



Small Businesses As Consumers: Are They Sufficiently Well Protected?

A Report for
The Federation of
Small Businesses

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1. Introduction

- 1.1. When individual consumers purchase goods and services, they enjoy certain rights and protections. These derive from general consumer protection legislation and also, for the important utility sectors, from industry-specific regulations. These various provisions are designed to help consumers to make effective purchasing decisions, without fear of exploitation or misrepresentation.
- 1.2. In general, the level of protection afforded to business customers is significantly lower, reflecting a view that businesses ought to be in a position to look after themselves. A culture of *caveat emptor* or 'buyer beware' is typically considered sufficient protection for business customers, other than in extreme circumstances.
- 1.3. There is increasing recognition, however, that smaller business customers, and in particular sole traders and micro businesses¹, are likely to face many of the same problems as individual consumers when making purchasing decisions, especially when buying products or services that are not directly related to their particular line of business. For this report, we have reviewed the available evidence on the behaviour of smaller business customers and their treatment by suppliers. While this evidence is limited, it is broadly supportive of the view that smaller businesses find it significantly more difficult than larger businesses to make effective purchasing decisions.
- 1.4. This gives rise to an obvious question: Should any of the protections provided for individual consumers be extended to such smaller business customers? In this report, we review the arguments for and against such an extension, which would effectively give extra protections to smaller business customers relative to larger business customers. We conclude that extension is likely to be merited in many situations, especially within the regulated sectors, where significant concerns can arise and regulations can be relatively well targeted to address them.
- 1.5. We then go on to consider the current position within both general consumer law and also the regulated sectors in the UK. To provide this comparative perspective, the report necessarily takes a high level approach, and does not seek to provide a comprehensive analysis of the regulatory position in each sector.
- 1.6. We observe that there is growing awareness amongst the UK regulators of the needs of smaller business customers, and a number of measures have been taken to help to protect them. However, it remains a somewhat mixed picture.

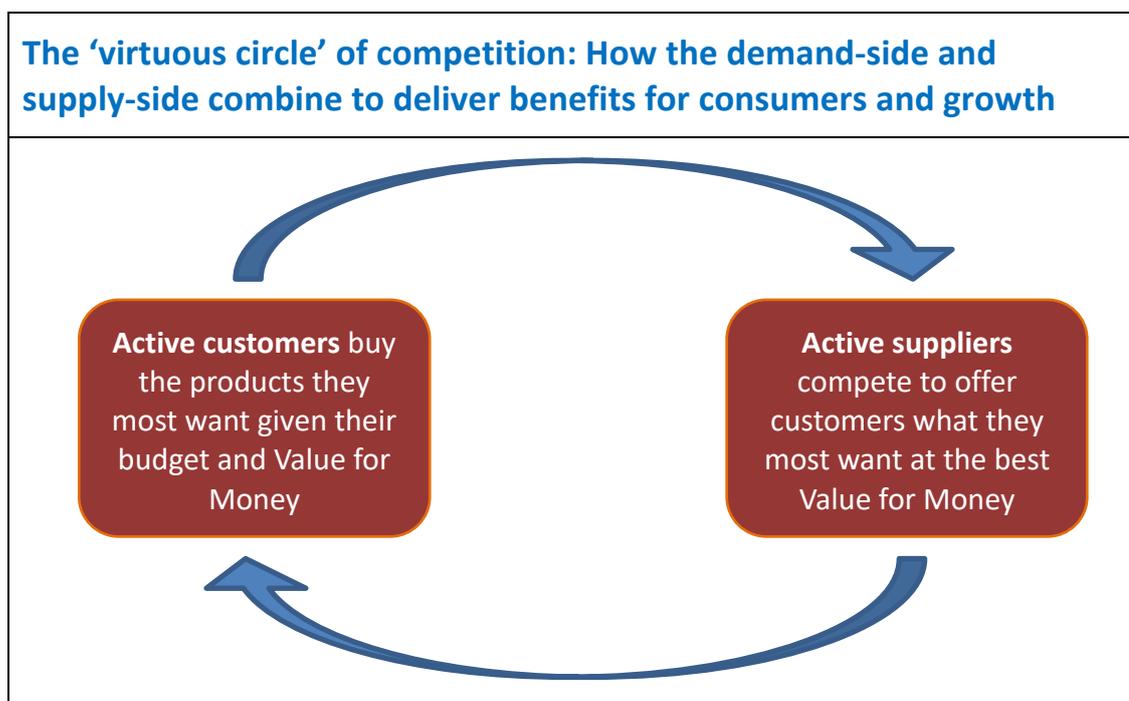
¹ As discussed further below, the precise definition of 'microbusiness' or 'micro enterprise' differs across areas of legislation and policy but in broad terms they are businesses fewer than 10 (or sometimes 10 or fewer) employees.

- In *telecoms*, the regulator Ofcom follows a broadly consistent policy of extending all consumer protection provisions to micro businesses, reflecting the wording in the 2003 Communications Act.
 - In *energy*, the regulator Ofgem considers each element of consumer protection separately, on the basis that any extension of regulatory protection should be proportionate and justified by the evidence. However, it has given considerable focus to this area in recent years, and has increased the protections available to micro businesses as consumers (as well as extending the definition of micro businesses it employs).
 - In *financial services*, the picture is complex. Consumer protection provisions are extended to business customers in some areas, but not others, and the cut-offs for which business customers receive additional protection differ across products. This broadly reflects the legislation under which the relevant bodies act, as opposed to policy choices by the regulators. In some areas, there is a clear line drawn between firms that are provided with additional protection and those that are not. In others, intervention requires assessment of whether the smaller business involved is ‘non-sophisticated’ and thus worthy of protection.
 - In *water*, the England and Wales regulator Ofwat has specific rules around information provision for household customers, but beyond that it currently makes little formal distinction between different types of customers in terms of consumer protection provisions. It does, though, take a risk-based approach to reviewing information provision, which focuses on the extent of customer harm. In the past, smaller business customers have been unable to switch water and sewerage supplies, and thus consumer protection has arguably been of less relevance, but this will change following the enactment of the current 2013 Water Bill. Ofwat is thus in the process of revisiting the consumer protection needs of smaller business customers.
- 1.7. Within *general consumer protection law* in the UK, there has been no extension of the core consumer protection laws to cover smaller business customers. Smaller businesses are treated no differently from larger businesses and receive substantially less protection than individual consumers. The UK differs in this respect from a number of other jurisdictions including other EU Member States.
- 1.8. It is beyond the scope of this report to assess in detail the extent of residual detriment arising from this mixed degree of protection for smaller business customers. Some of the variability in the protections available for smaller business customers across markets may reflect differences in the extent of the likely problems they face, and perhaps also the practicability of rules designed to protect them.

1.9. However, in our view, the many different approaches and definitions employed across the regulated sectors do indicate a lack of a unified framework for considering the issues faced by smaller businesses, when acting as consumers in the regulated sectors, including at stage of writing legislation. On this basis, we make a number of recommendations. These are primarily designed to achieve a more rigorous and consistent approach to this important issue. The annex to the report provides further details and references for the evidence drawn upon here.

2. Why worry about smaller business customers?

- 2.1. When they work effectively, competitive markets can deliver important benefits for both consumers and growth. In order to do so, however, the demand-side of the market needs to be vigorous and well, not just the supply-side.
- 2.2. This requires effective decision-making on the part of the customers in the market, whereby these customers seek out and purchase the products and services that provide them with what they most want, at the best value for money. If they do, and if the supply-side of the market is also working well, then the firms which win the most business, and make the highest profits, will be those that can offer the products and services that best match these customer preferences.
- 2.3. This process can be viewed as the ‘virtuous circle’ of competition, as shown diagrammatically below.



- 2.4. There can, however, be blockages to this 'virtuous circle'. In particular, on the demand-side, effective consumer decision-making relies on consumers being able to access, assess and act on information about the different products and services available in the market. Each of these can sometimes be imperfect, especially in markets which are characterised by complexity of choice, search and switching costs, and other factors which might affect consumers' decision-making such as behavioural biases like over-confidence or hyperbolic discounting.
- 2.5. Where such problems arise, consumer decision-making can be improved, and thereby competition in markets can be helped to work more effectively, through actions that:
- **Improve consumers' access to information:** for example by ensuring that suppliers provide adequate and accurate information in a clear and transparent manner, when describing their products and services pre- and post-sale or contract agreement.
 - **Improve consumers' assessment of information:** by providing facilitating and empowering consumers to compare across suppliers and tariffs and take the purchasing decision that best satisfies their needs.
 - **Improve consumers' ability to act on information:** by preventing consumers from getting locked into expensive or unfair deals (and also by protecting them from unfair *ex post* hold-up if they do get stuck).
- 2.5. Consumer protection measures can assist in all of these areas. They can also be valuable in reducing detriment more directly where it occurs. For example, ombudsman services provide an important route for customers to ensure that any complaints are dealt with fairly, while rules which place conditions around the ability of suppliers to disconnect customers may be important in ensuring that customers are treated fairly, and not overly penalised for simple mistakes or short-term payment difficulties.

Protections provided for individual consumers

- 2.6. There is a recognition that individual consumers, sometimes termed 'natural persons', can face particularly high search and switching costs, and other difficulties and biases in accessing, assessing and acting on information, and indeed that firms can exploit these to the detriment of both consumers and competition.
- 2.7. For this reason, consumers are given general protections under consumer law, and also – in the important utility sectors - certain industry-specific protections through regulation.

Protections provided for businesses customers

- 2.8. When businesses purchase goods and services, by contrast, they are generally seen as able to look after themselves (other than in extreme situations). They are therefore afforded substantially less protection, both general and industry-specific.
- 2.9. It is natural, however, to think of there being a spectrum, rather than a dichotomy, between individual consumers and firms. While large firms may well be in a position to purchase effectively, sole traders and micro businesses are likely to have rather more in common with individual consumers.
- 2.10. Intuitively, there are (at least) four reasons why small businesses may struggle to engage in the accessing, assessing and acting on information that is required for effective purchasing decisions:
- *Lack of expertise in purchasing the product or service.* There seems no real reason to expect a small business to have any more expertise than a domestic customer in purchasing most products and services. The only exception is where a firm is purchasing core inputs for its particular trade, where we might expect even a small firm to be reasonably expert. For more general purchases, larger firms are more likely to have staff who have a specific procurement role, and may even be professionalised in this function. This is far less likely in small firms.
 - *High opportunity cost of time spent making purchasing decisions.* A small business will often be working flat out trying to run its core business effectively. The opportunity cost of spending time on a non-core activity, such as choosing an energy supplier, may be high. Indeed, this opportunity cost of time may even be higher than it is for a domestic customer. As such, there is a risk that small businesses may be even less well placed than domestic consumers in making such decisions.
 - *Low benefits (actual or perceived) of time spent making purchasing decisions.* A small business will typically have relatively low purchasing requirements for products and services that are not directly linked to its core trade. This in turn affects the likely benefits from gaining improved terms. The benefits to a small business of spending time choosing the ideal energy supplier, for example, may be relatively limited, or at least perceived as such.
 - *Poor bargaining power.* Domestic customers often buy products and services at set prices, drawing on price lists or standard tariffs. Larger businesses tend to be able to negotiate better deals than this by exploiting their bargaining power. Smaller businesses, however, have far less bargaining power, especially in

respect of large companies such as major utility service providers, and in some cases (such as energy) they may not have access to standard published tariffs.

- 2.11. The first two rationales above relate directly to the size of the business customer. The latter two relate more to the size of purchase made by that customer.
- 2.12. This discussion raises two obvious questions. Are micro and other smaller businesses more analogous in their purchasing behaviour to individual consumers (or possibly even less effective than such consumers), as compared with large businesses? And if so, should they benefit from protections under the law and regulation that are more analogous to those provided for individual consumers? In the remainder of this section, we review the available economic evidence and legal arguments around these questions.

The available economic evidence on smaller business customers

- 2.13. For this report, we have reviewed the available evidence on the behaviour of smaller business customers and their treatment by suppliers. There is limited empirical evidence that compares directly the decision-making of individuals and micro/small businesses.² However, there is more (albeit still limited) evidence on the relative purchasing behaviour of different sizes of business customers, which allows us to compare the behaviour of micro and small businesses with that of larger firms.
- 2.14. This evidence paints a broadly consistent picture of significant differences between smaller and larger customers in terms of their decision-making behaviour and also their treatment by suppliers. For example, we have extracted the following statements from a couple of recent qualitative research reports, both carried out on behalf of Ofgem.

