

Department for Energy Security and Net Zero's call for evidence as part of its review of Ofgem

Response from the Competition and Markets Authority (CMA)

Background

1. The CMA is the UK's principal competition and consumer authority. It is an independent non-ministerial UK government department, and its responsibilities include carrying out investigations into mergers and markets and enforcing competition and consumer law. The CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.¹
2. The CMA has a role in providing information and advice to government and public authorities.² The CMA carries out this role with a view to ensuring that policy decisions take account of impacts on competition and consumers.

Ofgem's consumer law enforcement powers

3. The Digital Markets, Competition and Consumers Act 2024 (DMCCA) introduces significant reforms to the consumer protection landscape. It:
 - (a) enables the CMA to make decisions about whether certain consumer laws have been breached, and impose monetary penalties to prevent genuine harm; and
 - (b) amends the pre-existing court-based regime for other consumer law enforcers, such as sector regulators. The relevant sector regulators, including Ofgem, will still need to apply to a court to establish a breach of consumer law, but the court will now be empowered to impose monetary penalties for breaches.
4. The call for evidence seeks views on Ofgem being given consumer law enforcement powers similar to the CMA, so that it can make its own decisions on breaches of consumer law, including the imposition of monetary penalties,

¹ The CMA's statutory duty is to promote competition, both within and outside the UK, for the benefit of consumers.

² Under Section 7(1) of the Enterprise Act 2002, the CMA has a function of making proposals, or giving information and advice, "on matters relating to any of its functions to any Minister of the Crown or other public authority (including proposals, information or advice as to any aspect of the law or a proposed change in the law)."

(‘administrative enforcement powers’), rather than needing to establish breaches of consumer law through the courts.

5. The CMA’s view is that Ofgem would be in a considerably stronger position to enforce consumer law and prevent genuine harm if provided with administrative enforcement powers.³ Although the CMA welcomes the strengthening of court-based enforcement, enforcement by sector regulators such as Ofgem is likely to be more efficient under a framework which permits administrative enforcement.
6. The CMA is mindful that providing sector regulators such as Ofgem with administrative enforcement powers would require decisions on a number of additional issues. These include:
 - (a) The appropriate mechanisms to ensure consistency and coordination in the application of the law.
 - (b) The elements of consumer law for which the relevant sector regulators would have administrative enforcement powers.
 - (c) How best to ensure that the ability to enforce general consumer law is an effective complement to regulatory or licensing powers.
7. If the government decides to provide Ofgem (or other sector regulators) with administrative enforcement powers, the CMA would be happy to support the development of the wider policy framework.

Ofgem’s consumer law remit

8. The call for evidence seeks views on Ofgem’s remit to enforce consumer law in respect of low carbon technologies, such as heat pumps and solar panels, and what the appropriate boundaries might be. Preventing genuine harm through strong consumer protection is important in all markets, but it is particularly important in this sector where:
 - (a) Consumers are making infrequent purchases of expensive and complex products, involving relatively new technology that they may be unfamiliar with.
 - (b) The cost of fixing problems is likely to be high.

³ As set out at paragraph 2.211 of the [CMA’s response](#) to the government’s consultation in 2021 on reforms to competition and consumer policy, the CMA would support reforms such that those sector regulators who wish to enforce consumer law through an administrative model can do so.

