



energy perspective

A quantum of solace: a look back at the achievements of Energywatch

Last week the gas and electricity consumer council, better known as Energywatch, ceased operations and was superseded by a new consumer representation regime centred on the new National Consumer Council—branded as Consumer Focus—an expanded role for Consumer Direct and a beefed-up energy ombudsman.

In this *Energy perspective* we review some of the achievements of Energywatch and track changes in the consumer regulatory landscape that has occurred since its inception.

On her majesty's secret service

The Utilities Act 2000 established Energywatch as a non-departmental public body, sponsored by the DTI, and ultimately funded by gas and electricity licence-holders. It began operations in November 2000 with Ann Robinson in charge. Energywatch consisted of seven regional offices, a head office and a call centre, including offices in the then newly devolved Welsh and Scottish nations.

If we remind ourselves of the state of the market at the time we find retail price controls were still in place; the new electricity trading arrangements (Neta) were just about to be introduced; supply licence conditions were in their original form, and the number of suppliers in the retail and business sector was almost double that of today.

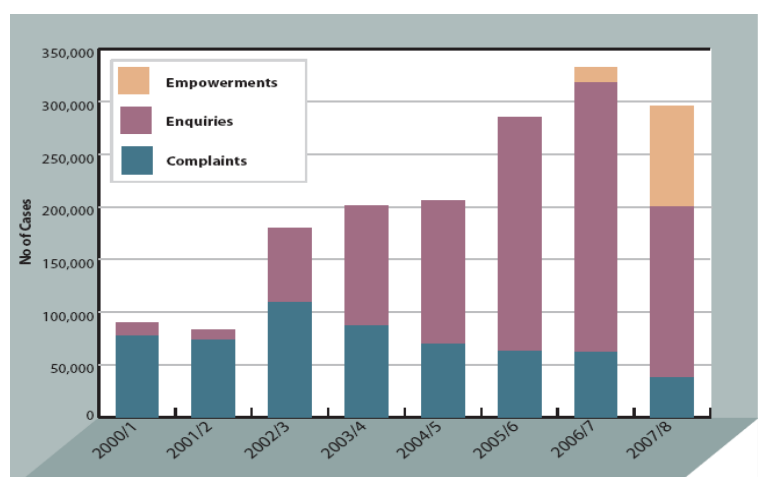
Thunderball(s)

One of Energywatch's first initiatives was the creation, in conjunction with suppliers and Ofgem, of a voluntary code of practice to help consumers who were switched to a new supplier without their consent, then accounting for almost half of all complaints received. The Erroneous Transfer Customer Charter introduced on 1 January 2002 showed that, despite having no statutory powers, the watchdog could bring about regulatory change to benefit consumers through voluntary initiatives. It demonstrated that industry rules could be developed fairly rapidly by all stakeholders, and more importantly gave comfort to the Government and Ofgem that self-regulation had a place in energy consumer protection.

The next issue it tackled was the high levels of mis-selling complaints. At the time retail competition was still very much in its infancy and suppliers were vying hard for new customers. This occasionally led to some sales agents acting unscrupulously, which prompted the watchdog to launch its *Stop Now!* campaign. By highlighting concerns in the national press, suggesting remedies and gaining a sympathetic ear of the then energy minister Brian Wilson, Energywatch effectively managed to give the industry an ultimatum—clean up your act or face tougher regulation to resolve the problem.

The result was the creation of a code of practice covering direct sales and the establishment of an accreditation scheme for sales agents. The success of this measure—another example of self regulation—showed Energywatch's real power lay in how it used the wealth of data collected from consumer contacts. Presenting consumer issues with qualitative case studies and quantitative analysis of complaint statistics often meant that concerns received a high profile firstly in the media and then subsequently in board rooms of suppliers and MPs' constituency offices.

Complaints received by Energywatch



Source: Energywatch Annual Report 2008

Nonetheless simply giving an issue profile did not guarantee that industry would engage and deliver solutions that the watchdog sought.

