



## **Unit 1**

### **Understanding the Energy Industry**

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## Document History

### Revision History

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This document (or component parts) has been reviewed by the following:

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This document requires the following approvals:

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## Unit 1

### Understanding the energy industry

#### Introduction

For the purposes of these training materials, the word energy is used in relation to gas and electricity only. Other forms of energy, such as oil and liquid petroleum gas (LPG) are not considered in these notes.

This first unit concentrates on explaining who plays what role within the energy industry and how it is regulated. In order to consider the second of these issues, it is necessary to look at some areas of general law which might apply.

The headings to be addressed in this unit are as follows:

- Section 1: Roles within the energy industry
- Section 2: Regulation of the energy industry
- Section 3: Legal provisions

## Section 1

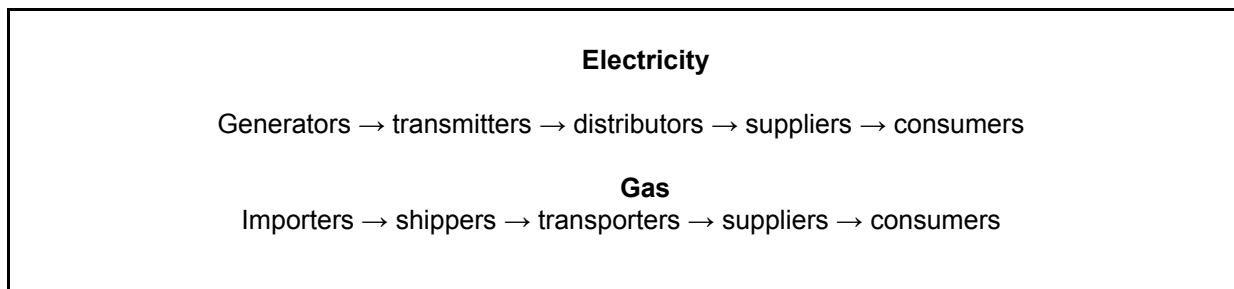
### Roles within the energy industry

#### Industry structure

The Utilities Act 2000 introduced competition within the gas and electricity markets. It is not necessary for you to have a deep understanding of how the energy industry works but it would be useful to have a basic knowledge of some of the terminology used, particularly relating to the supply chain, how to identify a consumer's supplier and the different types of consumer.

#### The supply chain

There are five basic stages between the production of gas and electricity and their consumption by consumers, and this is illustrated below and in more detail later. Although the stages for each are broadly similar, the two industries use different terminology and operate in different ways, principally because gas can be bought and stored in advance, whereas electricity has to be generated to meet demand. It is possible to buy in both gas and electricity from other countries, which involves the use of companies who act as interconnectors, to connect up our supply with that of another country. Companies providing these interconnecting activities require a licence, as do all the other activities listed below.



Most queries that you are likely to deal with, will involve the consumer's supplier and in a moment we will deal with how to identify a consumer's supplier. However, in addition advice may need to be given in relation to others in the supply chain, so we will briefly mention what they do. In particular references will be made to operators which are the gas transporters (T) and electricity distributors (D or DNO).

#### Electricity

Most of our electricity is generated in power plants or power stations which run on gas or coal to produce heat which is then converted into electricity using a complex process involving steam compression and turbines. It is also possible to generate electricity by, for example, harnessing wind, solar and hydro power. A network of cables both above and below ground, are used to transport electricity across the country by the distribution network operators (DNO).

#### Gas

Gas is produced as a by-product of the distillation of oil which is piped in from the North Sea or further afield. It is, however, becoming increasingly possible to produce gas from the decomposition of waste in landfill sites and animal waste products. The shippers arrange for the transporters to move the gas from the beach to the consumer on the supplier's behalf. The transporters use underground pipelines and are also referred to as Gas Distribution Networks (GDN).



## Suppliers

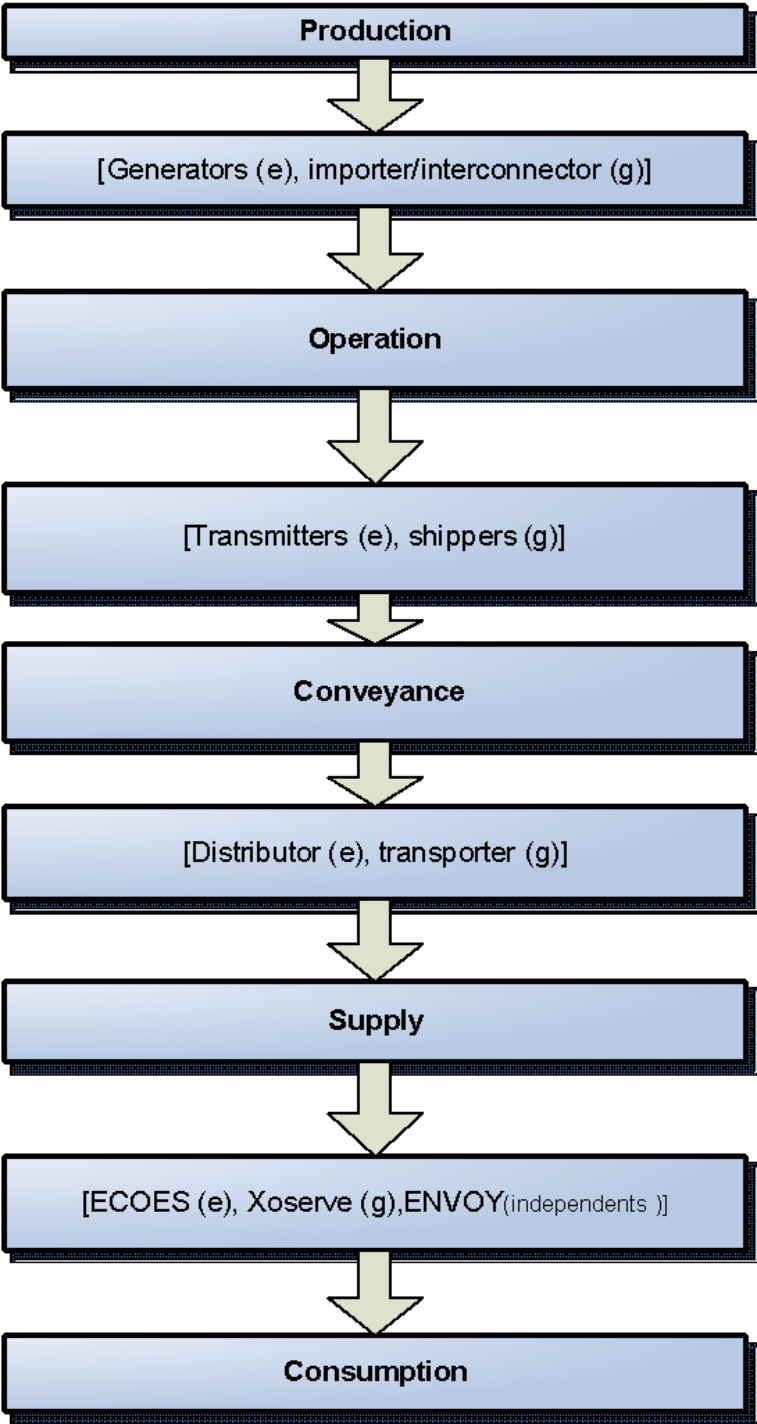
There are six main suppliers of gas and electricity (The Big 6) which alphabetically are:

- ✓ British Gas
- ✓ EDF
- ✓ E.oN
- ✓ NPower
- ✓ Scottish and Southern Energy
- ✓ Scottish Power

However, in addition to these main six there are a number of other suppliers currently licensed by Ofgem, the main regulatory body.

The main queries which you may encounter are covered in unit 10 'Common complaints and enquiries'.

The following diagram on the next page illustrates the supply chain.





### How to identify a consumer's supplier

Each property has two meter point reference numbers allocated to it, one for electricity (MPAN – meter point administration number) and one for gas (MPRN – meter point reference number) and there is a centralised system for each industry which administers these M or supply numbers to try and ensure that the right customer is matched up with the right premises. In addition there is a company called Envy which registers the independent gas transporters and electricity distributors.

It is the responsibility of the electricity distributor or gas transporter who connected a property to their network to ensure that the property has been given an M number. The supplier who arranged for a meter to be installed will usually assume responsibility for sending out bills for the supply once an M number has been allocated to a meter.