“Size and maturity of business emerged as the crucial factor in dictating an organisation’s ability to manage supplier relationships effectively.....Large and very large consumers had positive, business-like relationships with energy suppliers.....Medium-size consumers had generally developed a functional but stable

² The closest we have found is a 2012 report commissioned by Ofgem, examining complaints to the Ombudsmen Services: Energy, by both domestic (individual) consumers and micro businesses. This survey reveals substantial similarity between the two groups of customers, at least in respect of their views of the complaints process. Both groups exhibit substantial dissatisfaction with the overall complaints process, with micro businesses marginally less likely to be satisfied (40% of Domestic customers and 34% of micro business customers claimed to be satisfied). There was also a significant disconnect in perceptions between the supplier and both types of customer, with over two in five of all complaints classified as resolved by the supplier being considered by the individual customer to be unresolved (41% for domestic and 44% for micro business customers. See GfK NOP (2013), “Complaints to the Ombudsmen Services: Energy - Report for Ofgem exploring why few consumers refer their complaint to Ombudsman Services: Energy”, <https://www.ofgem.gov.uk/ofgem-publications/85086/ofgemgfkcomplaintstoombudsmanservicesenergyreport2013.pdf>.

relationship with suppliers, having often had bad experiences in the past from which they had learned.....Small consumers often had poor experiences with suppliers, and felt insufficiently protected in their dealings with them.....Micro consumers also had poor experiences on a regular basis, and sometimes felt exploited by suppliers or brokers. They were often very confused by their dealings with energy suppliers.” (Insight Exchange “Research into the Proposed Standards of Conduct: Non-Domestic Consumers” (2012)).³

“Smaller businesses in particular showed lower levels of understanding of the energy market and similarly lacked understanding of the role of third party intermediaries. Many within this group harboured mistrust of brokers and tended not to use them to procure their energy supply. Given the difficulties smaller businesses also expressed with regard to shopping around and switching supplier, this meant there was a lower propensity to switch overall within this group.” (Opinion Leader “Research Findings on the Experiences of Non-Domestic Customers” (2012)).⁴

- 2.15. Further evidence in support of this view can be found in the following selection of more detailed results from a number of recent quantitative surveys.
- 2.16. The following table examines the responses by different sizes of non-domestic water and sewerage customers to a 2012 survey carried out jointly by the Consumer Council for Water and Ofwat.⁵

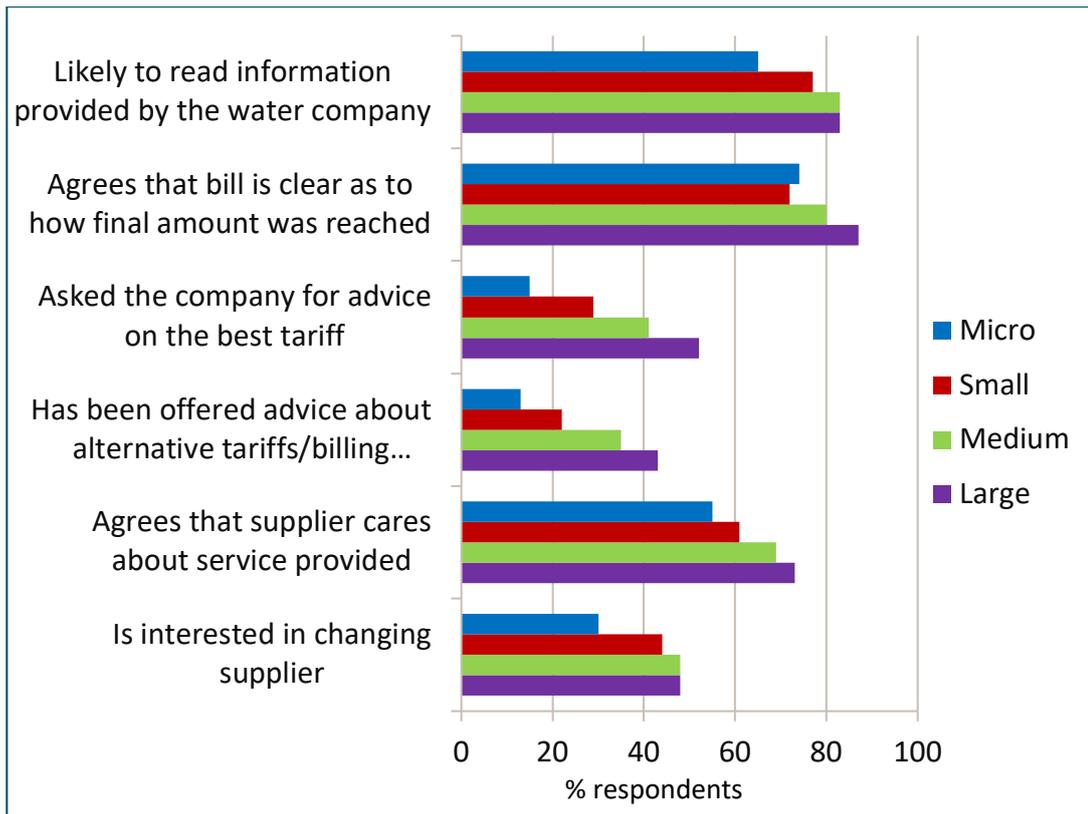
³ <https://www.ofgem.gov.uk/ofgem-publications/39447/non-domestic-soc-report.pdf>. Page 3.

⁴ <https://www.ofgem.gov.uk/ofgem-publications/39445/ofgemnon-doms-research.pdf>. Page 27.

⁵ Consumer Council for Water and Ofwat, “Understanding the Needs of Small and Medium Enterprise Customers”, (2012), available at

http://www.ccwater.org.uk/upload/pdf/Understanding_the_needs_of_SMEs.pdf

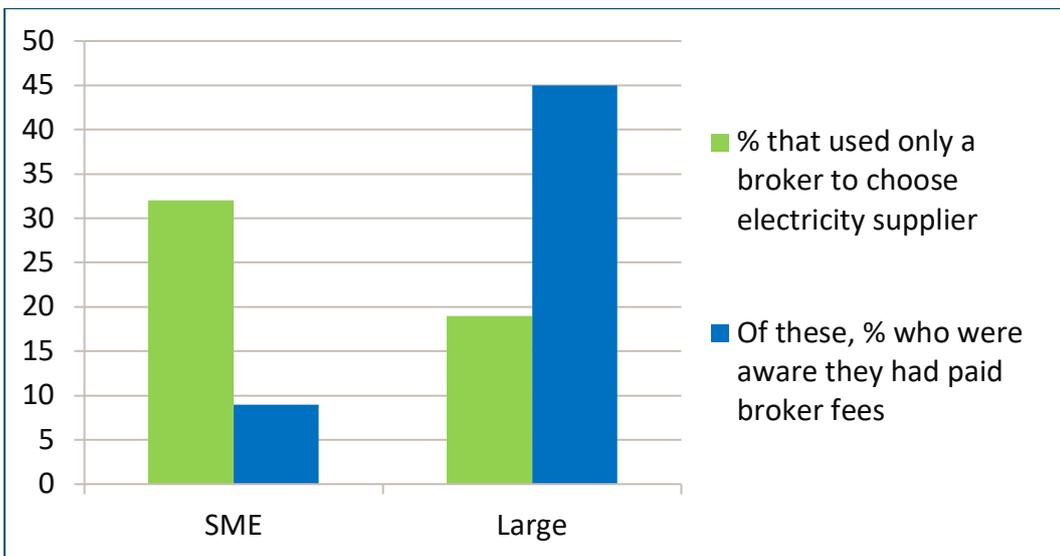
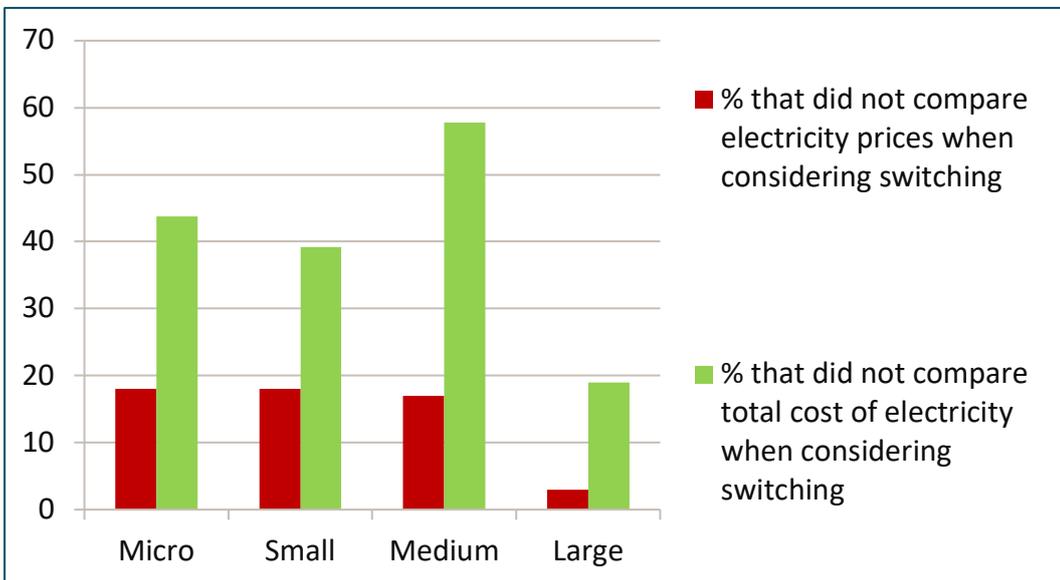
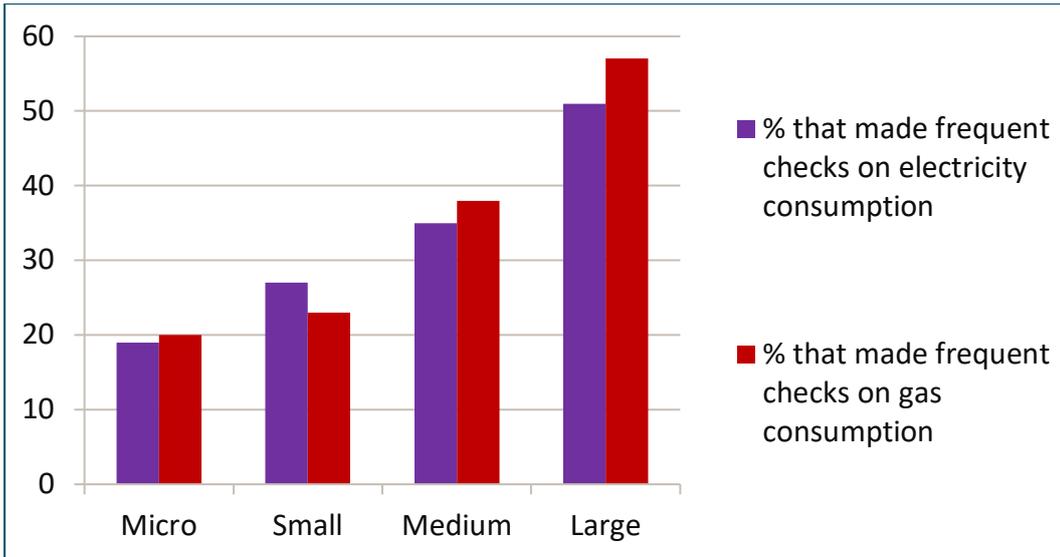
For the purpose of this study *Micro* businesses were those with fewer than 10 employees, *small* businesses are those 10 to 49 employees, *medium* those with 50 to 99, and *large* those with 100 to 250 employees.