For your eyes only

Energywatch's mandate included industrial and commercial consumers. Although the largest were often more than capable of resolving issues with suppliers bilaterally, the watchdog built relationships and rapport with these consumers and their trade associations. Intelligence provided via these networks enabled it to anticipate problems trickling down from the wholesale market to retail.

This perspective reinforced the watchdog's view that it needed to campaign for well-functioning wholesale and retail markets for the interests of all consumers, while continuing to react to immediate problems. While we doubt many consumers contacted Energywatch expressing concerns such as how complex industry governance rules could pose a barrier to entry for new companies wishing to enter the market, it developed the insight from its wider operations to see how arcane industry and market structure issues needed resolving in the long term.

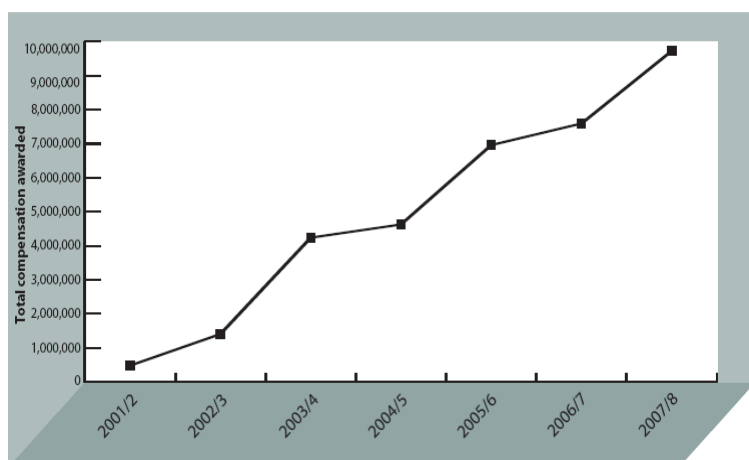
And perhaps one of the unsung areas of Energywatch activity was the assistance and campaigning it undertook on behalf of smaller businesses. As wholesale prices rose in 2004 the year before Energywatch had witnessed increased contacts from small businesses seeking help and advice. Besides its own complaint data the watchdog recognised there was a dearth of information on the health of the small business market and commissioned research by Cornwall Energy to help it form a better understanding of the state of non-domestic retail markets and problems such businesses typically experienced.

This research confirmed there were real issues in these markets involving smaller businesses and recommended that Energywatch should establish information resources where customers could access practical assistance on understanding and evaluating offers. But despite creating a small business team to implement some of the recommendations and campaign on behalf of these constituents, it was unable to gain support to bring greater regulatory oversight and market monitoring to enable a more sober judgement to be formulated of the health of this section of the market. But Energywatch continued its work in this area, and in July 2007 published a substantial survey of small business customer satisfaction and used this to call for a comprehensive review of the small business market by Ofgem.

Never say never again

The Enterprise Act 2002 strengthened consumer protection by introducing the concept of super-complaints. In February 2004 Energywatch applied to the DTI to become a designated body permitted to submit super-complaints to Ofgem. Having received the powers in April 2005, it submitted a super-complaint to tackle irregular billing cycles, incorrect bills and the high prevalence of estimated bills. The billing super-complaint resulted in the industry being given a directive from Ofgem for the establishment of an ombudsman scheme to resolve deadlocked billing complaints, effective from July 2006 and a 12-month deadline to end back-billing.

Compensation and bill reduction



Source: Energywatch Annual Report 2008

These developments marked a turning point in consumer protection and presaged the changes which we now see. Energywatch's new power meant that, when submitting a super-complaint at least, the regulator and industry were obliged to take notice and accept regulation could be tightened. Further the super-complaint resulted in the bolstering of a new consumer protection body for the energy sector: an independent ombudsman. Again the creation of the ombudsman is an example of industry self regulation, but it would not have happened without pressure from Energywatch on behalf of consumers.