### Electricity

The Electricity Central Online Enquiry Service (**ECOES**) was set up in 2006 and operates a service which helps suppliers to ensure that they register the right customer at the right metering point, thereby minimising erroneous registrations. All the suppliers use ECOES and their website is [www.mrasco.com](http://www.mrasco.com).

### Gas

**Xoserve** operates under the joint ownership of the gas distribution network companies and provides a central service point for the gas industry, managing the complex business arrangements between the shippers and the transporters. It also operates the M Number service, and manages all information relating to gas supply points in the UK (about 22 million, both domestic and commercial), referred to as Supply Point Administration. All the suppliers use Xoserve and the website is [www.xoserve.com](http://www.xoserve.com).

### Practical tip

If an MPAN or MPRN has not been created for a consumer's meter then the consumer should not be charged. A site is deemed to be shipperless, which means without a supplier, since no supplier has been registered. In such a case a consumer should nominate who they wish their supplier to be, inform them of the meter serial number and advise them that an M number is required.

### Types of customer

Most of the queries you receive will be from consumers, however, it may also be necessary to deal with business customers and this may mean that the advice that needs to be given must differ. Unit 11 is devoted to consideration of the differing position the business customer, both large and small, will find themselves in.

### Summary

- There are five basic stages in the energy supply chain from production, operation, conveyance and supply through to consumption, however the gas and electricity industries use different terminology



to describe these activities, all of which require a licence, including that of interconnecting which takes place when either gas or electricity is sourced from another country.

- Electricity is generated then transmitted, using high voltage lines, to distributors who arrange for it to be conveyed to premises on behalf of suppliers who sell it for consumption by consumers.
- Gas is brought ashore by generators, importers or interconnectors and can be stored before it is shipped to the transporters who arrange for it to be conveyed to premises on behalf of suppliers who sell it for consumption by consumers.
- There are six main suppliers, the Big 6, who alphabetically are British Gas, EDF, E.ON, nPower, Scottish & Southern Energy and Scottish Power and also numerous smaller suppliers, with National Grid managing distribution in both sectors.
- Meter point reference numbers help to identify a consumer's supplier and relate to a specific premise, there being one for gas (MPRN) and one for electricity (MPAN) for each metering point, administered centrally by ECOES for the electricity industry and Xoserve for the gas industry.
- Energy customers can be either consumers or business customers and it is important to know the difference since rights and obligations will differ for the different supply contracts.



## Section 2

### Regulation of the energy industry

The energy industry is regulated in a number of ways but the principal regulatory body is 'the Authority' supported by Ofgem. Since Ofgem operates on a day to day basis, all references will be to Ofgem, however, please note that any legislation mentioned will refer to 'the Authority'.

We will begin by discussing the structure and roles of Ofgem before moving on to look at how its powers are derived from basic legal principles.

### Ofgem

The regulator, Ofgem, is the administrative arm of the Gas and Electricity Markets Authority ('the Authority') created by the Utilities Act 2000 and throughout these materials we will refer solely to Ofgem. We will now examine Ofgem's role and enforcement approach before moving on to look at specific powers and investigations.

### The Role of Ofgem

Ofgem is funded by an annual licence fee imposed on the companies which are regulated by it and its two main functions are concerned with:

- ✓ looking after the interests of all **customers**, especially those considered to be vulnerable, for example, through disability, sickness, pensionable age, low income and rural location, and
- ✓ the promotion of **competition**

In addition it is concerned with environmental issues surrounding the industry, such as ensuring compliance with government targets concerned with greenhouse gas and low carbon emissions, and securing supplies for the future. In fact security of supply is at the core of all major policy decisions. The security of supply is achieved by:

- ✓ ensuring that there is sufficient investment in the networks through **controlling prices**
- ✓ monitoring the markets to look for **anti-competitive behaviour**
- ✓ checking that companies keep to their **licence conditions**

Ofgem does NOT set energy prices and does NOT have a direct complaint handling or advice role. It can investigate certain matters such as breaches of licence conditions and certain matters which affect consumers generally (see powers below).

An examples of an area of review work undertaken by Ofgem is indicated below:

### The Energy Probe - 'The Probe'

The Probe, commenced in February 2008, looked into whether competition in the electricity and gas retail supply markets for consumers and small business customers was working efficiently. Initial findings were put out to consultation in October 2008 with a number of key areas of concern highlighted. As a result of the Probe new reforms have been brought in, by way of changes to the standard licences, namely:

- the prohibition of unjustified price differences
- the requirement for a standard annual statement, including amongst other things, the consumer's tariff and consumption figures (see unit 6 'Charges for fuel')
- the need for written quotations before a doorstep sale is made and proof that the offer is better than the consumer's existing deal
- new protections for small businesses (micro-business contracts) (see unit 11 'Business advice')

Since the Probe's initial findings, Ofgem has continued to introduce further measures to potentially increase competition and ensure that the retail energy supply market works in the interests of all consumers. These will be referred to as and when relevant. In particular some were introduced as Overarching Standards and these are explained in section 4.

### Ofgem's powers

Ofgem's powers are derived from a number of sources, including various pieces of legislation. Decisions, in relation to particular issues, are made by a committee of the Authority which has not been involved in the investigation in question. Examples of some of the decisions made are outlined below:

Brief details	Company	Date and decision
<p>Billing.</p> <p>Billing issues affected over 500,000 customers between September 2013 &amp; December 2014. NPower failed to handle complaints effectively within a reasonable timeframe.</p>	NPower	<p>December 2015</p> <p>Fine £26m</p>
<p>Mis-selling.</p> <p>Ofgem found failings at all stages of SSE's sales processes, from the opening lines on the doorstep, in-store or over the phone through to the confirmation process which follows a sale. In particular, SSE consistently failed, over a prolonged period of time, to conduct its sales activities in a way that would provide clear and accurate information on prices and potential</p>	SSE	<p>April 2013</p> <p>Fine £10.5m</p>

savings to enable customers to make an informed decision about whether to switch suppliers.		
<p>Not treating customers fairly.</p> <p>British Gas failed to re-open complaints when the customer had indicated that the complaint was not resolved. Failed to provide customers whose complaint they could not resolve with some key details about the redress service provided by the Energy Ombudsman. Failed to put in place adequate processes and practices for dealing with complaints from micro-businesses.</p>	British Gas	<p>July 2011</p> <p>Fine £2.5m</p>

### Ofgem's investigations

An investigation by Ofgem may follow the receipt of a complaint or internal monitoring activities, an example might be if suppliers were refusing to install pre-payment meters (PPM).

The usual timescale for investigations is nine months from opening the case, at which point Ofgem would usually do one of the following:

- issue a detailed Statement of Case (or of Objections)
- close the case (if there is no breach or it is outside its priorities)
- provide an update (advise the parties of any further steps/timescales)

Sometimes problems that occur are not clear breaches of licence provisions or the Competition Act and in such situations Ofgem will use informal or other means to apply pressure for change or to remedy the detriment caused. At the end of the day, regulation needs to be effective so that the industry complies with its obligations and consumers benefit. An example of using informal means to remedy detriment can be seen below when there was a breach of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 by EDF.

### Example

Between October 2008 and March 2009, EDF had not maintained all their records in the way in which the Regulations require when handling complaint details from consumers.



Ofgem accepted an offer by EDF to pay £200,000 towards energy advice work and this was paid to the Money Advice Trust and the Citizens Advice scheme 'Energy Best Deal'. This was felt to be more appropriate and beneficial to consumers than Ofgem imposing a financial penalty.

## Trading Standards

TSS is a local authority function provided by the council. Officers promote compliance with laws which protect consumers and ensure a fair trading environment amongst traders. They also have powers to enable them to enter business premises to carry out inspections and investigations and take enforcement action if required. Citizen's Advice works in partnership with TSS by recording details of complaints and enquiries onto a database which TSS has access to. Cases are also passed onto TSS if it is likely that further action may be appropriate or if they relate to traders based in their area.

It is important that you understand what TSS do and how they operate, some **cases will need to be referred through in accordance with RAST protocols**. We will briefly examine the nature and scope of (a) local services, (b) enforcement work (c) advice work and (d) education work, carried out by TSS.

