

Feed-in Tariffs: Complaints and Dispute Resolution

AIM

This paper is intended to:

- identify where any gaps exist in established complaints and dispute resolution (DR) processes as a direct result of the introduction of the Feed-in Tariffs (FITs);
- establish short term arrangements to ensure that any disputes / complaints as a result of the introduction of the FITs can be handled from the launch date; and
- identify where further work is needed to establish firmer and longer term complaints and dispute resolution processes for FIT issues.

RECOMMENDATIONS

We recommend a complaints procedure which incorporates existing structures and processes to minimise confusion and duplication of effort. We suggest that the Dispute Resolution (DR) process mentioned below is adopted on a voluntary basis by those involved in the paying and administering of the FITs for the first year of the scheme. The effectiveness of the DR process will be reviewed nine months after the introduction of the FITs with a view to having a more formal DR process in place by April 2011. To enable this we also recommend that FITs licensees and Ofgem keep a record of the type of complaints received and the outcome of FITs related complaints and that this is provided to DECC nine months after the introduction of the FITs in January 2011. This information will enable a review of the complaints process and also to feed into any future review of the FITs.

We anticipate that the majority of complaints will come from FITs generators. In those circumstances we propose the following:

1. If a FIT generator has a complaint about their FIT they should in the first instance contact their FIT Licensee. If the complaint cannot immediately be resolved, we propose that the complaint be recorded by the FIT Licensee, who may go back to the complainant and request supplementary information about the complainant and their complaint to assess which complaint route to use.
 - a. Domestic and micro business FIT generators will follow the existing dispute resolution process which is open to electricity consumers.
 - b. For the larger FIT generators the process will depend on the which process the FIT Licensee has in place. For example, some FIT Licensees will assign an account manager to its larger FIT generators regardless of the fact that they may not be import customers also. In this case the account manager will take forward the complaint. If no account manager is assigned then a similar process to that for domestic and micro business FIT generators will follow.

2. The FITs licensee will then investigate the complaint and respond as per their existing complaints processes.
 - a. For the first year of the FITs the time limit before a complainant can refer their complaint to the Energy Ombudsman is extended from 8 weeks to **12 weeks**¹ for all suppliers. This is referred to as the “gestation” period. This 12 week period begins from the time that the complaint is first received, not from the point where any supplementary information is received. The established complaints handling procedures, coupled with the process of registering the installation onto Supplier’s systems, should provide a the Suppliers with a good indication of the type of customer initiating the complaint. Therefore, the time between requesting additional information from the complainant and receiving it should not have a significant bearing on the 12 week timescale.
 - b. For complainants who do not fall within the remit of the Energy Ombudsman the existing complaint route through the courts will apply.
3. If after an initial investigation it is established that the complaint is not about the supplier the supplier will, where possible, contact the relevant organisation and provide a co-ordinated response to the complainant.
4. As stated in paragraph 6.3.2 (a) of the Feed-in Tariffs licence modifications, a FIT Licensee is required to provide a description of the Complaints Procedure to the FITs Generator in the Statement of FIT Terms. This should refer to the procedure mentioned here.
5. If a FIT generator has a complaint about the actions of the Authority (Ofgem) such as their entry on the FIT registry or the decision that they do not meet criteria for accreditation under the scheme then the existing Ofgem complaints process should be followed.
6. There will be instances when a FITs licensee will want to make a complaint. We anticipate that the majority of these complaints will relate to the central FIT register. In those circumstances we propose that the complaints process suggested by Ofgem is followed:
 1. For disputes involving the Central FIT Register the FIT licensee should contact the Central FIT Register Manager at Ofgem.
 2. Enquiries, disputes and complaints involving the levelisation, mutualisation and annual reconciliation process should be made to the FIT Compliance Manager at Ofgem.

¹ The “gestation” period was previously extended to 12 weeks when the Estate Agents and Redress (CEAR) Act 2007 came into force on 1 October 2008. Here the small, independent suppliers and networks were allowed to work with a 12-week gap between the first complaint to them from customers and the customers’ ability to approach the Energy Ombudsman. This lasted for a period of 12 months.