Pointing the (gold) finger

As Energywatch matured, it became more adept at raising concerns about market structure, although it continued to tackle specific issues, such as disconnections and price differentials for pre-payment customers, right up to its last day of operations. The introduction of Neta and

the subsequent collapse of wholesale electricity market prices in 2003 ushered in an aggressive period of market consolidation as suppliers became vertically integrated to reap the benefits of scale and to achieve more balanced portfolios. From the watchdog's point of view, the reduction in wholesale prices was not followed by an adequate fall in the retail price. This made it increasingly vocal, pressuring the Government and regulator to investigate the market and the increasingly high concentration levels within it.

Energywatch then embarked on a path highlighting the apparent lack of competitive pressures in the market. Although the regulator, many participants and commentators maintained Britain benefited from one of the most competitive energy markets in the world, the arguments from late 2006 in a rapidly falling wholesale market seemed to gain credence. This approach put Energywatch on a collision course with Ofgem, who for long periods resisted the argument that the market was rigged (or doctored), with a resounding no. And as wholesale markets soared this year (but with much more rapid pass-through of increases) more of the arguments stuck at least politically. Some will argue it is coincidence, but there is a high level of convergence between the arguments made by Energywatch over the past 18 months and the coverage of the recommendations of the Berr select committee. But we think Energywatch's ability to back up argument with evidence has played an important role in these developments.

Tomorrow never dies

To quantify some of its achievements the watchdog recovered over £35mn in compensation and bill reductions for consumers and dealt with 575,000 complaints. Unsurprisingly it has left the market with unfinished business.

One of its last strands of work was the development of and recognition for a set of rights for energy consumers. The aim was to incorporate these in the EU's third legislative energy package. The watchdog also teamed up with Consumer International to incorporate the rights in the UN *Guidelines for consumer protection*. A recent campaign to mandate social tariffs for the most vulnerable consumers has also borne fruit. It also stimulated important and successful change proposals to increase transparency in the gas market, through UNC006, (not 007), and many believe there is more work to do in this area. And of course its lobbying on behalf of the fuel poor has also been significant and merited at a time when Government figures last week showed an increase of 1mn affected in 2006 from 2005 and warnings of a further 1.2mn to be hit in 2007 and 2008 (*we will cover this report in the next issue*).

Energywatch has undoubtedly left a legacy for the new consumer regime to build upon: pre-payment meter price differentials have become a greater concern for consumer representatives and of course consumers' ongoing concerns about the structure and operation of the energy market are encapsulated by Ofgem's probe but also by EDF's proposed takeover of British Energy.

Casino royale

The trading environment has undergone profound change over the past three or four years. Many of the market and regulatory assumptions made by ministers and officials when they conceived the Consumers Estate Agents and Redress legislation have changed. It is fair to say that when the changes to the institutional arrangements for consumer representation were announced back in 2003 there was not much pushback. There is also a view that large parts of the industry and even the regulator egged the Government on because they saw Energywatch as an irritant.

It is clear that the consumer dynamic is now different and—we think—in the absence of an advocacy role weaker. While the industry has adapted to the challenge of self-regulation when prompted, it cannot be accused of pursuing many of the changes that have occurred enthusiastically. Berr committee chairman Peter Luff said recently the decision to annul Energywatch was ridiculous, and it is easy to see that the changes could not have come at a worse time.

Of course the wisdom of the changes can only be tested over time. Many take the various codes of practice now in place for granted. There are signs that the initial voluntary ombudsman scheme has settled down reasonably well. And Consumer Focus and Consumer Direct have yet to roll up their sleeves. Signs are though that they will have to hit the ground running, as by the time you read this comment Ofgem will have released its supply market probe (which coincidentally should provide a barometer of the extent to which many of Energywatch's arguments have credence).

What is clear is that Energywatch has set the bar pretty high. It often punched above its weight and consistently provided resolution for hundreds of thousands of consumers while doggedly attempting, sometimes succeeding and sometime failing, to mould the regulatory landscape to the benefit of consumers. Perhaps the last word should be left to the outgoing chief executive Allan Asher, who said in the final Energywatch annual report: "My hope is that Energywatch will be remembered as a friend to those with the right intentions and a thorough pain to those who only see consumers as a source of income or nuisances to be ignored."