



Different Rules for Different Fuels: Exploring Consumer Protection in the District Heating Market

A report for Citizens Advice Scotland

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Report	Different Rules for Different Fuels: Consumer Protection in the District Heating Market
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1. EXECUTIVE SUMMARY

Introduction

District heating consumers do not benefit from the same levels of consumer protection as those with gas or electric heating due to a largely unregulated market. Given the Scottish Government's ambitions to increase levels of district heating in the coming years (1.5 TWh by 2020), this poses a risk to a growing number of consumers¹. The Consumer Futures Unit (CFU) at Citizens Advice Scotland (CAS) commissioned research to explore what consumer protections may be needed in the Scottish district heating industry, and what options there are to implement these. The research was carried out by Changeworks and the Centre for Sustainable Energy (CSE) in late 2016 to early 2017.

Research aims

This research sought to understand:

- Issues facing district heating consumers in Scotland in relation to pricing, billing, the provision of heat and related standards of service
- Current consumer protections in place in district heating schemes and suppliers' willingness to join voluntary schemes
- The experiences in other European countries in implementing consumer protection measures
- An analysis of potential measures that could be put in place, given the Scottish Government's powers to introduce measures.

Methodology

The research was carried out via:

- A review of consumer research
- Desk-based research into the measures that exist in other European countries
- Interviews with 20 district heating suppliers in Scotland
- Analysis of potential consumer measures (based on the above research and a legal opinion commissioned by the CFU alongside this research)
- A stakeholder workshop to refine the analysis.

Key findings

The research found that:

- Despite satisfaction rates amongst consumers with district heating generally being high, there is a clear need for greater consumer protection. Consumer issues include concerns around standing charges, poor complaints handling, slow response times to faults, lack of information and over-heating.

¹ At the time of writing The Scottish Government was consulting on the regulation of district heating in its [Consultation on Heat & Energy Efficiency Strategies, and Regulation of District Heating](#), published January 2017, as part of its [Energy Strategy](#) and [draft Climate Change Plan](#). It has also established a Special Working Group to identify the necessary steps for regulation of the market.

- There are a number of consumer protection measures already in place, however these are not consistent across the sector, resulting in differences and gaps in the provision of protections. Consumer protections include: the voluntary Heat Trust scheme (where suppliers have joined it); existing regulations such as the Heat Network (Metering and Billing) Regulations (2014); and suppliers' own policies and procedures, including those they are already required to do as part of wider social landlord regulations, where these apply.
- Feedback from suppliers suggests that most are unlikely to join the Heat Trust, at least in the near future. This means that without regulation, there are likely to continue to be gaps and inconsistencies in how Scottish district heating consumers are protected, leaving consumers vulnerable to a number of issues.
- The research identified 16 possible protection measures focusing on: ensuring prices are fair; maintaining adequate levels of warmth and comfort; service standards such as fault handling, regular billing, debt handling, fair heat contracts, and an independent dispute resolution service; and providing sufficient information to consumers. Additional work would be needed to explore further details of these measures, including how they would work in practice and their applicability in a Scottish context.
- Feedback from suppliers and wider stakeholders in the Scottish district heating industry generally supported the call for greater consumer protections, including regulation. In particular it was felt that this should focus on ensuring consumers get a fair price, are provided with sufficient warmth and comfort, and can access an independent dispute resolution service.
- The legal opinion commissioned as part of this work suggests that the Scottish Government has the competencies to set up a licensing regime for district heating suppliers, which could include consumer protection measures. However further detail is needed to understand how this could work in practice, including its introduction and the identification of a regulatory body. It is the understanding of the authors of this research that any consumer protection measure *could* be implemented through such a licensing regime, although there remains a question as to whether price controls, in any form, could be².

Recommendations

- The Scottish Government should look to introduce a licensing regime for district heating suppliers that would include measures to protect consumers. Further assessment would be needed to understand how a potential licensing regime would work including how it could be implemented, its likely cost and policing of the scheme, including sanctions for non-compliance and identification of an appropriate

² This was not an issue explored in the research or examined in the legal opinion however it was considered that this might be a more complex area to regulate.

regulatory body. There is also a question as to whether it could include price controls and how it may be applicable to different types of district heating schemes.

- It is recommended that any licensing scheme in Scotland should look to build on the content of the Heat Trust which has already been developed and tested extensively with stakeholders. Consideration would be needed to identify how a mandatory licensing scheme could fit with the voluntary Heat Trust.
- Further work is also needed to understand the detail of potential consumer protection measures to understand more precisely what measures are necessary and desirable, building on the research presented in this report.

2. INTRODUCTION

2.1 Background

Unlike the gas and electricity markets, district heating is largely a non-regulated market leaving consumers vulnerable to a number of potential issues such as high prices or lack of redress. Whilst levels of district heating³ are currently low in Scotland, the Scottish Government's ambition (1.5 TWh by 2020) means the sector is likely to grow in the coming years. In turn the number of consumers potentially at risk from these issues is likely to grow.

Prior to commissioning this research, the Consumer Futures Unit (CFU) at Citizens Advice Scotland (CAS) were aware of evidence across the UK that some consumers have experienced potentially detrimental issues related to district heating, such as poor billing information and lack of advance notice of heat supply interruption. They were therefore keen to understand what issues consumers may face, and what protection measures are and will be needed in Scotland. The CFU commissioned Changeworks and the Centre for Sustainable Energy (CSE) to carry out research on this topic in late 2016. The research draws on the experience of other European countries as well as looking at the situation in Scotland to identify what measures could and should be introduced. This was carried out alongside a legal opinion, also commissioned by CFU, to understand the extent of the Scottish Government's competence to regulate the district heating market in Scotland.

It should also be noted that at the time of writing, the Scottish Government was consulting on district heating as part of its Energy Strategy and has established a Special Working Group⁴ to identify the necessary steps for regulation of the market.

2.2 Research aims

Research questions

- What consumer protections are in place at present for district heating consumers in Scotland?
- How do these protections compare with those offered in other European countries?
- What administrative options are open to the Scottish Government to strengthen consumer protection for district heating consumers in Scotland?

Research objectives

1. To develop a comprehensive understanding of the protections currently available to district heating consumers in Scotland, the way these protections are implemented in practice, and the issues facing district heating consumers in Scotland.
2. To examine consumer protection regimes for district heating in other countries, and establish which models best respond to which issues.
3. To analyse and make recommendations on the options for the regulation of district heating by the Scottish Government to provide appropriate consumer protection.

³ Note that the term 'district heating' has been used throughout this document to refer to both district and communal heating.

⁴ The Scottish Government (January 2017) [Scottish Energy Strategy: The future of energy in Scotland](#)

4. To make recommendations for embedding consumer protections in the district heating market in Scotland through means other than regulation where this is not viable, such as the establishment of robust codes of practice and linking this more strongly to Government incentives.
5. To make recommendations for other bodies (UK Government, Ofgem etc.) for further regulation in light of the changing district heating landscape in Scotland, where the Scottish Government is unable to do so.

3. METHODOLOGY

3.1 Desk-based review of schemes in Scotland

The first step of the research was to better understand the context of district and communal heating schemes in Scotland. A list of known schemes was compiled with details such as name of scheme, heat supplier, tenure and approximate number of customers. The list was compiled from a range of sources: Changeworks' own data, published data on the District Heating loan scheme and a list from the UK Government based on Heat Network Regulation submissions (Freedom of Information Request).

3.2 Consumer research

Changeworks has previously carried out two pieces of research involving consumer research on satisfaction with district heating schemes:

1. Research on metering and billing in district heating schemes owned by social landlords, [*Identifying the Fair Share: Billing for District Heating*](#) (2015). Funded by Eaga Charitable Trust, this involved a quantitative survey of 143 residents of social housing district heating schemes in Scotland and qualitative telephone interviews with 20 of these residents.
2. Research on social landlords' experiences of developing and delivering district heating schemes across the UK, *'District heating: Delivering affordable and sustainable energy'* (awaiting publication). This involved focus groups with residents at six case study schemes. Results from the two focus groups held in Scotland (with a total of 11 residents) were reviewed as part of this research. The research was funded by the Joseph Rowntree Foundation (JRF) and carried out by Changeworks and the Centre for Sustainable Energy (CSE).

The results of these were analysed to identify current issues facing district heating consumers in Scotland, and where possible, the prevalence of these issues. It should be noted that the intention was not to carry out comprehensive consumer research but to provide an indication of the levels of satisfaction with district heating and the issues experienced by consumers.

3.3 Supplier interviews

Telephone interviews were conducted with suppliers and owners of district heating schemes in Scotland. These sought to identify:

- What schemes exist and their details
- Existence of customer protection schemes, including the Heat Trust and scheme-specific policies
- Willingness to join the Heat Trust, including perceived benefits and costs of joining
- Perspectives on what consumer protection is and is not required in Scotland.

Contacts from the list of district heating schemes (Section 3.1) were contacted to ask if they would take part in an interview. Forty organisations with district heating suppliers were contacted and 20 participated. The majority of these organisations were social landlords,

reflecting the composition of district heating schemes in Scotland. However efforts were also made to include private suppliers to ensure a variety of perspectives were captured.