BACKGROUND / SCOPE

In order to ensure a smooth transition to the new FITs scheme, we have sought to understand the types of complaints that may be received. We will work to improve any problem areas within the FITs scheme based on volumes of complaints.

The Dispute Resolution (DR) process referred to in this paper relates to those complaints / disputes that arise as a direct consequence of the claiming and administration of the FITs. It is not intended that this process replaces any existing policies and procedures in place for other disputes.

Complaints / disputes will form only a small proportion of the number of contacts between parties involved in the claiming and administering of FITs. It is not intended that any DR process impact on any existing principles put in place by the Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 ("the FIT Order") or supply licence modifications in the administration of the FITs.

DEFINITION – WHAT IS A COMPLAINT

The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 determine the following definition of a complaint:

“Any expression of dissatisfaction made to an organisation, related to any one or more of its products, its services or the manner in which it has dealt with any such expression of dissatisfaction, where a response is either provided by or on behalf of that organisation at the point at which contact is made or a response is explicitly or implicitly required or expected to be provided thereafter”.

WHO MAY COMPLAIN AS A RESULT OF THE FITs?

In accordance with the Consumers, Estate Agents and Redress (CEARS) Act 2007 and the remit of the Energy Ombudsman complainants who should be covered by the redress schemes for electricity consumers include “domestic consumers” and “Micro Business”. Micro business is identified as those organisations that have a turnover of less than €2m and less than 10 employees; or an annual electricity consumption of less than 55,000kWh.

Only the owner of the kit (the FIT generator) or those who have been assigned FIT Payment rights (nominated recipients) may complain / raise a dispute. For those who are nominated recipients, the DR process may be limited because of data protection issues, and in those circumstances the owner of the installation would be required to take the complaint / dispute forward.

The table below identifies those that may raise a complaint following the introduction of the FITs and the possible complaints.

Who may complain?	Possible Complaints	Complaint should be directed to:
A generator may complain about a FITs Licensee	<ul style="list-style-type: none"> • The FITs Licensee won't accept me as a FIT generator; • The FITs Licensee has taken a long time to register my installation; • The FITs Licensee is withholding my FIT payment / taking a long time to process my payment; and • The FITs Licensee has miscalculated my FIT payment. 	<ul style="list-style-type: none"> • The FITs Licensee in the first instance – complaint dealt with according to Licensee's complaints process • If a mutually agreeable outcome has not been reached after 12 weeks from the complaint being lodged, the FIT generator may refer their complaint to the Energy Ombudsman • Once the Ombudsman has received a complaint it will consider whether the FIT Licensee has been given sufficient time to deal with the complaint and also assess whether the complaint falls within the remit of the Ombudsman. If the ombudsman takes on the case it will investigate and make recommendations to rectify a situation. The FIT licensee then has up to 28 days to action any recommendations by the Energy Ombudsman. <p>N.B. Only domestic consumers and micro-businesses may apply to the Energy Ombudsman. For larger scale FIT generators the FIT Licensee remains the first point of contact. In most cases FITs Licensees will allocate a relationship manager to its larger FIT generators and this would be the normal route for a complaint. If there is no resolution after 12 weeks or if the complainant is not satisfied with the outcome the next stage would be through the courts.</p>
A generator may complain to a FITs Licensee about	<ul style="list-style-type: none"> • The FIT Generator is disputing the information contained on the Central FIT Register. 	<p>All FIT generators are able to write to Ofgem's Central FIT Register Manager and request details held on the Central FIT Register about them.</p> <ul style="list-style-type: none"> • Disputes about the information being held on the Central FIT Register should first be raised with the FIT Licensee, who will attempt to resolve issue by updating the

