



Unit 11

Business Advice

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Unit 11

Business advice

Introduction

All the units preceding this one are concerned with advice for consumers whereas this unit is about giving advice to business customers. The advice will be different depending on whether the business can be considered to be a small or a large business. A significant number of the enquiries you receive will be from businesses, most of them small traders.

The rights and remedies available in a business to business situation will be examined in this unit. Whatever the status of the buyer, they will be potentially embarking on the same customer journey as a C, from needing pre-shopping information through to enforcement of a court judgment if they take a supplier to court and win but receive no satisfaction. The rules and processes along the way will however, be quite different in some instances.



In 2008 the Probe (see unit 1 'Understanding the energy industry') included a detailed examination of the small business sector in the energy supply market and concluded that it required better protection than it was receiving previously. Therefore, Ofgem introduced new rules, with effect from 10 January 2010, designed to afford better protection to, what it terms, micro business customers. The exact definition will be covered in section 1. It also introduced overarching standards.

This was followed in November 2011, by The Retail Market Review: Non-domestic Proposals (RMRNDP), which concluded that the Probe remedies needed strengthening in the business market.

The business energy market is different from the domestic market in a number of respects and the RMRNDP and the 2016 CMA report aim to bring some further regulatory measures to protect business customers further. The three main differences between the two markets are that: firstly, there are many more suppliers in the business market, secondly, most of the contracts made are for fixed terms rather than being rolling contracts and thirdly, there is a high use of brokers by business customers, in an attempt to find the best deals.

The section numbers in this unit match the earlier unit numbers for each topic, for example, unit 7 was about 'Connections, quality and safety', from the consumers point of view, and section 7 in this unit addresses the same issue, but from the business point of view. The section headings are:

- Section 1 Understanding the energy industry
- Section 2 Contract law
- Section 3 Marketing energy



- Section 4 Energy supply contracts
- Section 5 Charging for fuel
- Section 6 Paying for fuel
- Section 7 Connections, quality of supply and safety
- Section 8 Debt and disconnection
- Section 9 Complaint resolution and consumer organisations

Section 1

Understanding the energy industry

Roles within the energy industry

Industry structure

The supply chain

The roles within the supply chain for the energy industry will be the same for business customers as they are for consumers, however, not all suppliers will have business customers. The Big 6 all cater for business customers, but some of the smaller suppliers will confine themselves to consumers and some may actually specialise in business customers.

How to identify a consumer's supplier

Business premises may have several metering points, especially for electricity and each will have its own reference or M number. In addition to the two websites mentioned in unit 1, which can be used to determine which supplier is registered to which meter, there is a third which may be helpful if one of the smaller suppliers is being used and that is www.ecoes.co.uk.

Advisory bodies

Not all the advisory bodies will give advice to businesses, however, you, as Citizens Advice advisers, will be expected to advise businesses, and the EHU may be able to assist small business customers who are threatened with disconnection or in a vulnerable position and are unable to pursue the complaint themselves. The Energy Ombudsman also deals with small businesses and it is worth noting that 95 percent of all businesses in the UK are SME (small to medium enterprises). For other organisations which may be able to assist see section 9.

The definition of a small business can be found in the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 and is referred to as a micro business customer (MBC). The definition originally related to non-domestic premises and either the annual energy consumption or the number of employees and turnover. As a result of the RMRNDP, Ofgem proposed a 'small business' definition, to run alongside the MBC definition, so that more small enterprises would receive certain protections afforded by some of the SLC. The definition of an MBC was subsequently amended from 31st March 2014 and is detailed below. To give this some context, a business consuming the amounts in the definition would be paying around £10,000 before VAT for each fuel per year.

Micro business customers

A MBC is one supplied at non-domestic premises, with

- ✓ an annual consumption of electricity of not more than 100,000kWh or gas of not more than 293,000kWh

OR

- ✓ fewer than 10 employees (or their full time equivalent) and annual turnover (or balance sheet) not exceeding 2 million Euros

Non-domestic premises (NDP)

A NDP is one which is not a domestic premise (DP) and includes where someone has a commercial agreement to provide residential or other accommodation services at the premises, which includes a charge for the supply of gas or electricity (express or implied), for example, a landlord letting out rooms. Once a non-domestic supply contract (NDSC) has begun it will be treated as such until it ends, even if the customer begins using the energy for a domestic purpose.

Regulation of the energy industry

Ofgem

Ofgem's main aim is to protect consumers, which covers ALL consumers, businesses included. The consumer section on the Ofgem website has a section for business customers and there are various factsheets available

Trading Standards Services

Most TSS will give advice to small and large businesses about compliance with legislation which they enforce, however, much of it only protects consumers. They may also give civil advice, for example, on contracts. Calls from business customers wanting contractual advice should be handled in accordance with RAST protocols.

One of the pieces of legislation they enforce is the Business Protection from Misleading Marketing Regulations 2008 (BPR), which is aimed at protecting businesses from practices which may be misleading. These Regulations will be covered in more detail in section 3.

Legal provisions

Legal controls

Civil law

Disputes between businesses can also be sorted out using the civil law and sometimes businesses are also entitled to compensation when certain things happen in the energy industry.

However, enforcement orders under Part 8 of the Enterprise Act 2002 can only be sought in relation to practices which affect consumers not businesses.

Legal concepts

All the legal concepts considered in this section would be the same for both consumer and business customers.

Non-legal controls

Codes of Practice

It is important that the provisions in the codes are checked very carefully to see whether or not they apply to businesses. Certainly many of the voluntary consumer organisation and trade association ones only protect consumers.

Market forces

Competition amongst those who supply businesses with energy is also desirable but not all the controls in place to try and ensure this, apply to business customers and the two licence conditions which were brought into effect in September 2009 as a result of the Probe to improve the functioning of the market, only protect consumers (prevention of undue discrimination in T&C and cost reflective payment methods). However, some amendments were made to SLC(G&E)7A (S) in 2014 and a new SLC(G&E)7B was introduced at the same time, requiring certain standards of conduct (SOC) to be complied with. These will be considered later.

Industry specific laws

None of the legislation listed under this heading applies just to consumers or just to businesses, there are often provisions within each one which have different applications and so these will be pointed out where relevant in the appropriate section. Certainly, not all the guaranteed standards apply to business customers and not all the SLC protect them either.

Trading Standards laws

The laws of contract, negligence and misrepresentation are based in the common law and so apply equally to consumers and businesses, although some specific rules may differ. In the absence of other forms of protection, reference to the contract becomes very important from a business customer perspective and this will be considered in more detail in sections 2 and 4.

The table below indicates which pieces of legislation protect only consumers and which have provisions which may apply to both consumers and businesses. Some new pieces of legislation are also introduced and will be discussed in more detail in the relevant section.

It should be noted that the Consumer Credit Act 1974 protects debtors which are defined more widely than consumers and also includes sole traders and partners of two or three.

Protect consumers only	Apply to business customers too
Consumer Rights Act 2015	Unfair Contract Terms Act 1977
Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs)	Misrepresentation Act 1967
Consumer Protection from Unfair Trading Regulations 2008	Business Protection from Misleading Marketing Regulations 2008 (BPRs) (only protects businesses)
Enterprise Act 2002 (Part 8)	Electronic Commerce (EC Directive) Regulations 2002
	Provision of Services Regulations 2009
	Supply of Goods and Services Act 1982 (Scottish common law)
	Consumer Credit Act 1974

Summary

- Not all suppliers will have business customers and although the 'Big 6' do all, some of the smaller suppliers will confine themselves to consumers and many actually specialise in business customers.
- Business premises may have several metering points, each with its own M number.
- Not all the advisory bodies will give advice to businesses, however, you, as advisers, will be expected to advise businesses, and the EHU may be able to assist small business customers who are disconnection or in a vulnerable position and are unable to pursue the complaint themselves. The EO also deals with small businesses.
- A small business is often referred to as a micro business customer (MBC) and is one supplied at non-domestic premises, with an annual consumption of electricity of not more than 100,000kWh or gas of not more than 293,000kWh OR fewer than 10 employees (or their full time equivalent) and annual turnover (or balance sheet) not exceeding 2 million Euros.
- Ofgem's main aim is to protect consumers, which covers ALL consumers, businesses included and the consumer section on the Ofgem website has a section for business consumers with links to Citizens Advice.
- None of the industry specific legislation, or the GS or SLC apply just to consumers or just to businesses, there are often provisions within each one which have different applications and so these will be pointed out where relevant in the appropriate section.
- Much of the legislation enforced by TSS relates only to consumers, however, there is some which protects business customers too, namely, the BPR, UCTA, SGSA, CCA, E-Commerce Regulations, the Provision of Services Regulations and the Misrepresentation Act, in fact the BPR only protect businesses.
- The Probe brought in Standards of Conduct for suppliers in 2008 and 3 years later in 2011 the RMRNDP suggested that some of the remedies proposed be strengthened to provide better protection. Some of these were incorporated into the SLC in 2014. Further amendments were suggested following the CMA report in 2016.

Section 2

Contract law

Formation and types of contract

Elements of a contract

Contracts are formed in exactly the same way between two businesses as they are between a consumer and a business, small traders in particular are still likely to be presented with a set of standard terms, although they may be able to negotiate some of the terms too. Regulation of the contract however, will be considerably less for a business, on the basis that the parties are considered to be of equal standing and could both have easier access to legal advice.

The reality is that small businesses often have no more knowledge about energy contracts than consumers as their business expertise will be concerned with the nature of their business ventures not the ancillary services, like gas and electricity, required to run it.

Capacity

Having the capacity to enter into a contract is a necessary element of a properly constituted contract and this can be an issue for businesses which are incorporated under the Companies Act 2006 (one which has ltd or plc after its name) as there will only be the capacity to make contracts in accordance with the company's rules (the Memorandum of Association).

Entering into a contract for the supply of gas and or electricity is highly likely to be something which a company can do but what might be relevant, from the supplier's point of view, is to make sure that the person entering into the contract on behalf of the company is someone who is authorised, that is, has the capacity to do so.

Types of contract

The classifications for different types of contract will be the same for businesses, but there will be some that are more common than others for business customers and the legislative protection will be less extensive, for example, off-premises and distance contracts only gain protection under the CCRs, if the customer is a consumer.

Miscellaneous contractual matters

The use of agents is more commonplace with businesses contracts, although sometimes third parties do introduce potential customers to suppliers without an agency relationship being present and this will be referred to later.

Standard licence conditions

The application of some of the SLC depends on whether the premises being supplied are domestic or not. Probably the most important standard licence conditions for businesses are those which provide protection to MBCs when they want to switch suppliers, namely SLC(G&E)7A and certain paragraphs of SLC(G&E)14 and also those relating to standards of conduct, SLC(G&E)7B(S) and smart meter installations, SLC(G&E)42(S).

Definitions and interpretation

Non-domestic premises

The definition of non-domestic premises (NDP) can be found in SLC(G&E)6(S), and unless the context requires otherwise, a NDP is one which is not a DP and includes where someone has a commercial agreement to provide residential or other accommodation services at the premises, which includes a charge for the supply of gas or electricity (express or implied), for example, a landlord letting out rooms. Once a NDSC has begun it will be treated as such until it ends, even if the customer begins using the energy for a domestic purpose.

Since this definition refers to domestic premises it seems appropriate to remind you of that definition too. A DP is '...premises at which a supply of gas / electricity is taken, wholly or mainly for a domestic purpose, except where that premises is a non-domestic premise'.

Standards of performance

The aim of the performance standards is to require the suppliers and also the transporters (T) and distributors (D) to attain minimum service levels or pay out compensation to customers.

Guaranteed and overall standards

All but one of the standards expected of T and D, apply to businesses as well as consumers, and some of the supplier standards only apply to consumers. Some of the standards attract higher levels of compensation for businesses. There is no distinction for the size of the business. More detail can be found in section 4 and Annexes 1 - 4.

Handling complaints

The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, which require suppliers, transporters and distributors to have procedures for handling complaints and provide information about compliance, apply to consumers and also MBC. Compensation is not payable for non-compliance, however, Ofgem will monitor this. The Regulations will be dealt with in more detail in sections 4 and 9.