The interviews contained both quantitative and qualitative elements and lasted around 30 minutes. A copy of the interview topic guide is in Appendix A. Results were analysed to understand the variety and prevalence of views on the topics listed above.

3.4 European literature review

Research was carried out into district heating consumer protection measures in place in a number of European countries: Denmark, Sweden, Norway, Finland, the Netherlands and Germany. Countries were chosen where they had sufficient experience in district heating and relevant protections, and where there were consumer protection related lessons that were transferable to Scotland.

The review first identified the customer protections (including regulatory or non-regulatory measures) that have been used in these countries. This was carried out via an internet search and contact with stakeholders in those countries such as energy regulators and consumer bodies.

Secondly a spreadsheet was created as a data collection tool to capture the detail of each of the consumer protection measures. This included:

- Detail of the measure
- Type of measure e.g. regulatory/ non-regulatory (and voluntary/ mandatory)
- Consumer issues addressed
- Information related to costs of participation and benefits (identified through research or anecdotal)
- Type of consumers/ schemes addressed (if not universal)
- Date of introduction/ length of time in operation
- Level at which responsibility for the measure lies, i.e. national or local Government
- Enforcement details and penalties (if applicable)
- Successes and challenges with introduction and development.

Data was then sought on all these issues through further desk-based research and stakeholder feedback. Whilst it was relatively straightforward to collect information on the measures in existence, it was more challenging to gather information on how measures had been introduced and their impact. Either documents did not provide this information or stakeholders did not have this information, especially if the measure had been introduced a number of years ago. It was compounded by a language barrier, i.e. documents not always being available in English.

A summary of this research is found in Section 6. A list of sources and literature reviewed for this task is in Appendix B.

3.5 Analysis and recommendations

The analysis and recommendations drew on the remainder of the research carried out and a legal opinion (Appendix C) commissioned by the CFU to inform an understanding of what

consumer protection measures could and should be introduced into the Scottish district heating market.

Legal opinion

The CFU commissioned a legal opinion on the extent of the Scottish Government's competence to regulate, possibly through the establishment of a statutory license for district heating, which could in turn introduce statutory consumer protections for heat customers. This was in the context of the Scotland Act 2016 which devolves a range of powers to the Scottish Parliament including responsibility for the heat market (but not electricity and gas). A summary of the legal opinion is provided in Section 7.3 to provide context to the rest of the report.

Analysis

The analysis comprised of five stages:

- 1. Identification of consumer need** based on Changeworks and CSE's experience of working with vulnerable householders and consumer protections. A framework was built to identify the needs of district heating consumers and five key consumer needs were identified, as outlined in Section 5.
- 2. Identification of potential consumer protection measures to meet these five needs** based on those identified from the European desk-based review. These are listed in Section 6.
- 3. Identification of existence of these measures** using results from the supplier interviews, review of the Heat Trust guidance documents and the legal opinion.
- 4. Analysis of each measure** in terms of:
 - Their pros
 - Their cons, and potential mitigation measures to mitigate the cons
 - Applicability in a Scottish context e.g. metered/ unmetered schemes, different scales of schemes and customer type.
- 5. Refinement of the above based on stakeholder feedback** – see the workshop below in section 3.6.

A summary of these research findings are provided in Section 8, together with findings from the stakeholder workshop. However it should be noted that this is initial research and further research would be needed to identify additional details of each measure and its applicability.

3.6 Stakeholder workshop

A half day workshop was held with 10 key stakeholders in Edinburgh on 13 January 2017. A range of stakeholders attended the workshop including social landlords, district heating scheme operators, Scottish Government, Ofgem, the Heat Trust, Energy Action Scotland and the University of Edinburgh. The aim of the workshop was to gain further insight from these stakeholders on whether, and how, consistent consumer protections could be implemented for district heating consumers across Scotland. The research findings to date

were presented at the beginning of the workshop. Two interactive exercises were then held to understand stakeholders' perspectives on:

- **District heating consumer needs.** As per the five needs identified for the analysis of this section, stakeholders were asked to mark the importance of each need to consumers and the issues associated with these needs being effectively met.
- **Potential consumer protection measures** in terms of their pros, cons and applicability.

Essentially the workshop intended to refine and explore the analysis carried out as part of this research. An overview of the findings from the workshop is provided together with the analysis in Section 8.

4. BACKGROUND

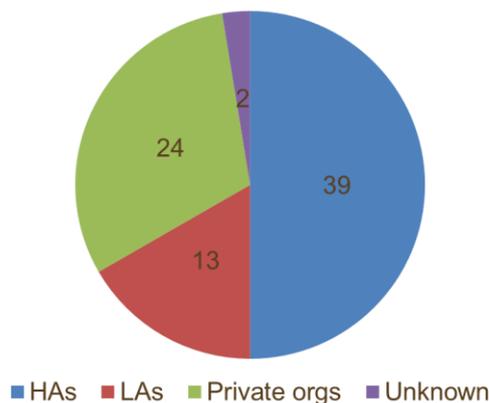
4.1 Overview of district heating schemes in Scotland

There are currently estimated to be around 35,000 households in Scotland who are served by district or communal heating schemes⁵. Approximately 28,000 of these households are social housing and 7,000 are private housing. This equates to around 1% of all households.

The compilation of schemes carried out as part of this research identified 78 organisations that own district heating schemes (Figure 1). These are the 'known' schemes and it is possible other schemes exist that have not been identified as part of the research.

As the chart shows, two-thirds of organisations are social landlords, with half being housing association (HAs). The remaining third are largely private organisations, most of whom are small organisations such as farms or estates. There are also a small number of large energy utilities and community-owned schemes.

Figure 1: Number of organisations that own or manage a district or communal heating system in Scotland



Base = 78

Data on the number of schemes was obtained for 32 organisations, showing that almost two-thirds (20) of these organisations owned multiple schemes. Some social landlords own in excess of 20 or 30 schemes, which are likely to be communal heating schemes.

Schemes varied from two to 2,000 homes. All the small schemes (fewer than 20 homes) are owned by private developers, mostly farms or similar set-ups. Social landlords own a variety of sized schemes from 50 to 2,000 homes.

Whilst the above data represents the owner of the scheme, third party organisations are often involved in their management or operation. In a small number of cases private developers own a social housing scheme where they have both funded and managed it.

⁵ The Scottish Government (2015) [Scottish House Condition Survey: 2014 Key Findings](#)

4.2 Policy context

The drive to reduce fuel poverty and tackle climate change is likely to continue to drive the expansion of district heating, both in terms of new schemes and expansion of current schemes. The Scottish Government's [Heat Policy Statement](#) sets out an ambition to achieve 1.5 TWh of Scotland's heat demand to be delivered by district or communal heating, and to have at least 40,000 homes connected by 2020. In addition, the Committee on Climate Change suggests a target of 2.6 TWh by 2030 which would equate to almost 70,000 homes.

4.3 Consumer protections in district heating

Unlike the gas and electricity markets, district heating is non-regulated, meaning consumers have no formal protection. Further, district heating schemes are generally monopolies since there can only be one supplier, exacerbating these issues as consumers lack choice. This leaves them vulnerable to a range of issues such as a lack of billing information, support for consumers in debt and access to an ombudsman. This poses an obvious threat to these consumers, particularly vulnerable householders who are in, or at risk of fuel poverty. This is pertinent since most district heating schemes are in social housing where householders are more likely to be vulnerable.

This lack of consumer protection is a growing concern across the sector, especially given the ambitious targets to grow and set up new schemes. Recent reports by consumer bodies Citizens Advice⁶ and Which?⁷ have highlighted this and, for example, raise concerns around mis-selling, complaint handling processes and confusion with bills. Many of these issues were also found in Changeworks' and CSEs' recent research reports which are reviewed as part of this research (Section 5).

Heat Trust

Industry and Government concerns around consumer protection in district heating led to the development of a voluntary scheme, the [Heat Trust](#). This provides protections around:

- Guaranteed performance standards including temperature, continuity of service, guaranteed service payments for service interruptions, and maintaining supply of heat to vulnerable consumers during an interruption
- Minimum general customer service requirements
- Procedures for reporting faults and emergencies, and standards for repairs and replacements
- Provision of information to new customers
- Transparency of billing, cost calculation, and standards for the installation and maintenance of heat meters
- Requirements to provide additional support to customers who require it, including a Priority Service Register.

It also provides an online price comparator for consumers with district heating to compare their costs to a household with an individual gas boiler.

⁶ Citizens Advice (2016) [District Heating Networks: Analysis of Information Request](#)

⁷ Which? (2015) [Turning up the Heat](#)

The initiative was developed by a steering committee and launched in 2015. To date only one organisation in Scotland has signed up to the scheme. The Heat Trust is not suitable for schemes where a third party is involved in the sale of heat as it requires a heat contract between the supplier and customer. This means that many social housing schemes are currently not eligible to join the Heat Trust scheme. However this is currently under review with the intention that all heat suppliers would be able to join the scheme by the end of 2017⁸. The scheme does not provide for a supplier of last resort when suppliers go into administration.