Who may complain?	Possible Complaints	Complaint should be directed to:
the information contained on the Central FIT Register.		<p>Central FIT Register. If for some reason they are unable to make the update, the Licensee will contact the Ofgem Central FIT Register Manager on the Generator's behalf.</p> <ul style="list-style-type: none"> If a mutually agreeable outcome is not reached you should follow the complaints process detailed above.
A generator about the Microgeneration Certification Scheme (MCS)	<ul style="list-style-type: none"> There aren't enough MCS accredited installers in my area; and Delays in receiving MCS certificate / Number. 	<ul style="list-style-type: none"> Complaints about delays in updating the MCS database and numbers should be made to Gemserv, who administer the scheme http://www.microgenerationcertification.org/Information+Menu/Gemserv+MCS+License Any complaints about the policy requirement to use MCS accredited kit / installers should be referred to Secretary of State for the Department for Energy and Climate Change (DECC).
A generator about the Authority	<ul style="list-style-type: none"> It is taking too long for my kit to be accredited (for those installations that are >50kW); I am appealing against a decision that my installation does not meet the FIT criteria; and I have unfairly been struck off the FITs register. 	<ul style="list-style-type: none"> Ofgem (in writing), who will then investigate and acknowledge within 1 working days, with a response in 10 working days If after this process the complainant is still not satisfied they should write to the Senior Information Risk Officer at Ofgem for a further investigation. If the complainant is still not satisfied they can refer their issue to the Parliamentary Ombudsman for an independent investigation. <p>N.B. Where the generator has a direct relationship with Ofgem (i.e. those who are accredited via the FIT/RO route), all complaints should be directed through this route.</p>
A Generator about an installer	<ul style="list-style-type: none"> Quality of workmanship / installation; Actual performance of kit 	<ul style="list-style-type: none"> Generators should refer installation issues to the installer If the complaint is not resolved, generators can approach the Certification body for the installation company. Details of the correct Certification body can be found on

Who may complain?	Possible Complaints	Complaint should be directed to:
	differs from expectations / information given during pre-sale	<p>the MCS website http://www.microgenerationcertification.org/</p> <ul style="list-style-type: none"> Alternatively generators can approach the Renewable Energy Assurance Limited (REAL) to escalate the complaint. REAL can withdraw the company's membership from REAL and therefore stop them from trading under the Microgeneration Certification Scheme (MCS) http://www.realassurance.org.uk/how-to-complain
A Generator about quality of kit	<ul style="list-style-type: none"> Generating kit is not performing / is faulty 	<ul style="list-style-type: none"> Product complaints should be referred to the manufacturer or distributor who should the kit. If they are not satisfied with the response, customers can then approach the Certification body for the product to escalate the complaint. <p>N.B. Please refer to the MCS website to find which Certification body they need to contact for the product/installer. The FIT generator may also have legal rights as a consumer of the product if it is not fit for the purpose for which it is sold, which is not covered under this DR process.</p>
A Generator about the FITs policy	<ul style="list-style-type: none"> Raising issues regarding the final FIT policy. 	<ul style="list-style-type: none"> Secretary of State for Energy and Climate Change
A FITs Licensee about the Authority	<ul style="list-style-type: none"> Calculating the levelisation payments is taking too long; The levelisation calculations are incorrect; and The FITs Central registry is not up to date. 	<ul style="list-style-type: none"> Ofgem (in writing), who will then investigate and respond - For complaints involving the Central FIT Register, contact the Central FIT Register Manager. - For complaints involving the levelisation, mutualisation and annual reconciliation process contact the FIT Compliance Manager. If after this process the complainant is still not satisfied they should write to the Chief

Who may complain?	Possible Complaints	Complaint should be directed to:
		<p>Operating Officer at Ofgem for a further investigation.</p> <ul style="list-style-type: none"> • If the complainant is still not satisfied they can refer their issue to the Parliamentary Ombudsman for an independent investigation.
<p>A FITs Licensee about another FITs Licensee</p>	<ul style="list-style-type: none"> • Switching • Levelisation payments 	<ul style="list-style-type: none"> • Ofgem (in writing), who will then investigate and respond - For complaints involving the Central FIT Register, contact the Central FIT Register Manager. - For complaints involving the levelisation, mutualisation and annual reconciliation process contact the FIT Compliance Manager. • If after this process the complainant is still not satisfied they should write to the Chief Operating Officer at Ofgem for a further investigation. • If the complainant is still not satisfied they can refer their issue to the Parliamentary Ombudsman for an independent investigation.