Summary

- Contracts are formed in exactly the same way between two businesses as they are between a consumer and a business, small traders in particular are still likely to be presented with a set of standard terms, although they may be able to negotiate some of the terms too.
- Regulation of the contract will be considerably less for a business, on the basis that the parties are considered to be of equal standing and could both have access to legal advice, although in reality small businesses often have no more knowledge about energy contracts than consumers as their business expertise will be concerned with the nature of their business ventures not the ancillary services, like gas and electricity, required to run it.
- The supplier should ensure that they have entered into a contract with someone who has the capacity to make such a contract, that is, someone who is authorised to make contracts on behalf of the company.
- The classifications for different types of contract will be the same for businesses, but there will be some which are more common than others for business customers and the legislative protection will be less extensive.
- Various standard licence conditions apply to contracts for business supplies of gas and electricity, including those relating to meter inspections and safety arrangements, but probably the most important are those which provide protection to MBCs when they want to switch suppliers, namely SLC (G&E)7A(S) and certain paragraphs of SLC(G&E)14(S) and also those relating to standards of conduct, SLC(G&E)7B(S) and smart meter installations SLC(G&E)42(S).
- A NDP is one which is not a DP and includes where someone has a commercial agreement to provide residential or other accommodation services at the premises, which includes a charge for the supply of gas or electricity (express or implied), for example, a landlord letting out rooms.
- All but one of the guaranteed standards expected of transporters and distributors apply to business consumers as well as domestic consumers, and some of the supplier standards only apply to the latter: some of the standards attract higher levels of compensation for businesses, however, there is no distinction for the size of the business.
- The complaints handling standards, which require complaints procedures to be in place and information about compliance with them to be provided, apply to MBC but compensation is not payable for non-compliance.

Section 3

Marketing energy

The suppliers use the same methods of marketing to gain business customers as well as domestic customers, however, the controls which exist to regulate their activities are mainly for the protection of consumers. One distinction is the use of third party intermediaries (TPI) in the form of brokers and consultants who negotiate with the suppliers on behalf of some business customers. Ofgem does not currently regulate their activities, other than through enforcement of the Business Protection from Misleading Marketing Regulations 2008 (BPRs) and they are not required to be licensed. In the light of criticism of the behaviour of some of these third parties, the Utilities Intermediaries Association (UIA) was established and it operates two codes of practice which regulate the conduct of such brokers and the use of price comparison websites aimed at business customers. Membership is however, only voluntary.

The CCRs, the CPR, SLC(G&E)25(S) and the ERA EnergySure Code, all only apply to consumers and do not protect business customers, so there are no automatic cancellation rights or cooling off periods and much less regulation about the information which has to be given and how the sales staff have to conduct themselves.

Third Party Intermediaries and Data Gathering on Flare

A TPI is a company that provides information for an energy customer or organises an energy contract with a supplier on the customer's behalf, rather than the customer contracting with the energy supplier directly.

Examples of third party intermediaries are:

- Energy brokers
- Energy efficiency advice providers
- Switching websites

TPIs are not required to search the whole market to find the best deal for the customer, some TPIs only represent 1 supplier, or a small number of suppliers.

If a micro business would like more pre-shopping information about using a TPI there is information available on the Ofgem website.

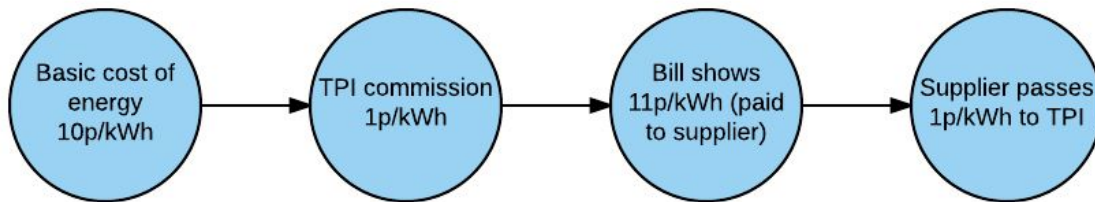
TPIs are not subject to direct regulation by Ofgem in the same way as energy suppliers are and any consumer protection laws such as civil rights under the CPRs will not apply to businesses.

The BPRs do apply, so any marketing activities have to be clear and accurate. Any potential breach should be referred to Trading Standards, however, ofgem also has powers to enforce these Regulations.

How do TPIs make money?

TPIs charge either direct or indirect fees. A direct fee is paid by the micro business for each trade made on their behalf. An indirect fee is where the TPI receives commission from the energy supplier which is then added to the micro business bill.

Indirect fee example:



In the example above if the micro business used 50,000 kWh per year the TPI would receive £500 from the energy supplier in commission.

What is meant by detriment?

Any statement by the micro business to say they feel they have 'lost out' in some way may mean there has been some detriment to them. SLC(G&E)7B(S) requires MBCs to be treated fairly and this includes not being caused detriment. Ofgem have identified 8 areas that could cause detriment.

Behaviour	Examples leading to detriment
Aggressive sales	Repeated cold calling which could lead to bullying
Lack of transparency	Not clearly presenting fees/charges or specifying how much of the market has been searched to find price
Misrepresentation	Failing to identify themselves as an intermediary. E.g 'I'm calling from Meter Registrations', 'I'm calling from your supplier'
Mis-selling	Selling customers unsuitable contracts, presenting something as best deal based on their commission which could lead to the customer not getting the best deal for them
No clarity on licensee	Not making it clear who the supplier will be/ acting in a supplier-like capacity which could lead to customers not receiving information and making it harder to switch/ complain
Failure to deal with complaints	Complaints left for suppliers to deal with which could lead to disengagement and a lack of trust
Fraud	Faking phone recordings/ contracts which could lead to erroneous transfers
Misusing industry systems	Using ECOES data for marketing purposes meaning customers receive unwanted contact. May be duped.

What information should be gathered?

If a micro business caller states that they have suffered some detriment, it should be asked if they used the services of another company (TPI) or if they contracted with their supplier directly. If the potential detriment is due to the actions or statements of a TPI, as much information about the situation, along with the details of the TPI should be taken and noted in the case details.

How should information be recorded?

The TPI details should be added as an additional trader on Flare (if the call is not solely about the TPI) with information as to why the caller feels there is a detriment in the case notes.

Example:

TPI - A1 Energy Advice. Detriment - TPI stated that the provider they recommended was the cheapest on the market, caller has now found there are three other suppliers which are cheaper, has signed a 5 year contract.

Off-premises and distance selling

Standard licence conditions

SLC(G&E)25(S) only protects consumers. The Standards of Conduct (SOC) do however, protect MBC to some extent and in particular require suppliers to provide information that relates only to products that are appropriate to the MBC to whom it is directed SLC(G&E)7B.4(b)(iii)(S). The overriding Customer Objective of 7B is that suppliers should treat MBCs fairly.

Trade Association Codes

The Code of Practice for Face to Face Marketing of Energy Supply (the EnergySure Code) established by the ERA, only protects consumers.

There are however, some codes of practice which do apply to businesses and these are discussed below.

Compliance with codes

Code owners are prohibited from promoting in a code, any advertising or comparative advertising which is misleading (BPR see below). If a code of practice encourages any misleading advertising, it would be possible for civil enforcement action to be taken against the code owner, for example the Utilities Intermediaries Association rather than having to pursue individual code members who are simply following the provisions contained in the code. Responsibility for enforcement lies with TSS and ofgem, although, a breach does not amount to a criminal offence.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the CCRs)

The CCRs only protect consumers.

The Business Protection from Misleading Marketing Regulations 2008 (BPR)

The CPR do not protect business customers, only consumers, however, the BPR prohibit businesses from advertising their products so that they mislead traders. They also permit comparative advertising providing it is not misleading and meets the criteria laid down, for example, comparing like for like, not discrediting competitor's products and making comparisons which are objective and concerned with material, relevant, verifiable and representative features, such as price.

A product includes services and advertisement is defined very widely to include 'any representation' made to 'promote the supply or transfer of a product'. So statements made by third parties (TPI) during negotiations could amount to a breach of these Regulations, as could printed material handed out by them. This is regardless of whether the TPIs are agents of the suppliers or completely independent of them.

The suppliers are caught by the Regulations too, regardless of the methods they choose to carry out marketing activities. So, visiting potential business customers at their trading premises, advertising on line, conducting telesales, advertising in trade magazines and sending out direct mail or mail shots, are all covered too. Breaches should be referred in accordance with RAST protocols. It should be noted that Ofgem has acquired the same enforcement powers under the BPR as TSS.

Example

Kevin and Caroline run their own farm and they are visited by a representative from an electricity supplier who informs them that if they switch their supply to this company before the end of the month they will receive a 10 per cent discount on their first year's supply. They complete the switch and then discover that the discount only applies to businesses which employ more than ten people in their workforce. The head office of the electricity supply company tell Kevin and Caroline that they are not entitled to this discount as they only employ four workers.

Advice

This is likely to amount to misleading advertising and could breach the BPR. This element of the complaint should be handled in accordance with RAST protocols. There could also be a misrepresentation here which may allow Kevin and Caroline to rescind their contract. On a practical level they could discuss the matter with the company, which may be prepared to give the discount rather than risk losing the contract altogether, although Kevin and Caroline should be advised of the difficulties involved with proving verbal statements.

Other examples could include supplier representatives or independent brokers misrepresenting or providing misleading information about: who they represent and the nature of the products, tariffs and charges that are available.

Misrepresentation

A misrepresentation is a false statement of fact made during pre-contractual negotiations as an inducement to enter into a contract and the law relating to misrepresentation covers both consumers

and business customers (small and large) alike. This area of law was discussed in detail in unit 3 'Marketing energy' and examples of when it may be useful include where:

- a supplier's representative tells a business customer that they are the cheapest energy provider in the UK, which proves not to be the case
- a business customer is told by an energy company that they ought to switch their supply to them from their current supplier because they are cheaper, when that is not the case

The most difficult problem with pursuing a remedy for misrepresentation is that, more often than not, such statements are verbal and it will be one person's word against another. Also it should be noted that the UCTA allows liability for misrepresentation to be excluded if it is reasonable to do so.

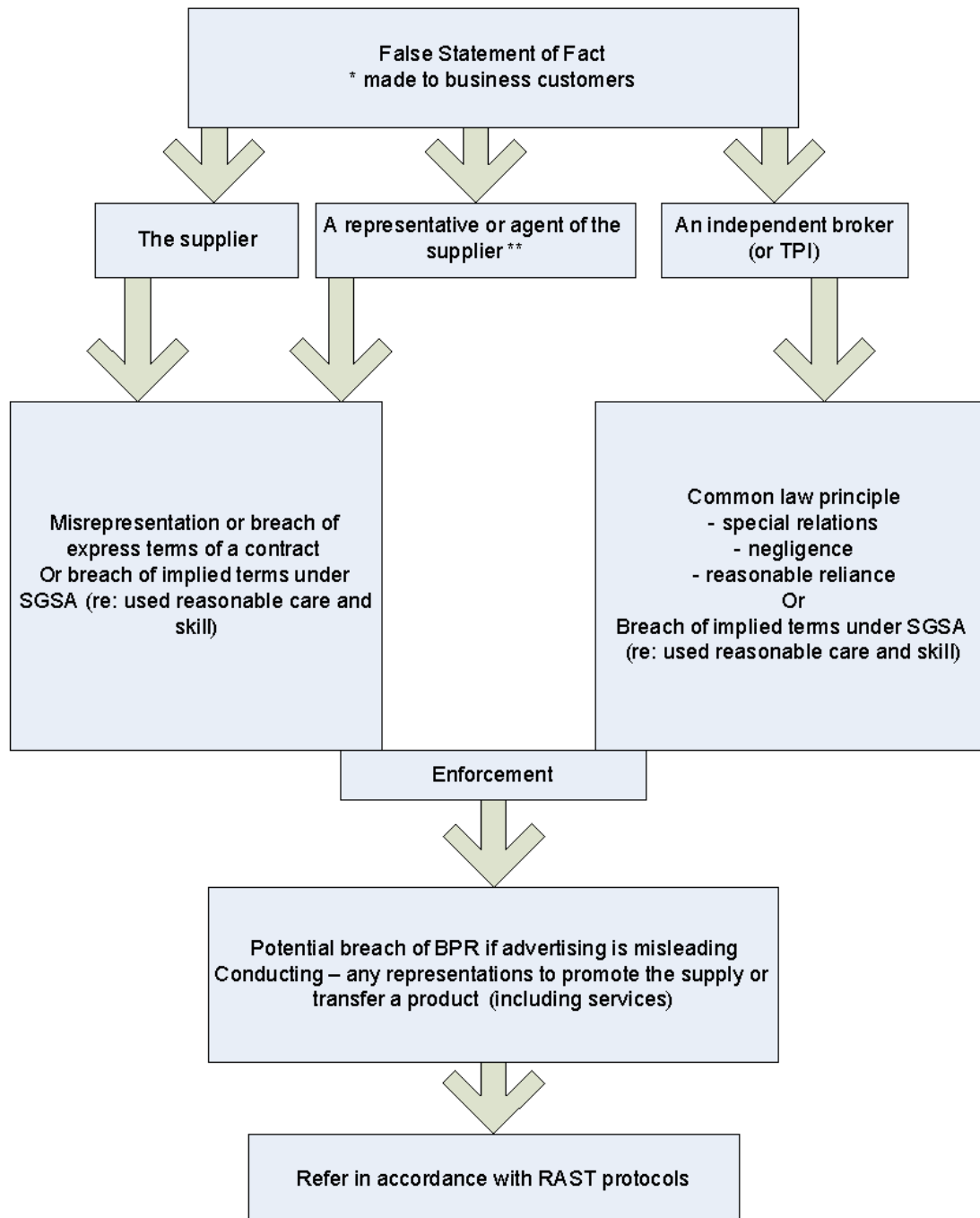
Where the person making the alleged misrepresentation is not a supplier employee or their representative or agent, but is an independent broker, then a claim under the Misrepresentation Act 1967 cannot be made. This is because the subsequent main energy supply contract will not be with that broker but between the supplier and the customer. If the false statement has been made negligently then it may be possible to make a claim under common law principles, which is sometimes referred to as Professional Liability or liability for negligent mis-statements.

