important prerequisite to ensure that a new Consumer Duty delivers real improvements in practice.

How a supplier might apply the Consumer Duty in practice



An energy supplier designs a new service that combines low carbon technology and a smart tariff with a long contract.

The supplier tests the service with people with a small range of needs over a limited period to see if it delivers good outcomes, and markets it to people it thinks are likely to benefit.

As customers use the service in the real world some find their energy needs change, but their costs rise significantly as a result. Some customers realise the service was not suitable for them in the first place.

The supplier expected people to use self-service options to resolve issues, but some people need extra support and can't get help easily.



The supplier monitors customer outcomes closely and identifies root causes. It makes the service more flexible for people who need to use energy in different ways.

It adjusts the way that it provides customer service so people can speak to agents quicker when they need help. It changes its testing, targeting and sales processes to prevent problems in future.

References and Footnotes

1. Ofgem/Citizens Advice (2021) [Consumer Perceptions of the Energy Market Q2 2021](#) and forthcoming Q3 and Q4 2021 reports
2. Citizens Advice (2021) [Worst energy suppliers five times more likely to provide inaccurate bills than the best ones](#)
3. Citizens Advice (2020) [Future Proof](#)
4. Citizens Advice, Energy UK and ADE (2021) [Demanding attention](#)
5. Forthcoming Citizens Advice research on experiences of digitally excluded customers
6. Ofgem (2013) [New standards of conduct for suppliers](#)
7. FCA (2021) [A new Consumer Duty: feedback to CP21/13 and further consultation](#)
8. Ofgem supply licence condition 0 contains the overarching Customer Objective (to treat customers fairly) and the Standards of Conduct
9. Ofgem supply licence condition 25
10. Ofgem supply licence conditions 28AD (price cap), SLC 27 (payment methods), 21D (tariffs with environmental claims)
11. Ofgem supply licence conditions 31F - 31I
12. Citizens Advice (2021) [Market Meltdown](#)

Citizens Advice responded to the FCA's consultations on the Consumer Duty, focusing on how it could deliver most benefit for consumers in practice. These responses are [here](#) and [here](#).

Citizens Advice helps people find a way forward.

We provide free, confidential and independent advice to help people overcome their problems. We are a voice for our clients and consumers on the issues that matter to them.

We value diversity, champion equality, and challenge discrimination and harassment.

We're here for everyone.

Author: Alex Belsham-Harris
Designer: Rhiannon Fuller
March 2022