- (c) The products serve an essential need (home heating), and consumers can be left in a particularly vulnerable position when things go wrong that are not promptly and effectively addressed.
9. It is therefore essential that businesses (including new entrants) are supported to understand their consumer law obligations, and that fair-dealing businesses can compete on a level playing field. It is essential that people can trust businesses in the sector to treat them fairly; that they can make informed decisions about buying and installing products; and that they have confidence that they are protected from mis-selling and poor quality installations. Without consumer confidence in this sector, demand for green heating products and the transition to net zero will be slowed. The CMA has undertaken a range of work in the green heating and insulation sector over recent years, including our May 2023 report on the findings of our [review of consumer protection in the UK green heating and insulation sector](#).⁴
10. The UK's consumer enforcement landscape is complex and involves responsibility spanning a number of different bodies. In December 2024, the CMA set out its view that there would be merit in a more in-depth review of the effectiveness of how the CMA works with sector regulators to fulfil their consumer protection roles in the regulated sectors.⁵
11. It is particularly important for the CMA and sector regulators such as Ofgem to adopt a collective approach to issues in new markets and markets developing at the perimeter of regulators' existing responsibilities. Providing clarity to consumers and businesses should be a key objective. For example, there may be an advantage in Ofgem taking a lead role in consumer law enforcement for products delivered under government schemes it is responsible for administering, as this will help to simplify the landscape for consumers and businesses, drive consistency and minimise regulatory uncertainty.⁶ We look forward to working with Ofgem and the government on Ofgem's consumer protection role in the area of low carbon technologies, supported by the feedback received through the call for evidence.
12. Separate to consumer law enforcement, the CMA's review of consumer protections in green heating and insulation underscores the important role that

⁴ The CMA's review assessed the consumer experience of buying green home heating products; businesses' practices in marketing and selling these; and the effectiveness of the standards bodies that oversee quality and consumer protection standards for member businesses. We identified concerns in these areas and set out key actions for the CMA, the sector, and for governments across the UK, to help ensure that people are treated fairly and protected.

⁵ [Review of the competition concurrency arrangements](#) paragraphs 96-112

⁶ It is also important, however, that all consumers accessing low carbon technologies are well protected, regardless of how their purchases are funded. Otherwise there is a risk that, as the sector grows, consumers who fully self-fund their purchase have weaker standards of protection.

standards bodies⁷ can play in this sector in increasing consumer trust. Whilst people have rights and protections under general consumer law when buying low carbon technologies, it is important that there are additional safeguards in place given the potential vulnerability of consumers in this sector (including for the reasons set out at paragraph 8, above). A well-functioning standards landscape can help to ensure that businesses are competent to carry out the work with clarity on the standards expected of them, customers are treated fairly and there are mechanisms for people to seek redress if things go wrong. This should, in turn, reduce the need for consumer enforcement bodies such as Ofgem, Trading Standards, or the CMA to take enforcement action.

13. The CMA's 2023 report on [consumer protection in the UK green heating and insulation sector](#) found that the standards landscape was complex (with a myriad of different bodies and schemes) and not working as effectively as it could be.⁸ To help address these concerns, the CMA published a set of good practice principles for standards bodies.⁹ In February 2024, the CMA published an update on progress made by standards bodies against our good practice principles.¹⁰ We found that overall, standards bodies had engaged positively, but more still needed to be done to improve levels of consumer protection – particularly to ensure smooth dispute resolution and strong financial protections. We reiterated our recommendation that the UK government consider carrying out a holistic review of the standards landscape to look at how it could be simplified and protections further improved, informed by the CMA's and others work in this area.
14. The CMA welcomes the government seeking evidence on these issues, and stands ready to support the government in improving consumer protection for low carbon technologies.

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⁷ There are a range of 'standards bodies' in the sector that set quality and consumer protection standards, certify or accredit businesses as meeting those standards, and monitor compliance with those standards. These bodies include the Microgeneration Certification Scheme, TrustMark and two sector-specific (Chartered Trading Standards Institute) approved Consumer Codes.

⁸ In particular, we also identified that:

- (a) the level and robustness of standards varied, raising the risk of inconsistent protection and poor outcomes for consumers;
- (b) complaints processes were generally confusing, with no clear and simple route for people to raise complaints; and
- (c) some post-installation financial protections could be limited in scope and contain important caveats and exclusions that consumers might not expect (for example, only covering quality of work issues).

⁹ [Good practice principles for standards bodies](#).

¹⁰ [Consumer protection review update on the standards landscape](#)