The requirements for this type of liability are that:

- ✓ there must be a special relationship between the parties
- ✓ there must have been reliance on the statement
- ✓ the reliance must be reasonable
- ✓ there must be no effective exclusion of the liability (permissible if reasonable under the UCTA)

Independent brokers, who are not agents or representatives of a supplier, may make false statements to potential customers concerning a number of things, for example, the tariffs available, the cost of any standing charge, the relationship between themselves and various suppliers, the nature of the service to be provided.

It can be extremely difficult to establish the exact nature of the relationships between the supplier, the maker of the statement and the customer. Who pays who for what will often be a very important factor. Sometimes the customer may pay the broker for their services or the broker may be paid a commission by the supplier. Remember also that where there is a service contract between parties, there is an implied term to perform that service using reasonable care and skill and an independent broker could be in breach of such a term if he doesn't use such care and skill when advising potential customers.



* - verbal statements may be hard to prove
 ** May be difficult to establish the exact status of the statements made .
 Referring cases in accordance with RAST protocols

In instances of unclear contractual relationships the matter should be referred in accordance with RAST protocols.

Provision of Services Regulations 2009

These Regulations require all service providers (which includes energy suppliers) to make certain information available in certain ways and at certain times.

Other legal controls

The Electronic Commerce (EC Directive) Regulations 2002

Certain information must be provided by any trade supplier or advertiser using electronic means to communicate. The E-Commerce Regulations are not restricted to consumer contracts and advertising. Breaches of these Regulations should be referred in accordance with RAST protocols.

Other marketing methods

The Advertising Standards Authority

The Advertising Standards Authority (ASA) is an independent regulator for advertising across all types of media, including TV, internet, sales promotions and direct marketing. Its role is to ensure that advertisements are legal, decent, honest and truthful by applying the advertising codes. The codes and ASA adjudications can be found on their website at www.asa.org.uk. Many of the complaints about advertising in the energy sector, come, not from energy customers, but competitors!

It might be appropriate to refer advertising to them which does not appear to breach the BPR enforced by TSS or ofgem, but which is nevertheless the subject of a complaint, for example, a magazine advert using imagery which causes offence.

It does not matter whether the recipient of an advertisement is a consumer or a business.

Legal controls

The general controls which could apply to any form of advertising or marketing are: BPR, the law on Misrepresentation, ECR and PSR, all of which have been covered when looking at either off-premises and or distance selling above.

Price comparison websites

Business customers may use price comparison websites in the same way that consumers do and sometimes they use brokers or consultants to negotiate with the suppliers on their behalf before entering into a contract. The Utilities Intermediaries Association (UIA) is a trade association and its members agree to abide by two codes of practice, one concerned with business internet comparison

websites and the other concerned with the conduct and activities of brokers or consultants, referred to as third party intermediaries (TPI).

Business selling code (TPI Premier code)

Businesses can be referred to the Ofgem website for further information.

One top tip is on using TPI and one is to ask whether they are accredited by UIA which maintains a register of consultants and brokers who meet the Association's requirements and agree to operate to the Premier Code of Practice.

The approved logo can be seen on the Association's website at www.uia.org.uk and the TPI Code is entitled – Written Standards for the Conduct of Professional Work by Third Party Intermediaries operating in the Utilities Markets. Such intermediaries could well be visiting small traders at their business premises which is akin to visiting consumers in their own homes.

The main requirements are that signatories to the code should:

- ✓ behave ethically, for example, operate a policy of truthfulness, not make deceptive representations and not prevent a client from speaking to their supplier
- ✓ protect the privacy of their clients
- ✓ not use confidential information disclosed by a client to gain an advantage (or create a disadvantage for a third party)
- ✓ provide a contract which sets out what the signatory will do and what the client should expect
- ✓ obtain letters of authority from clients before seeking prices from the market place
- ✓ ensure they have legal ability to sign contracts with suppliers (if required to do so)
- ✓ include the 10 listed mandatory items in their contract or agreement with a client
- ✓ consider which others from a suggested list should be included
- ✓ ensure that all information is passed on to the client at the request of a supplier
- ✓ make clear to clients, the origins of any income or consideration gained
- ✓ seek good communication processes with their client
- ✓ maintain a professional working relationship with clients
- ✓ comply with the law at all times
- ✓ inform clients of the code and the complaints procedure

The code also lays down a complaint handling process, a disciplinary process, potential outcomes of disciplinary action and an appeals process.

The business price comparison code (The E-bis code)

The E-bis code (Written Standards for the Conduct of Professional Work by Business Internet Switching Sites operating in the Energy Markets), available at www.uia.org.uk, sets out minimum standards for those business internet comparison sites which are members, by requiring comparison providers to subscribe to six commitments (including explanatory notes), the comparison provider must:

- ✓ be independent of any supplier (indicate which suppliers receives payment from)
- ✓ include like-for-like price comparisons from as many suppliers as possible (with a summary of all those approached)
- ✓ provide certain information with explanations (key contract terms, payment methods, consumer's responsibility concerning changing at the end of the contract, supplier's right to prevent a transfer in certain circumstances)
- ✓ normally provide prices for the suppliers from whom they receive commissions (or draw attention to the low number of prices provided)
- ✓ ensure comparisons are accurate, on a like-for-like basis, state when last updated and for how long applicable
- ✓ not seek to mislead and provide a link to its complaints procedure and the UIA codes of practice and redress scheme

Businesses can report breaches of either code to UIA if the TPI is a member.

Mis-selling

It is likely that business customers may be subject to similar selling scams and misleading practices as those encountered by consumers. However, as we have seen above the law which regulates such incidents will be different. There may be breaches of the following, which can be referred in accordance with the RAST protocols:

- ✓ Business Protection from Misleading Marketing Regulations 2008
- ✓ Provision of Services Regulations 2009
- ✓ Electronic Commerce (EC Directive) Regulations 2002
- ✓ Misrepresentation Act 1967
- ✓ Third Party Intermediary code (TPI Premier code) (the business doorstep selling code)
- ✓ E-bis code (Written Standards for the Conduct of Professional Work by Business Internet Switching Sites operating in the Utilities Markets) (the business price comparison code)

Some of these provisions will apply to both suppliers and also TPIs.

Summary

- The CCRs, the CPR, SLC(G&E)25(S) and the EnergySure Code, all only apply to consumers and do not protect business customers, so there are no automatic cancellation rights or cooling off periods and much less regulation about the information which has to be given and how the sales staff have to conduct themselves.
- The BPR prohibit businesses from advertising their products so that they mislead traders and permit comparative advertising providing it is not misleading and meets the criteria laid down, for example, comparing like for like, not discrediting competitor's products and making comparisons which are objective and concerned with material, relevant, verifiable and representative features, such as price.
- The ECR require certain information to be provided by any trade supplier or advertiser using electronic means to communicate, and require an immediate electronic acknowledgement of any contract entered into using electronic means.
- The Provision of Services Regulations also require information to be given by service providers, about both themselves and their services to those who receive their services including relevant contact details (postal, fax or email address, a telephone / text number, and an official address if there is one) for recipients to complain to or request information.
- The law on misrepresentation may provide a civil remedy of rescission and or damages if a salesperson made a false factual statement to induce a potential customer to enter into an energy supply contract, although this is less straightforward if the misrepresentation is made by a third party who is not legally an agent of the supplier.
- Sanctions may be available to deal with a broker or consultant who is a member of the UIA Association and is in breach of the TPI Premier code of conduct by engaging in unacceptable behaviour or not drawing up contracts in accordance with the guidelines, or business internet comparison sites which do not comply with the E-bis code.
- The ASA is an independent regulator for advertising across all types of media, including TV, internet, sales promotions and direct marketing and its role is to ensure that advertisements are legal, decent, honest and truthful by applying the advertising codes.
- Standards of Conduct were introduced by the Probe in 2008 and in 2011 the Retail Marketing Review: Non-domestic proposals concluded that these were not stringent enough and so strengthened provisions may follow.
- Businesses can be referred to relevant Ofgem Factsheets

Section 4

Energy supply contracts

Once a contract for the supply of energy has been entered into as a NDSC (see below), or a deemed contract for non-domestic premises has begun, it continues as such until it ends, even if the customer begins using the premises for a domestic purpose (SLC(G&E)6.3 and 7A.2).

We need to examine the terms which are likely to appear in a business energy contract, what obligations are placed on the parties in terms of performance, when a business may be able to escape from a contract and advice necessary concerning enforcement of the contract. The Ofgem website contains guidance about how to [understand energy contracts for business](#).

Types of energy contracts

Nature of premises

Non-domestic supply contract (NDSC)

Contracts to supply non-domestic premises are, in effect, contracts to supply businesses. Small businesses receive more protection than large ones if they meet the definition of a micro-business, as defined in unit 1 'Understanding the energy industry'.

Nature of premises

Business contracts can be express or deemed in the same way that consumer contracts can.

Duration of the contract

Fixed term contracts are more prevalent for business customers than they are for consumers.

Miscellaneous contracts

Feed-in tariffs and wayleave agreements are both applicable for business premises in the same way that they are for consumer premises.

Energy contract terms

Although business parties to a contract are presumed to be of equal standing and therefore able to negotiate contracts, in reality the majority of businesses are SME and have no more knowledge about gas and electricity than consumers and will, more often than not, simply be presented with a standard set of terms by the Big 6 suppliers. The protection they receive will be considerably less than that provided for consumers.

Types of contract terms

Business contracts will also be made up of both express and implied terms in the same way that consumer contracts are.

Common law remedies for breach of express terms

Express terms in business contracts are also classified according to their importance, as either conditions or warranties. The same remedies are, by and large available to both consumers and business customers.

Implied terms in energy contracts

You may remember that the terms which would be implied into a service contract would be that the service should be performed:

- ✓ using reasonable care and skill
- ✓ within a reasonable time (unless fixed under the contract)
- ✓ for a reasonable charge (unless fixed under the contract)

These terms are implied into contracts regardless of whether the customer is a consumer or a business. The main difference which needs to be pointed out here is that the second of these, performance within a reasonable time, is presumed to be a condition in a business contract, whereas it is presumed to be a warranty in a consumer contract.

Remedies for breach of implied terms

Giving advice about remedies for breach of implied terms is outside the scope of Citizens Advice energy advisers and such calls should be handled in accordance with office protocols for further action and advice.

Express terms in energy contracts

The express terms in a business contract are very important since there will be much less protection for the business customer from the usual sources, such as the SLC, legislation and Guaranteed Standards, which are mainly concerned with protecting consumers.

Examples of express terms found in energy contracts

The Big 6 suppliers have T&C on their websites, relating to business customers. Some make a distinction between small and large businesses whereas others do not. The areas covered by the T&C are likely to be similar, both to the consumer contracts and as between suppliers, although it is likely that the exact detail will differ and it will be usual to include a term to the effect that the person agreeing to the contract has the authority to do so.

It is also more common to exclude or limit liability when the customer is a business, particularly with regard to, property or financial loss through negligence, for example, the extra gas or electricity used as a result of a faulty appliance.

SLC(G&E)16(S) does apply and so there will need to be a term concerning gas safety in gas contracts.

SLC(G&E)22(S) and 23 do not apply so there is no general requirement to put all business contracts in writing let alone include specific terms and conditions.