### Local services

Responsibility for providing a TSS lies with individual local authorities and these vary in population, resources and priorities.

The name of the service / department may vary too, for example, Trading Standards, Consumer Protection or Regulatory Services to name a few. Whatever the name, the overall aim will be to maintain a fair and safe trading environment by seeking compliance with relevant legislation. This could range from giving informal advice to traders to taking formal court action to prosecute them. TSS also have powers of civil enforcement under part 8 of the Enterprise Act 2000 and can obtain enforcement orders from a court to prevent a trader from carrying on with a practice which harms consumers.

### Enforcement work

There are numerous pieces of legislation enforced by TSS, some of which carry a duty of enforcement and others which only contain a power of enforcement. Since resources and priorities differ you may also find that some enforcement responsibilities differ between authorities too. As mentioned above TSS carry out routine inspections to check whether businesses in their area are complying with the law and they also deal with cases which have been referred from Citizen's Advice. The list of legislation with which they deal is very long, however, we will only cover those which are most likely to apply to the energy industry. The most likely scenarios which you may need to refer to TSS, will involve doorstep sales, unsafe products and unfair practices. Further details about these appears below.

### Doorstep crime

Sometimes householders are persuaded to allow rogue traders onto their property and they then steal from them or otherwise convince the householder to give them money.

### Example

A consumer receives a visit from a man who claims to be a representative of one of the energy suppliers stating that he would like to discuss energy efficiency. He persuades the consumer to order a number of energy efficiency related products to help the consumer to reduce their energy bills. The consumer pays for these products during the visit. The consumer does not receive the goods and when they contact the company, whose name appears at the top of the receipt left by the representative, they are informed that the company does not supply such products.

### **Advice**

The consumer should be advised that the matter will be referred to the relevant TSS.

**Any complaints concerning doorstep crime should be handled in accordance with RAST protocols.**

There are also rules about doorstep sales people giving certain paperwork to consumers when they visit them at home and in certain other circumstances. These requirements fall within the Cancellation of Contracts made in a Consumer's Home or Place of Work Regulations 2008 (Doorstep Selling Regulations) and they will be covered in more detail in unit 3 'Marketing energy'.

### **Unsafe goods**

There are two pieces of legislation which protect consumers from unsafe products. One is Part II of the Consumer Protection Act 1987 which makes it unlawful to supply good which breach specific safety standards, for example, electrical equipment. The other is a very general piece of legislation, the General Product Safety Regulations 2005 (GPSR) which place an obligation on traders to ensure that all goods supplied to consumers are safe.

### **Example**

A consumer has recently had a gas boiler installed which now appears to be leaking gas.

### **Advice**

Give advice about the procedure to follow for gas safety (discussed later in unit 7 'Connections, quality and safety of supply') and because the boiler appears unsafe, handle the safety issue with the boiler in accordance with office protocols for further action and advice.

### **Unfair practices**

The Consumer Protection from Unfair Trading Regulations 2008 (CPR), make it unlawful for traders to engage in unfair commercial practices. When they were introduced the Regulations did not give rise to consumer rights they simply place a duty on TSS to promote compliance and consider complaints about such practices, taking appropriate enforcement action as they see fit. There is a list of 31 practices which are

automatically unfair and in addition a commercial practice may be unfair if it is likely to have an adverse effect on decisions made by consumers and relates to:

- the provision of misleading information
- a failure to provide important information
- aggressive behaviour
- a contravention of the requirements of professional diligence

### Examples

- 1 Jan receives a visit from a representative of one of the gas suppliers. The representative tries to persuade her to enter into a contract with that supplier. Jan asks the representative to leave her house but the representative refuses.
- 2 Peter has been informed by one of the energy companies that he will receive a dual fuel discount if he has both his gas and electricity supplied by them. Peter later discovers that the company do not provide dual fuel discounts.
- 3 Joel is visited by a representative from an electricity supplier who informs him that if he does not make a sale that day he will lose his job.
- 4 Samantha has received a flyer through the post offering a free energy efficiency check. When Samantha contacted the trader, she was informed that she would have to pay £15 for the check but that this would be reimbursed if she then purchased any other products or services from the company.

### Advice

If you feel that a supplier is involved in an unfair practice ensure that you make a comprehensive record of the details in the case notes. The consumer could also make the supplier aware that their action potentially breaches these Regulations and this may assist them in resolving their dispute with them.

Reports of unfair practices should be handled in accordance with RAST protocols..

### Advice work

Not all the work of a TSS is classed as enforcement work. Advice, guidance and education for businesses and consumers are, more often than not, seen as high priority roles in a TSS.





## **Businesses**

There are a number of occasions when it will be appropriate for TSS to advise a business or trader concerning their legal obligations. This may be seen as an appropriate way of dealing with a reported or discovered breach or there may be new legislation with which the business is unfamiliar.

## **Consumers**

Before Consumer Direct was launched in 2004, not all consumers had access to consumer advice. From April 2012, the service is now run by Citizens Advice and is known as the Citizens Advice consumer service.

There is no duty on local authorities to provide an advice service and some TSS do not offer this facility. Citizens Advice however, is a national service, offering first tier advice over the telephone or online. Consumers needing second tier advice, where their query is complex or they are vulnerable for example, can be referred to a TSS in accordance with RAST protocol. Certain problems being experienced by vulnerable consumers can be referred to the Extra Help Unit (see Unit 9 )

## **Education work**

Education is often a role which TSS is involved in and this could be for businesses, consumers and or children. This could be as simple the provision of information leaflets for distribution to traders and the general public, or as elaborate as full scale seminars, particularly when new pieces of legislation come into force. Other educational tools and methods may involve talks and presentations or stalls at County fairs or other events. There are even national competitions for school children called 'The Young Consumer of the Year' and one for children with special educational needs called the 'Consumer Challenge Quiz'.



## Summary

- Ofgem, acting for the Gas and Electricity Markets Authority, is the main regulatory body for the energy industry and its top priority is to protect the interests of consumers while at the same time promoting competition within the industry and ensuring sustainability and compliance with Government targets concerned with greenhouse gas and low carbon emissions.
- The many powers and functions of Ofgem include, licensing those in the energy supply chain, prescribing licence conditions, regulating to ensure that standards of performance are achieved, imposing sanctions when necessary and investigating potential problem areas within the industry such as those highlighted in the Probe.
- TSS also plays a role in the regulation of the energy sector since it is responsible for day to day enforcement of and compliance with, legislation, aimed at ensuring a fair trading environment for businesses and consumers, for example, the CPR which prohibit practices by traders which are unfair; they also deal with doorstep crime and unsafe products.

# The consumer protection landscape and the role of Citizens Advice

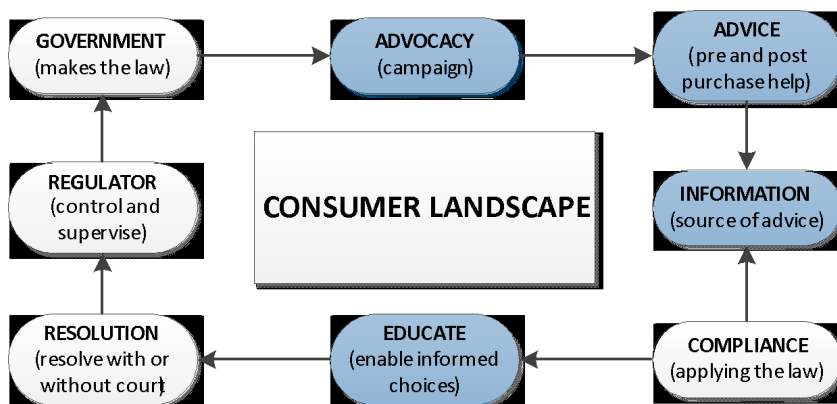
The law gives consumers rights and requires businesses to trade fairly. Traders are often well trained in the art of selling and some products are becoming more and more complex, making life for consumers potentially quite intimidating, so to counteract this potential inequality of bargaining power consumer protection, or fair trading laws exist to try and even out the situation. The Citizens Advice service (Citizens Advice and Citizens Advice Scotland) is funded by government to play a significant role in delivering consumer protection, and works alongside many other organisations that provide a service for consumers or businesses. Consumer service advisers have important roles, letting consumers know about their rights and gathering information on behalf of local authority (LA) Trading Standards services (TSS) and other partners to enable them to seek compliance with the law.

