

**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 ("tOSI"), which administers the Energy Ombudsman Service.
- 1.2 The Energy Ombudsman Service is an alternative dispute resolution mechanism set up by tOSI to resolve disputes arising from customers of the member companies of the Energy Ombudsman Service.
- 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 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 On 14 March 2008 Ofgem published its criteria for approval that a scheme must comply with and invited schemes to apply for approval. tOSI submitted an application for approval for the Energy Ombudsman Service on 23 April 2008.
- 2.3 The Authority provided approval to tOSI for a statutory redress scheme in the energy sector on 18 June 2008 subject to BERR making an Order of the form indicated in its response document of 21 December 2007<sup>1</sup>. On 19 September 2008 the Authority confirmed its approval.

**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 interests of consumers, wherever appropriate by promoting effective competition.

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

- 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 tOSI is a private company limited by guarantee and ensures the independence of the Energy Ombudsman Service from the industry, the regulatory authorities and the consumers. It has the responsibility to provide an independent and impartial Alternative Dispute Resolution service (the Energy Ombudsman Service) for the unresolved complaints of its members from domestic customers, and micro business customers defined in the redress scheme Order.
- 3.4 Membership of the Energy Ombudsman Service 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 tOSI 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 the Energy Ombudsman Service; 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 tOSI will take all reasonable steps to ensure they facilitate the ability of the other to operate effectively. The Authority and tOSI 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 tOSI agree that representatives of Ofgem and the Energy Ombudsman Service will meet at least quarterly to ensure the effective implementation of this agreement and discuss operational issues.
- 5.3 In addition, the Energy Ombudsman Service and senior officials of Ofgem will meet to discuss major policy issues, including resourcing and future development of the scheme that impact on the service provided by the Energy Ombudsman Service and ultimately upon consumers of gas and electricity at least bi-annually.

- 5.5 The Authority will use all reasonable endeavours to provide the Energy Ombudsman Service with access to advice and expertise regarding the regulatory framework, and training or advice where training might be sourced.
- 5.6 Wherever possible, the Authority and the Energy Ombudsman Service 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.
- 5.7 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.
- 5.8 The Authority and the Energy Ombudsman Service will seek to work together where appropriate to deliver information, including concerning the availability of the scheme, to consumers, stakeholders and other relevant bodies.
- 5.9 Both bodies will share information and ideas on the future development of the scheme.
- 5.10 Where tOSI proposes to make changes to the scheme including changes to rules, procedures, terms of reference, or governance arrangements, it will write to the Authority and National Consumer Council (referred to in this document as Consumer Focus) 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 tOSI. This might lead to confusion about which organisation is best able to assist them.
- 6.2 Ofgem will redirect to the Energy Ombudsman Service any enquiry made to it about the Ombudsman and the services available to the consumer through the Ombudsman. The Energy Ombudsman Service 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 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 the Energy Ombudsman Service. The Ombudsman will investigate and reach a provisional conclusion regarding the case. Ofgem would not expect to advise on individual cases but as part of the broader guidance and training arrangements outlined in 5.5 above will clarify the approach it would expect to be followed. If at the provisional conclusions stage either party is dissatisfied with the outcome of the Ombudsman's investigation, and it is within the statutory time limit (within 12 months of the date of final connection for connection disputes), the Ombudsman will

advise them that they may refer the case to Ofgem for formal determination of the relevant elements before a final decision, where relevant, is taken by the Ombudsman on the case overall.

## **Regulatory matters**

- 7.1 The Authority recognises that the Energy Ombudsman Service is a major source of information and intelligence on the issues affecting consumers.
- 7.2 The Energy Ombudsman Service will bring to Ofgem's attention any trends or issues of concern across the industry 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 the Energy Ombudsman Service that a complaint relates to a potential licence breach, other than those which are de minimis (unless part of a broader trend) the Energy Ombudsman will make the Authority aware of the matter.

## **Provision of performance information**

- 8.1 tOSI will make available certain performance-related data concerning the Energy Ombudsman Service to the Authority.
- 8.2 At the beginning of each month tOSI will provide:
- number of contacts to the Energy Ombudsman Service 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 Provisional Conclusion (i.e. time taken by the Energy Ombudsman Service to make provisional rulings on cases)
  - average telephone response times
  - number of complaints/cases
  - number of complaints/cases initiated as a result of a 'deadlock' letter.
- 8.2 At the beginning of each quarter tOSI will provide, by each member company:
- number of complaints/cases
  - number of complaints/cases initiated as a result of a 'deadlock' letter
  - a summary of awards made and actions required.
- 8.3 tOSI will provide the Authority with the following information annually:
- the number of complaints received about the Energy Ombudsman Service, analysis of the reasons why cases are out of scope
  - the number of cases for which forms are not returned and research on the reasons
  - the number of cases where further representations are made, by whom, and analysis of the reasons
- 8.4 The Authority or Consumer Focus may, 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 or Consumer Focus and tOSI.

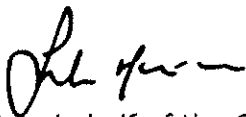
- 8.5 Prior to undertaking research tOSI will seek the Authority's view on whether particular additional information should be sought. TOSI will also provide the Authority with any surveys of customer satisfaction with the Energy Ombudsman Service that it commissions or undertakes, any research that 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 the Energy Ombudsman Service after twelve months of operation as the statutory redress scheme and will share the proposed scope of that review. The Authority will share its findings with tOSI and discuss with them how any concerns or issues raised by the review might be addressed.

### **Review of the agreement**

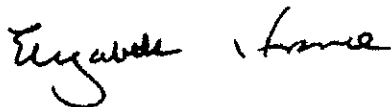
- 10.1 This MoU will be reviewed or revoked following any changes to the framework within which the two organisations operate or at least every two years, whichever is the sooner.



Signed on behalf of the Gas and Electricity Markets Authority

Date: 01/10/08

Signed on behalf of the Ombudsman Service Limited



Date:

03/10/08