However, if the business customer is a MBC a new SLC applies from 18 January 2010, (SLC(G&E)7A(S), and amendments were made from 31 March 2014). This may cause some confusion since there will be MBC who will have contracts which commenced before 18 January 2010, which will be largely unregulated and there will be contracts entered into after this date which will have to comply with SLC(G&E)7A(S). Suppliers may have three sets of T&C for:

- pre 18 January 2010 contracts
- post 18 January 2010 contracts but pre 31 March 2014
- post 31 March 2014 contracts.

The protection provided for MBC after the 18 January 2010 will be particularly important when it comes to FTP contracts as there is now a requirement to provide a Statement of Renewal Terms (SRT) within a certain time period before the contract ends and there is a maximum roll over period of 12 months.

Contracts for micro business customers

The main protection for MBC contracts can be found in SLC(G&E)7A(S) which requires some pre-contract information and clear terms and conditions. The general provisions are that:

- ✓ the supplier must take all reasonable steps to identify whether a business contract is with a small or a large business
- ✓ FTP contracts cannot be rolled over for more than a year
- ✓ if charges can vary or fluctuate, this must be clear, along with how this will occur or how an MBC can obtain information from the supplier
- ✓ any termination provisions must comply with the notice and clarity requirements (see later)

Pre-contract requirements (7A.4)

All reasonable steps must be taken to bring the following to the attention of a MBC before they enter into a contract (in plain intelligible language, but can be verbal)

- an explanation that the contract will be legally binding
- the principal or key terms of the proposed contract

Entering into a contract (7A.7)

Within 10 days of (or ASARP after) agreeing or renewing a MBC contract, the supplier must take all reasonable steps to provide the following information (both in writing and in plain intelligible language)

- ✓ copy of all the express terms
- ✓ a Statement of Renewal Terms (SRT), if it contains a FTP, which displays the following (7A.6) in a prominent manner:
 - o date FTP ends or duration
 - o the relevant date (see below)
 - o statement that written notification can be sent to the supplier at any time before the relevant date to prevent a further FTP (a roll-over)
 - o a postal and email address for such a notification
 - o explanation of consequences of not renewing (will be 'rolled over' for 12 months) or not agreeing a new contract before the relevant date (a deemed contract may come into force)

Renewal of FTP contracts (7A.8)

On or about 30 days before the relevant date, (so about 60 days before the FTP ends) the supplier must provide:

- ✓ a SRT (see above) - unless already agreed a new MBC contract
- ✓ a copy of the relevant Principal Terms (in writing and in plain intelligible language) which might apply if a FTP:
 - o is rolled over (maximum 12 months) because the MBC does nothing (i.e. does not notify that it wants to switch or terminate and there is a term allowing a rollover); or
 - o becomes a deemed or variable contract because the supplier has been notified in writing that the MBC does not wish to renew but does not appoint another supplier: or
 - o becomes a deemed or variable contract when the FTP ends, because there is no term allowing a rollover but the MBC has not changed supplier, nor agreed a new contract with the existing one (FTP or otherwise)
 - o becomes a deemed or variable contract because the supplier has prevented the MBC from extending the FTP but continues to supply the MBC
- ✓ a statement displaying the charges for energy which apply when the statement is provided
- ✓ annual consumption details

If the supplier makes new offers then at least one must be written and capable of being accepted until the end of the notice period (7A.10).

FTP contracts can only be extended into a further 12 month FTP if the above 10 day and 30 requirements have been complied with and the MBC has not sent written notification to prevent such an extension, so there is a maximum of a 12 month roll-over.

Further information is available on the Ofgem website.

Use of clear language

There are several plain intelligible language requirements in SLC(G&E)7A(S) and Ofgem has previously applied the OFT guidance on r.7 of the UTCCR (now CMA Guidance on Part 2 of the Consumer Rights Act 2015) when checking for this. Early monitoring suggested that many MBC contracts were not clear either in their use of terminology or layout. Areas of particular concern included:

- ✓ business customers' understanding that a legally binding agreement had been entered into, particularly when the initial communication was verbal
- ✓ clarity about which terms related to which types of contract, for example, fixed terms contracts, deemed contracts and those for an indefinite period (rolling or evergreen contracts)
- ✓ availability of all information about the duration of a contract, including what would happen at the end of a FTP and when a contract might roll-over into another FTP
- ✓ any differences between the MBC obligation to give notice if he wished to terminate and the ability to prevent a further FTP from occurring

Deemed contracts

Deemed contracts are relevant for business customers and the provisions in SLC(G&E)7(S) will apply to deemed business contracts too, although those provisions in SLC(G&E)24(S) will only apply to consumers. This could be relevant where a landlord is in between tenants for example. The landlord could be treated as a business and charged accordingly.

Off-premises contracts

The CCRs only protect consumers, not business customers and are mainly concerned with a right to cancel in any event. There are no specific provisions which are concerned with the actual contract itself, although third party agents who are members of the UIA will have to comply with the provisions of the relevant codes of practice for that organisation. Some of the provisions in the codes regulate the contracts between the business and the agent but not the contract between the business and the energy supplier.

Changes may be made in this area following the 2011 RMRNDP and the 2016 CMA investigation into the energy market.

Distance contracts

The CCRs do not apply to businesses since they only protect consumers who enter into contracts in this way. This means that there is no requirement to give the PCI or contract confirmation in relation to a contract concluded online or as a result of a telesales. However, the E-Commerce Regulations

and the Provision of Services Regulations may apply and certain information may be forthcoming in compliance with this legislation.

Some of Ofgem's suggestions in the 2011 RMRNDP and 2016 CMA report mentioned above, could apply to distance sales as well as off-premises ones. As TPIs contact businesses by telephone to discuss switching suppliers.

Feed-in tariff agreements

Businesses can be FIT generators too so SLC(E)33(S) and SLC(G&E)34(S) will apply.

Factors affecting the terms

Standard licence conditions

The cost reflective pricing and prohibition on undue discrimination, SLC(G&E)25A(S) and SLC(G&E)27.2A(S), do not apply to business customers. It is possible that suppliers could have different prices for each customer if they so wished.

Codes of practice

The suppliers do not have many codes of practice that affect their business customers. It would be necessary to check against each supplier in the area being queried to see if there are any relevant codes or charters which promise certain levels of service on top of the contractual requirements.

The Unfair Contract Terms Act 1977 (UCTA)

The UCTA allows liability under most of the implied terms and standard terms in a business contract to be excluded or limited if it is reasonable to do so. It is not however, possible to exclude liability for death or personal injury caused by negligence.

The Consumer Protection from Unfair Trading Regulations 2008

The CPR do not apply to unfair practices which affect traders, since they only protect consumers. However, the BPR do protect businesses, and misleading advertising and comparative advertising which is misleading and or does not meet the criteria laid down, is not permitted. These Regulations were discussed in more detail in section 3 Marketing energy and where a complaint involves such potential breaches the case should be handled in accordance with protocols for further action and advice.

Overarching standards

These Standards of Conduct (SOC) apply to MBC and require suppliers to:

- Not change anything material without explaining why clearly
- Not prevent switching of products or suppliers without a good reason

Standards of Conduct (SOC)

The SOC contained in SLC(G&E)7B(S) aim to ensure that MBCs, are treated fairly (the Customer Objective) and broadly means that suppliers should not:

- significantly favour their own interests, or

- do things or fail to do things that are likely to cause detriment

More specifically this covers: dealing with mistakes, customer service arrangements, customer access, behaviour and the provision of information.

- | | | |
|----------------------------------|---|---|
| Dealing with mistakes | - | action to rectify mistakes should be prompt |
| Customer service processes | - | should be fit for purpose and transparent |
| Customer access | - | it should be easy for an MBC to contact their supplier |
| Behaviour | - | suppliers should behave in a manner that is: <ul style="list-style-type: none">● fair● honest● transparent● appropriate● professional |
| Provision of information should: | - | information provided to MBCs, whether oral or written, <ul style="list-style-type: none">● be complete, accurate and not misleading● be in plain, intelligible language● relate to products that are appropriate to the MBC to whom they are directed● be fair in terms of content● be fairly presented● give appropriate prominence to important elements |

The SOC apply to the listed Designated Activities, which do not include the amount of any charges, and cover:

- bill accuracy
- accuracy of statements of account
- the timeframe for receiving bills
- the timeframe for receiving statements of account
- the timeframe for paying bills
- communications about billing or contracts details
- transfers or switching
- deemed contracts
- anything, relating to MBCs, within the scope of the following SLC(G&E)(S)
 - 7A - MBC contracts
 - 14 - blocking switching
 - 14A - 21 day switching
 - 21B - billing based on meter readings

Suppliers must take all reasonable steps to achieve the SOC and interpret and apply them in the spirit of the Customer Objective.

Letting MBCs know what the SOC are should be done via an annually updated Treating Customers Fairly Statement (TCFS) which should contain specific details, follow a certain format and be distributed as listed. The details and format are that it should:

- be written
- clearly highlight, in a heading, that it relates to how the supplier intends to treat MBCs fairly
- include the main actions being taken
- refer to the service and treatment a MBC could expect from the supplier

Distribution of the TCFS should be:

- on the Website, if the supplier has one, capable of easy access by anyone
- by free provision to anyone who requests it, in writing and asarp

Contract performance

In the same way as for consumer contracts, the most important obligations under a business contract will be the supply of the relevant fuel for the supplier and payment by the customer for what has been consumed.

As well as the supplier, the DNO and GT have performance obligations towards business customers too.

Supplier's obligations

The supplier will have to meet various obligations under the contract, mainly those which it has undertaken to do because it has written them into the contract as express terms. To a much lesser extent than with consumer contracts there will be obligations imposed by SLC, legislation and codes of practice.

Standard licence conditions

Contractual obligations towards MBC under the SLC(G&E) are very similar to those for consumers with the exception of the provision of PPM services, including resetting after price increases, and gas

safety checks for particular customers. SLC(G&E)25(S) does not apply to business customers and so there is less emphasis on what information has to be in a business contract. There is some protection for MBC by virtue of SLC(G&E)7A & 7B(S) as discussed above.

Guaranteed standards

The Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015 apply to standards for making and keeping appointments for business customers and also for passing on payments from DNOs. The details are contained in Annex 1 including any applicable criteria and exemptions.

Other legal obligations

Suppliers have other obligations under the contract, besides the GS, and these stem from a number of sources and will be discussed in the following sections, with emphasis on how they differ from obligations towards consumers. In particular it should be remembered that obligations towards MBC are likely to be more regulated than those towards larger businesses. Some examples include:

- | | |
|---|-----------|
| ✓ calculation of charges | section 5 |
| ✓ payment options | section 6 |
| ✓ connection, quality and safety duties | section 7 |
| ✓ disconnection and debt issues | section 8 |
| ✓ provision of a complaints handling system | section 9 |

Distributor / transporter obligations

Compensation is payable to business customers for breaches of some of the GS owed by the DNO or GT. The details are contained in Annexes 2 - 4, as listed:

- | | | |
|--|---|---------|
| ● Electricity DNO general standards | - | annex 2 |
| ● Electricity DNO connection standards | - | annex 3 |
| ● Gas T standards (general and connection) | - | annex 4 |

There will be some differences between the standards for consumers and businesses. In addition the laws relating to product liability and negligence can give rise to claims against business third parties.

Standard licence conditions

SLC for DNO and GT mainly relate to arrangements between these operators and suppliers, although some do occasionally affect business customers. They will be referred to where necessary in the relevant section.

Other legal controls

Suppliers, distributors and transporters all owe obligations to business customers under a variety of headings too numerous to list here. All those which are important will be covered in the subsequent sections. It is just worth mentioning the laws relating to negligence and product liability which both cover third parties, regardless of whether they are consumers or business people. Business customers suffering personal injury will require specialist advice.

Information requirements

Business customers have to be provided with certain information too as part of the proper performance of the contract, although not as much is required as for consumers. Again, sometimes it is required from suppliers, and sometimes from DNO and GT, and the stages at which it has to be provided vary too. Unless otherwise stated, the provisions apply equally to the supply of both gas and electricity. The information requirements stem mainly from the SLC but there are one or two from other sources too. Those covered by the SLC relate to:

✓ deemed contracts	SLC 7
✓ MBC contracts	SLC 7A
✓ customer objective and standards of conduct for MBCs	SLC 7B
✓ last resort supply direction	SLC 8
✓ arrangements for ensuring representatives are suitable	SLC 13
✓ when switching suppliers can be prevented by the supplier	SLC 14
✓ financial information (consolidated segmental statement)	SLC 19A
✓ gas leak contact details / meter reference numbers	SLC 20
✓ details of energy sources and environmental impact (fuel mix)	SLC 21
✓ when supplier can order not to use or restrict use of gas	SLC 16
✓ feed-in tariffs details	SLC 33
✓ smart meter requirements	SLC 42

Business customers need to make sure that they obtain the right information in connection with their energy supply contracts and a list of questions which they might want to ask if they are thinking of switching supplier.