Multiple complaints

There will also be situations where a complaint / dispute could be made about one party where in fact responsibility is about another party, for example:

- A generator may make a complaint about a FITs Licensee, where the complaint has arisen because of an action of the Authority or in fact a delay by MCS in administering and logging their installation onto the MCS Database; and
- A generator may make a complaint about a FITs Licensee, where the complaint has arisen because of the MCS or an installer.

DISPUTE RESOLUTION PROCESSES

In 2007 the CEARS Act came into force and gave powers to the Secretary of State to require regulated providers to belong to a qualifying redress scheme. This followed the opening up of the gas and electricity markets to competition in 1998/99 and an increase in the number of consumers switching and an increase in the number of complaints received by energy watch.

Annex A contains a complaint route map for the processes mentioned below.

Complaints against a FIT Licensee

Currently there are a number of routes for dispute resolution open to electricity consumers. New complaint handling standards came into force on 1 October 2008 following the CEARS Act 2007 which places a duty on **energy suppliers** to resolve consumer complaints in a timely and satisfactory manner. Consumers should in the first instance contact their energy supplier who will log and attempt to resolve the complaint.

A common process is in place across all suppliers in relation to a resolution time and further routes if a mutually agreeable outcome is not reached (also referred to as Deadlock). Currently suppliers have a period of eight weeks (or 12 weeks for small suppliers) to resolve the complaint. If the complaint is not resolved within the time period the consumer can approach the **Energy Ombudsman**² for consideration.

The Energy Ombudsman's remit extends to consumers and micro business. Once the Ombudsman has received a complaint it will consider whether the supplier has been given sufficient time to deal with the complaint and also assess whether the complaint falls within the remit of the Ombudsman. If the ombudsman takes on the case it will investigate and make recommendations to rectify a situation and also can impose a financial reward of up to £5,000. The supplier then has up to 28 days to action any recommendations by the Energy Ombudsman. We have discussed the issue of FIT complaints with the Ombudsman and there is no need to formally extend their remit initially for them to cover FIT related complaints. This may, however, be required when more formal processes are put in place.

For larger scale consumers a similar process is in place where the suppliers is the first point of contact. In most cases suppliers will allocate a relationship manager to its larger

² www.energy-ombudsman.org.uk/

customers and this would be the normal route for a complaint. If deadlock is then reached or the complainant is not satisfied with the outcome the next stage for these levels of dispute is through the courts.

Consumer Direct³ is the Government's helpline which provides impartial advice and information for consumers, including relevant bodies that can assist the consumer take forward their complaint.

Complaints against the Authority (Ofgem)

Ofgem have already suggested dispute resolution processes for FITs related complaints / disputes, which mirrors their existing dispute resolution process. This is a three step complaints process where complainants are required to write to Ofgem who will investigate and respond. If after this process the complainant is still not satisfied they should write to the Senior Information Risk Officer at Ofgem for a further investigation. If the complainant is still not satisfied they can refer their issue to the **Parliamentary Ombudsman**⁴ for an independent investigation. More detail is provided in the complaints leaflet provided by Ofgem⁵.

For those FIT generators who have a relationship with Ofgem (such as those that are accredited via the FIT/RO route) and are unhappy with the way they have been dealt with or unhappy with the way in which Ofgem has reached a decision or how Ofgem operates they should follow the existing dispute process for Ofgem.

All FIT generators are able to write to Ofgem's Central FIT Register Manager and request details held on the Central FIT Register about them. If they dispute the information being held, they should first raise this with their FIT Licensee and attempt to resolve the information through the FIT Licensee updating the Central FIT Register.

Where a FIT Licensee has disputes and complaints involving the Central FIT Register, they should contact the Central FIT Register Manager. For enquiries, disputes and complaints involving the levelisation, mutualisation and annual reconciliation process the FIT Licensee should contact the FIT Compliance Manager.

If a FIT Licensee believes that an issue has not been resolved by the Central FIT Register Manager or FIT Compliance Manager or they are unhappy with the way in which Ofgem has reached a decision or how Ofgem operates, then they should also follow the Ofgem complaints process.

More detail on the processes in place will be provided by Ofgem in the FIT Guidance due shortly.