A further notable development in the sector is the recent introduction of the [Heat Network \(Metering and Billing\) Regulations \(2014\)](#). These place specific obligations on suppliers around billing and metering; for example, the requirement to provide accurate billing information and heat meters in individual dwellings under certain circumstances.

⁸ Based on information provided at the stakeholder workshop as part of this project

5. CONSUMER ISSUES

5.1 Consumer needs

As explained in the methodology section, the starting point of this research was identifying what consumers' needs are in relation to district heating schemes. These can be categorised into five main needs, as outlined in Table 1. These categories were identified by the research team (Changeworks and CSE) based on their considerable experience of supporting fuel poor and vulnerable households with energy issues, and having carried out research with consumers around district heating.

Table 1: Consumer needs in relation to district heating

Consumer need	Description
1. Fair price	Consumers should not be overcharged for their heat
2. Warmth, control & comfort	Consumers should be provided with sufficient warmth, reasonable controllability and not suffer from over-heating
3. Standard of service	Consumers should be receiving services with good standards: a. Faults being dealt with effectively and efficiently b. Debt handling (sensitively) c. Billed regularly and accurately d. Fair heat contracts e. Appropriate support for vulnerable people
4. Easy access to redress	Consumers should be able to get compensation and/ or dispute resolution readily if agreed standards are not met, including effective complaints handling
5. Information providing reassurance	Consumers should receive or be able to easily access information and a level of transparency that proves they are receiving 1 – 4 above. This relates to: a. Billing and pricing information b. Contractual information

5.2 Introduction to consumer research review

The following sections provide information from the review of consumer research to highlight whether the consumer needs outlined above are being met and where problems exist. These findings are based on two pieces of research, as highlighted in the methodology (Section 3.2). These are referenced as source A ([Identifying the Fair Share: Billing for District Heating](#)) and source B (*District heating: Delivering affordable and sustainable energy*, awaiting publication). These sources were reviewed because they covered most of the topics required for this research.

5.3 Fair pricing

Generally, residents reported their heating to be affordable; three-quarters of residents surveyed in the source A research preferred the new district heating system compared to their previous heating systems. However a particular concern in some schemes was standing charges. For example, two residents explained their concerns with standing charges:

“A standing charge has been introduced... regardless of what I use, it [the money] gets used up. It seems to be a contradiction; a payment policy with a standing charge just subsidises the high users and is encouraging a greater use of energy.” (source A)

“Some tariffs have a high standing charge but have a lower price per kWh... the standing charge is very high compared to the standing charge on the comparisons... you can't change you're stuck with that... even in the summer the bill is quite high.”

Another resident believed that the introduction of a standing charge was related to inefficiencies in the system and planned to stop using their district heating scheme:

“I'm going to stop using the whole system; a standing charge has been introduced out of the blue without consultation for a mistake that they've made. The system is too big and is running at a loss... and they need to subsidise it somehow.” (source A)

There were also concerns about price rises, for example when a tariff might be increased and by what amount. However this appeared to mostly relate to poor communication of price rises, rather than experience of high price rises.

5.4 Warmth, control and comfort

Levels of warmth were reported to be reasonable by a majority of residents: 59% of respondents from source A thought their homes were 'easy' or 'very easy' to keep warm. However this means that 41% did not.

Levels of warmth can be associated with prices as residents may keep their homes cooler than preferred if they seek to minimise their bills: however only 11% of residents stated they wanted to have their heating on for longer. Levels of warmth in some cases were also better due to residents living in well-insulated properties.

Residents in one scheme included in source B suffered from over-heating in communal areas such as corridors, which was due to a lack of pipe cladding. Some residents in this scheme also complained that their flat was too warm, or that they just had no need to put their heating on due to receiving adequate heat from neighbouring flats.

Levels of controllability were felt to be good with 71% of respondents from source A stating that their heating system was either 'easy' or 'very easy' to use. However others highlighted specific problems:

“The timer procedure is way too complex to work out and I am by no means stupid.”

Most residents had received advice on how to use their heating controls (source A) but only 58% felt the advice had been helpful.

In addition residents in both research sources cited issues with their hot water supply.

5.5 Standard of service

Faults being dealt with effectively and efficiently

Breakdowns were not reported to be a problem for most consumers with only 15% of survey respondents from source A indicating they had suffered a breakdown. However just under half of respondents (48% or 72 out of 143 respondents) had experienced faults with their current heating system. Most commonly these were leaks, no hot water or the system losing pressure. Many respondents reported these faults as initial problems around the time of installation.

Experiences of breakdowns were mixed and scheme dependent. For example residents from some schemes reported no breakdowns whereas residents in another scheme reported mixed experiences - some residents facing no issues but others having significant on-going difficulties. These issues were largely reported to be due to problems with the installation not being completed to design specification.

In terms of dealing with breakdowns and faults, experiences varied. Residents from one scheme (which had not experienced any major faults) were particularly positive about the presence of a concierge and the allocation of an on-site, specialised engineer who provided a familiar face and quick resolution to any issues. In another scheme where breakdowns had occurred, one resident had reported significant issues to be on-going after multiple visits from engineers; they reported it to take three to four days before an engineer came out when the system had broken down.

The findings also highlight that experiences of compensation for breakdowns and the provision of other heat sources has varied. For instance, one respondent's heating system had been broken for over a year and they struggled to afford to use the temporary solution:

“When the system broke down we were given plug in heaters to start with and then eventually they put in an electric wet boiler; which was considerably more expensive than the biomass, three or four times more, but I had to put it on in the winter.”

However another respondent's heating system had broken down not long after it was first installed but they were not too affected as they *“received £50 as a bit of a sweetener; it was only broken for about a day!”*

Debt handling

Debt was not raised as a common issue: only two residents from source A mentioned getting into debt and this was as a result of a metering error or billing confusion (see below). These residents explained that their landlord had asked them to set up regular monthly payments to clear the debt.

Many residents were on prepayment meters which often had an emergency credit facility. There were reported to be some issues with this. For example, one resident felt that the £5 of emergency credit went down more quickly than £5 of normal credit, explaining they thought that either something was wrong with the system or it was designed in this way (source B). Another resident had an issue with their emergency credit facility which they can

activate when the payment point is closed; it failed to activate when they needed to use it over the Christmas holidays (source A).

Billed regularly and accurately

Residents involved in the research are on different billing methods, e.g. prepayment/ pay-as-you-go, heat with rent and variable rate billing. The research indicates some confusion around billing, which in some cases had led to the accrual of bills:

“I’m still angry actually because I thought that my heating all got paid through the rent like I was told, but no, I managed to rack up a big bill, nearly £300 in arrears because I didn’t know that I was supposed to pay it not the ESA [Employment Support Allowance]. I’m still paying it off just now.” (source A)

Likewise one resident reported problems with their meter which had led to them accruing considerable debt:

“[The heating] broke down not long after I moved in, the engineer... had to cross the wires so that the heating was on all the time and I would be getting it for free. Eventually they came to read the meter and said that I had got into arrears. I had to set up the payments so that it came out of my bank account.” (source A)

Similarly, a resident reported that they had gone from £200 in credit to £100 in arrears due to a fault on their meter (one scheme) and others reported issues with the meters not topping up straight away (both schemes).

Aside from this, issues of not being billed regularly or accurately were not evident from the research. However one resident was unsatisfied that they could not see their meter in order to check their heat usage:

“We used to be able to see what we were using now we have to take their word for it... you’re in no man’s land until you get your bill at the end of the month... my husband thinks that it is against the law to lock it away; we’ve sent a few letters but we’ve had no response.” (source A)

Fair heat contracts

Residents involved in the research were not explicitly asked about whether they had heat contracts with their supplier and, if so, whether the terms of these were reasonable. It should however be noted that the specific subject of fair heat contracts did not arise during the research.

Appropriate support for vulnerable people

Likewise, support for vulnerable people was not a topic explicitly covered in either of the research projects.

5.6 Easy to access redress

In terms of handling complaints, residents from different schemes reported different experiences. In one scheme residents reported that complaints may take days to be responded to. Further, they felt there were disparities in the outcomes of complaints; for

example compensation was given out for damage caused during installation but was not for damage caused during corrections to work more latterly. In contrast, in another scheme, residents reported that complaints had been handled effectively and in a timely manner.

Similarly, residents in one scheme stated that they knew who to contact in case of complaints whereas residents in another scheme were unclear.

5.7 Information providing reassurance

Billing information

A range of different approaches had been taken to inform residents of their heating consumption, how much they owe, and a breakdown of the charges. This included in-depth annual statements and smart meters. Some residents found these helpful, but others found them either un-engaging (particularly the statements), had not been shown how to use them (monitors) or felt they were over-complicated:

“There was a drawing on the back which showed how much heat you’ve used... I thought it was alright, once I’d sat down and worked it out, but others might struggle to make sense of it.” (source A)

One resident with a good understanding of the breakdown of their tariff had attempted to make comparisons online because this is what they had done in the past; however they didn’t seem aware that they were comparing cost per unit of heat to cost per kWh.