Customer obligations

Business customers acquire obligations under a contract too and payment on time and in full is particularly important for them since there are no grants and schemes available for assistance with payment and no obligation on the supplier to offer payment plans.

Not tampering with meters or damaging any equipment or apparatus and allowing access for specific reasons of inspection and safety are obvious ones.

Escaping from energy supply contracts

Business customers may also be able to escape from contracts but this will be considerably more difficult for them to do than consumers.

Cancellation rights

The law very rarely gives business customers cancellation rights in relation to contracts. The CCRs only protect consumers. Suppliers may choose to give a cooling off period and business customers should check their T&C to see if there is an express term to this effect. Problems may arise where during the verbal negotiations a supplier or a broker states that there will be such a cancellation period where a subsequent written contract does not incorporate one. This may amount to a misrepresentation, although proving what was said may be difficult.

Contractual rights

Termination rights

There can be a variety of problems associated with termination rights in a business contract. High termination fees are a common occurrence and business customers need to check their contracts carefully to see if and when these apply, however, a termination fee cannot be charged to end a deemed contract. There are further provisions in SLC(G&E)7A(S) that cover terminating MBC contracts:

- ✓ the contract cannot be terminated or have different terms applied to it during a fixed term period (FTP) on the basis that a small business no longer satisfies the MBC criteria
- ✓ any notice period for termination must be no longer than 30 days (for example, for rolling or evergreen contracts, however, this does not prevent FTP in contracts)
- ✓ an MBC is entitled to give notice to terminate a contract at any time upto the maximum 30 day notice period (if there is a FTP)
- ✓ following a FTP, if there is no rollover, an MBC should be able to give notice to terminate at any time
- ✓ suppliers should take all reasonable steps to notify MBCs within 5 WDs after receiving a notice of termination, that they have received it
- ✓ certain details about termination must be provided on every MBC bill and statement of account in plain, intelligible language and in a prominent position and in addition to the end date of the FTP, what is required depends on whether there is a term in the contract that allows the supplier to roll the contract over into another FTP or not
 - Where rollovers are permitted**, the information required is:
 - the relevant date (30 days before the end of the FTP)
 - an explanation that the MBC can send written notification to prevent the rollover and terminate the contract when the FTP ends;
 - Where rollovers are not permitted**, the information required is:
 - the latest date for giving notice to terminate at the end of the FTP
 - clarity that this is a latest date

Repudiation, rescission, void and voidable contracts

For the extent to which you need to be aware, the traditional remedies and redress which may be available for breaches of contract, misrepresentation and when factors affect a contract, will all apply equally to business customers as they do to consumers.

Switching supplier

Transferring from one supplier to another is not as easy for a business customer as it is for a consumer. Business customers do not have the same rights to simply switch supplier, however, in accordance with SLC (G&E)7A(S) they can now elect to terminate (at the end of the FTP) at any time up to 30 days before the end of a FTP and can only be rolled over for a maximum of 12 months.

The UIA codes of practice for brokers and business internet comparison sites may also be relevant and were discussed in section 3. There is also information available on the Ofgem website.

Remember that the overarching standards of conduct apply to MBC too and they state that suppliers should not prevent switching of products or suppliers without good reason. In addition, treating MBCs fairly is a SOC requirement in SLC(G&E)7B(S) and the requirement to switch within 21 days applies to all customers, SLC(G&E)14A(S).

Ofgem sent out an open letter early in 2012 to remind business suppliers of their obligations under SLC(G&E)14(S) and highlight good practice with regard to allowing customers to switch suppliers. In addition changes may be made in this area following the 2011 RMRNDP and the 2016 CMA report.

Can a supplier block a proposed business customer transfer?

SLC(G&E)14.2(S) contains the grounds for preventing a proposed supplier transfer (PST) for business customers (large or small):

- original contract includes a term which allows the first supplier to prevent a transfer
- the supplier initiating the PST agrees it was done in error
- customer has related metering points and has not applied to switch them all at the same time
- there are outstanding Green Deal charges due by that customer to the original supplier that are not genuinely disputed or a supplier error amount

Compliance with the SOC, the requirement to treat MBCs fairly, will prevail over any conflict with SLC(G&E)14.2(S) [SLC(G&E)7B.6(S)].

If the supplier makes a request to prevent a PST of a MBC it must give a notice to the MBC, ASARP, to inform him:

- that a request to prevent the transfer has been made
- of the grounds for such a request
- how the MBC can dispute or resolve such grounds

Enforcement of contracts

Business customers would follow the same complaint resolution path as a consumer, starting with the supplier (or DNO / GT if appropriate). Some of the advice agencies give advice and guidance to MBC and the regulatory bodies would deal with infringements against business customers. It is of course always open for business customers to pursue their complaint through the courts but the same advice would apply in terms of only using this as a last resort.

The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 which prescribe standards for dealing with complaints by suppliers and also DNO and GT, apply to MBC as well as consumers.

Both the EHU and the EO, as well as yourselves, will give advice to MBC, although the former only in relation to those who are vulnerable and those who have been threatened with disconnection.

Ofgem can also make determinations in respect of matters which affect both consumers and MBCs.

Summary

- Although business parties to a contract are presumed to be of equal standing and therefore able to negotiate contracts, in reality the majority of businesses are MBC and have no more knowledge about gas and electricity than consumers and will, more often than not, simply be presented with a standard set of terms by the big suppliers.
- Often business energy contracts will be FTP contracts, and businesses experience problems with these being 'rolled over' into further FTP without them realising, often at higher prices and with large termination fees.
- The implied terms in the SGSA for services (**Scottish common law**) are still relevant for business contracts, however, the UCTA allows liability under most of the implied terms and standard terms in a business contract to be excluded or limited if it is reasonable, apart from death or personal injury caused by negligence.
- The detail contained in the express terms is very important since there will be much less protection from the usual sources, such as the SLC, legislation and Guaranteed Standards, which are mainly concerned with protecting consumers.
- The Big 6 suppliers have T&C on their websites, relating to business customers and some make a distinction between small and large businesses, although, the areas covered by the T&C are likely to be similar, both to the consumer contracts and as between suppliers and it will be usual to include a term to the effect that the person agreeing to the contract has the authority to do so.
- MBC who enter into contracts after 18 January 2010 should receive renewal terms (SRT) about 60 days before the contract ends and FTP contracts can only be rolled over for a

maximum of 12 months, in addition the principal terms (PT) and an explanation of the binding nature of the contract should be provided and then a copy of the express terms and the SRT within about 10 days after agreeing a contract.

- SOC aim to ensure that MBCs, are treated fairly when dealing with designated activities meaning that suppliers should not significantly favour their own interests, or do things or fail to do things that are likely to cause detriment; more specifically this covers: dealing with mistakes promptly; having transparent customer service processes; creating easy customer access; behaving in a fair, honest, transparent, appropriate and professional manner and providing complete, accurate, non-misleading information that is in plain intelligible language, fairly presented and only relates to products that are appropriate to the MBC it is directed to.
- Some contractual obligations are placed on suppliers and D and T by the SLC and the guaranteed standards and many relate to the provision of information at various stages and in different formats; business consumers will incur obligations under the contract too such as taking care of equipment and allowing access for inspection and safety reasons.
- Escaping from business contracts is not easy but some suppliers allow a short cooling off period and there will be a termination period if the contract is a rolling or evergreen one whereas FTP contracts will incur a large fee if they are terminated before they end, also, it may be possible that common law or equitable remedies are available for breach of contract or misrepresentation which include rescission, repudiation or being able to treat a contract as void.
- Certain details about termination must be provided on every MBC bill and statement of account in plain, intelligible language and in a prominent position and, in addition to the end date of the FTP, what is required depends on whether there is a term in the contract that allows the supplier to roll the contract over into another FTP or not; the maximum rollover is 1 year and the maximum notification period for termination is 30 days.
- MBC is entitled to give notice to terminate a contract at any time up to the maximum 30 day notice period (if there is a FTP) and following a FTP, if there is no rollover, an MBC should be able to give notice to terminate at any time
- suppliers should take all reasonable steps to notify MBCs within 5 WDs after receiving a notice of termination, that they have received it
- Switching suppliers is not as easy for business customers as it is for consumers since many contracts are FTP which contain expensive termination fees, however, MBC must be given a statement of renewal terms if they entered into their contract after 18 January 2010, which allows for a period during which they can change suppliers if they wish however, SLC 14.2 contains certain grounds for preventing a proposed supplier transfer.
- Business customers should start with their supplier or DNO / GT to deal with any contractual issues and the Complaints Handling Standards Regulations protect MBC as well as consumers.
- EHU, the Energy Ombudsman and CA all give advice to MBC, although the former, only in relation to vulnerable consumers and threatened with disconnection.



- The 2011 RMRNDP suggested a number of amendments to improve protection for some businesses, as did the CMA 2016 report.

Section 5

Charging for fuel

Business customers still have their energy consumption measured through meters and are obviously charged for fuel by their suppliers. Here we will examine some of the differences which the business customer may encounter.

How fuel is measured and meters

How fuel is measured

Fuel is measured in the same way for all customers however the temperature and volume correction figure of 1.022640 only applies if customers use no more than 73,200 kWh of gas (The Gas (Calculation of Thermal Energy) Act 1996). If a customer uses more than this they should contact their supplier to see what figure they have used.

Types of meter

Business premises are more likely to have several meters for different buildings each with their own M number. Someone new to a business premise may not realise how many meters there are or where they are, but should be advised to find out and make a note of the M numbers, serial numbers and readings for each one.

PPMs are really for consumers but there is nothing to stop a business customer from having them although they would not receive the protection afforded by SLC(G&E)28(S) with regard to resetting them after price increases. Security deposits may be requested by suppliers.

Smart meters (SLC(G&E)12(S))

Meters installed in business premises after 6/4/09, must be advanced (smart) meters, where:

- the measured annual gas consumption is over 732,000kWh
- the electricity metering point falls within profile class 5, 6, 7 or 8

and from 6/4/14 all non-domestic premises which meet this criteria must have advanced meters, unless the supplier is unable to install one, despite taking all reasonable steps to do so.

An advanced meter is one which provides measured gas consumption data for at least hourly multiple time periods (electricity half-hourly) and allows the supplier to access such data remotely. Suppliers must ensure that customers have timely access, on request, to the data too. SLC(G&E)42(S) requires there to be a smart meter installation code for MBCs to ensure high standards of service and that an MBC's experience of smart meter installation, meets their reasonable expectations. All activities should be undertaken in a fair, transparent, appropriate and professional manner. MBCs should be provided with complete and accurate information and should not be misled. Provisions of SMICoP cover MBC installations, however, there is no duty to offer smart meters or IHDs, which probably means that charges for them will be made. Neither is there any restriction on marketing activities that can take place at the same time.

By 1/4/2017 all businesses with advanced meters in profile classes 5 - 8 will have their [energy use recorded every half an hour](#) as part of a process called settlement. This should be clear from the first two-digit number in the box to the immediate right of the “S” in the MPAN/supply number on the bill, as it will be 05, 06, 07 or 08. Where these numbers are 00, 01, 02, 03, or 04 this will not apply as it will be a different profile meter and this cannot be changed. Recording of half-hourly usage will also have happened to those businesses who started or renewed contracts after the 5/11/2015.

If the business has a Current Transformer (CT) meter, it may see an increase in network charges for the capacity reserved for it by the DNO, known as maximum import capacity (MIC). Overtime, bills may go down if businesses take control of their consumption and spread usage throughout the day rather than concentrating it during peak hours. This should enable DNOs to bring their costs down, avoid future costs and pass on savings. A business could always contact its DNO if it thinks its MIC is too high.

The Ofgem factsheet 131 (July 2015) [Cheaper off-peak electricity for business consumers](#) explains some of these issues.

Rights of entry

Rights of access are the same and SLC(G&E)13(S) suggests that contracts should make sure that rights of entry are specifically included for gas customers in secondary premises.

How to read meters

An explanation of how to read the different types of meter along with illustrations of some of the different meters can be found on citizensadvice.org.uk. The PSR relates to consumers only so none of the free services which those registered on it will apply to business customers. Business customers will need to check their T&C to see whether and how frequently the supplier has agreed to read the meter. Charges may be made for visits outside such obligations.