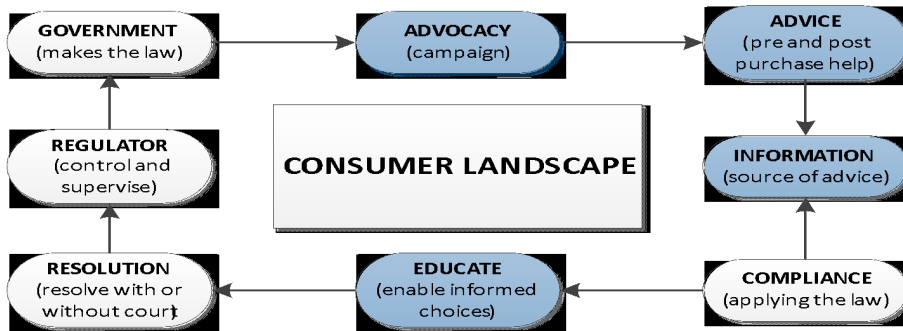
A consumer (C) could be seen to be on a journey, as indicated by the boxes below, and the units will cover the various stages on this journey from what may be required before buying anything, right through to the possibility of taking a company to court for breaching the law and enforcing a judgment when that company does not comply with the court's decision.



Following the consumer on this journey will involve considering: how consumers enter into contracts, what issues might arise when those contracts are not performed properly, and how the parties could try to sort their differences out, with the ultimate solution of going to court. The basis of the consumer's rights and the trader's obligations can be found in the law of the European Union (EU) and also that of United Kingdom (UK) so there is discussion of some of the more relevant principles that apply throughout the various units.

## The Consumer Protection landscape





## Information

Cs need information before they buy so that they know facts such as what they are buying, how much it will cost, what T's terms and conditions of business are (T&C), and what they can do if something goes wrong with their purchase. The amount of time spent finding out about a product or service before purchase usually depends on what is being purchased. Most people probably don't think twice about which newspaper to buy, or where to buy it, but not many would go out and buy a car without first researching what is available, how much it costs and how the transaction might be financed.

The requirement to provide certain consumer protection information originates in the form of legislation e.g. The CCRs, or accompanying guidance. Cs need to know what the law says so that they know what they can expect and businesses need to know what information they should provide.

BIS has divided the responsibility for providing consumer protection information, as follows:

- ✓ the Citizens Advice service has responsibility for providing information to Cs
- ✓ The Chartered Trading Standards Institute (CTSI) has the responsibility for providing information to businesses

## Advice

Cs and businesses need to be able to access help when problems arise. Cs need to be able to find out which law applies to their problem, whether they are entitled to a remedy and how to complain to T. Advice needs to be available at convenient times and via channels that C is able to access.

BIS has divided the responsibility for providing consumer protection advice, as follows:

- ✓ the Citizens Advice service has responsibility for advising Cs
- ✓ CTSI has responsibility for advising businesses

## Education

Consumer education helps to reduce consumer detriment and enable Cs to make informed choices. It is estimated that over £3.5 billion is lost each year in scams alongside many other Cs losing money by signing contracts or agreeing to purchases they have not fully understood. Education empowers Cs to make informed choices, how to avoid problems or get a better deal and to know where to turn to when problems do arise.

BIS has divided the responsibility for consumer protection education, as follows:



- ✓ the Citizens Advice service has responsibility for educating Cs
- ✓ CTSI has responsibility for educating businesses

CTSI runs an annual competition for 14 -17 year olds, called 'Young Consumer of the Year', to promote consumer rights and responsibilities. An alternative version, called "The Consumer Challenge Quiz" is also available in some areas of the UK.

Information, advice and education all need to be provided, taking into account the needs of different users. Some may be limited in terms of how they can access information, advice and education, e.g. through language and channel barriers; others may be limited by their working hours.

### Advocacy

Consumer advocacy is when an organisation speaks publicly to represent, promote, protect and influence the interests of Cs. The Citizens Advice service is the national 'consumer advocate' or 'Consumer Champion' for all general consumer issues and those in the regulated gas, electricity and postal sectors. This means that it speaks up for and highlights issues on behalf of Cs.

A super complaint [s11(1) Enterprise Act 2002] is a complaint submitted by a designated consumer body that 'any feature, or combination of features, of a market in the UK for goods and services is or appears to be significantly harming the interests of consumers'.

Super complaints provide a fast track system for designated consumer bodies to bring matters of concern to the attention of industry regulators. Consumer bodies are awarded designated status by BIS and are indicated in the table below along with the market features that could be investigated. Regulators are required to consider the issue raised within a fixed time (90 calendar days) and are accountable for providing a public response. Financial matters are reported to the FCA and other matters to the CMA. Some industry regulators have concurrent powers alongside the CMA:

- Ofcom – the communications regulator
- Ofgem – the gas and electricity regulator for England, Wales and Scotland
- Utility Regulator – the gas, electricity and water regulator for Northern Ireland
- Ofwat – the water regulator
- Office of the Rail Regulator (ORR) – the rail regulator
- Civil Aviation Authority – the aviation regulator

### Consumer bodies able to make super complaints

Designated consumer bodies	FCA investigate: features of a market in the UK for financial services that are or which may be significantly damaging the interests of consumers	CMA investigate: features of a market in the UK for goods and services is or appears to be significantly harming the interests of consumers
Citizens Advice	✓	✓
Federation of Small Businesses	✓	✓



General Consumer Council for Northern Ireland (GCCNI)	✓	✓
Which?	✓	✓
Campaign for Real Ale (CAMRA)		✓
Consumer Council for Water		✓

The possible outcomes of a super complaint include:

- Taking enforcement action under competition or consumer law
- Agreeing voluntary changes with the industry
- Launching a market study into the issue
- Making a market investigation reference
- Recommending action by the government, a regulatory body or other organisation
- Finding the complaint requires no action
- Finding the complaint to be unfounded

## Compliance

Day to day enforcement of consumer protection law is the responsibility of LA TSS. Non-compliance can be dealt with using a variety of methods, including civil injunctions and criminal prosecutions National Trading Standards (NTS) prioritises national enforcement that crosses LA boundaries. It also administers national and regional enforcement teams in areas such as illegal money lending, scams, intelligence and eCrime. For some industry sectors there are specific regulators who have powers to seek compliance in certain ways alongside the TSS more general role, energy is one of these areas and we will look at the role of Ofgem in more detail shortly. Seeking compliance is not primarily about individual consumer rights, it is concerned with ensuring that businesses comply with the law and do not breach legal provisions. The Citizens Advice service refers potential legal breaches to LA TSS and other regulators have access to the data on consumer complaints and queries. The table below indicates the relationship between the various organisations and functions.

## The relationship between government, industry sectors, consumer protection functions and specific organisations

	Goods and services	Energy	Post	Communications	Finance
Government department	BIS	BIS Department for Economy and Climate Change (DECC)	BIS	Department for Culture Media and Sport (DCMS)	BIS The Treasury
Advocacy	Citizens Advice				
Advice	Citizens Advice	Citizens Advice	Citizens Advice	Citizens Advice Ofcom	Citizens Advice FCA
Information	Citizens Advice				
Enforcement	TSS NTS CMA Environmental Health (see A3)	Ofgem TSS	Ofcom TSS	Ofcom TSS	FCA TSS
Education	Citizens Advice				
ADR	Various	Ombudsman Services: Energy (OS:E)	Postal Redress Service (POSTRS)	Ombudsman Services: Communications (OS:C) Communications and Internet Services Adjudication Scheme (CISAS)	Financial Ombudsman Service (FOS)
Regulator	CMA	Ofgem	Ofcom	Ofcom	FCA

### Resolution

There are various ways in which a consumer complaint can be resolved. A resolution is a final decision made by a court, regulator or redress organisation that has powers to review facts of a case against the legal requirements and come to a conclusion whether consumer protection rights have been breached, and if so,



suggest an appropriate remedy. Court will usually mean a Judge's decision in the County Court (Sherrif's Court) using the small claim track.

Alternative dispute resolution (ADR) can offer a cheaper and quicker alternative to court for disputes where a consumer has not been able to resolve their complaint directly with the business. ADR is a collective term for the ways in which disputes can be settled, with (or without) the help of a third party. ADR schemes may be mandatory or voluntary and include Ombudsman schemes and mediators, and also the UK ECC, which helps Cs who have purchased goods and services in other EU countries.