In addition, some residents, particularly those with prepayment meters were not always aware of how much they were paying per unit, whether their tariff included a standing charge and how they could find this information out. Some residents with prepayment meters stated that they had not received a statement or bill and were therefore unaware of the breakdown of charges (source A). However in some schemes where residents were sent an annual statement they had engaged with it and were aware of the price per unit.

Another issue in relation to billing information was whether changes in tariff had been well communicated by the landlord. Residents at one scheme reported that tariff changes had been outlined in an annual statement and all residents involved in the research stated that they were aware of the change (source B). However residents in other schemes had experienced issues. This included an instance of a tariff increase that was communicated to local authority tenants but a private resident was not advised (source A); another resident stated that a recent standing charge introduction had not been reported to residents well; and lastly again where a standing charge had been introduced and the resident not understanding how the charge would be taken (i.e. from prepayment meter or via a separate bill) (source A).

Contractual information

As highlighted above, the existence or quality of heat contracts was not explored in the research reviewed.

5.8 Other issues

Other issues highlighted by residents in the research included the following:

Lack of being able to switch

Due to a general lack of understanding of what a communal heating system is, many residents were unaware that they were not able to switch. After a brief explanation by the interviewer, participants were asked what they thought and seemed generally comfortable with this (source B) and trusted their landlord not to make a profit. However others expressed significant dismay (source A):

“We should be able to pay separate like we do electric, that way it's taken out of the Council's hands as they will just keep putting it up and there's nothing tenants can do.”

“I don't understand how in this day and age with consumer laws I don't understand how you can be tied into one supplier and for them to be able to set their rates at whatever they want, there should be something in place that forces them to set their rates competitively, there should be a limit to what they can set it at... if they are meant to be delivering better value then there should be some sort of body that says there should be a maximum rate that they can charge.”

Payment methods

Almost two-thirds of residents surveyed (from source A) stated that they were ‘happy’ or ‘very happy’ with their payment method (e.g. online, Paypoint, phone). However some residents mentioned that they would like to have more choice. A couple of residents in both research projects (source A and B) mentioned that they were concerned that by paying via prepayment meter for their heat it would be more expensive than via direct debit (which is an incorrect assumption).

5.9 Summary of consumer research

Table 2 provides a summary of the review of consumer research. This highlights that satisfaction with district heating is generally good in terms of pricing and warmth. However this is very scheme dependent with residents in some schemes experiencing problems such as over-heating. In addition, consumers reported mixed experiences of complaints and faults handling. Overall, consumers generally did not seem to know whether they were ‘getting a good deal’ and lack of understanding about billing was evident.

Table 2: Consumer needs in relation to district heating

Consumer need	Description	Importance and prevalence of issue in Scotland
1. Fair price	Not be overcharged for their heat	Generally considered to be affordable although low awareness of prices (see 5.a. in this table) Concerns around high standing charges and price rises
2. Warmth, control & comfort	Sufficient warmth, reasonable controllability and not over-heating	Levels of warmth generally fine but some residents find their home hard to heat Over-heating, especially in communal areas, has been a problem in some schemes Low awareness of effective use of heating controls
3. Standard of service	a. Fault handling	Major faults were not reported to be a key issue but for some individuals faults were reported to be on-

		going and ineffectively dealt with Compensation for interrupted service varied
	b. Debt handling (sensitively)	Debt was not highlighted as a common problem but in one case the supplier had provided support to the resident
	c. Billed regularly and accurately	Information on regularity or accuracy of billing was not that evident However many consumers did not understand the billing information provided and some did not receive annual statements
	d. Fair heat contracts	Insufficient information was contained in the research on this topic
	e. Appropriate support for vulnerable people	Insufficient information was contained in the research on this topic
4. Easy access to redress	Compensation and dispute resolution	Varied experience with instances of complaints being effectively handled and others not Some residents are unsure of who to contact in the case of complaints
5. Information providing reassurance	a. Billing information	Overall a lack of understanding was evident amongst consumers about their billing system
	b. Contractual information	Insufficient information was contained in the research on this topic

5.10 Stakeholder feedback

During the stakeholder workshop (Section 3.6 in methodology), delegates were asked to provide their perspectives of consumer needs in relation to district heating. They were asked to rank, from 1 – 5 for each of five areas of consumer protection, the **importance to consumers** (X-axis) and the **extent to which they think these give rise to potential harm for consumers** (Y-axis) where:

X-axis

1. No real value
2. Some limited value
3. Important
4. Very important
5. Fundamental

Y-axis

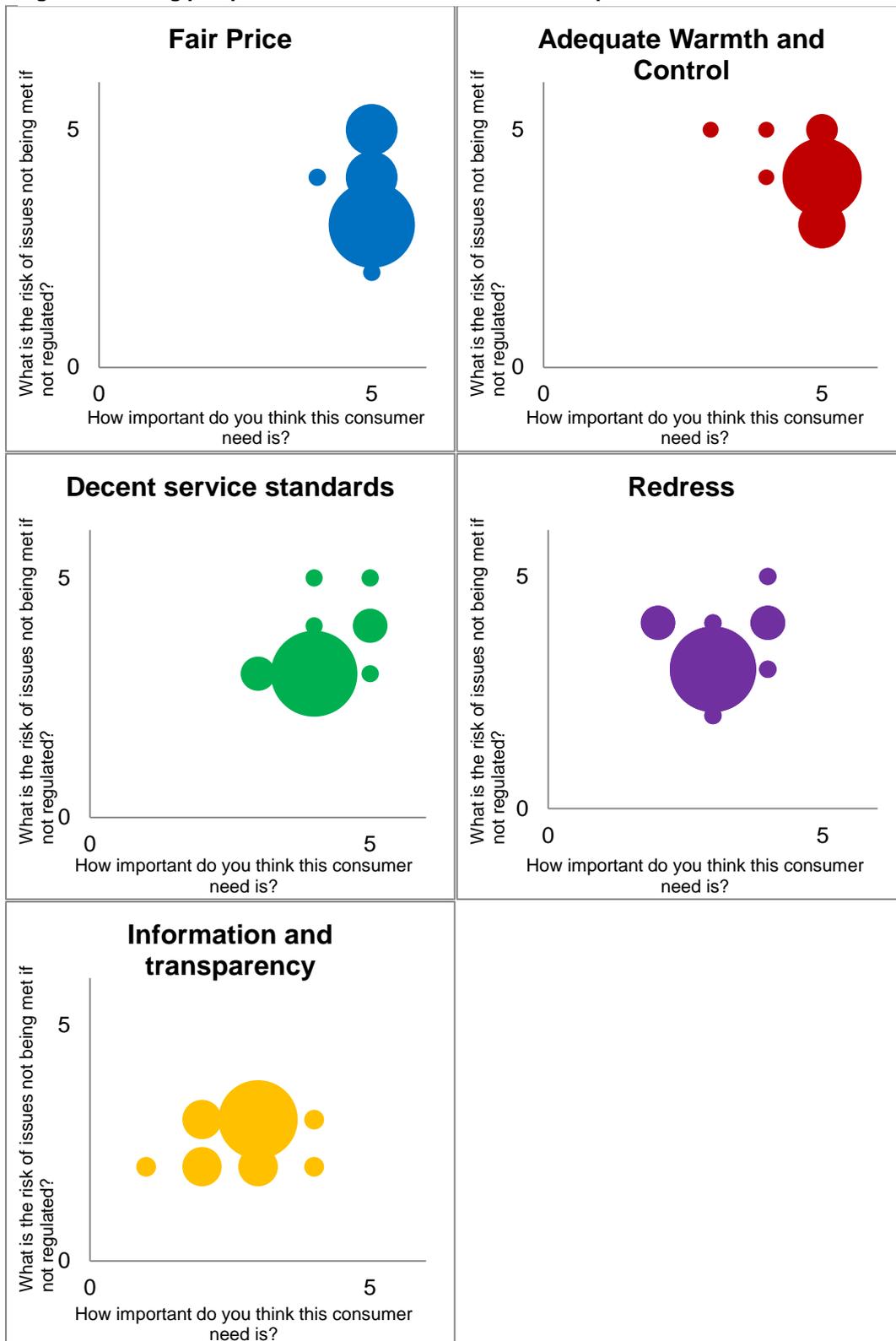
1. Not an issue at all
2. Some minor niggles
3. Common area of concern
4. Regular evidence of consumer issues
5. Serious risk of consumer harm.

The responses are marked on a chart as shown in Figure 2 below.

For **Fair Price** in particular, but also for the issues of **Adequate Warmth & Control** and **Decent Service Standards**, the delegates mostly agreed that the issues were very important or fundamental. In addition they agree that both were a common area of concern, there is regular evidence of consumer issues or there is serious risk of consumer harm. In discussions, delegates felt that these three issues were integral to provision of (district) heating.