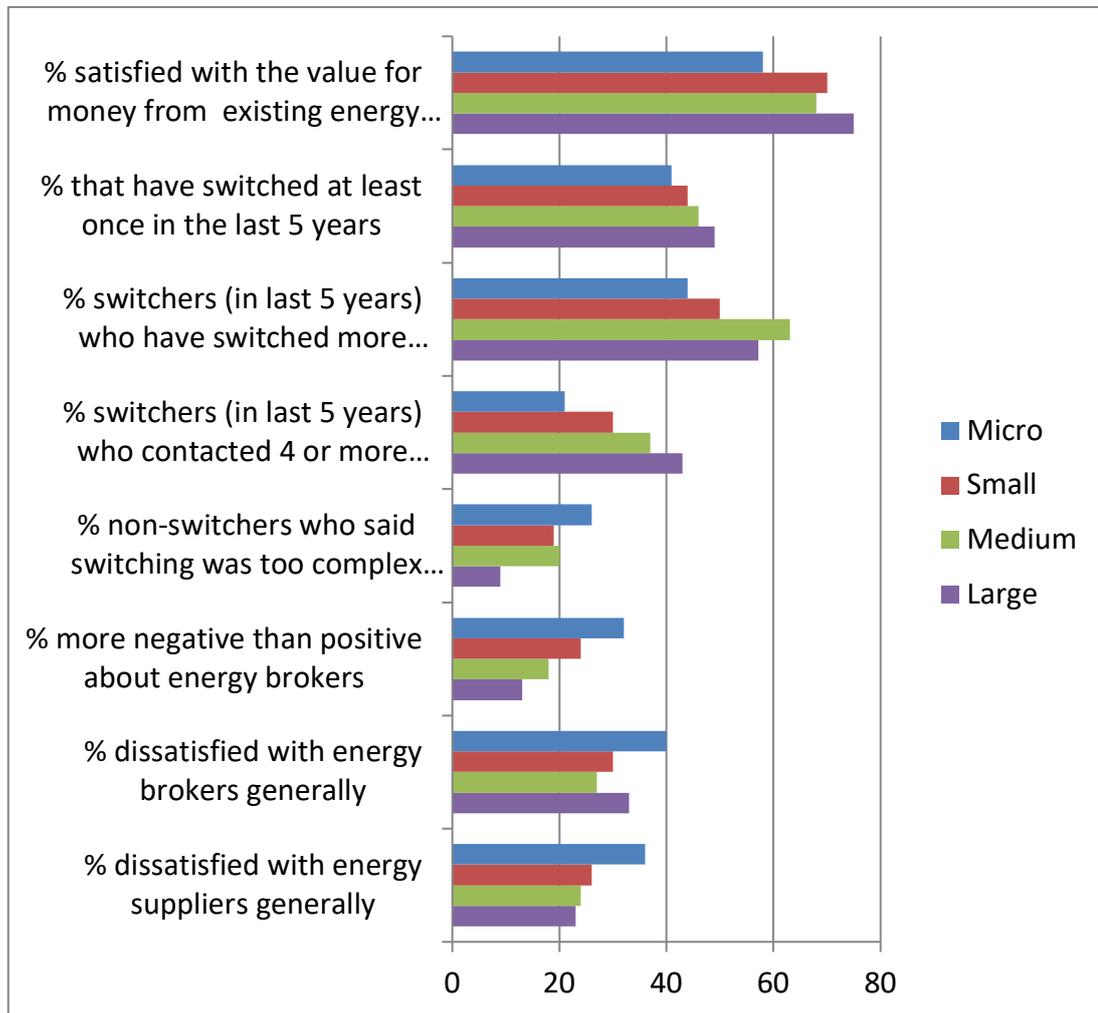
2.17. As is clear from this figure, micro businesses (and to some extent also ‘small’ businesses) were found to be less likely to read the information provided by the water company, less likely to ask for advice on the best tariff, less likely to be offered such advice, less likely to agree that the supplier cares about service, but at the same time less likely to be interested in changing supplier. While a high proportion of micro businesses agreed that bills were clear as to how the final amount was reached, this claim was tested further in a qualitative survey carried out alongside this quantitative survey, and it was found that they were far less clear in practice.

2.18. The following charts, which derive from a 2012 survey of non-domestic energy customers by Ofgem, tell a similar story.⁶ Micro (and small) businesses are less likely to make frequent checks on their energy consumption than larger businesses. They are less likely to compare the prices and total cost of electricity when switching, compared to large business customers. Small and Medium-sized Enterprises (SME) are also far more likely to have used a broker to change electricity supplier than large business customers, but far less likely to be aware that they had paid fees to this broker for its services.

⁶ Ofgem, “Quantitative Research into Non Domestic Customer Engagement and Experience of the Energy Market”, (2012), available at <https://www.ofgem.gov.uk/ofgem-publications/39449/quantitative-research-non-domestic-customer-engagement-and-experience-energy-market.pdf>. For the purpose of this research: Micro Businesses (1 to 9 employees), Small Businesses (10 to 49 employees), Medium Businesses (50 to 249 employees), Large Businesses (250 or more employees).



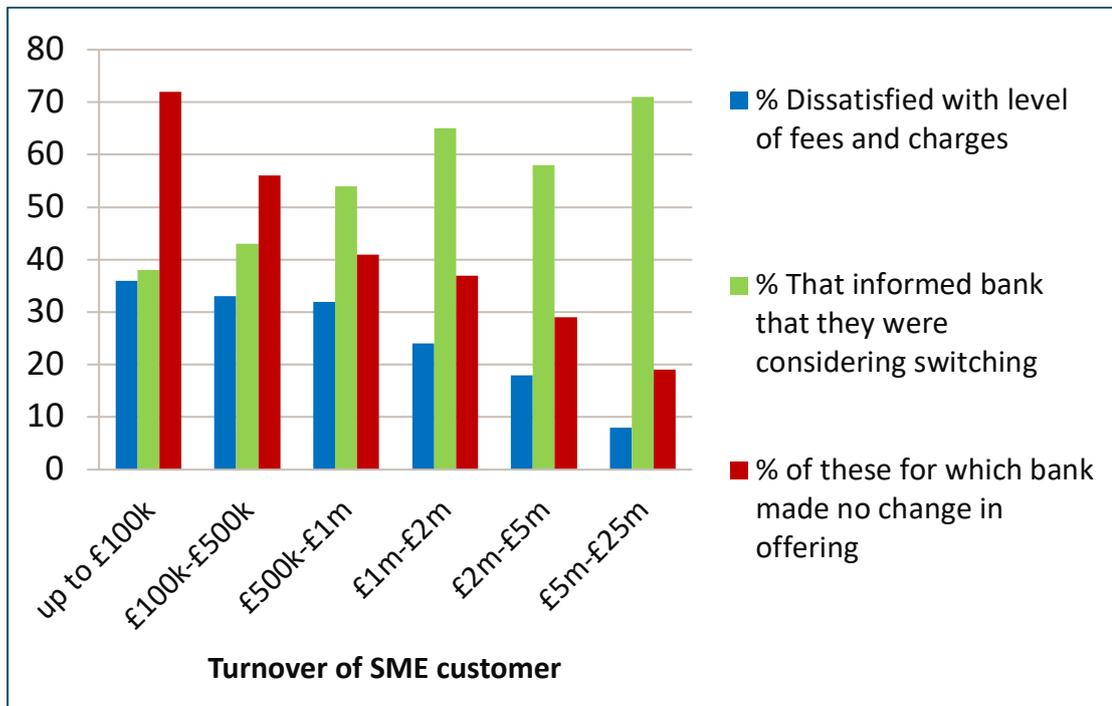
2.19. Ofgem has recently published a further survey of non-domestic customers, some of the results from which are shown in the figure below.⁷



2.20. These survey results again show clear differences between different customer types, with micro businesses less likely than other business sizes to be satisfied with the value for money offered by their existing energy supplier, but also less likely to have switched during the last 5 years and substantially less likely to have switched more than once or to contacted 4 or more suppliers when doing so. Those who had not switched were more likely to say that they felt the switching process was too complex and time-consuming and they were more likely to be generally negative about both energy brokers and energy suppliers.

⁷ Ofgem (2013) “Quantitative research into non-domestic consumer engagement in, and experience of, the energy market”, carried out by Element Energy and the Research Perspective. available at: <https://www.ofgem.gov.uk/ofgem-publications/85187/non-domquantfinalforpublication181213.pdf>. The report also concludes that “increasing simplicity and transparency of the energy market is a key priority for micro businesses”.

2.21. The following figure tells a similar story for SME current accounts, drawing on a 2006 survey carried out by IFF for the Office of Fair Trading. Relative to larger customers, smaller banking customers were more likely to be dissatisfied with their fees and charges, but less likely to tell the bank that they were considering switching and where they did, the bank was less likely to change its offering in response.



The key question: Should small business customers receive extra protection relative to larger firms?

2.22. The above evidence provides a broadly consistent picture of differences in purchasing behaviour between smaller business customers and their larger counterparts, and of their treatment by suppliers. But does this mean that smaller business customers should receive additional consumer protection?

2.23. There are two key arguments in favour of providing greater protections for micro (and potentially other smaller) business customers, and specifically extending to such businesses the protections afforded to domestic consumers. Both relate to the weaker ability of small businesses to make effective purchasing decisions relative to larger businesses.

- The first is simply that small businesses need such protections if they are to make effective purchasing decisions and thereby play their part in ensuring that the ‘virtuous circle’ of competition really works to drive market benefits.

- The second relates to the legal principle of ‘normative coherence’– or the principle of ‘treating like cases alike’. If small businesses behave more like consumers than they behave like big businesses, then it would simply be coherent to treat them the same under the law.

2.24. There are, however, also a number of significant arguments against such an extension of the law:

- First, any extension of existing consumer protection provisions to small businesses would impose an extra burden on suppliers, many of which are themselves small businesses.
- Second, it would be disproportionate to give extra protection to larger business customers, for which *caveat emptor* should apply, but legislation which provides for special treatment for small business customers would be costly and impracticable for suppliers to comply with, since they rarely know the size of their customers (and it would be costly to require them to find out).
- Third, the issues arising in practice around business customers’ purchasing decisions will depend not only on the size of the customer but also on the size of the purchase (is it worthwhile making the effort to purchase effectively) and the complexity of the product or of the purchasing process. An example, described in more detail below, is the UK Financial Conduct Authority’s action on interest rate hedging products, where mis-selling has been found in respect of business customers far larger than micro businesses. This means that a simple extension of the law, based only on the size of the business customer, is likely to be unnecessarily burdensome in some circumstances and/or provide insufficient protection in others.

2.25. On this third point, it is noteworthy that many different delineations of ‘micro’ or ‘small’ business have been used by the regulators and authorities. Within UK telecommunications, the primary focus is on ‘small businesses’ where this is defined as having ten or less employees. The term ‘small business’ is also used within the rules of the UK Financial Conduct Authority (FCA), where it is defined as a firm with an annual turnover of less than £1 million.⁸ Both of these concepts are in fact closer (albeit not identical) to the EU definition of ‘micro enterprise’, which requires a business to have less than ten employees and annual turnover or balance sheet of less than €2 million, than to the EU definition of small business.⁹

⁸ See <http://fshandbook.info/FS/glossary-html/handbook/Glossary/S?definition=G1095>.

⁹ The EU definition of small enterprise is substantially larger, at less than 50 employees and a turnover or balance sheet of less than €10 million. This is in turn similar, but not identical to the definition under the UK Companies Act 2006, see paragraph 2.27.

- 2.26. This EU micro enterprise definition is used by the FCA in respect of UK banking regulation and access to the Financial Ombudsman Service. Within UK energy, the focus is on 'micro businesses'. Ofgem uses the EU definition of micro enterprise, but extends it to include any business with an annual consumption of not more than 100,000 kWh for electricity or an annual consumption of not more than 293,000 kWh for gas. This equates currently to an annual spend of roughly £10,000 on the relevant fuel (either electricity or gas).
- 2.27. To add further complexity, for investment products, firms are eligible to claim compensation under the Financial Services Compensation Scheme so long as they meet the conditions for being a 'small company' as defined under the UK Companies Act 2006. That is, it must have at least two out of: turnover not more than £6.5m, balance sheet total not more than £3.26m, and no more than 50 employees. The eligibility criteria for compensation also differ across products. In some cases, all business customers are eligible, while in others only 'small businesses' (with annual turnover of less than £1m) are eligible.
- 2.28. On balance, the arguments for providing extra protection are perhaps strongest in the utility sectors:
- First, some of the key issues that can arise in respect of purchasing decisions are especially significant in the utilities. For example, purchasing decisions around water, energy and telecoms can be relatively complex and long-term, given that they involve signing ongoing contracts. This is especially true given limited switching rates. In the financial services sector, there are specific issues around the fact that many financial products are inherently complex, can involve trade-offs between the present and the future, may require assessing risk and uncertainty, can be emotive, and may permit little learning from past mistakes. All of these elements have links to well-known behavioural biases, which can result in consumers failing to choose the products that are best for them.
 - Second, within the utilities, any additional protection can be relatively well targeted to address key areas of concern, and smaller businesses can be (more or less) identified and targeted through their usage, rather than requiring the supplier to determine their size.
- 2.29. There may be an argument for further extension still in the area of financial services, given the complexity of many financial services products and also the scale of the potential losses that may arise, which can threaten the viability of smaller business customers even if their fundamental business model is sound. It is perhaps not surprising therefore that, as discussed further below, the FCA extended its action on Interest Rate Hedging Products to customers beyond micro businesses.

2.30. However, it is also noteworthy that many jurisdictions also offer additional protections under general consumer law. These are discussed in the following section.

3. Protection of smaller business customers under general consumer law

Key elements of general consumer law

3.1. General consumer law is designed to help consumers access, assess and act on information about products through preventing firms from behaving in misleading, aggressive or exploitative ways. Broadly, it comprises three key elements:

- **The consumer contract:** Rules around the product being as described, fit for purpose, and of adequate quality, as well as rights to reject or repair.

At EU level, a number of these rules were already in place through other directives, but they have been brought together and updated in the new Consumer Rights Directive 2011 (CRD). In the UK, this Directive is being implemented through the Consumer Rights Bill 2013, but again many provisions were already in place through the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982.