Inaccurate readings

There may be a number of reasons why a meter reading which a business customer has, does not match a reading on the supplier's bill or statement, and these will be the same as for consumers, it could be a result of:

- reader error
- inaccurate account records
- readings taken when there has been a transfer between suppliers

In the case of transfers, you should remember that The Code of Practice for Accurate Bills only applies to consumer users, although the practical aspects of taking readings at the appropriate times would seem to be a logical approach when transferring business customers too.

Responsibility for the meter and meter boxes

Responsibility for a meter still lies with the owner, but there is more of a possibility that large businesses may own their own meters.

Meter accuracy

Accuracy levels stated are the same for consumers, MBC and other businesses.

It is not clear whether or not the GS, requiring suppliers to deal with alleged electricity meter inaccuracies or PPM faults in a certain way, apply to just consumers or businesses too, as explained previously. The schedule in the relevant legislation contains compensation amounts in the column for business customers, however, the actual numbered regulations only refer to consumers.

Movement of meters

Businesses may also wish to re-position their meters for a number of reasons and it will be their responsibility to arrange this and pay for the work involved. Businesses will not be on the PSR and will therefore not be able request a free re-siting of a meter on the basis that it is difficult to access.

Meter tampering

Anyone tampering with a gas or electricity meter can be liable to prosecution, whether a consumer or a business. The operators have the same powers of entry for business premises as they do for domestic premises. SLC(G)13.3(S) states that suppliers must take all reasonable steps to obtain contractual rights of entry for themselves, transporters and shippers. These need to be similar to those in the Gas Code for use in secondary premises, for example, a flat in a block of flats.

Charges for fuel, bills and statements

Charges for fuel

In general a business bill is likely to be made up of similar charges to a consumer bill, however, there are likely to be a couple more charges on a business user bill which don't generally appear on a consumer bill. These are discussed below and are:

- ✓ a standing charge
- ✓ a climate change levy

VAT

Businesses, apart from charities are charged VAT at 20 per cent but if 60 per cent of the fuel at a property is for domestic use then all the VAT should be charged at 5 per cent. If domestic use is less than 60 per cent then the VAT should be charged appropriately for the correct portions of the bill.

Back billing is not restricted to one year if there are no bills as it is with consumers. So a business customer is liable to pay for all gas and electricity consumed during their occupancy of the premises. Suppliers will be able to pursue claims for up to six years (**five years in Scotland**) since this is the legal time limit for initiating proceedings in the courts.

Serial numbers should also be checked on each meter at a business premise so that these can be checked against a bill.

Other charges

Climate change levy

The CCL was set up to encourage business and public sectors to improve energy efficiency and reduce emissions of greenhouse gases. The rates (subject to VAT) are payable by those who pay VAT at the 20 per cent rate (see above) and those which apply from 1 April 2009 for electricity and gas are:

Electricity	0.47 p/kWh
Gas	0.164 p/kWh

HM Revenue and Customs will be able to tell customers if they are exempt and can be contacted by telephone or you can direct them to the website at www.hmrc.gov.uk/climate-change-levy/index.htm

Standing charge

This has to be paid regardless of how much or how little fuel is consumed. It can be charged as an amount per day, per month or per quarter. It is sometimes balanced by a lower price per unit of energy.

Practical tip

Business customers should be advised to do the following, to keep billing problems to a minimum:

- ✓ make a note of where all the meters are
- ✓ write down all the M and serial numbers of each one
- ✓ check bills when they arrive, particularly to see if the amount is based on an actual or estimated reading
- ✓ take their own readings, note the date, keep a record of them and notify the supplier
- ✓ retain all bills, own notes and any correspondence so that there are dated points of reference to refer to in the event of any problems

Tariffs

There is a vast range of tariffs available as indicated in unit 5 'Charging for fuel'. Apart from social tariffs they are all likely to be available to both consumers and business users and the latter will have to check their T&C to check what tariff they are on. There may be more scope to negotiate day and night time rates, for example, depending on the size and nature of the business.

The overarching standards (standards of conduct) apply to MBC as well as consumers but not to large businesses.

Price rises

Increased prices can be an issue for business customers, particularly since they are often on fixed term period (FTP) contracts which impose high termination fees if customers try to leave before the FTP is up and then often 'roll over' into further FTPs. MBCs receive some protection by virtue of SLC(G&E)7A(S) because since 18 January 2010, contracts cannot roll over for more than one year and the MBC must be informed of the transfer window within specified time periods and this may allow them to switch to another supplier, in the event of a price increase, without incurring a fee. This is explained more fully in section 4.

Other business customers will be bound by the T&C of their contracts.

Bill frequency

Business customers should be advised to check their T&C to see when and how they will be billed. The Back Billing Code will not apply and the provisions of the Limitation legislation will dictate how far back a supplier can claim for energy charges.

Understanding the bill

The content and format of bills and statements are not regulated either since SLC(G&E)31A(S) only applies to consumers. Most of the Big 6 suppliers do have sample small business bills on their websites with explanations of what they mean.

Estimated bills

Business customers may receive estimated bills if their meters have not been read and if they have not provided meter readings themselves. They can be advised that this can be avoided by submitting meter readings and asking for bills to be re-calculated on the basis of their readings. The duty to try and inspect the meter every two years, in accordance with SLC(G&E)12(S), applies to all customers.

Refunds

SLC(G&E)27(S) does not apply to business users so there is no requirement to refund a credit balance or re-assess payment schemes in accordance with the Billing code. Customers will have to check their T&C to find out what their contracts say in respect of these issues.

Landlords: charges for fuel

Where gas or electricity is re-sold for use at commercial or industrial premises, the rules about Maximum Resale Price (MRP) do NOT APPLY. This means that the landlord of a commercial property can resell to tenants at any rate and it would be up to the tenant to check their tenancy agreement.

Statements

SLC(G&E)31A(S) only applies to consumers and so there is no obligation to provide annual statements to business customers. The T&C should be checked to see whether the supplier has undertaken to provide this.

Summary

- Fuel is measured in the same way for all consumers, however, different conversion factors can be used for temperature, pressure and compressibility where the gas is conveyed to the meter at a rate which exceeds 25,000 therms or 732,000 kWh per year and business customers who exceed this rate will have to check with their suppliers for the figures used.
- Business premises often have several meter points and new premises with an annual gas consumption of over 732,000 kWh or electricity meters of profiles, 5, 6, 7 or 8, have to have advanced (smart) meters fitted and after 6/4/14 all business premises meeting this criteria must have such meters unless the supplier is unable to install one.
- By 1/4/2017 all businesses with advanced meters in profile classes 5 - 8 will have recordings of half-hourly energy usage and this will also have happened to those businesses who started or renewed contracts after the 5/11/2015.
- If the business has a Current Transformer (CT) meter, it may see an increase in network charges (MIC) for the capacity reserved for it by the DNO, although overtime, bills may go down if businesses take control of their consumption and spread usage throughout the day rather than concentrating it during peak hours.
- All activities relating to MBC smart meter installation should be undertaken in a fair, transparent, appropriate and professional manner and MBCs should be provided with complete and accurate information and should not be misled; however, there is no duty to offer smart meters or IHDs, which probably means that charges for them will be made and neither is there any restriction on marketing activities that can take place at the same time.
- The duties to inspect and not tamper with meters apply equally to business premises and the same rights of access exist with compensation being payable under the GS if appointments are not kept, although the amounts may be different.
- The PSR only applies to consumers as does the Code of Practice for Accurate Bills however the reasons for inaccuracies on bills are likely to arise for similar reasons, relating to reader error, inaccurate account records and transfer procedures.
- More businesses are likely to own their meters and therefore incur responsibility for their safekeeping.
- The guaranteed standards requiring suppliers to deal with alleged meter inaccuracies or PPM faults may not apply to businesses so there may be no compensation payable, any cause of action would then be based on a breach of contract which will depend on the contract T&C.
- There are likely to be a couple more charges on a business user bill which don't generally appear on a consumer bill, which are a standing charge, payable regardless of how much or how little fuel is consumed, and a Climate Change Levy, set up to encourage business and public sectors to improve energy efficiency and reduce emissions of greenhouse gases and payable by those who are subject to VAT at the normal rate.
- Where gas or electricity is re-sold for use at commercial or industrial premises, the rules about MRP do NOT APPLY, which means that the landlord of a commercial property can

resell to tenants at any rate and it would be up to the tenant to check their tenancy agreement.

- Businesses, apart from charities are charged VAT at 20 per cent but if 60 per cent of the fuel at a property is for domestic use then all the VAT should be charged at 5 per cent. If domestic use is less than 60 per cent then the VAT should be charged appropriately for the correct portions of the bill.
- Back billing is not restricted to 1 year if there are no bills, since the Back Billing Code does not apply, so a business customer is liable to pay for all gas and electricity consumed during their occupancy of the premises and suppliers will be able to pursue claims for up to six years (five years in Scotland) since this is legal time limit for initiating proceedings in the courts.
- Price increases can be an issue for business consumers particularly if they have a FTP contract as there is likely to be a high termination fee to end the contract, and no requirement to give variation notices in rolling contracts, but MBC have a 30 days transfer window in which they can switch suppliers.
- The SLC which protect consumers when it comes to aspects of billing, do not apply so there is no regulation of the content and format of bills and no requirement to refund a credit balance, or provide annual statements the T&C would have to be checked with regard to these issues.

Section 6

Paying for fuel

Who has to pay a bill and how can it be paid are issues for business customers too. In most instances it will be a question of looking at what was agreed at the contract making stage and what has been put into the written contract, assuming there is one.

Who has to pay the bill?

Contracts

Express contracts

Responsibility for paying an energy bill is likely to be more straight forward for a business than a consumer, providing it is clear that the supplier has entered into a contract with the business rather than an individual employee or representative. If the person signing or agreeing to a contract was authorised to do so on behalf of the business then the contract will be binding on the business as a whole.

Deemed contracts

If a business user moves into premises where there is already an energy supply which they then use, there will be an obligation to pay for what is consumed under a deemed contract and SLC(G&E)7(S) will apply although SLC(G&E)28(S) will not.

Common areas of dispute

There may be similar areas of dispute about who is liable to pay an energy bill between suppliers and business users as there are between suppliers and consumers. The two main points to note are that firstly, the person entering into an energy supply contract on behalf of the business must be authorised to do so, and even if they are not a deemed contract may arise in relation to any energy consumed, and secondly, that landlords for business premises will not have to comply with the rules in relation to MRP. Also electricity connections may be classed as other than single voltage, high voltage or extra high voltage which will make them more likely to be business premise and affect which standards apply.

How to pay the bill

Credit meters

SLC(G&E)27(S) only applies to consumers and therefore there is no obligation to offer a wide choice of payment methods to business customers as there is for consumers, although, on a practical level, choices may be available for business customers, they would need to discuss this with their suppliers and or check their T&C. The Fuel Direct Scheme is not available for business users.

If the business customer is paying by direct debit and is unhappy with the amount of the payment, they would need to take this up with the supplier. The Code of Practice for Accurate Bills (Back Billing Code) only applies to consumers so there is no requirement to reassess DD amounts every 15 months.

Pre-payment meters

We have already mentioned that PPMs are not usually used by business customers but there is always the possibility of pre-paying for fuel in this way. It should be noted however, that there is no obligation to offer this method of payment to business customers since, as stated above, SLC(G&E)27(S) only applies to consumers.

Lost payments

Payments from business customers can get lost too and the procedures and advice would be the same as for consumers.

Enquiries regarding accuracy and payment methods

The same GS apply under this heading to both consumers and business customers as per Annex 1.

Summary

- Who has to pay a bill and how it can be paid will require business customers to look at what was agreed at the contract making stage and what has been included in the written contract, if there is one.
- Responsibility for paying an energy bill is likely to be more straight forward for a business, providing the person signing or agreeing to the contract was authorised to do on behalf of the business since it will then be binding on the business as a whole.
- Business users who move into businesses which are already connected will find themselves under an obligation to pay for what they consume as there will be a deemed contract in place in accordance with SLC (G&E)7(S).
- It should be noted that landlords for business premises will not have to comply with the rules in relation to maximum retail prices.
- It is possible, but unusual, for business customers to pay for fuel using a PPM, but there is no obligation on suppliers to offer this facility.
- Nor is there any requirement to offer a wide choice of payment methods, although in practice, various options may be available and businesses should discuss the possibilities with their suppliers and check their T&C.
- If a business customer is paying by direct debit and is unhappy with the amount of the payment, they would have to take this up with their supplier since the Code of Practice for Accurate Bills (Back Billing Code) only applies to consumers so there is no requirement to reassess direct debit amounts every 15 months.
- The same guaranteed standards apply in relation to accuracy and payment methods, to both consumers and business customers and details can be found in Annex 1.