Delegates felt that need for fair **Redress** was less important, and had a lesser risk of harm to the consumer (yet still did not score below a two on either axis). For the issue of **Information and Transparency** only two delegates felt it was 'very important' and one thought it was of 'no real value'. None of the delegates scored the risk of a lack of information as greater than a three, so there was no 'regular evidence of consumer issues' or a 'serious risk of consumer harm' as a result of this issue. The former point would be disputed based on the research presented earlier in this section.

Figure 2: Testing perspectives - assessment of needs to be protected



Base = 13

5.11 Conclusions on consumer need

The research reviewed here has shown that whilst consumers may be, on the whole, reasonably satisfied with their district heating scheme, there are a number of problems

commonplace such as lack of billing information. Experience is very scheme specific and residents in some schemes have experienced significant issues around levels of comfort, breakdowns and poor complaints handling.

Further information is needed to ascertain the extent to which other consumer needs are being met, in particular, fair heat contracts. It should also be highlighted that the previous consumer research reviewed for this project was based on seven schemes and therefore may not be representative of the sector.

Stakeholder feedback shows that the provision of warmth, comfort and controls, and providing a fair price are considered the most important consumer needs but also those from which harm is most likely to occur. Decent standards of service, such as complaints handling, was also considered important but less so. Redress, and information and transparency were considered less important by stakeholders and less likely to cause potential harm. However this may have been based on the fact that these factors are not necessary if the other issues (i.e. fair pricing and adequate warmth) are adequately provided. This suggests that any development of consumer protection measures may want to focus first on issues considered to be most important. However it may be sensible to gather more specific feedback on what is important from residents using district heating themselves to inform this decision.

6. POTENTIAL CONSUMER PROTECTION MEASURES

This section looks at consumer protection measures that are in place in several European countries with developed district heating markets: Denmark, Finland, Germany, the Netherlands, Norway and Sweden. The purpose of this was to identify examples of consumer protection measures and assess their effectiveness. The literature and sources reviewed as are listed in Appendix B.

6.1 Potential measures to address consumer needs

Overview of potential measures

Research of the European measures was undertaken via desk-based research and stakeholder input (although the latter was minimal due to the scope of the project). These findings have then been presented around a framework drawn up by the research team. This builds first on the five identified consumer needs, as introduced in Section 5, and then on what protection measures would be needed to address each of these needs. Table 3 lists these measures.

Table 3: Potential consumer protection measures to meet identified consumer need

Consumer need		Potential consumer protection measures
1. Fair price		Price cap and/ or price control (e.g. RPI-x)
		Price setting criteria
		Publishing of prices (including benchmarking)
		Schemes have to be run on a not-for-profit basis
2. Warmth, control & comfort		Technical standards
		Compensation for interrupted supply
3. Standard of service	a. Fault handling	Minimum level of service regarding fault handling, including response time
	b. Billed regularly	Minimum standards of regularity and accuracy
	c. Fair heat contracts	Ensure contractual terms are 'fair'
	d. Debt handling	Minimum standards to support customers in debt e.g. ensure consumers are supported not to get into debt and set up prepayment plans
	e. Support for vulnerable consumers	Obligations to 'know your customer' and specific assistance to address relevant vulnerabilities
4. Easy access to redress	a. Complaints handling	Complaints handling including an independent dispute resolution service
		Compensation for interrupted supply (as above)
5. Information providing reassurance	a. Billing information	Breakdown of prices to consumer
		Benchmarking against other schemes
	b. Contractual information	Joining and leaving rights
		Nature of contractual terms

The following sections provide details of examples of these protection measures from other European countries. It should be noted that this piece of research was not large and the search therefore could not be very comprehensive.

6.2 European experience: overview

This section provides an overview of consumer protection measures in other European countries. Aside from Finland, all countries have laws that provide specific consumer protection to district heating consumers. As highlighted in the table, all of these contain an element of price control and dispute regulation. The majority of countries also have laws regulating district heating companies, including penalties for non-compliance such as fines and a regulator⁹. Finland has taken a different approach as this is a self-regulated market.

An overview of the approach taken in each country is provided below. Following this, each category of consumer need is considered with details of the protection measures identified in relevant countries.

Denmark

The Danish district heating market is regulated under the Heat Supply Act (1979), which regulates public heating supply installations (including so-called “block heating stations”) with a heating output of more than 250 kW and CHP units with a heating output of up to 25 MW. The sector is overseen by the Danish Energy Regulatory Authority and the energy area of the Board of Appeal; they deal with complaints regarding prices and conditions. District heating suppliers must run schemes on a not-for-profit basis and the principles by which the price is calculated is set in law. Prices are published annually which allows for transparency. In addition there is a voluntary benchmarking scheme which most large suppliers participate in. There is an obligation for homes to connect and remain connected to schemes, which can mean that consumers have to continue to pay a connection fee and/ or an annual fixed fee to the heat supply company whether or not they use the heating.

Finland

There is general legislation that applies to, but is not specific to, the district heating industry: the Consumer Protection Act¹⁰ (that was introduced in 1978 and amended in 2015) and the Competition Act¹¹ (2011) (which specifically prohibits the misuse of a dominant market position). In addition, Finnish Energy provides recommendations on a range of topics for district heating suppliers around pricing, contracts, equipment, compensation, etc. These are complied with by the industry. Feedback from one stakeholder suggested the approach of self-regulation combined with general legislation has been successful.

Germany

Conditions for district heat consumers in Germany are set out in a regulatory framework (AVBFernwärmeV) which was introduced in 1980. It includes a measure to control price increases which takes into account prices from other district heating suppliers. A review of prices found wide variation between schemes but few were considered excessive. The directive also includes a limit on heat supply contracts to 10 years, although they can be renewed.

⁹ In Norway there are penalties for violating the Energy Act, including fines or imprisonment of up to one year. Similarly, the Netherlands Authority for Consumers and Markets (NACM) is the regulatory authority and can impose incremental penalty payments and administrative fines.

¹⁰ <http://www.finlex.fi/en/laki/kaannokset/1978/en19780038.pdf>

¹¹ <http://www.finlex.fi/en/laki/kaannokset/2011/en20110948.pdf>

Netherlands

The Dutch district heating industry is regulated by the Heat Act (2010)¹² which contains legislation on a number of areas: heat supply permits, compensation for interrupted supply, price caps, dispute resolution, consumer information and companies having to demonstrate financial capability. The Act was only recently introduced and a recent review recommended some improvements, particularly around price capping. It is important to note that suppliers are exempt from the Act if they supply a small scheme or if they are the landlord or owner of the building.

Norway

The Norwegian district heating industry is regulated by the Energy Act¹³ which was introduced in 1990. This sets out a price cap, mandatory connections and licenses.

Sweden

The District Heating Law (2008) regulates the district heating market in Sweden with regulations on price transparency (annual publishing), contract conditions, information provision and dispute mediation through the District Heating Board. The Swedish Energy Market Inspectorate continuously monitors the market on behalf of consumers. In addition there are voluntary schemes to enhance consumer confidence in district heating, such as a scheme under which suppliers publish and forecast prices.

6.3 Fair price protections

Price caps or controls

Price caps exist in Norway and the Netherlands. The Heat Law in the Netherlands specifies maximum heat tariffs (including the standing charge and connection fee) based upon a principle of "Niet-meer-dan-anders" ('no more than otherwise')¹⁴. However an independent review of the Heat Act in 2016 highlighted concerns that the maximum heat tariff was not high enough to allow suppliers to make sufficient profit to make their investment worthwhile. Recommendations contained in the review include re-evaluating the parameters used for these calculations such as the prices for central heating boilers and their depreciation costs, and to also include connection fees as part of the 'no more than otherwise' principle.

In Norway, the Energy Act specifies that charges must not exceed the charge for electrical heating in the same area.

Price setting criteria

Laws in Denmark, Norway, the Netherlands and Germany specify how the price for district heating must be calculated:

¹² <http://wetten.overheid.nl/BWBR0033729/2016-07-01#Hoofdstuk1>

¹³ <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-19900629-050-eng.pdf>

¹⁴ The Act originally stated that the applicable rate is to be determined based on two prices: the maximum price and the 'reasonable' price. This combination of two possible prices was considered to be unclear to consumers and very complicated both for heat suppliers and for the supervisory authorities. In order to address this problem, a 2011 Bill proposed the abolition of the two-price system and the setting of a maximum price based on the NMDA principle and applicable to all suppliers.