The law requires ADR to be available for any dispute concerning contractual obligations between a consumer and a business. The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (ADR Regs) give Citizens Advice a central role in signposting Cs to the correct, or most appropriate, ADR scheme at the relevant time. They also require competent authorities to certify ADR schemes available for Cs who have a contractual problem with goods or services. Sector specific regulators take on the role of competent authority in their area and CTSI perform this function in non-regulated sectors.

## **Citizens Advice**

### **The Consumer Champion**

Citizens Advice is referred to as the 'Consumer Champion' because of the way in which consumer advice, information, education and advocacy are interlinked.

- Advice and information on consumer issues are available from the Citizens Advice consumer service, local Citizens Advice and the Citizens Advice website. This enables consumers to get pre-shopping advice, find out what their rights are if things go wrong and understand what they need to do to enforce their rights.
- Consumer education is delivered through Citizens Advice's national campaigns and education materials available to education subscribers. These aim to get key messages to Cs without them needing to contact Citizens Advice directly.
- Citizens Advice's advocacy helps transform consumer experiences by changing the way that companies behave, regulators act and policymakers make decisions. Examples include the FCA introducing new rules for credit brokers and caps on the costs Cs incur when their mobile phone is stolen.

### **Citizens Advice consumer service**

The consumer service is a GB wide service, funded by government and delivered by Citizens Advice (England and Wales) and Citizens Advice Scotland working in partnership. Delivery of the service is outsourced to Citizens Advice Direct in Scotland.

Clients can contact the consumer service by telephone or email and for energy and post, by letter. Clients telephoning the consumer service directly get routed to a contact centre in their own country where it can be identified that their call originates from England, Scotland or Wales. Calls from mobiles or numbers that cannot be identified are distributed between each supplier. Figure A2 provides some of the contact and location details as well as a brief summary of work undertaken.





The scope of the consumer service is to:

- advise and provide information on contracts for goods and services (including energy and post) before, during or after purchase, including legislation or industry regulations and practical guidance (energy means the supply of gas or electricity; issues relating to heating oil or liquid paraffin gas (LPG) are classed as general consumer issues)
- act as a channel to allow clients to report potential breaches of legislation and industry regulations, or unfair trading practices, to partners for consideration and possible enforcement activity
- make referrals to partners following operational procedures and agreed protocols for:
  - potential criminal and civil support – Trading Standards
  - problem resolution – energy and post suppliers and the Extra Help Unit
  - ADR – approved scheme as per relevant competent authority
- signpost clients to the most appropriate body for support, whether internally or externally, where the matter falls outside scope
- provide clients with appropriate information and signposts for support, whether internally or externally, where there is evidence of a need for increased financial capability.

A case record is created for each contact (telephone, email or for energy and post, letter) handled by the consumer service. Case data is shared with TSS where a potential offence is identified and when another organisation is able to assist the client resolve their problem.

The consumer service provides specialist consumer law advice which is only part of relevant advice in regulated sectors areas such as tenancy, debt and gaming. Clients contacting the consumer service on such matters will be advised of contract law principles that apply to their issue as well as being signposted to their local Citizens Advice or a relevant sector specific organisation(s).

## **Citizens Advice consumer service**



Citizens Advice consumer service		
<p><b>Telephone</b> 03454 040506 03454 040505 (Welsh language) 18001 followed by 03454 040506 (Text relay) Most local authority Trading Standards Services divert their calls to the consumer service</p>	<p><b>Online</b> www.citizensadvice.org.uk/consumer Online content available or clients can request advice on a specific issue by completing a web form (general consumer, energy or post)</p>	<p><b>Letters (energy and post only)</b> Post Point 24, Town Hall Walliscote Grove Road Weston super Mare North Somerset BS23 1UJ</p>
<p><b>England and Wales</b> Agilisys contact centres: Barrow, Cwmbran, Weston super Mare  Agilisys handle 85% of contacts (telephone and web forms) received, as well as all letters. Telephone calls that can be identified as originating in Wales are routed to Cwmbran.</p>	<p><b>Scotland</b> Citizens Advice Direct (CAD) contact centres: Stomoway, Glasgow  CAD handle 15% of telephone and web form contacts. Telephone calls that can be identified as originating in Scotland are all routed to CAD.</p>	
<p>Advice is provided on goods and services (Agilisys and CAD), energy and post issues (Agilisys only), to give clients the knowledge to resolve issues themselves. Awareness of, access to, and benefits of alternative dispute resolution schemes (ADR) compared to court is also included in the remit of the service. Consumer service advisers do not take ownership of any client issues. For clients who are unable to resolve their problem themselves, the consumer service will <b>refer</b> or <b>signpost</b> the client where possible.</p>		
<p><b>Referral</b>: the transfer of details to a service partner, such as Trading Standards, where there is prior agreement that the service partner will take responsibility for the case, taking further action where appropriate.  Service Partners include Trading Standards, Extra Help Unit, energy and post companies, Ombudsman Services and Motor Codes.</p>	<p><b>Signposting</b>: the client is given contact details for another organisation (including local Citizens Advice) that may be able to assist. No commitment of further action is given to the client.</p>	

## Local Citizens Advice offices

Local Citizens Advice offer advice from over 3,500 locations. These include high streets, community centres, doctors' surgeries, courts and prisons. Advice may be given in person or by phone. Most local Citizens Advice can arrange home visits and some provide email advice. Some are also piloting the use of text, web chat and web cams. Advice offered by local Citizens Advice covers a wide range of subjects including:

- Benefits
- debt and money
- employment
- housing
- immigration and asylum
- consumer

Local Citizens Advice may be able to offer specialist advice in some regulated areas such as debt and tenancy. A summary of the contact details is provided by figure A3.

## Local Citizens Advice



**Local Citizens Advice (England and Wales) / Citizens Advice Bureaux (Scotland)**

Face to Face	Telephone	Online	Web chat
<p><b>England and Wales</b> 3500 locations <a href="https://www.citizensadvice.org.uk/about-us/how-we-provide-advice/advice/">https://www.citizensadvice.org.uk/about-us/how-we-provide-advice/advice/</a></p> <p><b>Scotland</b> Over 90 bureaux and 200 outreach locations <a href="http://www.cas.org.uk/bureaux">http://www.cas.org.uk/bureaux</a></p>	<p><b>England and Wales</b> Adviceline: national phone service in Wales (3444 77 20 20) and being rolled out in England (03444 111 444). Text relay users - 03444 111 445. Local telephone services also available.</p> <p><b>Scotland</b> Citizens Advice Direct: 0808 800 9060</p>	<p><b>www.citizensadvice.org.uk</b> Users select a 'home' country for the website which determines which law applies to the advice</p> <p>Some local Citizens Advice offer email advice.</p> <p>A national email advice pilot is in progress.</p>	<p><b>England and Wales</b> A national web chat pilot is in progress.</p> <p><b>Scotland</b> Citizens Advice Direct provide advice by web chat</p>

Local Citizens Advice/Bureaux may transfer or signpost clients to the consumer service when they do not have capacity to handle consumer problems or need support on consumer issues .

### Adviceline / Citizens Advice Direct

Adviceline is the national phone service for England and Wales. As of October 2015 63% of local offices are part of this service. Citizens Advice Direct provides a national phone service in Scotland. Cs calling a national phone service will be asked questions to enable their problem(s) to be identified. The adviser will then help the client to deal with their problem, which could include:

- an appointment for specialist advice from a local office
- a signpost to another organisation who may be better equipped to deal with the problem
- providing the client with information

### Citizens Advice data

Data is collected by both the consumer service and local Citizens Advice, which Citizens Advice uses to identify trends in issues Cs contact them about and provide evidence for its advocacy work.

### Advice Trends

Advice trends is aimed at national government departments, regional agencies; third sector organisations concerned with advice or social policy, and social policy researchers. It focuses on advice provided by local Citizens Advice with a commentary and charts, and it also summarises statistics for the consumer service and usage of the public website. There is a version for England and Wales, and another for Wales alone.