- **Misleading or aggressive sales practices:** Rules around misleading marketing/advertising and also misleading sales practices such as bait pricing, unclear pricing, and even pure scams.

In the EU, these rules are set out within the Unfair Commercial Practices Directive 2005 (UCPD), implemented within the UK as the Consumer Protection Regulations 2008 (CPRs).

- **Unfair contract terms:** Rules around unfair terms in standard contracts; typically requiring that terms should be either transparent upfront or, if not, then fair.

In the EU, rules were already in place through the Unfair Terms in Consumer Contracts Directive 1993, but this has been superseded by the CRD. Again, this is in the process of implementation in the UK as the Consumer Rights Bill 2013.

The position internationally: Are small businesses given special treatment? Sometimes

3.2. In the EU, there has been substantial variation across Member States in terms of how 'consumer' is defined in terms of consumer protection law. In recent years, there has been increasing harmonisation on a narrower definition of 'consumer',

restricted to 'natural persons'. However, in a number of Member States, the definition of 'consumer' continues to extend to business customers under existing law. The most recent easily available information relates to 2007, but at that point this appeared to be the case in Austria, Belgium, Czech Republic, Denmark, France, Greece, Portugal and Slovakia.¹⁰

- 3.3. Perhaps because of this, and despite a wider move towards maximum harmonisation of laws across the EU, the recent EU directives in this area (UCPD and CRD) allow for the law to be extended beyond individual consumers at national level, for example to non-governmental organisations, start-ups or SMEs, at the discretion of Member States.
- 3.4. In the case of the law on misleading or aggressive sales practices, which are covered by the UCPD, a number of Member States have indeed extended in this way. Germany, Austria, France, Sweden and recently Italy have also taken up this flexibility to extend the provisions, although in Germany the extension only covers Annex I of the Directive ('the Black List') while in France it only covers Article 6 and Annex I (that is, it is limited to the provisions on misleading practices).
- 3.5. Member States are currently implementing the provisions of the Consumer Rights Directive, which incorporates revised provisions in respect of the consumer contract and also unfair contract terms. While Member States are again free to extend the provisions of the directive, for example to SMEs, it is not clear that any Member State is intending to do so.
- 3.6. There is recognition that small businesses need some further protection on an EU-wide basis when acting as a consumer. For example, businesses do have separate legal protection from misleading advertising under the Misleading and Comparative Advertising Directive 2006 (MCAD). The Commission is currently in the process of extending this Directive, in particular to make it more effective in addressing marketing scams directed at businesses, such as misleading directory companies.¹¹
- 3.7. The situations in Australia and South Africa are also worth noting.
 - Under the *Australian Consumer Law 2010* (ACL), the provisions around the consumer contract are limited only by value of purchase, with the law providing a 'consumer guarantee' for any product up to \$40,000 (around 28,000 euros) whether bought by consumers or business customers. The provisions do not apply, however, where the products are bought for resale or for transformation

¹⁰ University of Bielefeld, "Consumer Law Compendium – Comparative Analysis" (2007), available at http://ec.europa.eu/consumers/cons_int/safe_shop/acquis/comp_analysis_en.pdf

¹¹ The directive will also be revised to address concerns around enforcement, in particular where cross-border cooperation between Member States is required. See <http://uk.practicallaw.com/3-522-7148?service=eu#>.

into a product for resale (that is, where it is related to the core trade of the business). The provisions of the ACL on misleading, deceptive and unconscionable conduct, meanwhile, appear to cover both individual and business customers (of any size). By contrast, the rules on unfair contract terms only cover individual consumers.

- The *South African Consumer Protection Act 2012* extends its provisions, which cover all three key strands of consumer law, to corporations with an asset value or annual turnover of less than R2 million, which is equivalent to around 150,000 euros. While this is a relatively low threshold, it may nevertheless provide extra protection for sole traders and other very small firms.

The position in the UK: Are small businesses given special treatment? No

3.8. In the UK, businesses (of all sizes) are given some limited protections, when acting as consumers, for example under the Unfair Contract Terms Act 1977, the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982. (These laws will remain in place following the enactment of the new UK Consumer Rights Act, but will become restricted to business-to-business transactions only.) Likewise, the MCAD is implemented in the UK through the Business Protection from Misleading Marketing Regulations 2008 (BPRs).

3.9. However, the main tranches of consumer law, which offer the most significant protections, only cover individual consumers. There are no special provisions within general UK consumer law for micro or other smaller businesses.

3.10. Indeed, the UK has actively chosen not to provide for such extension. This is despite the EU providing the flexibility for extension. In respect of the Consumer Rights Bill 2013, which is in the process of being enacted, the UK Department for Business, Innovation and Skills has specifically stated that:

“In the 2008 Consumer Law Review, the Government asked whether the definition of consumer should be extended to include small or micro businesses whose bargaining power in a contract is often similar to that of the consumer. Business groups were opposed to the idea and we do not propose to take it forward.”¹²

3.11. In the case of the unfair contract terms element of this Bill, it is noteworthy that this approach conflicts with a recommendation from the Law Commissions of England and Scotland in 2005 to extend this area of protection to the smallest and most

¹² Department for Business, Innovation & Skills (2012) “Enhancing Consumer Confidence by Clarifying Consumer Law: Consultation on the Supply of Goods, Services and Digital Content”, p. 27, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31350/12-937-enhancing-consumer-consultation-supply-of-goods-services-digital.pdf.

vulnerable businesses (with 9 or fewer employees). This recommendation was in fact accepted in 2006 by the then MP Ian McCartney, but implementation was later put on hold, pending the development of the CRD at EU level.¹³ The Federation of Small Businesses has recently raised this issue again with the BIS Select Committee.

4. Protection of smaller business customers through utility regulation in the UK

- 4.1. Given the provisions of consumer law set out above, it is hardly surprising that the UK regulators are only able to carry out consumer enforcement activity under these laws in respect of domestic consumers. Perhaps more surprisingly, the regulators have not typically had powers to enforce the business-focused protections under the BPRs, although Ofgem has just sought and been given such powers.
- 4.2. The regulators nevertheless have the powers to go beyond general consumer law and provide protection for business customers, to ensure that firms treat their customers fairly and in order to promote competition. Such protections can include requirements for disclosure and transparency, rules about contract terms, and other requirements to facilitate search and switching.
- 4.3. In this section, we examine the treatment of smaller business customers by four key regulators: Ofcom, the FCA, Ofgem and Ofwat. We do not provide a complete description of the key provisions of each of the regulators in respect of improving consumers' access to information, assessment of information, and ability to act on information (although more detail is provided in the Annex). Rather we focus on the extent to which these provisions do or do not extend to micro, small and/or other business customers.
- 4.4. Overall we find a mixed picture. The regulators have given this issue increasing focus in recent years, and many protections that are in place for domestic consumers have now been extended to micro businesses. However, there remain a number of apparent inconsistencies in terms of where and whether micro businesses are given comparable protections to domestic consumers, and also in terms of where the precise threshold is drawn between businesses that receive protection and those that do not. Many of these derive from the underlying legislation within which the regulators work, rather than from the regulators' own policy choices.
- 4.5. In some cases, such inconsistencies may in fact be justified, for example because smaller business customers are better able to look after themselves than individual

¹³ Law Commission, "Unfair Terms in Contracts", <http://lawcommission.justice.gov.uk/areas/unfair-terms-in-contracts.htm>.

customers or because the associated detriment is lower. However, the degree of inconsistency of approach that is observed is strongly suggestive of a lack of an underlying unified framework for assessing this issue across the regulators, including at the stage of enacting legislation.

4.6. Our key findings across telecoms, financial services, energy and water are as follows.

Telecoms

- 4.7. Under the 2003 Communications Act (s52), a line is drawn between ‘domestic and small business customers’ and other customers. The definition of a ‘small business customer’ in this context is a company for which ten or fewer individuals work. As such, it is closer to the ‘micro enterprise’ definition used in the EU, albeit there is no limit on turnover or balance sheet.
- 4.8. Ofcom appears to be broadly consistent in providing such micro businesses with the same protections as domestic customers, throughout its general conditions. For example, both types of customer are covered by Ofcom rules relating to information to be provided at the point of sale, the ban on automatic rollover contracts (ARCs), and restrictions on misleading or aggressive selling. Each supplier is required to develop and publish a Code of Practice for both individual and small business consumers that should, at a minimum, specify where such customers can avail themselves of necessary information. Access to the Alternative Dispute Resolution scheme is also available for both domestic and small business customers.
- 4.9. There is, however, a clear line drawn in Ofcom’s policy between such micro businesses and larger business customers. The latter are given fewer protections, especially around sales and marketing (General Conditions 23 and 24), albeit all end users are provided with certain protections, for example around transparency and switching.
- 4.10. Ofcom recognises that it may, at times, be difficult for suppliers to identify whether or not a customer has 10 employees or less, since they do not routinely collect such information. It therefore states that in assessing compliance with the rules, Ofcom will consider whether suppliers have taken reasonable steps to ensure that small business customers are protected. Such steps may include identifying the size of a business by its annual communication spend, or by the number of lines it has, or alternatively requiring customers to identify themselves as having more than 10 employees if they wish to opt for packages that are not covered by the protections within the rules.¹⁴

¹⁴ For details in the context of the rules on automatic rollover contracts, see http://stakeholders.ofcom.org.uk/binaries/consultations/arcs/statement/ARCs_statement.pdf, Annex 3.

- 4.11. Interestingly, there are provisions relating to minimum contract terms (General Condition 9) which must be made available to all end users 'on request'. It is not clear how well known this is amongst business customers, or to what extent the option to request such terms is taken up.

Financial Services

- 4.12. Within the financial services sector, smaller business customers also receive a number of additional protections, but the situation is rather more complex than in the communications sector, reflecting the array of different legislation under which the relevant bodies act, at least part of which is driven by EU requirements. In this section, we have primarily focussed on banking, insurance and credit as the primary financial services of relevance to small businesses.
- 4.13. For *banking*, the Banking Conduct of Business sourcebook (BCOBS) sets out relevant rules. These apply to domestic customers (natural persons acting for purposes outside their trade, business or profession), micro enterprises (based on the EU definition of fewer than ten employees and an annual turnover or balance sheet that does not exceed €2 million), as well as small charities (with less than £1m annual income). The new 7-day switching scheme is available to broadly the same set of customers, as is access to the Financial Ombudsman Service. The BCOBS rules on distance marketing, however, apply only to domestic customers.
- 4.14. In addition, there are a number of additional provisions that have been imposed on banks by the Monopolies and Mergers Commission (now Competition Commission) in respect of sales to SMEs, where these are defined as having annual sales revenues of no more than £25m. (NB the market for SME banking is currently under review again, by OFT/FCA).
- 4.15. For *insurance*, there is substantial overlap between the protections given to individual consumers and business consumers within the Insurance Conduct of Business Sourcebook (ICOBS). However, there are a number of areas in which individual consumers have additional protections, including in the area of cancellation rights and also the rules around when an insurer can reject claims based on the claimant having provided misrepresentative information.
- 4.16. The FCA recently slightly extended the definition of 'consumer' within ICOBS by adding the term 'mainly' into the following: insurance mainly for purposes unrelated to trade or profession. This was done to reflect the wording in the Consumer Insurance (Disclosure and Representation) Act 2012. However, this does not go as far in giving micro enterprises the same protections as domestic consumers more generally.

- 4.17. For *credit*, domestic consumers have significant protections for loans up to £25,000 in value. They are also afforded some (albeit slightly reduced) protection for loans up to £60,260. While the EU Consumer Credit Directive 2010 does not cover business lending, the UK Government has chosen in enacting the domestic legislation to extend most of the protections afforded to consumers also to business customers, for loans up to £25,000. This is designed to provide extra protection for micro business customers, in particular. (The key protections not included are those around the need for the credit provider to assess creditworthiness, specific rules around the advertising of credit and rules around provision of information on overdrafts.)
- 4.18. The FCA's action in respect of *interest-rate hedging products* (IRHPs) is also worth noting. The FCA found that there had been substantial mis-selling of such products to business customers. In designing its redress scheme, it allowed for a number of different business characteristics, including not only the size of the business customer but also its relevant sophistication and experience. In addition, the size test applied here was the Companies Act threshold for small companies/groups (less than 50 employees, less than £6.5 million annual turnover and a balance sheet of less than £3.26 million). This higher threshold for intervention probably reflects the high relative perceived complexity of IRHPs and the heavy losses potentially suffered. It emphasises that businesses which are rather larger than micro enterprises may be worthy of protection in some situations.
- 4.19. More generally, the rules around eligibility for redress in the financial services sector are complex and depend on the type of product, largely reflecting EU requirements. For some products, such as deposit-taking, any business is eligible to claim. For others, such as investment business, the cut-off is whether they meet the conditions for being a small company under the UK Companies Act 2006.¹⁵ For others, such as general insurance broking, the cut-off is whether they are a 'small business' where this is defined as annual turnover of less than £1m.