- In Norway the charge should be equal to the connection fee plus fixed yearly charge and charge for the heat used.
- In Germany the price must be designed “*in a way that reflects both the cost of generation and supply of district heating by the company and the respective circumstances of the heating market appropriately*”. It means that both the costs to the supplier and the prices charged by other suppliers must be taken into account, but it only relates to the incremental change in price, rather than looking to review the appropriateness of the price level. Interestingly, a review of pricing was carried out by the national competition regulator in 2012 which found that prices varied widely, and that in a few cases they could be considered excessive. As a result of this, legal proceedings were launched against seven suppliers.
- In Denmark, the law states that the price of heating has to be ‘reasonable and relevant’. The price charged to consumers should cover all necessary costs related to the supply of heating such as: fuel costs, heating production facility, the district heat network, operation and maintenance. The heating plants cannot charge more for the heating than the costs of producing and transporting heating to the consumers – although this does include the depreciation of assets and financing costs to ensure that heating companies can be financially sustainable. Again evidence shows that prices between schemes vary considerably with prices usually lower in large-scale networks.
- In the Netherlands, the Heat Law specifies maximum heat tariffs (including the standing charge and connection fee) based upon a principle of “Niet-meer-dan-anders” (‘no more than otherwise’).

In addition, whilst Finland has no specific rules on pricing in district heating, its general industry laws apply and these specify that suppliers cannot impose unfair purchase or selling prices.

Not-for-profit schemes

In Denmark, district heating suppliers are not permitted to make a profit (although note that companies providing services to the district heating supplier can, just not the supplier itself)¹⁵. There are also rules to ensure that supply services do not result in indirect subsidisation of the consumers and it must not result in the indirect taxation of the consumer. The intention of the non-profit principle is to protect consumers against the monopoly market that is inherent to district heating.

Publishing of prices

In Denmark, the Netherlands and Sweden there are requirements to publish prices. In Sweden, heat tariffs and heat sales for each municipality must be published annually. There is also a voluntary industry-wide initiative, Price Dialogue (Prisdialogen), to examine price changes for district heating to increase customer confidence. In this, suppliers announce new prices early on in the year for the following year, and they also forecast prices for the next two coming years.

¹⁵ Further detail on this: supply services must not result in indirect taxation of the consumers (which means the municipality is not allowed to increase its income through utility services). Supply services must not result in an indirect subsidisation of the consumers (the municipality is not allowed to give subsidy to any users of the utility service).

In Denmark, prices are set each year and have to be published, including the calculation used to create the prices. The set price allows consumers to have confidence in the price for the subsequent year. Similarly in the Netherlands information on heat prices must be publically available.

Other

In Sweden, consumers always have the right to request a negotiation with regard to price and capacity that has been agreed upon. In conjunction with this, the consumer has the right to receive information they need in order to negotiate. Consumers also have the right to negotiate any change such as increased prices.

6.4 Warmth, control & comfort

Technical standards

Sector guidance for district heating suppliers in Finland sets out recommended guidelines of the quality of heat provided such as minimum and maximum temperatures, and minimum pressures.

Compensation for interrupted supply

In the Netherlands, heat suppliers must compensate customers for interruptions to heat supply in the form of payments. Reimbursements should also be included should the heat supply service not conform to agreed quality parameters. Suppliers are required to keep records of supply interruptions. The compensation levels and quality standards must be included with the heat supply contract.

In addition there is a provision for guaranteed heat supply in the Netherlands. The Heat Act provides power to apply emergency procedures to guarantee the supply of heat where the existing supplier cannot. This includes the power to appoint another supplier and set a fee to be paid to them. It also allows the Minister to order the operator of the gas network to replace a heat network where it is no longer profitable, without the consumer having to bear the costs of connection to the new network.

Voluntary guidance in Finland outlines recommended compensation if there are delays in connection.

6.5 Standards of service

Fault handling

Voluntary guidance for suppliers in Finland outlines responsibilities for faults and repairs. For example, the resident is responsible for reporting faults and allowing access for repairs whilst the supplier is responsible for carrying out repairs. The supplier must also provide compensation for damages caused by faults or interrupted heat supply. However the guidance does not provide rules around response times and this was not evident in measures from the other countries studied.

Minimum standards of billing regularity and accuracy

The voluntary guidance for suppliers in Finland also sets out rules in relation to billing. For example, customers must be billed based on actual consumption, although invoicing can be calculated on estimated heat usage if a 'balancing bill' is carried out three times a year using actual heat consumption. Meters must be read three times a year. It also contains guidance on billing errors and delays in payment.

Ensure contractual terms are 'fair'

Finland and Sweden both have guidance for 'fair' heat contracts. For example in Sweden the District Heating Law contains directions for contract conditions. In Finland general legislation on industry contains a number of rules but more specifically Finnish Energy has a series of recommendations for their members which include a template heat contract and guidance on heat contracts, including their terms.

Minimum standards to support customers in debt

Little information was gathered about suppliers' obligations to support consumers in debt in the European countries studied. In Finland however there is guidance for suppliers about the discontinuation of heat supply if, for example, the consumer has built up a certain level of debt.

Obligations to 'know your customer' and specific assistance

No information was obtained about policies for this topic in other European countries.

6.6 Easy access to redress

Complaints handling

Little information was obtained on how complaints are handled or any minimum standards of service in regards to this. However, as explained below, all countries have a set process for handling disputes between consumers and suppliers. In addition some countries specify the rights of consumers with regards to complaints. For example in Denmark, consumers can complain to their supplier about the prices that have been set and appeals regarding this go to the Energy Board. Similarly in Norway consumers have the right to appeal to the licensing authority about prices and other terms of delivery.

Guidance in Sweden states that if an agreement between the supplier and consumer is not reached then the district heating company must inform the consumer verbally or in writing that negotiations have been concluded and provide a reason why an agreement has not been reached.

Independent dispute resolution service

Most of the countries studied have an independent dispute resolution service set up. This is often existing organisations that can handle complaints about district heating. For example, in Finland, the Competition Authority, Consumer Ombudsman and the [Consumer Disputes Board](#) can investigate disputes. In other countries, such as Sweden, specific district heating organisations have been set up (the District Heating Board in Sweden handles disputes although the Swedish Energy Market Inspectorate also monitors the sector on behalf of

customers). In Denmark it is a mixture of the two approaches with the Danish Energy Regulatory Authority and the energy area of the Board of Appeal dealing with complaints.

Specifically in the Netherlands, the Heat Act stipulates that disputes should be *“solved in a speedy, simple, transparent and inexpensive manner by an independent dispute resolution committee, without prejudice to the jurisdiction of the civil courts”*.

In Finland the Consumer Disputes Board’s decisions are recommendations only and are not enforced; however businesses comply with decisions in over 80% of cases¹⁶. Stakeholder feedback suggested that systematic or very serious malpractices may have led to regulation being introduced in some sectors; however this has not occurred in the field of district heating.

6.7 Information providing reassurance

Billing information - Breakdown of prices to consumer

A number of countries have rules that specify transparency in price calculations for district heating. For example, the District Heating Law (July 2008) in Sweden obliges transparency in the pricing of district heating provisions. Similarly in Germany suppliers must clearly state the relevant calculation factors used and, when applying price change clauses, the percentage of the factor covering the fuel cost price change must be stated separately. As stated above, in Denmark, the calculation used to create the prices must be published. In the Netherlands, companies are required to provide *“reliable, insightful information on total costs and revenues associated with the supply of heat and the performance of the connection”*.

Billing information - Benchmarking against other schemes

Denmark has a voluntary benchmarking system for suppliers. On an annual basis data is published in a large spreadsheet on a range of factors such as heat losses¹⁷. Stakeholder feedback suggests that most or all large suppliers participate in this exercise. The scheme exists to encourage efficient scheme management and operation.

Contractual information - Joining and leaving rights

In Germany, supply contracts are limited to 10 years. However if the contract is not terminated by either party nine months before the end of the contract then the contract will be automatically renewed for a further five years.

In Sweden, consumers have the opportunity to terminate their district heating agreement without cost, with the period of notice usually being three months.

Norway’s Planning and Building Act sets out connections to district heating are mandatory. However the Energy Act states that if a building cannot be connected due to delays on the deadline for completion, the licensee may be ordered to provide a temporary heat supply.

¹⁶ <http://www.kuluttajariita.fi/en/index.html>

¹⁷ Although a stakeholder commented that this may turn into a mandatory requirement

Guidance on contract terms is also set out in the set of recommendations for district heating suppliers in Finland. This includes guidance on ending a contract. Similarly, there is guidance on delays in connection and associated compensation.

Contractual information - Nature of contractual terms

The Ordinance on General Conditions for the Supply of District Heating in Germany sets out conditions for the supply of district heating to consumers. District heating suppliers can only deviate from these conditions with the explicit consent of the consumer, and changes to supply terms can only come into effect after they have been publicly announced.

The law in Sweden sets out a number of conditions with regards to district heating contracts. Consumers must be notified two months in advance of any changes to the terms of agreement or new terms or conditions; suppliers must also justify why the change is reasonable.

In the Netherlands, heat supply contracts must comply with consumer information and heat supply arrangements. The regulator has powers to judge if the terms of contracts are considered to be reasonable and transparent.

6.8 Other measures

Heat licenses

Heat suppliers in the Netherlands are required to gain permits to supply heat to consumers. Some suppliers are exempt: those with 10 or fewer consumers, those that supply heat of 10,000 GJ or less per year, or if the supplier is the landlord or owner of the building. Permits are issued and revoked by the minister of economic affairs. However a recent review suggested that the latter group should not be exempt.