### Snapshot

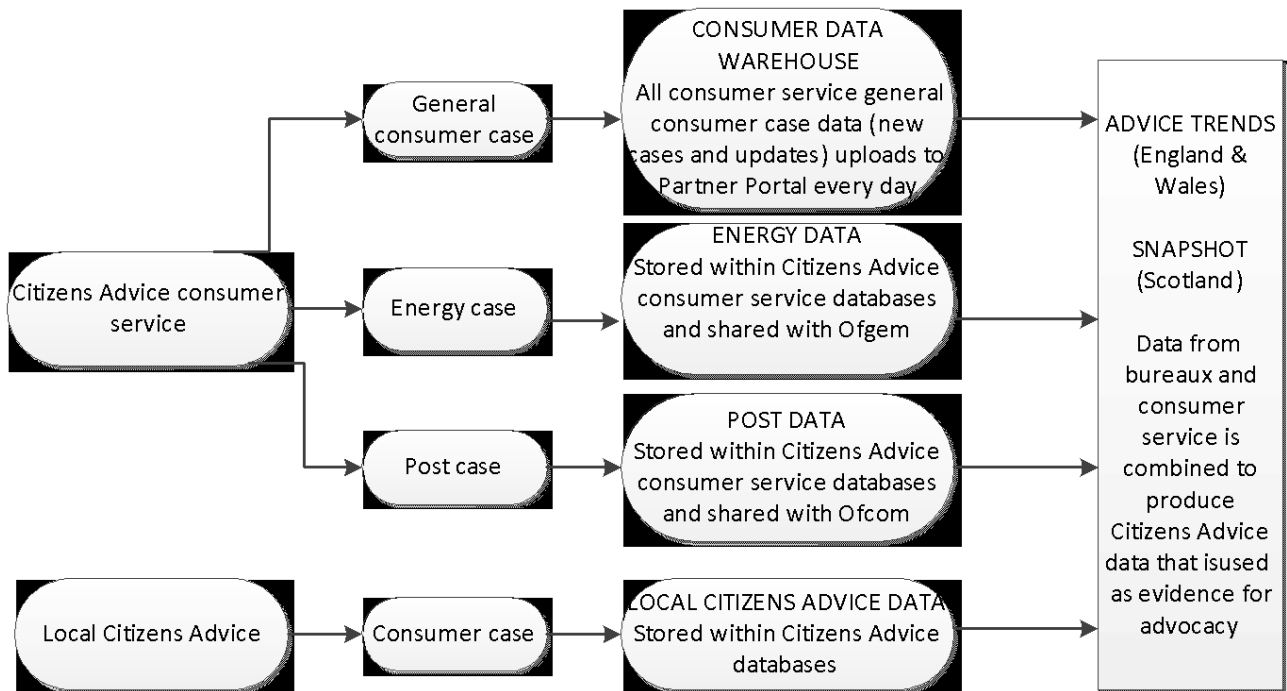
Snapshot is a quarterly briefing produced by Citizens Advice Scotland based on data collected by local Citizens Advice in Scotland and contacts handled by the consumer service that are identified as being from Scottish residents.

### Consumer data warehouse

The consumer data warehouse stores all case information for general consumer contacts handled by the consumer service. It provides a GB wide picture of issues Cs are seeking advice on and Ts being complained about. Enforcers and regulators are able to access the intelligence data appropriate to their role and function in the consumer landscape.

**Energy and post consumer data is not stored in the consumer data warehouse; it is stored within Citizens Advice databases and shared with regulators.**

### Uses of Citizens Advice data



Giving advice to Cs concerning what to do about their issue involves consideration of a 5 stage process:

- ✓ relationship      what is the relationship between the parties?
- ✓ rights             what rights does C have?
- ✓ wrongs            what has gone wrong with the rights?
- ✓ redress            what remedies or other redress are available?
- ✓ refer                what issues might need to be referred?

What may arise in relation to each of these 5 stages will be discussed throughout the various units.



## Summary

- **Consumer law gives consumers rights and requires businesses to trade fairly**, with the government funded Citizens Advice service, which plays a significant role working alongside many other organisations providing various services for consumers and businesses; consumer service advisers have important roles, letting Cs know about their rights and gathering information on behalf of LA TSS and other partners to enable them to seek compliance with the law.
- Following the **consumer on their transactional journey** will involve considering: how Cs and Ts enter into contracts, what issues might arise when those contracts are not performed properly and how the parties could try to sort their differences out, with the ultimate solution of going to court
- In the UK, **consumer protection is the responsibility of BIS** and its aim is to reduce the impact of regulation and invest in skills and education to promote trade, boost innovation and help people to start and grow a business, so **it funds two organisations to promote competition and make markets work well for Cs, businesses and the economy**, namely, the **FCA** for financial services and the **CMA** for other goods and services.
- In terms of providing **advice, information education and an advocacy role, responsibility for consumers is given to the Citizens Advice Service and for businesses to CTSI** with various designated consumer bodies having the power to submit a super complaint concerning any market feature that appears to be significantly harming the interests of consumers.
- Another consumer protection function is the **provision of various resolution services** enabling a final decision to be made by a **court, regulator or redress organisation** that has powers to review facts of a case against the legal requirements and come to a conclusion about whether consumer protection rights have been breached, and if so, suggest an appropriate remedy.
- A court can provide resolution, as can **various ADR schemes, which are often cheaper and quicker alternatives** where C has not been able to resolve their complaint directly with the business; these may be mandatory or voluntary and include Ombudsman schemes and mediators, and also the UK ECC, which helps Cs who have purchased goods and services in other EU countries.
- The **ADR Regulations require schemes to be available for any dispute concerning contractual obligations between a C and a T** and they give **Citizens Advice a central role in signposting Cs to the correct, or most appropriate, ADR scheme** at the relevant time; they also require competent authorities to certify ADR schemes available for Cs who have a contractual problem with goods or services with sector specific regulators taking on the role of competent authority in their area and CTSI performing this function in non-regulated sectors.
- **Day to day enforcement of consumer protection law is the responsibility of LA TSS with non-compliance being dealt with using a variety of methods**, including civil injunctions and criminal prosecutions; **NTS prioritises national enforcement that crosses LA boundaries and administers national and regional enforcement teams** in some areas, including: illegal money lending, scams, intelligence and eCrime.
- **Citizens Advice is referred to as the ‘Consumer Champion’ because of the way in which consumer advice, information, education and advocacy are interlinked** across the Citizens Advice consumer service, local Citizens Advice and the Citizens Advice website.



- **Clients can contact the consumer service by telephone, email or for energy and post, by letter.** Clients telephoning the consumer service directly get routed to a contact centre in their own country where it can be identified that their call originates from England, Scotland or Wales, with calls from mobiles or numbers that cannot be identified, being distributed between each supplier.
- The **scope of the consumer service** is to: **advise and provide information** on contracts for goods and services (including energy and post) before, during or after purchase; act as a **channel for reporting potential breaches** of legislation, industry regulations or unfair trading practices; **signpost** clients to the most appropriate support body if outside scope and **make referrals** to partners as per agreed protocols for, TSS, energy and post suppliers, the Extra Help Unit and approved ADR providers.
- **Advice offered by local Citizens Advice covers a wide range of subjects** including: benefits, housing, debt and money, employment, immigration and asylum and consumer; some may be able to offer specialist advice in certain regulated areas such as debt and tenancy.
- **Adviceline** (England and Wales) and **Citizens Advice Direct** (Scotland) provide a national phone service for clients seeking advice on non-consumer issues.
- **Data** is collected by both the **consumer service and local Citizens Advice**, which Citizens Advice used to identify trends in issues Cs contact them about and provide **evidence for its advocacy work using Advice Trends and Consumer Data Warehouse Information**, with enforcers and regulators being able to access the intelligence data appropriate to their role and function in the consumer landscape.
- **Giving advice to Cs requires consideration of a 5 stage process, covering:** the relationship between the parties, the rights C has, what has gone wrong, the remedies or redress available and whether any issues need to be referred

## Section 3

### Legal provisions

#### Legal controls

While discussing the roles and powers of Ofgem and TSS, a number of legal words and phrases were used which require further explanation. To put them in context it is necessary to examine some general legal concepts. The law can be used in a number of ways to regulate industries and three main methods are employed within the gas and electricity sectors; these are the civil law, the criminal law and licensing provisions, all of which are explained in more detail below:

#### Civil law

Disputes between individuals can be sorted out by giving certain people rights against others, imposing obligations in some circumstances and providing remedies when things go wrong. This is the role of the civil law. An example of how it applies to the energy industry is that compensation is payable to consumers in certain circumstances, such as when there is an electricity blackout (The Electricity (Standards of Performance) Regulations 2010).