Energy

- 4.20. Unlike telecoms, the legislation under which Ofgem acts does not make special provision for protecting smaller business customers. As such, Ofgem is required to demonstrate the need for any extension of regulation to protect such business customers. As part of its Retail Market Review, however, Ofgem has recently reviewed and enhanced the protections it provides for micro businesses, and it continues to consider this area actively.

¹⁵ That is, they are eligible to claim if they satisfy at least two of the following conditions: turnover not more than £6.5m, balance sheet total not more than £3.26m, and no more than 50 employees.

- 4.21. It has expanded the definition of micro business (under licence condition SLC 7a) to include more small and medium businesses. The new definition includes both businesses who qualify as micro enterprises under the EU definition (i.e. have fewer than 10 employees and a turnover or annual balance sheet of less than €2 million a year) and businesses who otherwise use up to 100,000 kWh per year on electricity and 293,000 kWh on gas – which equates roughly to a spend of around £10,000 per fuel on gas and electricity. In practice, this new definition is likely to include many businesses that would fall outside the EU micro enterprise definition. Businesses falling within this definition are also able to access help from the Energy Ombudsman.
- 4.22. For these businesses, the new protections broadly mirror those offered to domestic customers. Indeed, many of the changes to protections for micro business customers were designed to bring them more in line with those offered to domestic consumers.
- 4.23. There are some residual differences, however, and Ofgem is continuing to investigate whether further protections are needed in these areas. For example:
- Following the Retail Market Review, domestic consumers will be given substantially *improved information on tariffs* in order to be better able to carry out effective comparison across tariffs. There will also be a limit in the number of tariffs that each supplier can offer for each fuel, to limit excessive complexity in the market. These provisions are not available for micro businesses, and indeed the lack of standard tariffs for micro businesses restricts them from using general price comparison websites to choose supplier. They are forced instead to approach suppliers direct or to use third party intermediaries (TPIs), who are effectively brokers.

While such TPIs have the potential to help smaller business customers to purchase more effectively, there is evidence that a minority of TPIs are causing detriment to businesses by misrepresenting the services they offer and the fees they charge.¹⁶ Ofgem is currently considering through its TPI Programme whether the regulatory framework around TPIs needs changing, the focus being to enhance the experience of engaging with TPIs for both domestic and business customers.¹⁷ Ofgem’s new power to enforce the BPRs is expected to prove useful in this area.

¹⁶ See, for example, Cornwall Energy “Under the Microscope: Reviewing the micro business energy market”, a research report for Consumer Futures (2012). <http://www.consumerfocus.org.uk/files/2012/09/Under-the-microscope.pdf>.

¹⁷ <https://www.ofgem.gov.uk/electricity/retail-market/market-review-and-reform/third-party-intermediaries-tpi-programme>.

- There also continue to be differences in rules around *contract termination* between domestic and micro business consumers. Following the Retail Market Review, for domestic consumers on a fixed term contract, they must be contacted between 49 and 42 days before the contract expires, and during this window no notice period is required to switch and no termination fee payable.

By contrast, while Ofgem is improving the position of micro businesses within fixed term contracts, in terms of requiring (from March 2014) contract end dates to be shown on bills and allowing customers to send termination notices at any point, there are still some differences. In particular the length of termination notice required can be up to 90 days, and there are no restrictions around termination fees.

4.24. In addition, there are a number of areas where there are apparent differences in treatment between domestic customers and smaller business customers, but where Ofgem is achieving greater convergence in the market through soft influence, driving industry change, rather than through formal changes in licence conditions. For example:

- There are apparent differences around the use of *automatic rollover contracts*. A domestic fixed-term contract cannot be renewed without the consent of the consumer. If a domestic consumer does not explicitly agree on a new supply contract, the consumer will be put on the “Relevant Cheapest Evergreen Contract” (SLC 22.7), with a maximum 28 day notice period. By contrast, after meeting certain requirements, an energy supplier is entitled to an automatic renewal of a micro business fixed-term supply contract (SLC 7A.13).

While Ofgem is currently reviewing whether automatic rollover of contracts should be banned more generally, the need for this may have reduced now that – under pressure from Ofgem - five of the big six energy companies have stepped back from this practice, in one way or another.¹⁸

- Where a supplier realises that the bills have not been correct, it can *back-bill* the consumer for past underpayments. This can create difficulties for both domestic and micro business consumers. Following a super-complaint from Energywatch in 2006/07, Ofgem directed the industry to resolve domestic billing issues including back-billing and move to a one year limit for back-billing domestic consumers when the energy supplier is responsible for the failure.

More recently, Ofgem has adopted a similar strategy in respect of non-domestic back-billing. All the major suppliers and a number of more minor ones have

¹⁸ See Slide 6 of <https://www.ofgem.gov.uk/ofgem-publications/85211/autorolloversslides021213final.pdf>.

signed up to voluntarily standards and agreed on a one year back-billing limit. Back-billing should also become less of an issue with the roll-out of smart meters, which will remove the need for bills to be estimated.

- A final difference in licence conditions relates to *disconnection*. Non-domestic customers do not have the same levels of protection on debt and disconnection as domestic consumers, who are protected through licence conditions.

Ofgem does not currently believe that enforceable licence protections of this nature are necessary or desirable for non-domestic customers, where the nature of the detriment is different and where equivalent issues of vulnerability and fuel poverty do not exist. However, it is concerned that suppliers should nevertheless treat non-domestic customers who are in payment difficulties and face disconnection fairly. It has therefore set out what it considers to be best practice in this area and is monitoring suppliers' performance to assess progress.¹⁹

Water and sewerage

- 4.25. Water and sewerage regulation provides a marked contrast with other sectors, in that only larger business users (with water consumption over 5 Ml per year) have so far been able to choose their supplier.
- 4.26. Domestic consumers do not have any choice of water and sewerage supplier, and therefore there would be little rationale for regulations designed to enhance comparability across suppliers or switching. Rules do, however, exist around disclosure and transparency for domestic consumers.²⁰ Ofwat requires suppliers (under Licence Condition G) to have an approved code of practice for household customers, under which they commit to provide information in an accurate, transparent, accessible, and timely manner, including in respect of tariffs, payment options and complaints handling. These requirements also cover 'mixed use dwellings'.
- 4.27. Beyond this, however, Ofwat appears to make little formal distinction between different types of customers in terms of consumer protection provision, including in the area of redress. It does, however, adopt a risk-based approach to reviewing information provision, which focuses on the extent of customer harm. This might be expected to give rise to differences in regulatory approach for different customer types in practice, reflecting their relative needs.

¹⁹ <https://www.ofgem.gov.uk/ofgem-publications/57748/non-dom-disconnection-openletter-20-12-2012.pdf>.

²⁰ It is noteworthy that many customers are supplied under statute and do not even have contracts, which means general consumer law is inapplicable. For smaller business customers, this may be expected to alter once they are able to choose supplier. At this point, it may become desirable that Ofwat has powers to enforce the BPRs, just as Ofgem has just been given.

- 4.28. In the past, small business customers have also been unable to switch water and sewerage supplies, and thus issues around search and switching measures have again arguably been of less relevance. This will change following the enactment of the current 2013 Water Bill. Ofwat is therefore already considering whether it will need to set out more detailed requirements around the appropriate treatment of small business customers by suppliers. Ofwat has already confirmed to companies that they will be required to propose 'default tariffs' that will apply to non-household consumers based on a standard price and level of service.
- 4.29. A number of possible issues that may potentially arise for micro enterprises, at market opening, were usefully discussed in a meeting of the Ofwat Business Customer Forum in June 2012.²¹ These included the difficulties and confusion micro enterprises can face when dealing with utility bills and contracts, the risk of mis-selling by both water suppliers and third party brokers, and the protection that could be provided by default tariffs.
- 4.30. The Consumer Council for Water provides advice for business customers as well as domestic customers. It is noteworthy that around 10% of the complaints it deals with come from business customers.

5. Conclusions and recommendations

- 5.1. It is increasingly well recognised that small businesses can face many of the same challenges around consumer decision-making processes as individual consumers. This can in turn compromise the effective functioning of markets and their ability to deliver benefits for customers, suppliers and the economy.
- 5.2. Despite this, there has been little movement in the area of general UK consumer law. In recent years, the UK government has chosen not to extend the provisions of the Unfair Commercial Practice Directive to smaller business customers. This is despite the fact that the Directive specifically allows for such extension, and that several other Member States have taken up this opportunity. In its current implementation of the Consumer Rights Directive, the UK Government does not currently intend to extend the provisions of the bill to micro businesses, although the directive again allows for this.
- 5.3. It has been beyond the scope of this report to do a full analysis of the pros and cons of extending elements of the Consumer Rights Directive to micro businesses. We recognise that there may be potential difficulties associated with this, but note the

²¹ See p. 6 of minutes of meeting at http://www.ofwat.gov.uk/nonhousehold/min_wrk120.615bus.pdf.

past recommendation from the Law Commissions of England and Scotland to extend at least the unfair contract terms provisions to businesses with nine or fewer employees.

We therefore recommend that, when drafting consumer protection legislation, Government gives active consideration to the possibility of extending the provisions to micro businesses, and that it considers carefully the evidence both for and against such an extension before reaching a decision. Where relevant, we also recommend this at the EU level (or that the EU leaves the issue open, for domestic decision).

- 5.4. By contrast with the position in general consumer law, the UK regulators are increasingly recognising the challenges faced by micro business customers, and the potential impact of this on competition in utility markets. In some cases, they have identified issues that extend even beyond micro businesses.
- 5.5. On this basis, many changes have already been made to the protections afforded by micro business customers within the UK regulated sectors, and to a large extent they have been brought into line with the protections afforded to domestic consumers.
- 5.6. Nevertheless, there remain some apparent inconsistencies, both in terms of where the threshold for protection is drawn and in terms of what protections are given. In some cases, this may reflect substantive differences between the behaviour of individual businesses and smaller business customers, or their treatment by suppliers. Such factors may mean that an extension of consumer protections to these smaller business customer is not justified. However, it is far from clear that the choice of threshold or the choice of protection has always been fully analysed and evidenced on the basis of a framework that is robust and unified across sectors.
- 5.7. In many cases, the core issue relates to the legislation under which the regulators function. Ofcom is broadly consistent in extending consumer protections to micro businesses, reflecting the approach taken in the 2003 Communications Act. By contrast, Ofgem takes the view, based on the legislation under which it acts, that consumer protections should be extended to micro businesses only if it can demonstrate that this is needed. In the financial services sector, the approach taken is mixed, but again largely reflects the legislation under which the regulator acts, much of which derives from the EU.

We therefore recommend that, when drafting legislation in respect of the regulated sectors, Government consider adopting the approach in the 2003 Communication Act whereby the wording supports a default position that micro businesses should be given the same protections as domestic consumers, unless there are clear reasons why this is either unnecessary or disproportionate. Where relevant, we also recommend this at the EU level.

In the absence of such legislation, and where not limited by legislation from doing so, we recommend that the regulators retain (and even enhance) their focus on looking at whether their sector-specific consumer protection provisions might usefully and reasonably be extended to micro businesses, or even to larger business customers.

- 5.8. A particularly crucial element of purchaser decision-making is the ability to access clear information, across suppliers, about prices. While business customers can theoretically negotiate contracts, it seems clear that most smaller business customers are in practice offered relatively standardised contracts. Given this, there may be an argument that suppliers should be required to make their standardised (or 'default') contracts publically available, to foster improved decision-making. Ofwat is making this a requirement as the market for water and sewerage services to business customers is fully opened up to competition.

We recommend that, where they have not already done so, the regulators in the utility sectors consider whether suppliers should be required to publish their standard or 'default' tariffs for smaller business customers, and not just domestic consumers. These customers would be free to negotiate better terms, but these published tariffs would act as a fall back, at least for lower usage customers. Such tariffs could also be easily compared with domestic tariffs.

We also recommend that the regulators in the utility sectors review, on a regular basis, whether businesses at the lower levels of consumption are paying substantially more, or getting substantially less favourable terms, than are domestic consumers with equivalent usage. (If they are doing so, then this may raise questions about the effectiveness of competition for servicing these low usage business customers.)

- 5.9. An argument that can reasonably be made against the extension of general consumer protections to cover small businesses is that suppliers will not necessarily be clear, without asking, what size of business they are dealing with. Within the regulated sectors, however, where products are more homogeneous, we might expect to observe a stronger link between the size of a business and its purchasing requirements.
- 5.10. Given this, we support the approach taken by Ofgem, and also observed for consumer credit, of setting protection levels based on total consumption levels, rather than (or as well as) on the size of the firm. This makes the process more manageable for suppliers, while targeting protections effectively at those who are least likely to invest substantial time in finding the right supplier, because they have least to gain from doing so.

