



**Consultation: Consumer Council response to the Utility Regulator's  
Enforcement Procedure and Financial Penalties Policy**

**Date: 09/10/2015**

**Contact: Mark Crawford**

**Our Reference: 2379 PD20010**

## **Introduction**

The General Consumer Council for Northern Ireland (the Consumer Council) is an independent consumer organisation, working to bring about change to benefit Northern Ireland (NI) consumers. Our aim is to ‘make the consumer voice heard and make it count’.

The Consumer Council welcomes the introduction of an Enforcement Procedure and Financial Penalties Policy. We believe it will provide consumers greater protection within the energy market.

## **Consideration and Determination**

Adherence to licence conditions is the foundation for consumer protection in the energy market. In addition they help to promote an effective and competitive market in Northern Ireland (NI). Transparency and trust are at the heart of good regulation. They provide consumers with confidence in the regulatory process. Therefore the Consumer Council believes as a first principle that all determinations should be published by the enforcement committee. However if the Utility Regulator (the Regulator) believes there are instances when a determination should not be published, we would welcome clear guidance on what constitutes “good reason”. Furthermore if a decision is made not to publish a particular determination the reason for this must be published and made available to consumers.

## **Enforcement Procedure**

The Consumer Council acknowledges the power of the Regulator to make an enforcement order, impose a financial penalty and/or revoke a licence. In respect of imposing a financial penalty, we would make the following points:

1. Overall consumers should not suffer financial detriment as a consequence of a licence breach;
2. Any fine imposed due to a licence breach should be returned to consumers, either those directly impacted, or if not feasible, energy consumers as a whole;
3. Any fine imposed will be paid directly from company profits and not be recouped retrospectively via the company’s customer base.

## **Enforcement committee**

The Consumer Council agrees with the make-up and independence of the enforcement committee. However, we are uncertain about how the committee will be comprised and we request further clarification on how the size of the committee is determined.

Paragraph 4.2 of the policy states a committee will generally be comprised of three members. However it provides flexibility for the number to range from a single person to the entire board. We would have particular concerns about a committee comprising of a single person committee and therefore a quorum approach should be adopted.

## **Undertakings and alternative resolution**

*“5.5 For an undertaking to be an alternative to formal enforcement action both we and the company must agree the terms of the undertaking”.*

It is the Consumer Council’s view that details of this undertaking should be published and clearly explained. This is in the interests of consistency and transparency which increases consumers trust in the energy market.

## **General Factors**

Paragraph 4.2 of the policy sets out that the Regulator will take full account of any representations or objections from interested parties. We believe that sharing such information will help invite representations and enforce the objective of the Regulator to protect the interests of consumers. Therefore the Consumer Council supports this proposal.

The Consumer Council has a statutory role to represent energy and water consumers in Northern Ireland under the Energy Order 2003 and the NI Water and Sewerage Services Order (NI 2006). Furthermore our specific interest in energy licences has been recently recognised in the Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015, which gives the Consumer Council the right to appeal licence modifications to the Competition and Markets Authority (CMA). As such, we ask that the statutory role of the Consumer Council is recognised in this policy and that we are informed of and invited to make a timely submission on all investigations that take place.

## **Decision on proceeding or not to a formal determination**

Increasing the confidence and trust of consumers is the key to the effective operation of a competitive and consumer focused energy market here in NI. As a principle we believe all decisions should be published so that lessons can be learnt and consumers can make informed choices. As the statutory consumer body on regulated energy issues, the Consumer Council should be informed of any decision not to proceed to formal determination. This will help ensure that we have the information required when undertaking our primary statutory duty of safeguarding and promoting the interests of consumers.

If you would like further information or to discuss any issues raised in this paper please contact Mark Crawford on 028 9025 1640 or [mark.crawford@consumercouncil.org.uk](mailto:mark.crawford@consumercouncil.org.uk).



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