Various bodies advise people of their civil rights in different situations and your role will be to advise energy consumers of their rights and what they may be able to do to ensure that they are observed. Alternatively, you may be able to refer or signpost them to another body which may be able to assist them (unit 9 'Complaint resolution and consumer organisations').

Please note that Ofgem does NOT give energy users advice about their rights.

As a last resort civil rights can be pursued in the civil courts which act as a tribunal to hear disputes and impose remedies.

The law also allows for civil enforcement sometimes, and this involves a penalty being imposed on someone who breaches the law, without the matter going to the courts, instead of, or as well as, compensating victims, for example, Ofgem has the power to impose a reasonable penalty on licensees if they are in breach of their licence conditions or fail to achieve any prescribed standard of performance. Obtaining enforcement orders, under Part 8 of the Enterprise Act 2002, to prevent traders carrying on activities which harm consumers, is also a means of civil enforcement. This power is available to Ofgem, TSS and the CMA.

#### Criminal law

Behaviour is controlled by making certain activities into criminal offences and punishing people when they do not conform to the acceptable standards, for example, imprisoning people who commit murder and fining

those who park illegally. There are also various criminal offences which can be committed in relation to the energy industry, for example:

- misleading consumers when trying to persuade them to switch supplier
- operating within the energy industry without a licence
- tampering with a gas or electricity meter

Different organisations / services have responsibility for enforcing criminal provisions and authorised officers will often be given investigatory powers to undertake this role. You may have to refer potential criminal offences to an enforcement agency, for example, the relevant local authority TSS or Ofgem. Cases should be handled in accordance with RAST protocols.

As a last resort those who breach criminal provisions can be prosecuted in the criminal courts and a penalty imposed to punish them for their behaviour or activity.

Authorisation is sometimes necessary to institute criminal proceedings, for example, from the Secretary of State in relation to unlicensed activities contrary to the Gas Act 1986 (GA) and the Electricity Act 1989 (EA).

### Licensing provisions

Requiring the players within an industry to have a licence to operate acts as a form of control because if there are breaches of the licence conditions, sanctions can be imposed which can be both punitive and remedial.

Potential breaches of energy licence conditions will be picked up by Ofgem, the main regulatory body for the energy industry.

Everyone throughout the supply chain requires a licence and is therefore subject to licence conditions.

### Legal concepts

Since most of the rights and obligations for the energy industry arise under some form of legal provision, we will examine some of the terminology and general concepts further before looking at the specific legal provisions which apply to this sector. We have already encountered a number of legal terms, such as civil and breach, and these along with other legal phrases and other unusual words appear with their specific meanings in the glossary.

### Burden and standard of proof

An important distinction between criminal and civil law is the standard of proof required for each:

- **Civil case** – the burden is on the claimant (**pursuer in Scotland**) who must prove their case 'on the balance of probabilities' to obtain a successful judgment.
- **Criminal case** – the burden is on the prosecution (**Procurator Fiscal in Scotland**) who must prove the defendant's guilt 'beyond all reasonable doubt' to obtain a conviction.

It is possible, therefore, for a civil case to succeed where a criminal one may not.



**Practical tip**

Many incidents give rise to liability under both the civil and the criminal law. An energy company, for example, that sends a sales person round to someone's home to persuade them to change supplier, commits a criminal offence if they fail to give the consumer a prescribed cancellation notice when they visit. Also, from a civil point of view, in the absence of such a notice, any contract which the parties purport to enter in to, will not be enforceable against the consumer.

Both the civil and criminal provisions governing these matters can be found in the Doorstep Selling Regulations, which are covered in more detail in unit 3 'Marketing energy'.

In reality, many civil disputes and criminal breaches, particularly in the trading environment, are resolved and dealt with without recourse to the courts as there are a number of agencies and organisations which exist to give advice and guidance with disputes and compliance, to all parties involved or affected.

**Sources of law**

The two main sources of law are legislation and case law, sometimes referred to as the common law (**Scottish common law**), both of which can originate either in the UK or in Europe, since we are part of the European Community (EC).

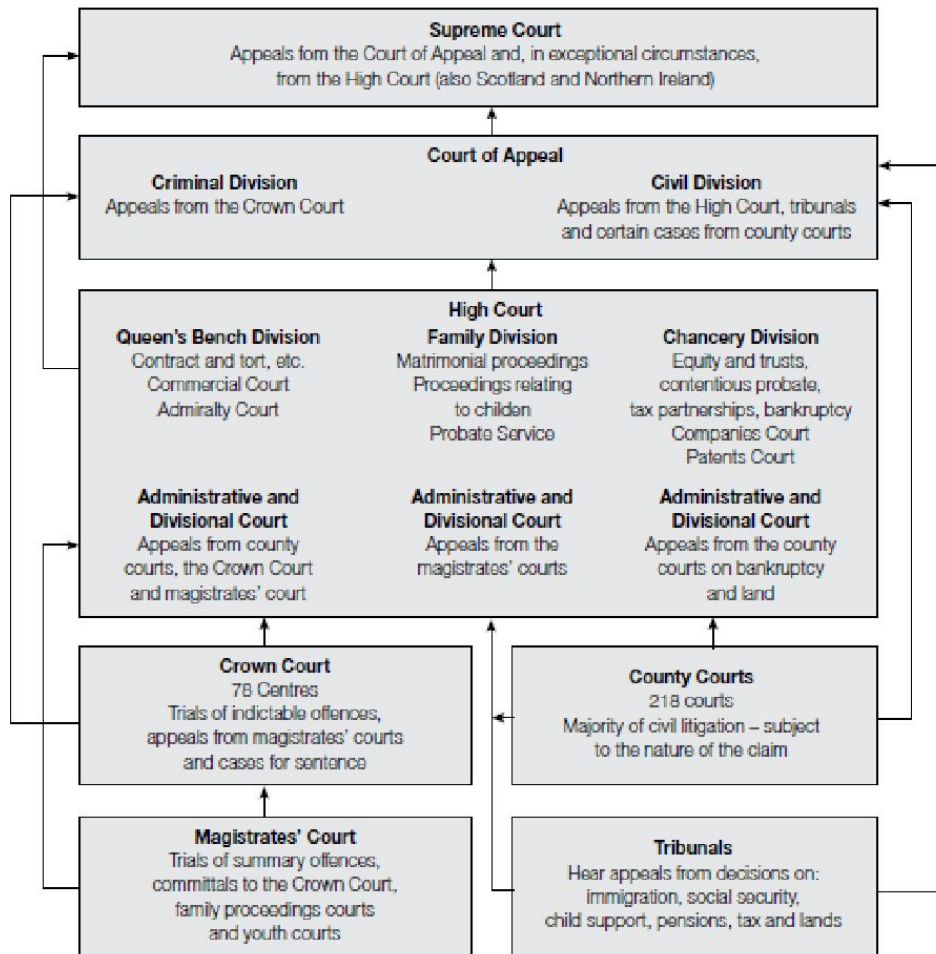
**Legislation**

Legislation is made by the Westminster Parliament, and certain matters can be legislated for by the Scottish Parliament. The Welsh Assembly may acquire the power to make legislation in the future too. Inevitably, of course this means that there is a political agenda which the government of the day will want to achieve. A summary of the main pieces of legislation affecting the energy industry is discussed later in this section.

The process by which government laws are passed is complicated, but be aware that the following words are all examples of law and some of them originate from Europe: 'legislation', 'statute', 'Act', 'statutory instrument', 'Regulations', 'Orders' and 'Directives'.

**Case or 'common' law**

Case law consists of the court decisions which judges make and which then appear as law reports. There is a hierarchy within the court system and as a general rule only the decisions of the higher courts are binding, by virtue of a system called precedent. Also only the part of the judgment necessary to make the decision is actually binding, although other judicial comments can be persuasive in later cases. The body of case law which has built up over hundreds of years is often referred to as the common law (**Scottish common law**). A diagram illustrating the court structure can be seen below.