Section 7

Connections, quality of supply and safety

These three areas are as important to business customers as they are to consumers, but some of the provisions regulating them are different. The SLC quoted in this section are those for the electricity distributors and gas transporters not the suppliers, unless indicated otherwise.

New connections and alterations

Entitlement to a connection

There is the same entitlement to a gas or electricity connection apart from the fact that there is no duty to connect premises for gas if the supply is likely to exceed 75,000 therms in a year (s10(8) GA 86).

There is more information available on the Ofgem website.

Procedures for obtaining a new connection

The procedures for getting a connection are broadly the same for consumers and business customers, although, the latter may require a higher rate flow connection for gas and this will affect the guaranteed standards that will apply.

Charges for new connections

All customers will be charged for new connections and it is necessary to obtain a quote for the work intended. The social fund will not assist business customers with the cost of obtaining a connection or meter installation.

The issues which may arise here are the same as for consumers so we will concentrate on the areas where there are differences.

Contestable and non-contestable work

The split between these categories of work will be the same regardless of who the customer is.

Quotations for electricity connections

The Electricity (Connection Standards of Performance) Regulations 2015 relate to premises dependent on the definitions below which are likely to be relevant to businesses and those with small

housing developments. Whether a customer is a consumer or business is not relevant for these regulations.

LV demand – where the highest voltage of the assets involved in providing such a connection, and any associated works, does not exceed 1,000 volts.

Single LV demand – an LV demand connection to single premises, involving a single-phase connection and no significant work other than the provision of a service line and the electricity distributor's fuses.

HV demand – a high voltage connection which has a nominal voltage of more than 1,000 volts but less than 22,000 volts.

EHV demand – an extra high volume demand connection where the nominal voltage is more than 22,000 volts up to and including 132,000 volts.

Small project demand – a connection via low voltage circuits fused at 100 amperes or less per phase with whole current metering and where the highest voltage of assets involved in providing such a connection and any associated works is low voltage and any associated works are low voltage to either:

- (i) a development scheme requiring 1-5 single phase connections at domestic premises
or
- (ii) a single premise requiring a 2 or 3 phase connection involving only the provision of a service line and the distributor's fuse

These Regulations provide for different time periods and payments in the standards in relation to the above when discussing estimates, quotes, scheduling and completion of works and energisation. The standards only apply where the customer has provided all relevant information that could reasonably be expected to be within their knowledge to the DNO and the DNO has received payment for the provision of the estimate or quotation where applicable. The details are in Annex 3.

Quotations for gas connections

The GS which apply to NDCs in relation to quotes for gas connections, depend on whether it is a standard or non-standard quotation in the same way that it does for a consumer quotation, however, the rate flow may well be higher and this effects the number of WD allowed for a quote to be given and the amount payable if it is not given within this time.

The relevant standards are set out in Annex 4 but they will not apply where the information provided by the consumer was incorrect or incomplete, or where consents from third parties are required:

It is worth emphasising that quotes from third parties, rather than DNO and GT cannot be challenged using the GS or the SLC and the reasonable price provisions in the SGSA will not apply if a price has been agreed. Security payments can be requested from business customers as well as consumers, if they are using a DNO or GT.

Connection charging methodology and accuracy schemes

The requirements to comply with charging methodologies and accuracy schemes apply equally to consumers and businesses, however the payments in respect of inaccurate electricity quotations differ not according to the nature of the customer, but the nature of the connection:

In the case of inaccurate quotations, Annex 4 applies for gas and Annex 3 for electricity (single LV and small project demands only).

Disputes

Only MBCs are able to refer complaints to the EO, not larger businesses, however, Ofgem 's power to make determinations is not governed by this principle and any business can request a determination when there is a power to make one. Many of the determinations in the Public Register part of the Ofgem website relate to the amount of connection charges quoted.

Alterations to the supply

Businesses are just as likely to require alterations to their existing supply and the guaranteed standards discussed above and below in relation to obtaining quotes and time periods for agreeing dates and for substantial completion of work also apply to alterations as well as charging methodology, charging statements and accuracy schemes.

Issues with alterations and connections

Quality of workmanship and design

Issues concerned with workmanship and design would be dealt with in the same way as for a consumer, under SGSA. Remember that only MBCs, not large business customers, can refer matters to the Energy Ombudsman.

Delay

Issues with time can include delays in relation to both commencement and completion dates. The requirements in relation to these are different for gas and electricity. Under the common law the time for performance of a service is presumed to be a condition in a business contract, which might mean that the remedy of repudiation (**rescission**) is available for a breach relating to a completion date. Practically, this may not actually help the customer, since the work will still need doing and there may be even more of a delay if another contractor has to be found!

Gas

There are GS for both commencement and completion dates in relation to gas connection / alteration works. Planned commencement and completion dates should be offered within 20 WD of the customer accepting a quote and automatic compensation will be payable depending on the rate of flow and number of days delay in providing such dates.

Failure to meet an agreed substantial completion date may also result in compensation payments and these depend on the value of the contract. Details are in Annex 4.

Electricity

The table below gives details of the time periods within which distributors should act in relation to non-contestable connections in accordance with SLC(E)15(D). Remember that compensation is not payable for a breach of a SLC.

Action required by DNO (SLC 15)	Timescale
Completion of the final work for a low voltage connection	Within 10 working days from receiving the request
Completion of works required for a low voltage phased energisation	Within 5 working days from receiving the request
Completion of the final works for a high voltage connection	Within 20 working days from receiving the request
Inform the customer of the proposed date for completion of extra high voltage connections	Within 20 working days of receiving the request (and complete the work as soon as practicable)
Complete works required for a high voltage energisation	Within 10 working days of receiving the request.

The Electricity (Connections Standards of Performance) Regulations 2015 impose compensation amounts for failures to schedule dates, complete work and energise premises within a certain number of days or by agreed dates (which presumably have to be within the above SLC timescales). The amount of compensation due and number of days allowed, depends on the voltage demand of the property rather than the status of the customer, as mentioned earlier. The details are in Annex 3.

Change of mind

Business customers will not acquire cancellation rights in respect of distance or off-premises contracts under legislation, however, many connection agreements contain an express term which allows for cancellation or termination and a business customer would need to check to see what, if any, conditions are attached to this, for example, giving written notice, paying for work already carried out and possibly an administration fee. Any exclusion clauses would be subject to the UCTA.

Quality of supply, disruptions and excavations

Businesses may experience similar problems to consumers if there are problems with disruptions to energy supplies and can use the same areas of law to make a claim if appropriate. It will be important to check for terms which exclude or limit liability in contracts, remembering that such clauses will be subject to UCTA.

Business customers will be affected in the same way as consumers when it comes to the quality of their energy supply being affected and the effects of disruptions and excavations. However, they may receive different amounts of compensation under the guaranteed standards so remember to check the relevant tables in Annex 2 (electricity) or Annex 4 (gas). The requirement to provide alternative heating and cooking facilities to gas customers in certain circumstances (on the PSR) does not apply to business customers.

Practical tip

Business customers experiencing disruptions to supply should be advised to make a note of the date and time of each disruption so that in the event that they experience multiple disruptions they will have a record to validate their claim.

In addition issues relating to compensation for small businesses when excavations are carried out by a transporter which cause a loss of earnings, are covered by the Gas (Street Works) (Compensation of Small Businesses) Regulations 1996 : The Regulations detail the recourse available for loss of trade if excavations are still in place after 28 days.

www.opsi.gov.uk/si/si1996/Uksi_19960491_en_1.htm

Electricity repairs and maintenance

There is no specific energy code or law which covers damage to premises caused by repairs and maintenance of electricity lines and equipment and none of the GS apply in this situation. Any claim would have to be based in the law of negligence if appropriate and remember that the UCTA allows for exclusion or limitation clauses for property damage or economic loss through negligence, providing they are reasonable. Liability for personal injury caused by negligence cannot be excluded.

Wayleave agreements and easements

These types of arrangements, whereby permission is granted to distributors and transporters to access customer premises or land to install and maintain plant and equipment, are common with business customers as well as consumers.

Safety

All the potential safety issues outlined in unit 7 are just as likely to occur on business premises as at consumer properties and so the advice for dealing with such matters remains the same.

SLC(G)29(S) does not apply to business customers so there is no requirement to provide them with annual statements containing the information about various gas safety matters listed in paragraph 5 or the obligations to carry out free gas safety checks for certain customers.

SLC(G&E)6(S) applies to business customers as well as consumers and so a 24/7 telephone service must be available for people to report.

Property repairs and improvements

If business users are having work carried out at their premises, the activities involved could affect the gas pipes and electric cables or overhead lines. It is advisable to check with the relevant pipeline operator or local distributor beforehand and if a query has been directed to a gas transporter in relation to the location of gas pipes, a response should be provided within five working days, otherwise compensation of £40 will be payable (Annex 4). There is no equivalent standard for electricity.

Important

Business customers who smell gas or suspect that there is a gas leak either inside or outside of their property should contact the National Gas Emergency Line on 0800 111 999 (note – they should also call this number if they suspect a leak of carbon monoxide).

If there is a potential hazard on an electricity cable, overhead power line or substation, business users should contact the emergency number on 0800 404090.

Summary

- There is the same entitlement to a gas or electricity connection apart from the fact that there is no duty to connect premises for gas if the supply is likely to exceed 75,000 therms in a year.
- The Electricity (Connection Standards of Performance) Regulations 2015 apply to premises requiring either connection or alteration work, depending on their voltage demand rather than whether they are for consumer or business use.
- The Connections Standards require distributors to pay out compensation for failures to meet standards relating to estimates, quotations, scheduling and completion of work and energisation, and the amounts differ depending on whether the demand is for a single LV, other LV, small project, HV or EHV.
- The schemes and grants available to help with payments are for consumers only and businesses may be able to seek advice from the Business Debtline and MBC may be referred to the EHU at CF if they are vulnerable.
- The distinction in compensation amounts for a failure to meet the standards for gas quotations, depends on whether the quote is for a standard or non-standard quotation and the number of working days for a quote to be given is longer if it is for a business customer.
- Quotes from third parties, rather than DNO or GT cannot be challenged using the GS or the SLC and the reasonable price provisions in the SGSA will not apply if a price has been agreed.
- MBCs may be able to refer complaints to the EO but larger business customers cannot, however, Ofgem's power to make a determination is not affected by the size of a business

customer and many of the determinations made relate to the amount of connection charges quoted.

- Under the common law, the time for performance of a service is presumed to be a condition in a business contract, which might mean that the remedy of repudiation (rescission) is available for a breach relating to a completion date, although practically this would not usually be a satisfactory solution.
- SLC(E)15(D) lays down timescales for some of the voltage demand completion and energisation requirements but not all those covered by the Connection Standards are covered by this SLC and breach of a SLC does not give rise to compensation for a customer, whereas breach of the CS does.
- Business customers do not acquire cancellation rights in respect of distance or off-premises contracts from legislation but they may have express rights of cancellation and or termination in their contracts which will be subject to the UCTA but not the UTCCR, which only applies to consumers.
- There are similar provisions in place for business customers when it comes to the quality of supply experienced, however, the compensation amounts may be different and the PSR only applies to consumers.
- The same GS applies to business customers when it comes to compensation payments for gas customers affected by excavation works, although the amounts are higher for businesses and in addition the Gas (Street Works) (Compensation of Small Businesses) Regulations 1996 apply and allow for claims for loss of trade if excavations are still in place after 28 days.
- There are no code or laws which cover compensation for electricity repair and maintenance work, however, the law of negligence may be an appropriate avenue for a claim, subject to any exclusion clauses complying with the UCTA being in place.
- Wayleave agreements and easements, whereby permission is granted to DNO and GT to access customer premises or land to install and maintain plant and equipment, are common with business as well as consumer customers.
- All the potential safety issues outlined in unit 7, section 3 are just as likely to occur on business premises as at consumer properties and so the advice for dealing with such matters remains the same and a 24/7 telephone service must be available for people to report problems.

Section 8

Debt and disconnection

It should be noted that the 'Fuel Poverty Strategy' covers consumers and not businesses and so the government targets will not apply to business customers. However, you will still receive calls from traders who are having problems paying their gas and electricity bills and who either face disconnection of their meters or have already been disconnected.

Getting into debt

Reasons for debt accumulating

The reasons which business customers experience for debt accumulating are likely to be very similar to those which consumers experience.

Being in arrears

When a trader can be considered to be in arrears may depend on the T&C in their contract concerned with paying the bill. They may be given a period of time to pay but once that has passed they will be considered to be in arrears. The Gas and Electricity Codes allow for 28 days after a written demand has been sent. This should be followed by a seven working day notice before disconnection can take place.