Complaints about an installer / kit or the MCS

Customers with product complaints would go to the **manufacturer** or **distributor** they purchased the kit from. If they are not satisfied with the response customers can then approach the **Certification body for the product** to escalate the complaint.

Where customers have installation problems, they would go to the **installer**. If they are not satisfied with the response they can approach the **Certification body for the installation**

³ www.consumerdirect.gov.uk/

⁴ www.ombudsman.org.uk/

⁵ www.ofgem.gov.uk/About%20us/Documents1/14751_complaint.pdf

company or to **Renewable Energy Assurance Limited (REAL)**⁶ to escalate the complaint. REAL can withdraw the company's membership from REAL and therefore stop them from trading under the Microgeneration Certification Scheme (MCS).

In both of these situations, people can refer to the MCS website⁷ to find which Certification body they need to contact for the product/installer.

A more detailed flowchart outlining the MCS complaints process can be found at Annex **B**.

Complaints about the need to use MCS accredited kit / installers fall under policy issues and would therefore be referred to the **Department for Energy and Climate Change (DECC)**⁸.

Complaints about poor kit performance leading to low FIT payments etc, should be referred to the **installer or manufacturer**.

The Judicial Review process

Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body.

The remedies which the Court may grant following a successful Judicial Review are:

- A quashing order, by which the Court sets aside or cancels a decision (or subordinate legislation) found unlawful;
- A prohibiting order, by which the Court forbids the public authority to perform an act found unlawful;
- A mandatory order, by which the Court instructs the public authority to perform a public duty;
- A declaration, by which the Court declares what the law is, for example that a decision is unlawful;
- An injunction, usually an Order not to do something, but it can be positive;
- Damages, by which (in limited circumstances) the Court can award financial compensation.

Any person with a sufficient interest in a decision made by a public body can initiate a Judicial Review, however there is a risk that they will incur costs in doing so and this may impact on a person's decision to bring a Judicial Review.

REPORTING

New complaint handling regulations were introduced in October 2008, requiring all regulated energy providers to publish an annual consumer complaint report⁹, including the number of complaints received from domestic consumers during a specified time period. We do not

⁶ www.realassurance.org.uk/

⁷ www.microgenerationcertification.org/

⁸ www.decc.gov.uk/

⁹ www.england-legislation.hmso.gov.uk/si/si2008/pdf/uksi_20081898_en.pdf

propose on changing this process. We do however, ask that FITs licensees and Ofgem keep a record of the type of complaints received and the outcome of FITs related complaints. This information is to be provided to DECC nine months after the introduction of the FITs in January 2011 to enable a review of the complaints process and also to feed into any future review of the FITs.

The CEAR Act relates to domestic and micro business consumers. It may be possible for a FITs licensee to have a domestic or small business FITs generator that is not a domestic or small business consumer. Because of this we propose that FITs complaints in this first year are not counted under total company complaints reported as a result of the CEAR Act. This will be one of the issues reviewed before more formal complaints processes are put in place.

Annex C: Definitions

Administrator:	The Authority will be the administrator of the Scheme and responsible for entering all generators who meet the eligibility criteria and have nominated a FIT Supplier on the Central FIT Register (Ofgem).
CEAR Act	The Estate Agents and Redress (CEAR) Act 2007, which came into force on 1 October 2008
Comment:	An observation that highlights a part of the service or policy that could be improved.
Complaint:	Any expression of dissatisfaction that needs a response. A complaint may be about service delivery or policy.
FIT Generator:	The Owner, identified as such in the Central FIT Register, of an Eligible Installation used or intended to be used for Small-scale Low-carbon Generation, whether or not that person is also operating or intending to operate the Eligible Installation.
FIT Licensee:	Means the collective term for Mandatory FIT Licensees and Voluntary FIT Licensees (Suppliers).
FIT Payments:	Means, as applicable, the Generation Payments and/or Export Payments.
Generation Meter Reading:	Means the measure by a Generation Meter of the gross amount of electricity generated by an Accredited FIT Installation.
Nominated Recipient:	Means a person appointed by a FIT Generator to receive FIT Payments in respect of an Accredited FIT Installation owned by that FIT Generator and recorded as such on the Central FIT Register.