Where there are genuine concerns about the ability of suppliers to determine whether customers qualify as 'micro businesses, we recommend that legislators and regulators (as relevant) give consideration to setting protection levels on the basis of consumption levels, rather than (purely) on size of firm.

- 5.11. Finally, it seems an anomaly that the utility regulators have enforcement powers under the Consumer Protection Regulations (CPRs) but not under the Business Protection from Misleading Marketing Regulations (BPRs). Ofgem has recently sought, and been given, such powers in order to deal with concerns relating to mis-selling by third party intermediaries in the energy sector. There seems little reason why this should not be extended to the other regulators.

We therefore recommend that all regulators with concurrent powers to enforce the Consumer Protection Regulations (CPRs) are also given concurrent powers to enforce the Business Protection from Misleading Marketing Regulations (BPRs).

Annex: Key evidence and references

In this Annex we set out the key evidence and references on which our core report is based. For clarity and simplicity, these are presented in the form of tables

The current situation in consumer law: International Perspective

EU	Consumer Contract	Covered by the 2011 Consumer Rights Directive. ²² This Directive explicitly covers consumers only, defined as natural persons where transactions which are wholly or mainly outside of their trade, business, craft or profession. The Directive allows Member States to extend coverage to non-governmental organisations, start-ups or small and medium-sized enterprises at their discretion. ²³ This flexibility appears to have been provided at a relatively late stage, without any request from member states. No Member State is currently expected to extend the provisions of the Directive to businesses.
	Unfair Contract Terms	In the EU, rules were already in place through the Unfair Terms in Consumer Contracts Directive 1993, but this has now been superseded by the Consumer Rights Directive (2011). As above, this explicitly covers consumers only, but with the potential for Member States to extend it to NGOs, start-ups or SMEs. The CRD is only now being implemented, but under the previous rules, approaches to unfair contract terms across member-states varied. In some instances state law provides similar levels of protection to consumers and small businesses. A clear example is Netherlands: Dutch law on unfair contract terms, in addition to a general clause, includes a grey and a black list of clauses which are respectively presumed and deemed to be unfair. Those lists apply to consumers and SME customers but not to large enterprises. ²⁴

²² European Commission, “DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council” (2011), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:01:EN:HTML>.

²³ DIRECTIVE 2011/83/EU, paragraph (13)

²⁴ Hesselink, M.W (2007) “SMEs in European Contract Law: Background Note for the European Parliament on the Position of Small and Medium-Sized Enterprises (SMEs) in a Future Common Frame of Reference (CFR) and in the Review of the Consumer Law Acquis”, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1030301.

	Misleading, Deceptive and Aggressive Sales Practices	<p>Covered by the Unfair Commercial Practices Directive (2005)²⁵. This Directive explicitly covers consumers only, but states that Member States are free to extend its provisions to business-to-business transactions if they wish. Italy, Germany, Austria, France and Sweden have taken this up, although in Germany the extension only covers Annex I of the Directive ('the Black List'), while in France it covers only Article 6 and Annex I (limited to the misleading practices).²⁶</p> <p>Businesses do have protection from misleading advertising under the Misleading and Comparative Advertising Directive 2006 (MCAD).²⁷ This Directive is currently under review and one of the main reasons for this is the fact that SMEs were deceived and trapped by scams such as Misleading Directory Companies²⁸. Legislative revisions are at an advanced stage. Definitions will be clarified, protection will be strengthened (e.g. augmented black list of practices) and enforcement across countries will be pushed (especially when it comes to cross-border trading).</p>
UK	Consumer Contract	<p>The Consumer Rights Bill (2013) is in the process of being enacted. The UK does not intend to extend its protections to small businesses.²⁹ It has explicitly stated elsewhere:</p> <p><i>"In the 2008 Consumer Law Review, the Government asked whether the definition of consumer should be extended to include small or micro businesses whose bargaining power in a contract is often similar to</i></p>

²⁵ European Commission (2005) "DIRECTIVE 2005/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council", <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:0039:EN:PDF>.

²⁶ European Commission, "REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE: First Report on the application of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council", (2013), http://ec.europa.eu/justice/consumer-marketing/files/ucpd_report_en.pdf.

²⁷ European Commission, "DIRECTIVE 2006/114/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2006 concerning misleading and comparative advertising", (2006), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0021:0027:EN:PDF>.

²⁸ European Commission, "COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Protecting businesses against misleading marketing practices and ensuring effective enforcement: Review of Directive 2006/114/EC concerning misleading and comparative advertising, (2012), http://ec.europa.eu/justice/consumermarketing/files/communication_misleading_practices_protection_en.pdf.

²⁹ UK government (2013) "Consumer Rights Bill: Explanatory notes", https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/206561/bis-13-926-draft-consumer-rights-bill-explanatory-notes.pdf.

		<p><i>that of the consumer. Business groups were opposed to the idea and we do not propose to take it forward.”³⁰</i></p> <p>However, customer rights for businesses will not actually be reduced through this new act. They will continue to have some basic consumer rights through: The Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982, which will be henceforth restricted to B2B transactions only.³¹</p>
	Unfair Contract Terms	<p>As before, the UK does not intend to extend the protections of the Consumer Rights Directive to small businesses.</p> <p>This is especially noteworthy given that it is contrary to the recommendations of a joint report by the Law Commissions of England and Scotland in 2005, which recommended that the provisions be extended to the smallest and most vulnerable businesses (with 9 or fewer employees).³² This recommendation appears to have been accepted in 2006, by the then MP Ian McCartney³³, but later put on hold, pending the development of the Consumer Rights Directive.</p> <p>Businesses have not lost protection through the new legislation, though. They will continue to be protected under the Unfair Contract Terms Act 1977, which will henceforth be restricted to B2B transactions only, albeit this Act provides relatively weak protections.</p>
	Misleading, Deceptive and Aggressive Sales Practices	<p>The UK did not choose to extend coverage to business-to-business transactions when implementing UCPD as the Consumer Protection Regulations (2008).³⁴</p> <p>Businesses are protected from misleading advertising under the Business Protection from Misleading Marketing Regulations (2008), which implement MCAD.³⁵</p>

³⁰ Department for Business, Innovation & Skills (2012) “Enhancing Consumer Confidence by Clarifying Consumer Law: Consultation on the Supply of Goods, Services and Digital Content”, p.27, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31350/12-937-enhancing-consumer-consultation-supply-of-goods-services-digital.pdf.

³¹ UK government (2013) “Consumer Rights Bill: Explanatory notes”, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/206561/bis-13-926-draft-consumer-rights-bill-explanatory-notes.pdf

³² The Law Commission and the Scottish Law Commission (2005) “Unfair Terms in Contracts: Report on a reference under section 3(1)(e) of the Law Commissions Act 1965”, http://lawcommission.justice.gov.uk/docs/lc292_Unfair_Terms_In_Contracts.pdf.

³³ Letter from the Minister of State for Trade, Investment and Foreign Affairs to the Law Commission, <http://www.dti.gov.uk/files/file34128.pdf>.

³⁴ UK Government (2008) “Consumer Protection: The Consumer Protection from Unfair Trading Regulations 2008”, http://www.legislation.gov.uk/ukdsi/2008/9780110811574/pdfs/ukdsi_9780110811574_en.pdf.

Australia	Consumer Contract	The 2010 Australian Consumer Law (ACL) provides for a ‘consumer guarantee’ for any product up to \$40,000 (around 28,000 euros), for both businesses and consumers. ³⁶ It does not apply, though, where the products are bought for resale or for transformation into a product for resale.
	Unfair Contract Terms	The ACL provisions on unfair contract terms appear to cover consumers only. This is in notable contrast with the other provisions within ACL.
	Misleading, Deceptive and Aggressive Sales Practices	The ACL provisions on misleading, deceptive and unconscionable conduct appear to cover sales to both consumers and businesses.
South Africa		The 2012 South African Consumer Protection Act (CPA) covers all three key strands of consumer protection law. It defines “consumers” to include corporations with an asset value or annual turnover of less than R2 million. ³⁷ This is equivalent to around 150,000 euros. The initial limit was intended to be the rather more generous R3 million.

³⁵ UK Government (2008) “TRADE DESCRIPTIONS: The Business Protection from Misleading Marketing Regulations 2008”, http://www.legislation.gov.uk/ukdsi/2008/9780110811475/pdfs/ukdsi_9780110811475_en.pdf.

³⁶ Consumer Affairs Victoria, <http://www.consumer.vic.gov.au/businesses/small-business>

³⁷ Law Society of South Africa, “The consumer Protection Guide for Lawyers”, (2011), <http://www.roylaw.co.za/Uploads/files/Consumer%20Protection%20Guide%20for%20Lawyers.pdf>.

Telecoms: Extent of consumer protection by type of customer

Type of service	Domestic Consumers	Small business customers (10 or fewer employees)	Other non-domestic customers
Voice over IP (VoIP) services	Covered by 'Code on the provision by Service Providers of consumer information to Domestic and Small Business Customers for the provision of Services' ³⁸	As for domestic consumers	Does not apply
Broadband	Voluntary code of practice regarding broadband speeds applies. Covers information that the company has to provide before sign up, at point of sale and post-sale ³⁹	As for domestic customers	Does not apply
	Provider must facilitate migration of an end-user. Information regarding the MAC must be given to end-user, while the whole process should be publicized. ⁴⁰	As for domestic customers	Does not apply
Mobile services	Covered by 'Code of Practice for the sale and marketing of mobile service subscriptions. This primarily relates to information clarity and transparency, and ensuring that the customer is not misled or confused during the sales process.' ⁴¹	Customer and consumer are used interchangeably. Not clear if it applies.	Customer and consumer are used interchangeably. Not clear if it applies.

³⁸ OFCOM, "Regulation of VoIP Services", (2007), Annex 3, <http://stakeholders.ofcom.org.uk/binaries/consultations/voipregulation/statement/voipstatement.pdf>.

³⁹ OFCOM, "Voluntary Code of Practice: Broadband Speeds", (2010), available at <http://stakeholders.ofcom.org.uk/binaries/telecoms/cop/bb/cop.pdf>.

⁴⁰ OFCOM, "Consolidated Version of General Conditions as at 30 July 2010 (including annotations)", Annex 1 to General Condition 22, (2010), <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/cvogc300710.pdf>.

⁴¹ OFCOM, "Code of Practice for the sales and marketing of subscriptions to mobile networks", (2007), <http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/mobile/cop.pdf>.

	Rules on information at point of sale: All sorts of information regarding payments, period of contract, early terminations charges etc. to be disclosed to domestic customers and small businesses ⁴²	As for domestic customers	Does not apply
Any Public Electronic Communications Service	Paragraph 9.2 of the general conditions appears to specify certain information disclosure requirements in consumer contracts exclusively. It includes the identity and address of the provider, details on services, prices and tariffs, contract duration, renewal and termination, etc. ⁴³	Does not seem to apply	Does not seem to apply
	Consumers and small businesses should be allowed to exit their landline, broadband or mobile contract without penalty if their provider increases the cost of their monthly deal. So any price rise should be communicated at least 30 days in advance and in a clear manner ⁴⁴ .	As for domestic customers	Does not apply
Publicly Available Telephone Services	Paragraph 10.1 contains information related to prices and tariffs that need to be provided to any end-user ⁴⁵ .	Applies. End-user definition includes any person natural or legal	Applies. End-user definition includes any person natural or legal
	The Communications Provider shall produce a basic Code of Practice for its Domestic and Small Business Customers which sets out at least where such customers may avail themselves of the information required to be published under Condition 10.2. Must be in plain English and easy to understand ⁴⁶ .	As for domestic customers	Does not apply

⁴² Ofcom, "Protecting consumers from mis-selling of mobile telecommunications services" (2009) <http://stakeholders.ofcom.org.uk/binaries/consultations/mobmisselling/statement/statement.pdf>.

⁴³ Ofcom, "Consolidated Version of General Conditions as at 30 July 2010 (including annotations)", Paragraph 9.2.

⁴⁴ Ofcom, "Consolidated Version of General Conditions as at 30 July 2010 (including annotations)", Paragraph 9.6.

⁴⁵ Ofcom, "Consolidated Version of General Conditions as at 30 July 2010 (including annotations)", Paragraph 10.1.

⁴⁶ Ofcpm, "Consolidated Version of General Conditions as at 30 July 2010 (including annotations)", Paragraph 10.2 and 10.3.