District heating suppliers have to demonstrate their financial capacity to continue the supply of heat. This is done through submission of financial statements as well as to forecast heat demand and how it will be met over the medium term (five - 10 years) and longer term (over 10 years).

Similarly in Norway district heating suppliers must have a license. The licensing authority needs to be notified about prices, terms of delivery and any anticipated changes. If licenses are not renewed, the plant can be taken over free of charge by the State, the country or the municipality.

Equipment

The Finnish guidance for heat suppliers details what permissions consumers must give for the installation of equipment, access, care of equipment and damages. It also sets out what compensation for damages and faults should apply and states that heat suppliers can discontinue the heat supply if consumers have not allowed access to repair a fault.

6.9 Feedback on introducing consumer protection measures

Little information was gathered on the experiences and impact on district heating industries of introducing these measures. On the whole this is because most laws were introduced years ago. The most notable example of feedback on the introduction of measures is the

Netherlands where the Heat Act was put into law in 2010 and came into force in 2014. The Act took 11 years to be drafted and approved as it underwent a number of revisions before final approval.

An independent review of the Heat Act in the Netherlands was carried out in February 2016. This concluded that the Act had so far resulted in some progress towards achieving its aims but that it had also had a number of unintended consequences such as a high administrative burden for smaller organisations. There was also found to be a lack of clarity in some areas. For example, the law specifies that building-based suppliers (such as housing associations) must guarantee a regulated price to their tenants; however as the supplier of the fuel can change the price that it charges to the building owner, this puts the building owner at risk. There have also been concerns about how the maximum price is set, whether the values it is based upon are appropriate and therefore whether it is high enough to allow suppliers to make sufficient profit to make their investment worthwhile. The review made a number of recommendations for improvement of the Act such as increasing the maximum allowable tariff.

6.10 Summary and conclusions

This section has presented an overview of consumer protection measures in place in several European countries. This highlights that in the studied countries, all except one (Finland), have specific laws that provide some element of consumer protection for consumers of district heating. In Finland industry-led voluntary measures were put in place instead of legislation. Commonly this includes some element of price control or calculation, transparency in prices, dispute resolution and in some cases details of heat contracts. However the rules are different in each country and none of the countries studied appear to have coverage on all issues, although it should be acknowledged that this was not a comprehensive review of all information, relying on that which was available. Table 4 provides an overview of the consumer protection measures that exist in the countries studied.

The impact of these measures was difficult to determine due to a lack of data and the fact that most measures were introduced a long time ago. The research did not look in detail at how prices of district heating vary within different countries but it is apparent that prices do vary, even where price protections exist¹⁸. This would be expected to be the case since the costs of supplying heat will vary between schemes (e.g. given the varying capital and heat supply costs). Instead the price protections act as a pressure to drive efficient operation, scheme design, and as a safe-guard against excessive heat prices in a monopoly situation.

There is little information readily available on the successes and challenges of introducing regulation because most measures were introduced several decades ago, although the recent Heat Act in the Netherlands provides a useful example. This highlights the challenges inherent in setting laws, especially price controls.

¹⁸ For example, Fjärrvärme (2009) An International Comparison of District Heating Markets

Table 4: Overview of consumer protection measures in selected European countries

Consumer need		Potential measures	Denmark	Finland	Germany	Netherlands	Norway	Sweden
1. Fair price		Price cap and/ or price control				x	x	
		Price setting criteria	x		x		x	
		Not-for-profit schemes	x					
		Publishing of prices	x			x		x
2. Warmth, control & comfort		Technical standards		x				
		Compensation for interrupted supply				x		
3. Standard of service	a. Fault handling	Fault handling		x				
	b. Billed regularly	Minimum standards of regularity and accuracy		x				
	c. Fair heat contracts	Ensure contractual terms are 'fair'		x				x
	d. Debt handling	Minimum standards to support customers in debt						
	e. Support for vulnerable consumers	Obligations to 'know your customer' and specific assistance						
4. Easy access to redress		Complaints handling including an independent dispute resolution service	x	x		x	x	x
5. Information providing reassurance	a. Billing information	Breakdown of prices to consumer	x		x			x
		Benchmarking against other schemes	x					
	b. Contractual information	Joining and leaving rights		x	x		x	x
		Nature of contractual terms			x			x

7. EXISTING CONSUMER PROTECTIONS

This section looks at what consumer protection measures are currently in place in Scotland for district heating consumers. First, it looks at suppliers' own protections, based on the data from supplier interviews. Secondly, it looks at suppliers' views on the Heat Trust. The summary provides an overview of the measures that exist.

7.1 Existing protections in place

The 20 suppliers interviewed as part of this research were asked what policies and procedures they already had in place for their district and communal heating schemes. A summary of the feedback is provided in this section. It should be noted that the majority of respondents were social landlords, reflecting the existing make-up of district heating operators in Scotland.

a. Fair price

Whilst suppliers calculate prices differently, four commented that their schemes are run on a not-for-profit basis but are subject to the wholesale fuel price negotiated as well as other running costs. Overall, some suppliers felt their prices were 'reasonable' with high satisfaction levels amongst residents:

"I think we're priced quite fairly. A small handful of residents might complain but I think 90% of them are happy with the pricing."

In contrast, another admitted to having high prices due to an inefficient system:

"This is a difficulty for us. We're non-profit and want to keep the costs as low as possible for the resident... but because of distribution and standing losses in the system it's more inefficient than we'd like, and the tariff is therefore higher than it should technically be, and higher than we'd expected before it was installed. We're trying to work out how efficient the system could be... we'd like to bring the costs to the residents down somehow."

Most suppliers cited that they reviewed prices regularly, typically on an annual basis although some did so more frequently, e.g. quarterly. Some commented on advising residents about price rises:

"Everyone's advised at the start of the year about what they're paying, and we base it on the year before's consumption."

Finally one organisation, a housing co-operative, commented that they would consult their residents if a price increase was proposed.

b. Standards of service

Process for reporting faults

All suppliers have a process set up for reporting faults and in many cases, as with the complaints procedures, this was the organisation's standard process for fault reporting, i.e. non-district heating specific. Sometimes procedures differed depending on whether the fault was a fault with the whole system or with the equipment in residents' homes.

Many suppliers commented that they had a repairs phone number that was available all day every day.

Debt handling and disconnection

The approach to debt and disconnection depends on the type of billing system in place. Those suppliers with prepayment meters stated that they did not allow residents to run up debt, although there may be a small level of emergency credit. This can lead to self-disconnection although one supplier had made efforts to support residents:

“We had a couple of people who wanted to disconnect but we managed to persuade them to stay.”

Schemes run on a variable rate billing or heat with rent approach mean that consumers can get into debt. The majority of suppliers have policies and processes to deal with debt, many of which are their standard local authority or housing association debt policies and which may involve supporting private consumers too. Some suppliers described how this would involve support:

“We ask if they need support, a housing officer visits them, we offer debt management services and advice on how to repay. We look at the reasons why they're in debt. They're given every opportunity to set up a payment plan.”

Where third party metering and billing companies are involved, they usually deal with debt directly.

Approaches to disconnection varied. Some suppliers stated that they would never disconnect consumers:

“There are no disconnections - they're all vulnerable people, and we can't disconnect them from the heat - it's included in the rent. But I'm not sure what would happen if they don't pay their rent.”

More commonly, disconnection would happen but it was normally described as 'a last resort':

“Disconnection is always the last action we'd take - in 18 years we've only disconnected two or three people. We know all our customers and try to work with them. If there are debt management problems we try to put them on a pre-payment meter and try to recover the debt that way.”

Another supplier commented that suppliers currently have limited recourse to recover bad debt.

Special services for priority register

Some suppliers keep a priority services register or list of vulnerable residents on their scheme, although many do not. However a general comment was that due to schemes predominantly being social housing the majority or all residents will be vulnerable e.g. elderly residents.

Most suppliers do not provide any special services for vulnerable residents, but partly because they deemed all or most of their residents to be vulnerable. A small number of

suppliers did provide special services for vulnerable residents, for example ensuring these residents are priority if the heating breaks down or providing them with emergency credit.

c. Easy access to redress

Complaints handling procedure

Almost all suppliers commented that they have a complaints procedure in place, with many social landlords commenting that these were their standard complaints procedures, i.e. not specific to district heating. A number of suppliers highlighted that their procedure was in line with Scottish Complaints Handling Procedure and others cited compliance with the Scottish Public Service Ombudsman stages.

One organisation stated that they did not have an official policy in place but worked closely with residents:

“We interact closely with customers. Grievances come to us and we deal with them internally. There's no official policy in place, but we have regular discussions with our customers and we work through problems to get a solution that's satisfactory for everyone.”

Even those with formal procedures commented that often in practice complaints are handled quite informally by close contact with residents:

“We have a procedure in the contract, which sets out their obligations and ours. Because it's such a small scheme they usually just phone me, but there is a formal procedure in there somewhere.”

d. Information providing reassurance

Price comparison

Most suppliers were not providing their residents with price comparison information, except in some cases as part of the sign up process to the scheme:

“We don't do price comparisons on a year-to-year basis. That's provided when people decide whether or not to take up the property. When they sign up they know what they're going to pay and what the electricity alternative is.”