Debt counselling / advisory services

The debt counselling and advisory services listed in unit 8 are all available to help consumers. The Business Debtline may be able to assist traders who are unable to pay their gas and or electricity bills. It may also be possible for traders to obtain advice from their professional body or trade organisation, if they belong to one, for example, the National Farmers Union.

Repaying the debt

Failure to pay a bill can have serious consequences and below we will consider the supplier's right to disconnect the supply for non-payment.

Controls in place to protect consumers

SLC(G&E)27 does not apply to business customers and the suppliers are not obliged to offer business customers a range of payment methods, Fuel Direct, a PPM, explanations about how DD payments have been calculated or information about how to reduce charges through more efficient use. Energy efficiency information, also required under SLC(G&E)31 for consumers, has to be published on the suppliers' websites and provided to anyone who requests it so business customers could access this information in their personal, rather than business capacities. Some of the suggestions could well apply to certain business premises as well as domestic homes.

The provisions requiring cost reflective pricing (SLC(G&E)27.2A) and prohibiting undue discrimination between customers (SLC(G&E)25A), also do not apply to business consumers. In fact the very essence of business contracts is that they are all likely to be very individual and each trade customer could well be paying a different amount for their energy supplies.

Information from suppliers about their options

As mentioned above, SLC(G&E)27 only applies to consumers and so there are no provisions concerning the following to protect business customers.

There is **no** requirement to:

- ascertain the ability to pay
- provide a choice of payment methods
- give out certain information, for example, concerning more efficient energy use
- direct customers towards financial assistance

Although, some of the required information will be available on suppliers' websites and therefore may be accessible to anyone.

Arrangements to pay arrears and prevent disconnection

Temporary payment arrangements

If arrears are the result of a short-term situation the supplier may be willing to negotiate arrangements to repay the debt during the period before the issuing of the next bill. There is no obligation on the supplier to do this and it may be more difficult to achieve for a business customer.

Agreeing a payment plan with the supplier

The business customer should contact their supplier in the event of being unable to pay a bill to discuss the possibility of arranging a payment plan but there is no obligation on the suppliers to do this. The T&C of the contract and any code of practice which may apply should also be consulted but the suppliers are not obliged to have codes for dealing with their business customers.

Pre-payment meters

PPMs do not have to be offered to business consumers but they are available and some traders may have them. They can be set to collect arrears over a specified time period, and generally, they incur higher charges.

Payment of a security deposit

Suppliers may request security deposits from business consumers and are entitled to do so.

Fuel Direct payments

Fuel Direct, the Third Party Deduction Scheme, is only available to consumers.

Part payments in full and final settlement

The supplier may not be willing to accept part payment of a debt in full and final settlement of a bill.

Ways to reduce future charges

Payment by Direct Debit

Traders may find that is cheaper for them to pay by DD, however, as SLC(G&E)27(S) does not apply there is no obligation for the supplier to base the amount on the most current information available, to give clear explanations about the basis for the amount or to review it.

Changing tariff

Whether a business customer can change tariff and how and when, is likely to be covered by their T&C. Remember that the T&C in a MBC are covered by SLC(G&E)7A(S) which was discussed in section 4.

Changing supplier

Changing supplier may be one way to reduce future charges but this is often more difficult for a business customer to do as many of them have fixed term period (FTP) contracts with high termination fees if they are ended before they run their term. All business customers receive some protection as discussed in section 4 under SLC(G&E)14.2(S) and if a contract was entered into after the 5/1/04 debt cannot be used as grounds to prevent a PST, but note that the FTP scenario is more likely.

Following the 2011 RMRNDP, Ofgem sent out an open letter to business suppliers reminding them of their obligations under SLC(G&E)14(S) and highlighting good practice.

Some businesses use TPIs when considering changing their supplier and the activities of these brokers was discussed in section 3 above.

Financial and other assistance

Financial assistance

All the various financial schemes are made available for consumers only, there is no financial assistance for business customers who are in debt.

Other assistance

Most of the other provisions available for assistance are also only available to consumers. However, the Business Debtline may be able to advise traders who are in debt and the EHU at CF may be able

to assist MBC in relation to a threatened disconnection. Note that they are unlikely to be able to help if a small business has already been disconnected.

Practical tip

If a business is a small business (see definition of MBC in section 1) then the EHU **may** be able to assist by giving advice on:

- ✓ a threatened disconnection (not much they can do if already disconnected)
- ✓ other issues **BUT ONLY IF** the MBC can be considered to be vulnerable (unable to deal with the matter themselves)

Disconnections

Disconnections

Typical disconnection procedures

The Gas and Electricity Codes apply equally to consumers and business customers, so if the correct procedures of the Gas Code or the Electricity Code have been followed, then the supplier can disconnect the premises unless there is a genuine dispute about the amount payable. The procedures are:

- ✓ a written demand for payment has been sent
- ✓ the business has not paid within 28 days
- ✓ a seven working day notice has been given notifying the business of the proposed disconnection.

The supplier will also be able to recover any expenses incurred in carrying out the disconnection. As an alternative, the supplier also has the power to install a PPM, but is under no obligation to offer one. Suppliers will have the same rights of entry into premises to disconnect and remove meters. The additional protections afforded to consumers in SLC(G&E)27 are not available for business customers.

If there is a genuine dispute for a valid reason, the EHU may be able to ask the supplier to put a hold on the debt recovery. They can usually only do this, if the business customer contacts them well before the intended disconnection date. Once a warrant has been issued this becomes very difficult to do. A genuine dispute about the debt may increase the chances of a reconnection, for example,

- ✓ based on incorrect readings
- ✓ debt belongs to a previous occupier

- ✓ payments are missing from the account

Provisions for vulnerable people

If any of the circumstances listed in the Safety Net procedures applies this could help with the negotiation with suppliers who have threatened disconnection, however, they are aimed at vulnerable consumers not business users. The suppliers have given Ofgem a commitment to apply the safety net principle if there are vulnerable consumers in domestic premises attached to the business premises, for example, living in accommodation which is part of a pub.

It may be worth checking whether the suppliers have codes of practice relating to debt and disconnection, which apply to businesses customers.

Summary

- The reasons which business customers experience for debt accumulating are likely to be very similar to those which consumers experience and whether they can be considered to be in arrears may depend on the T&C and what they say about allowing a time to pay.
- Business contracts are all likely to be very individual and each trade customer could well be paying a different amount for their energy supplies with no requirement to ascertain the ability to pay, provide a choice of payment methods, give out certain information, such as energy efficiency use or to direct customers towards financial assistance.
- Changing supplier may be one way to reduce future charges but this is often more difficult for a business customer to do as many of them have fixed term period contracts with high termination fees if they are ended before their term; changing tariffs is also a possibility.
- The Business Debtline may be able to assist traders who are unable to pay their bills and some may be able to obtain advice from their professional body or trade organisation if they belong to one, although the first step would be to contact the supplier to try and arrange the possibility of a payment plan even though the suppliers are not obliged to offer them.
- It is likely that a supplier can disconnect if a business has been given a written demand for payment, a 28 day period to pay and a seven working day notice, unless there is a genuine dispute.
- MBCs may be able to seek help from the EHU at CF in relation to a vulnerable customer or a threatened disconnection, although, there is little they can do if the business has already been disconnected or if a warrant has been issued.
- Suppliers have given Ofgem a commitment to apply the safety net principle if there are vulnerable consumers in domestic premises attached to the business premises, for example, living accommodation which is part of a pub.

Section 9

Consumer organisations and complaint resolution

Resolving complaints

Complaining to the company

The complaint resolution path discussed in Unit 9 is also appropriate for business customers. The first port of call should be the supplier concerned, or GT / DNO if more appropriate, depending on what the problem is. The Gas and Electricity (Consumer Complaint Handling Standards) Regulations 2008 apply to MBC too so suppliers, GT and DNO should all have appropriate systems in place to deal with complaints from small businesses as well as consumers, although, they may have different procedures. This should include procedures for dealing with referrals from CA.

The Big 6 suppliers have similar complaints handling procedures for business customers as they do for consumers, although sometimes there is a different link to choose on the website and the contact details are different.

Company referrals

Practical tip

When advising a customer about how to complain to the company you need to access that company's specific complaints procedure which can be found on RAST. This may include a preferred telephone number that can be used specifically by customers who have contacted Citizens Advice for advice.

Court action

Business customers can be referred to the EO providing they meet the criteria for a MBC and as a last resort they could take a valid complaint through the court system.

Detailed explanatory notes can be found on the appropriate court websites:

Practical tip

Your role does not include giving advice about going to court and anyone requiring such advice should be signposted to their LCA and given the details of the relevant court websites noted above.

Citizens Advice and key partner organisations

The partner organisations which Citizens Advice works with are the same for business customers as for consumers, however, the range of practices which can be referred to TSS is less since much of the legislation they enforce only protects consumers.

Trading Standards Services (TSS)

TSS legislation that protects businesses has been outlined earlier in this unit and so issues which need to be referred, may fall within the following categories:

- ✓ misleading advertising (breaches of the BPR)
- ✓ lack of information on websites (breaches of the ECR and or PSR)

Practical tip

When referring a case to TSS in accordance with RAST protocols, it is important that you explain to the customer that you are referring the matter to TSS for their consideration. Do not state that TSS will be taking action or investigating further.

Remember that the BPR apply to verbal statements as well as written advertisements and so discussions between customers and brokers as well as suppliers will be covered. The usual warning about the difficulty with proving verbal statement applies. Ofgem has powers under these Regulations alongside TSS and the OFT. Note that the BPR are an enforcement not compensatory measure.

Consumer organisations

Most consumer organisations, by their nature, are there to advise consumers, but the ones listed below do give advice to businesses too, although some may only deal with small businesses, for example, the EHU and the EO.

Note that cases cannot be referred to the EO until after the minimum time period which is eight weeks.

Businesses might belong to professional bodies or trade associations who might offer advice on energy matters.

The categories listed are those used in Unit 9 and next to each category appears the name of the organisations which may be able to assist business customers. Where the name appears in bold, it is an organisation which deals solely with businesses and so contact details can be found below, rather than in Unit 9.

There are a number of organisations which have different contact details for Scotland and even some which are completely specific to Scotland. These appear on the Adviceguide as a

separate list if Scotland is chosen as the relevant region from the pull down menu. This can be combined with an alphabetical and or theme search too.

In these notes the Scottish variations are highlighted in grey as one of the following:

- a separate box for the most commonly used organisations
- separate contact details in the main notes

Debt

Business Debtline

Business Debtline is a charity, formed in 1991 as part of the Money Advice Trust to increase the quality and availability of free, independent money advice in the UK. Advice is given to businesses in confidence and by trained specialists.

www.bdl.org.uk

Marketing

Utilities Intermediaries Association

The UIA is a trade association for third party intermediaries in the energy industry (TPIs). Such individuals act as brokers or consultants for small businesses to obtain favourable energy supply contracts for them. It is a not for profit company limited by guarantee which re-invests any profit back into the organisation. It promotes membership as a guarantee of integrity, competence and a high standard of service. To achieve this it is responsible for running two codes of practice concerned with firstly, the conduct and behavior of TPIs, and secondly, the operation of business internet switching sites, that is, price comparison websites. More details can be found in section 3.

www.uia.org.uk

Summary

- Business customers with complaints should first of all try to resolve them with the company concerned, whether it be a supplier, GT or DNO, following the procedures laid down by them.
- The Gas and Electricity (Consumer Complaint Handling Standards) Regulations 2008 apply to MBC so suppliers, GT and DNO should all have appropriate systems in place to deal with complaints from small businesses as well as consumers, although, they may have different procedures and this should include procedures for dealing with referrals from CA.
- Court action should not be considered unless all other avenues have been exhausted, including any alternative dispute resolution procedures, such as the Energy Ombudsman who will deal with complaints from MBCs after the specified time period of eight weeks.
- CA works with various partner organisations, for example, TSS, the Energy Ombudsman and Ofgem, to ensure that the activities of the energy companies are appropriately monitored and dealt with where necessary and their customers receive relevant advice, although there is a limited range of practices which can be referred to TSS, namely only breaches of the BPR, ECR, or PSR. Since 14th November 2013, Ofgem has also had powers under the BPR following the 2011 RMRNDP.
- Many of the organisations detailed in Unit 9 only give advice to consumers, although there are a few who will give advice to business customers in particular the Energy Ombudsman and the EHU, providing they are MBC and in the case of the EHU, in addition are vulnerable or are being threatened with disconnection.
- There are two organisations who deal specifically with business customers and they are Business Debtline and the UIA which is a trade association with responsibility for the business doorstep and business price comparison codes respectively.