	Paragraphs 13.1 and 13.2 specify the 'fair' behaviour of the provider in case the 'subscriber' has not paid. They also specify the need of the provider to publish details of measures it may take in such instance. ⁴⁷	Applies. Subscriber includes all businesses in the definition	Applies. Subscriber includes all businesses in the definition
Premium Rate Services, NTS calls, calls to 0870 numbers or calls to Personal Numbers	Provider must establish and thereafter maintain a Code of Practice for the provision of information to domestic and small business customers. ⁴⁸	As for domestic customers	Does not apply
Fixed-line telecommunications services	Protecting consumers and small business customers from mis-selling and aggressive contact of providers when the customer transfers from one provider to another. ⁴⁹	As for domestic customers	Does not apply
	Paragraph 24.6 of the General Conditions specifies the information at point of sale (when customer transfers from one provider another) to be provided. It includes charges, contract period, termination charges etc. ⁵⁰	As for domestic customers	Does not apply

⁴⁷ Ofcom, "Consolidated Version of General Conditions as at 30 July 2010 (including annotations)", Paragraph 13.1 and 13.2.

⁴⁸ Ofcom, "Consolidated Version of General Conditions as at 30 July 2010 (including annotations)", Annexes 1 and 2 to General Condition 14.

⁴⁹ Ofcom, "Protecting citizens and consumers from mis-selling of fixed-line telecommunications services", (2005), <http://stakeholders.ofcom.org.uk/binaries/consultations/752487/summary/statement.pdf>.

⁵⁰ Ofcom, "Consolidated Version of General Conditions as at 30 July 2010 (including annotations)", Paragraph 24.6.

	Paragraph 24.7 of the General Conditions specifies post-sale (post-transfer) information to be sent by both providers to the customer (consumer and small business). It includes switchover date, right to terminate the contract etc. ⁵¹	As for domestic customers	Does not apply
Complaints in general	Can raise a matter with the relevant Alternative Dispute Resolution (ADR) scheme. An ADR decision is binding on the provider but not the customer who makes the complaint. If the latter is still unhappy they can seek independent legal advice and consider legal action. ADR only applies to residential customers and small businesses. ⁵²	As for domestic customers	Does not apply. Need to go for legal help independently
Guidance in getting the best deal	Guidebooks on mobile telephony ⁵³ and price comparison. ⁵⁴	Guidebook on telecoms for small businesses. ⁵⁵	No specific guidance provided.

⁵¹ Ofcom, "Consolidated Version of General Conditions as at 30 July 2010 (including annotations)", Paragraph 24.7.

⁵² Ofcom, <http://consumers.ofcom.org.uk/tell-us/telecoms/contracts/>.

⁵³ Ofcom, "How to get the best mobile phone deal", http://consumers.ofcom.org.uk/files/2010/03/mobiledeal_v2b.pdf

⁵⁴ Ofcom, <http://consumers.ofcom.org.uk/price-comparison/>.

⁵⁵ Ofcom, "Getting the best telecoms deal – an Ofcom guide for small businesses, <http://consumers.ofcom.org.uk/files/2009/12/smallbusinesses.pdf>.

Financial Services: Extent of consumer protection by type of customer

	Individual consumers	Smaller business customers	Larger business customers
Consumer credit	The UK has applied all of the main provisions of the Consumer Credit Directive 2008 ⁵⁶ to both consumers and small business borrowers. Transposition has taken the form of amendments to the Consumer Credit Act (1974). ⁵⁷ Individual consumers are fully protected for borrowing less than £25k. They also have more limited protection for borrowing up to £60k.	Businesses have broadly the same level of protection as individual consumers when borrowing less than £25k (Articles 5*, 9, 10*, 11, 13, 14, 16, 17, 19, and 21 will apply) ⁵⁸	Loans above £25k not covered for business customers.
Banking	Switching: For consumers and micro enterprises (EU definition) there is a new switching service (as of Sept 2013) that guarantees that the switch to the new bank account will happen within 7 working days of opening the new account. It is free to use for the customer, catches all credits and debits into the old (closed) account for a period of 13 months, sends reminders to direct debit originators to update the details on their systems, and provides a guarantee that customers will be provided with a refund if mistakes occur. ⁵⁹		Does not apply

⁵⁶ European Commission, “Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC”, (2008), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF>.

⁵⁷ UK Government, “Consumer Credit Act 1974”, (1974), http://www.legislation.gov.uk/ukpga/1974/39/pdfs/ukpga_19740039_en.pdf.

⁵⁸ UK Government (2010), “Explanatory Memorandum to the Consumer Credit (EU Directive) Regulations 2010, the Consumer Credit (Total Charge for Credit) Regulations 2010, the Consumer Credit (Advertisements) Regulations 2010, The Consumer Credit (Disclosure of Information) Regulations 2010, The Consumer Credit (Agreements) Regulations 2010”, Annex A, available at http://www.legislation.gov.uk/uksi/2010/1011/pdfs/ukxiem_20101011_en.pdf.

⁵⁹ HM Treasury, “Banking reform: delivering stability and supporting a sustainable economy”, (2012), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32556/whitepaper_banking_reform_140512.pdf.

	The Banking Conduct of Business Sourcebook (BCOBS) specifies the behaviour of banks with respect to accepting deposits ⁶⁰ . Primary focus is on communication between the bank and the customer, post-sale requirements and cancellation rights.	BCOBS applies for micro enterprises (EU definition), apart from rules on distance marketing which are only for consumers. ⁶¹	BCOBS does not apply.
	Financial Services Compensations Scheme protects individuals, sole traders, and I businesses so long as the businesses are not large. (In fact, this condition equates to ‘small companies’, as defined under the Companies Act threshold) ⁶² . For deposit-taking, the EU Deposit Guarantee Schemes Directive requires Member States to have a guarantee scheme that provides cover of €100,000 for the aggregate deposits a person has with an authorised deposit taker. This limit can be converted into national currency and the UK limit is currently £85,000. All sizes of company are covered.	Protects businesses unless they are a large company. All sizes of company are covered under the EU Deposit Guarantee scheme.	FSCS does not apply
Insurance ⁶³	The Insurance Conduct Of Business Sourcebook (ICOBS) covers most aspects of insurance. It distinguishes customers (generic), consumers (insurance <i>mainly</i> for purposes unrelated to trade or profession), and commercial customers. The term ‘mainly’ was inserted in 2013 to widen slightly the scope of coverage for consumers. However, there is in fact very little difference within ICOBS between the treatment of different sizes of customer.		
	The primary difference relates to when a claim may be rejected on the grounds of misrepresentation. For a consumer, the insurer is required to show:	By contrast, a commercial customer has a duty to disclose all circumstances material to a policy, and a claim may be rejected if it fails to do so. It receives no	

⁶⁰ Financial Conduct Authority, “Banking: Conduct of Business sourcebook (BCOBS)”, (2013), <http://www.fshandbook.info/FS/html/handbook/BCOBS>.

⁶¹ Financial Conduct Authority (online), <http://www.fca.org.uk/firms/being-regulated/banking/Conduct-regime>.

⁶² Financial Services Compensation Scheme (online), <http://www.fscs.org.uk/can-we-help/#>.

⁶³ Financial Conduct Authority, “Insurance: Conduct of Business sourcebook (ICOBS)”, (2013), <http://fshandbook.info/FS/html/handbook/ICOBS>

	<ul style="list-style-type: none"> - that the consumer made the misrepresentation in breach of his/her duty 'to take reasonable care' not to make a misrepresentation, <i>and</i> - that, without the misrepresentation, the insurer would not have entered the contract (or agreed to the variation) at all, or would have done so only on different terms. 	additional protection in case of non-negligent misrepresentation, or misrepresentation which would not have changed the policy terms.	
	FSCS ⁶⁴ protects individuals, sole traders and businesses in relation to general insurance, in the case of businesses if they are 'small businesses' where this is defined as annual turnover of less than £1m. There is no size restriction in relation to compulsory insurance or life insurance.	Protects businesses for non-compulsory insurance and compulsory insurance if they are 'small businesses'.	Protects businesses for compulsory insurance irrespective of size. Does not protect businesses for non-compulsory insurance if they are not 'small businesses'.
Financial Ombudsman Service (FOS)	Consumers can go to FOS for redress	FOS considers complaints from micro enterprises (EU definition). ⁶⁵ In reaching a decision, FOS may consider whether or not the client was sophisticated or non-sophisticated at the time of sale.	Does not apply. Complaint is handled through standard legal system.

⁶⁴ See footnote 57.

⁶⁵ <http://www.financial-ombudsman.org.uk/publications/ombudsman-news/108/108-smaller-business.html>.

Energy: Extent of consumer protection by type of customer

	Domestic customer	Micro business customer	Larger business consumers
Definition (in relation to supply licence)	Natural person supplied with gas and electricity at domestic premises	A relevant consumer at non-domestic premises with fewer than 10 employees (or their full time equivalent); and an annual turnover or balance sheet total not exceeding €2 million, <u>or</u> which has an annual electricity consumption of not more than 100,000 kWh or annual gas consumption of not more than 293,000 kWh. ⁶⁶ (NB This threshold has recently increased; it was previously for electricity 50,000 kWh and for gas was 200,000 kWh). ⁶⁷	Other non-domestic customers can be deemed as micro business consumers by the supplier. ⁶⁸

⁶⁶ SLC 7A.14, Ofgem, ‘Standard conditions of electricity supply licence’ (2013) <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>; Ofgem, ‘Standard conditions of gas supply licence’ (2013) <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>

⁶⁷ Article 2(1) of the Gas and Electricity Regulated Providers (Redress Scheme) Order, S.I. 2008/2268). The aim of the increase of the consumption limit was to offer protection to more businesses. (see Ofgem, ‘The Retail Market Review – Final non-domestic proposals’ (2013) <https://www.ofgem.gov.uk/publications-and-updates/retail-market-review-final-non-domestic-proposals>).

⁶⁸ SLC 7A.1.

Notification of terms and conditions of supply contract	Principal Terms must be and in “plain and intelligible language” ⁶⁹	Terms and conditions must be in writing and in “plain and intelligible” language. ⁷⁰	It is “expected” but not required ⁷¹
Notification before end of supply contract	49-42 days before end of supply contract; Additionally, information that terms of deemed contracts ⁷² will apply if no new contract is signed. ⁷³	Supplier has to give notice between 30 and 90 days before the end of the fixed-term contract. ⁷⁴ New rules that “suppliers will have to show clearly, on every bill or statement of account, the date that the contract will end and the deadline for giving notice to change supplier.” ⁷⁵ Ofgem also wishes to abolish “termination windows” (short window for handing in notice to terminate contract). ⁷⁶ From March 2014 a termination notice can be given at any time. ⁷⁷	Not required

⁶⁹ SLC 23.1.

⁷⁰ SLC 7A.4 and 7A.5.

⁷¹ Ofgem, ‘Energy contracts for business customers’ (2011), <https://www.ofgem.gov.uk/ofgem-publications/64020/energycontractsforbusinesscustomersfs.pdf>.

⁷² A deemed contract is a contract where the supplier supplies gas and electricity without having signed an actual contract with the consumer.

⁷³ SLC 23.2.

Length of legal notice period for termination	Evergreen supply contract ⁷⁸ : no longer than 28 days ⁷⁹	No longer than 90 days for both non-fixed contract and fixed contracts; fixed-term contracts must be longer than 90 days ⁸⁰	Not applicable
Switching on fixed-term contracts	Switch at any time during or after “switching window” ⁸¹ without paying termination fee; No requirement of any form of notice to terminate fixed term supply contract. ⁸²	Switching depending on terms and conditions, often not possible as micro business consumer is on fixed-term contracts.	Switching depending on terms and conditions, often not possible as business consumer is often on fixed-term contracts.

⁷⁴ SLC 7A.14 in combination with 7A.8.

⁷⁵ Ofgem, RMR (n 2) 4.

⁷⁶ *ibid.*

⁷⁷ Ofgem, ‘New standards of conduct for suppliers – business consumer’ (2013) <https://www.ofgem.gov.uk/publications-and-updates/new-standards-conduct-suppliers-business-consumers>.

⁷⁸ An Evergreen supply contract is a contract that is automatically renewed, unless cancelled.

⁷⁹ SLC 24.6.

⁸⁰ SLC 7A.11 and 7A.12.

⁸¹ “Switching window” is defined as the “period which begins 49 days before the date the fixed term period of a Fixed Term Supply Contract is due to end and which ends on the date the fixed term period of a Fixed term Supply Contract is due to end.” (SCL 24.17).

⁸² SLC 24.8.

<p>Extension/continuation of fixed term contract</p>	<p>Automatic renewal of fixed-term contract not possible; In case of not changing or explicitly agreeing to a new (fixed term or Evergreen) contract, customer will be automatically put on the “Relevant Cheapest Evergreen Contract”⁸³</p>	<p>Possible, if:</p> <ul style="list-style-type: none"> - the licensee has provided terms and conditions and Statement of Renewal Terms (7A.7 or 7A.8), - the micro business consumer has not sent a notification before the relevant date⁸⁴ to prevent extension, - the duration of further contract does not exceed 12 month⁸⁵ 	<p>Depending on terms and conditions of the existing contract</p>
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⁸³ SLC 22C.7.