## Non - legal controls

In addition there are various non-legal methods which can be used to confer rights on consumers, impose penalties on industry players and act as general regulatory measures. These include codes of practice, market forces and overarching standards, all of which are explained in more detail below.

## Codes of practice

There are quite a lot of codes of practice associated with the energy industry. The main strength usually associated with a code of practice is that it can be used to deal with issues which are difficult to legislate for.

Although most codes are generally regarded as not being legal controls, since membership is often voluntary and provisions are not binding, some of the codes relevant to the energy industry do in fact have legal backing, for example, the Gas Code and the Electricity Code, (brought into effect by GA and EA).

In fact both of these codes impose duties on consumers as well as operators, such as the use of appropriate meters, failure to comply with which allows the supply to be cut off or disconnected. Several criminal offences are created too, another unusual feature of a code of practice. Some licence conditions require

compliance with industry codes and agreements and consequently breaches of obligations contained in them can constitute licence breaches, thereby allowing Ofgem to take enforcement action under the relevant legislation.

The code owners have certain powers to bring an end to a breach of the relevant code and to impose non-financial sanctions and Ofgem would take this into account if such breaches were referred to them. Note that some are voluntary consumer organisation codes whereas others are trade association ones which have a self regulatory role.

The promotion of any unfair commercial practice by a code owner in a code of conduct is prohibited under CPR. Individual traders who breach a code which they have undertaken to comply with, may be engaged in an unfair commercial practice too as this would be a misleading action. Neither matter amounts to a criminal offence but can be the subject of civil enforcement.

#### **Practical tip**

Consumers who wish to check the wording of a code can be referred to the relevant website and can follow the complaints procedures if they wish to pursue a claim for compensation or report a failure to comply.

Calls regarding breaches of a code of practice should be handled in accordance with RAST protocols.

#### **Market forces**

Natural competition amongst the players in a market acts as a form of control, since those participating in that market have to compete with each other for customers. To ensure that competition is prevalent in the energy market, there are laws which outlaw anti-competitive agreements and conduct which abuses a dominant position in the market place. The Probe, discussed in paragraph 2.2.1.1, found that competition is not yet fully effective in all sectors of the energy market which means that consumers are not reaping the full benefits of competition. Two new licence conditions came into effect in September 2009 as a result of the Probe and they were brought in specifically to improve the functioning of the market. They:

- ✓ require any difference in suppliers' terms and conditions (T&C) in respect of different payment methods, to be cost reflective, and
- ✓ prohibit undue discrimination in any T&C offered to consumers

#### **Overarching standards**

In addition to the licence changes mentioned above, other measures were brought in as a result of the Probe, again, in order to promote better competition. CF refers to these new requirements as 'overarching standards'.

These may also be referred to more generally as 'overriding standards'. They are not legal obligations since they do not appear as either licence conditions or in delegated legislation but Ofgem may decide at a later



date to incorporate them into one or the other if the suppliers do not comply with them. These overarching standards require suppliers to:

- ✓ only sell consumers a product or service which they fully understand and which is suitable for their needs
- ✓ not change anything material concerning a consumer's product or service without explaining clearly why this is happening
- ✓ not prevent consumers switching suppliers or products without a good reason
- ✓ not offer products which are unnecessarily complex or confusing
- ✓ make it easy for consumers to contact them and act promptly and appropriately when dealing with mistakes made

Since these requirements have no legal backing, Ofgem cannot penalise suppliers for non-compliance, nor can they require consumers to be compensated for failures.

## Industry specific laws

There are various pieces of legislation and areas of law which all relate to the energy industry to some degree. Some of it is specific to this sector and is discussed later, whereas others are more general in nature but could apply to the industry and products relevant to it. Some of this legislation gives rise to individual civil rights, some creates criminal offences (some does both!). Other pieces of legislation create the various bodies which play a regulatory or advisory role within the industry and give rise to the requirement to have a licence to operate.

Legislation listed here is the responsibility of Ofgem, the regulator for the energy industry and there are two main pieces of legislation which are relevant, the Gas Act 1986 (GA) and the Electricity Act 1989 (EA). There are, in addition, a number of pieces of delegated legislation made under the powers contained in these Acts and some supplementary legislation also.

- ✓ Rights of Entry (Gas and Electricity Boards) Act 1954
- ✓ Utilities Act 2000
- ✓ Consumers, Estate Agents and Redress Act 2007
- ✓ Electricity (Standards of Performance) Regulations 2010
- ✓ Gas Safety (Rights of Entry) Regulations 1996
- ✓ The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008
- ✓ The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (CHS Regs)

## Standards of Performance

### Electricity (Standards of Performance) Regulations 2010

These Regulations create two types of standards which consumers can expect in relation to services from suppliers and distributors:

- ✓ **Guaranteed standards (GS)** – these are the ones which affect individual consumers and give rise to compensation claims from either suppliers or distributors as indicated, if they are not met, for example, electricity blackouts and failing to keep timed appointments.
- ✓ **Overall standards** – these are general performance standards which the suppliers and distributors must meet but which do not give rise to compensation claims for individual customers, breaches therefore can only be dealt with by way of penalties imposed by Ofgem or changes in licence conditions, for example, the requirement on suppliers to send domestic consumers an annual statement about performance levels in connection with certain performance standards.

The training materials refer to their colloquial names the 'guaranteed standards' and 'overall standards' since this terminology is widely used throughout the advice professions.

Tables summarising the different standards can be found in unit 4 'Energy supply contracts' and in Annexes 1 and 2.

### Electricity (Connection Standards of Performance) Regulations 2010

These Regulations came into force on 1 October 2010 and a table of the main provisions appears in Annex 3. They are concerned with work carried out at premises for connections and alterations. The Regulations prescribe time periods where appropriate, and compensation for failures to meet them, in respect of the following:

- ✓ budget estimates and quotations
- ✓ accuracy levels for quotations
- ✓ agreement to, and keeping of, dates for commencement, completion and energisation.

### Gas (Standards of Performance) Regulations 2005

These work in exactly the same way as the Electricity (Standards of Performance) Regulations, providing for guaranteed standards and compensating consumers for failure to attain them, and overall standards, allowing Ofgem to penalise and change licence conditions for non-compliance.



## Trading standards laws

In addition to the industry specific legislation covered by Ofgem there are also criminal and civil provisions which affect consumers generally, and which are enforced by TSS. Those listed below are the ones which are most likely to apply to energy problems encountered by consumers. This will be addressed in more detail when relevant issues arise throughout the materials.

- ✓ Contract Law
- ✓ Law of negligence
- ✓ Misrepresentation Act 1967
- ✓ Consumer Rights Act 2015
- ✓ Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013
- ✓ Consumer Credit Act 1974 (CCA)
- ✓ Consumer Protection from Unfair Trading Regulations 2008 (CPR)

## Summary

- Legal controls apply by virtue of civil law, which aims to deal with disputes between individuals and prescribe suitable remedies, criminal law, which controls behavior and punishes wrongdoers, and licensing provisions, which require the players in the energy industry to have a licence and comply with the conditions attached to it.
- In a civil case, the burden of proof is on the claimant (**pursuer in Scotland**) who must prove their case 'on the balance of probabilities' to obtain a successful judgment and in a criminal case the burden is on the prosecution (**Procurator Fiscal in Scotland**) who must prove the defendant's guilt 'beyond all reasonable doubt' to obtain a conviction.
- The legal rules are usually based in either legislation or case law (the common law or **Scottish common law**) with a system of precedent applying in the latter which generally makes the decisions in the higher courts binding.
- There are also non-legal controls which exist in the energy industry, including codes of practice (although the gas Code and the Electricity Code are both contained in legislation and so have legal status), natural market forces (one of Ofgem's functions is to promote competition) and overarching standards, for example, those brought in as a result of the Probe's findings in October 2008, which suppliers are expected to comply with.
- There are various sector specific laws which regulate the energy industry, the main ones being the GA and the EA, both of which have been heavily amended by numerous pieces of legislation over the years and both of which have Standards of Performance Regulations made under powers contained in them (Electricity 2010, Gas 2005).
- In addition the Utilities Act 2000, CEARA and the Rights of Entry (Gas and Electricity) Boards Act 1954 are important pieces of legislation directly affecting the energy industry.
- TSS also enforce and advise on legislation, which although not specifically aimed at the energy industry, nevertheless applies to it; as well as the more general laws of contract and negligence.