⁸⁴ “Relevant date” is defined as: “date which is at least 30 days, and no longer than 90 days, before the date any fixed term period of a Micro Business Consumer Contract is due to end.” (SLC 7A.14).

⁸⁵ SLC 7A.13.

<p>Renewal forms (renewal of fixed term contracts)</p>	<p>“Statement of Renewal Form” requirements :</p> <ul style="list-style-type: none"> - in writing - title clearly shows that fixed term contract is due to end - date when contract is due to end - Statement: “Remember- it might be worth thinking about switching your tariff or supplier” - where to get information about switching from - note customer will be put on the “Relevant Cheapest Evergreen Tariff” automatic in case of acting passively - information on Principal Terms of current supply contract, the Relevant Cheapest Evergreen Tariff and further fixed term contract - information about costs, estimated savings, name of the Relevant Cheapest Evergreen Tariff/alternative cheapest tariff when currently on Relevant Cheapest Evergreen tariff - Tariff Information Label for the Principal Terms of each contract explained, - provision of annual costs for current fixed term contract and for a further fixed term period⁸⁶ 	<p>“Statement of Renewal Form” requirements:</p> <ul style="list-style-type: none"> - in writing - plain and intelligible language - date, or duration, or calculation of duration period - statement that shows possibility to end contract including postal or electronic communication address - explaining consequences when not renewing - Renewal Forms must be provided⁸⁷ 	<p>Not required</p>
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⁸⁶ SLC 22C.3.

⁸⁷ SLC 7A.8 and 7A.9.

Back-billing		Following a super-complaint from Energywatch in 2006/07, Ofgem directed the industry to resolve domestic billing issues, including back-billing, and move to a one year limit for back-billing domestic consumers when the energy supplier is responsible for the failure. ⁸⁸	More recently, Ofgem has adopted a similar strategy in respect of non-domestic back-billing. All the major suppliers and a number of more minor ones have agreed on a one year back-billing limit.	
Objectives of Smart Metering		<ul style="list-style-type: none"> - ensuring service meets expectations - licensee or Representatives operates in a “fair, transparent, appropriate and professional manner” - provision with clear and accurate, not misleading information about/during the installation of smart metering systems and information about benefits of smart metering - licensee has to ensure the fulfilment of the objectives - no unwelcome marketing during the installation process.⁸⁹ 	As for domestic customers, other than no protection from unwelcome marketing during the installation process. ⁹⁰	Does not apply
Standards of conduct	Objective	Fair treatment (no favouring the licensee’s interests and no likelihood of detriment to customer). ⁹¹	As for domestic customers. ⁹²	Does not apply.
	Licensee’s behaviour	Fair, honest, transparent, appropriate, professional. ⁹³	As for domestic customers. ⁹⁴	Does not apply.

⁸⁸ Energy UK, Ofgem and Consumer Focus, ‘Back-billing: A guide for domestic consumers’ <http://www.energy-uk.org.uk/publication/finish/3/703.html>.

⁸⁹ SLC (electricity) 41.2; SLC (gas) 35.2.

⁹⁰ SLC (electricity) 42.1; SLC (gas) 36.1.

⁹¹ SLC 25C.2.

⁹² SLC 7B.2.

⁹³ SLC 25C.4(a).

⁹⁴ SLC 7B.4(a).

	Provision of information (in writing or orally)	<ul style="list-style-type: none"> - Complete, accurate, not misleading - in plain and intelligible language - relates to appropriate products and services - fair in both content and presentation.⁹⁵ 	As for domestic customers. ⁹⁶	Does not apply.
	Behaviour	<ul style="list-style-type: none"> - easy to contact licensee - quick correction of mistakes - ensuring transparent and appropriate service arrangements and processes.⁹⁷ 	As for domestic customers. ⁹⁸	Does not apply.
	Exception to scope	No application in respect of the amount or amounts of any charges for supply or other charges or fees (does not relate to deemed contracts). ⁹⁹	As for domestic customers. ¹⁰⁰	Does not apply.
	Provision and publication of information	<ul style="list-style-type: none"> - Provision of annually updated information (“Treating Customers Fairly Statement”) in writing, including clear information on fairness, and expected service and treatment. - publish the Treating Customers Fairly Statement online. - providing a written copy free of charge upon request.¹⁰¹ 	As for domestic customers. ¹⁰²	Does not apply.

⁹⁵ SLC 25C.4(b).

⁹⁶ SLC 7B.4(b).

⁹⁷ SLC 25C.4(c).

⁹⁸ SLC 7B.4(c).

⁹⁹ SLC 25C.6.

¹⁰⁰ SLC 7B.7.

¹⁰¹ SLC 25C.7-25C.9.

¹⁰² SLC 7B.8-7B.10.

Complaints handling, using an ombudsman	<ul style="list-style-type: none"> - Complaints¹⁰³ can be taken to the ombudsman free of charge. - Complaints redress procedure must be made publicly available (written copy, website).¹⁰⁴ 	As for domestic consumers. ¹⁰⁵	Does not apply.
Additional consumer protection arising from the Retail Market Review, much of which is already in place, and the remainder is underway.	<ul style="list-style-type: none"> - limiting the number of tariffs (maximum of four core tariffs for each provider, further tariffs by region are possible) - providing consumers with better and more relevant information by creating standard ways of communicating key messages and prompts and by making the routine letters and statements more user-friendly, e.g. Tariff Comparison Rate (a new metric) , standard format Tariff Information Label for all tariffs , standard way of setting out Personal Projections of tariff costs, regular prompts from supplier what cheapest tariff is for you, requiring specific personalised information needed to assess tariff options on routine communications, degree of standardisation in the layout of the Bill, Annual Statement, Price Increase Notification and End of Fixed Term Notice to ensure that key messages are prominent and useful information is hard to miss.¹⁰⁶ 	<p>The majority of these additional consumer protections do not apply to micro businesses.</p> <p>The proposals do, though, include:</p> <ul style="list-style-type: none"> - increased monitoring of suppliers' customers transfer action - compulsory Code of Practice for non-domestic third-party intermediaries (TPIs).¹⁰⁷ - new sanctions to ensure fair treatment, dealing with problems immediately, not providing misleading information.¹⁰⁸ 	<p>The majority of these additional consumer protections do not apply to larger businesses.</p> <p>The proposals do, though, include:</p> <ul style="list-style-type: none"> - increased monitoring of suppliers' customers transfer action - compulsory Code of Practice for non-domestic third-party intermediaries (TPIs).¹⁰⁹

¹⁰³ Problems the ombudsman is able to deal with, are: energy bills, problems related to switching and the sales of energy, supply related matters, micro generation problems and Feed-In Tariffs as well as Green Deal services. See <http://www.ombudsman-services.org/energy.html>.

¹⁰⁴ Ombudsman Services, 'About Ombudsman Services: Energy', http://www.ombudsman-services.org/downloads/OSenergy_factsheetLP.pdf.

¹⁰⁵ *ibid.*

¹⁰⁶ Ofgem, RMR (n2) 10-11.

¹⁰⁷ Ofgem, RMR (n2) 7-8.

¹⁰⁸ Ofgem, RMR (n2) 7-8.

¹⁰⁹ *ibid.*

Water and sewerage: Extent of consumer protection by type of customer

	Household customers	Small businesses (non-household customers with water consumption under 5 MI/yr)	Large businesses (non-household customers with water consumption over 5 MI/yr)
Information ¹¹⁰	Ofwat expects companies to provide customers with information that is: <i>Accurate, correct, transparent, clear, accessible, timely, customer-led.</i>	Same as for household customers. No special treatment for small businesses relative to either household customers or large businesses in terms of information requirements, but Ofwat adopts a risk-based approach to reviewing companies' information provision. Reviews only when it has reliable intelligence that there are significant risks to customers. ¹¹¹	Same as for household customers.

¹¹⁰ Evidence to populate the cells of his table was collected almost entirely from the two separate sections of Ofwat's website for household and non-household consumers (see <http://www.ofwat.gov.uk/consumerissues> and <http://www.ofwat.gov.uk/nonhousehold>). We specify any alternative source with additional footnotes.

¹¹¹ <http://www.ofwat.gov.uk/regulating/compliance/infoprovision/>.

	<p>Each company should have a code of practice, approved by Ofwat (under License Condition G), that contains, as a minimum, critical information that OFWAT requires it to provide to domestic customers. Companies have freedom to design their code in a way that best meets customer needs, but it must:</p> <ul style="list-style-type: none"> • describe the nature of the services to domestic customers, including services to be provided, tariffs, payment options, complaints handling, what to do in an emergency, meter accuracy and liability for charges, and the Consumer Council for Water’s contact details; • give guidance to domestic customers who have difficulty paying their bills; • give allowances for the cost of water lost through leakage (Condition I). 	<p>It does not apply for small businesses. However, a number of companies have introduced discretionary policies for leakage allowances for non-domestic customers.</p>	<p>It does not apply for larger businesses.</p>
	<p>All customers of water and sewerage companies are entitled to guaranteed minimum standards of service, as laid down by the Government. This is the guaranteed standards scheme (GSS). Where a company fails to meet these standards it is required to make a payment to the affected customer. The water and sewerage companies must inform billed customers of their rights under the scheme every year.¹¹²</p>	<p>As for household customers but higher payments available for non-households where standards for restoring water supplies are not kept to.</p>	

¹¹² UK Government, “Water Industry, England and Wales: The Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008”, (2008), http://www.legislation.gov.uk/uksi/2008/594/pdfs/uksi_20080594_en.pdf.

	<p>Every company needs to provide information to customers which:</p> <ul style="list-style-type: none"> a. empowers them to secure the lowest possible bills and best possible service; b. involves customers and representatives in preparing, changing and implementing its information provision approach; and c. considers its adherence to our information provision requirements in its yearly risk and compliance statement and demonstrate this to Ofwat if required to do so.¹¹³ 		
Prices and Charges - General	Each water company's charges and terms and conditions are set out in its charges scheme. Ofwat approves the companies' charges schemes each year. Any household customer can ask their company for a copy of its scheme or view it on its website.	Ofwat has confirmed to companies that they will be required to propose default tariffs that will apply to non-household consumers based on a standard price and level of service ¹¹⁴	
Back-billing	Companies can ask up to six years of unpaid water and sewerage charges. However, this will depend on the circumstances of each case. The company should offer the household customer a reasonable repayment plan and allow spread repayments.	Does not seem to apply	Does not seem to apply

¹¹³ Ofwat, "Empowering water and sewerage customers through information – Ofwat's approach", (2013), http://www.ofwat.gov.uk/regulating/tools/consumerpolicy/pap_tec201305infoprovision.pdf.

¹¹⁴Ofwat "Information notice - 2014 price review – updated guidance to companies about our process for assessing their default tariffs", (2013), http://www.ofwat.gov.uk/pricereview/pr14/retail/prs_in1314pr14defaulttariffs.pdf

Disconnection	Companies cannot disconnect household customers. There are particular principles the company has to follow when attempting to recover debt which are detailed in Ofwat's 'Dealing with household customers in debt guidelines' ¹¹⁵	Does not apply. Can be disconnected. Exceptions however exist, such as residential accommodations and day-care educational facilities (set out in Schedule 4a of the 1991 Water Industry Act ¹¹⁶)	Does not apply. Can be disconnected
Complaints	Ofwat has powers to approve company complaints procedures. Consumers can also complain to Consumer Council for Water. The latter can address an issue with the water company on the customer's behalf. An alternative dispute resolution scheme for unresolved complaints is expected to be established in 2014.	As for household customers	As for household customers.

¹¹⁵ Ofwat, "Dealing with Customers in Debt – Guidelines", (2007), http://www.ofwat.gov.uk/consumerissues/problemspayingbill/gud_pro_custdebt20070327.pdf.

¹¹⁶ UK Government, "Water Industry Act", (1991), <http://www.legislation.gov.uk/ukpga/1991/56/contents>

Switching	Cannot switch	Cannot switch, but market to be opened up to all businesses, charities and public sector customers under the Water Bill 2013. ¹¹⁷ All business consumers, with the exception of those who operate businesses from their home address, will be able to opt for other terms and conditions from other licensed suppliers or alternatively negotiate the price and terms with their existing supplier.	Currently, only non-domestic customers buying more than 5 million litres per year can switch (25 million in Wales). ¹¹⁸
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¹¹⁷ UK Government, <https://www.gov.uk/government/policies/reforming-the-water-industry-to-increase-competition-and-protect-the-environment/supporting-pages/reform-of-the-water-market-the-new-water-bill>.

¹¹⁸ Ofwat, <http://www.ofwat.gov.uk/nonhousehold/choose/>.