Providing price comparison information was seen by some as unnecessary since residents cannot change suppliers, but others also commented on the challenges of doing so, for example deciding which fuel to use as a comparison in off-gas areas. One organisation commented on their efforts to provide price comparisons but noted the challenges inherent in communicating this to residents:

“We conduct price reviews, using a basket of prices available locally, to compare the heat selling price with the alternative gas selling price.....We've tried to educate customers that the delivered price is very competitive. If they take account of fuel costs, the efficiency of the boiler if they had their own and the replacement costs for that boiler. We should do more to make this clear to our customers, because many of them would otherwise make comparisons between the straight fuel cost and the delivered heat price which isn't a fair comparison.”

Two organisations stated that they make efforts to benchmark their prices against the ‘big six’ energy suppliers, with one providing a price promise that the cost will be cheaper than the gas price from the largest four energy providers.

In addition, some suppliers stated that they do have price comparison information that they use for their own purposes but was not shared with residents as a matter of course.

Billing information

The approach to the provision of information varied based on the metering and billing approach. Three organisations commented that they use prepayment (or pay-as-you-go) meters, with one highlighting that this included annual statements:

“We operate a pay-as-you-go system and send out annual statements. We decide what goes on the statements and we try to make them as clear and simple as possible.”

Others used some form of variable rate billing where residents are typically charged a standing charge and unit cost – some suppliers commented that they provided this breakdown to residents to ensure transparency:

“On the website we have the tariffs and a calculation as to how it’s worked out. We have open days with residents and the district heating providers.”

However others provided little information on what their bills look like and a number admitted their bills could be better. Some described their efforts to increase the user-friendliness and readability of bills:

“The information we give to customers is sometimes a little unclear, and steps are being taken to improve that.”

Other suppliers used a ‘heat with rent’ approach where residents are charged a standard sum regardless of the amount of heat they use. Those on heat with rent do not typically receive a bill or breakdown of heat usage; they are simply provided with the cost allocated to them and sometimes this is within the service charge. This was not perceived as necessarily having negative implications on residents as it was described as “easy”.

Support and information for new customers

Mixed approaches were taken to providing new customers with relevant information around the heating system such as how to operate it and the billing procedures. Some suppliers reported that they provide information via face-to-face home inductions whilst others provided written information via a home information pack. Some organisations also have their own energy advisors.

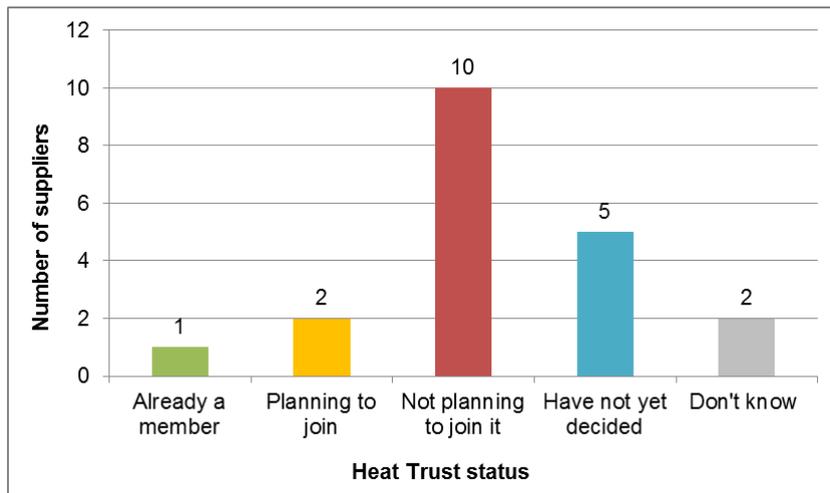
7.2 Heat Trust

Likelihood of joining the Heat Trust

Awareness of the Heat Trust was high with 17 out of 20 organisations stating they had heard of it. As highlighted in Figure 3, only one supplier is currently a member of the Heat Trust

with two further suppliers planning to join. Half of suppliers however stated that they were not planning to join it and a further five were undecided. Of these five, most were not sure how likely it was they would join in the future although one stated it was very likely. Two organisations stated that they wanted to address technical or metering problems in their system before joining or considering joining the Heat Trust. Another commented that they wouldn't be able to join the scheme until third parties involved in the scheme were eligible to join. It should be noted that this would apply to other interviewees but was not identified by them as a barrier.

Figure 3: Suppliers' views on joining the Heat Trust



Base = 20

Benefits of joining

When asked what the benefits of joining the Heat Trust are, there was a general sense that it was a good thing to protect customers and to provide the same level of protection that other utility consumers get. In particular suppliers mentioned the benefits of consumers receiving dispute protection (four) and the provision of price comparison or more standardisation (three). Four organisations also felt that it was a 'good thing to be seen to be doing' and may help build up consumer trust. One interviewee described the benefits as:

“Giving the tenants more of a voice and protection against bad customer service and bad billing. And it would reflect better on the Housing Association too but first and foremost it would benefit the tenant.”

Most interviewees perceived there to be benefits of joining the Heat Trust even if they were not planning to do so. However a small number of interviewees could not see the benefit or had not considered it.

Further some interviewees commented that it would prevent malpractice or unscrupulous landlords, with another commenting that they felt it was more applicable to private suppliers compared to social landlords.

Barriers of joining

When asked what the main barriers to joining were, the main issues identified were costs of joining (eight respondents) and perceived lack of benefit (five respondents). In terms of cost there were differences of opinion as to whether the joining cost of the Heat Trust (around £5

per customer) was high, with one large supplier citing they would need a minimum number of connections to make it worthwhile whilst two small suppliers felt the cost was a key barrier.

“The main barrier would be cost, because we’re only a small organisation. If it were free we might join. But it might be a disadvantage to us if it’s not mandatory, and it imposes lots of restrictions on us. And if we joined, our customers might not be aware of it anyway. So it depends on how onerous it is.”

Some were concerned that this cost would have to be passed on to consumers. In addition, some suppliers were unconvinced about the benefits that joining would bring, feeling that themselves or the billing company already provided sufficient protection, with one commenting that *“we are already a trusted brand”* and *“just not sure whether there’s any gain”*. Similarly, respondents pointed to the fact that they are not-for-profit and one highlighted their scheme was tenant-led (housing co-operative). The lack of consumer awareness about the scheme compounded the feeling of lack of benefit for one respondent.

A number of practical barriers were also identified. Three organisations stated that they do not have meters in individual homes; this was preventing two joining the Heat Trust and the other was not looking at the Heat Trust until they had met the Heat Network Metering and Billing regulations. Two organisations felt the scheme may involve too much administration, including repetition of work already being done and another was concerned about fines.

Two suppliers were concerned about compensation levels, stating they are already bound by the Housing Scotland Act to pay compensation for any outage or penalty payments if the system breaks down. There was therefore a concern that they may end up with double payments.

Other comments

One supplier felt that the Heat Trust needed to more actively market themselves to housing associations and that many other organisations may be unaware of the scheme.

7.3 Legal opinion on regulation of district heating

The legal opinion commissioned from John Campbell QC by CAS alongside this project can be summarised as follows. The full text is in Appendix C.

The opinion stresses the difference between two powers:

1. The power to legislate specifically for consumer protections

The legal opinion believes the power to legislate specifically for consumer protections is *reserved to the UK Government* and has not been devolved to the Scottish Government.

In addition the legal opinion identifies legislation that already exists on this matter:

- The Consumer Rights Directive which applies in Scotland and intends to be a complete code for the protection of consumers
- The EU Energy Efficiency Directive which is transposed in the UK through the Heating Network (Metering and Billing) Regulations 2014.

Under these pieces of legislation the legal opinion believes that consumers entering into district heating contracts have statutory consumer protection rights including: entry into the scheme, participation in it, the supply of heat, pricing, the right to switch (by which it means not entering into or being able to end a contract), the right to terminate, the right to information, metering and billing, the right to complain, to have a complaint dealt with and other relevant consumer orientated contractual rights. In this regard, the legal opinion sets out that it would be unnecessary to legislate further specifically for this issue due to the protective measures already in place. However whilst the legal opinion says that these protections exist in legislation, they are not codified in one place, and so are not regulated or enforced in practice.

2. The power to create a compulsory licensing regime for district heating suppliers

The legal opinion states that the Scottish Government *does* have the power to create a compulsory licensing regime for district heating suppliers. This would enable control of suppliers by registration and licence, by requiring them to include certain terms in their supply contracts. It could include both:

- Physical standards for district heating schemes, such as meeting safety standards as well as technical standards for output and overall efficiency
- Consumer protective measures such as tariffs, choices, the right to leave a scheme, value for money and complaint handling.

In effect the licence could ‘enshrine existing consumer protection law’.

It is also suggested that the licensing regime may be ‘proportionate to the project in question’, and could apply to both existing and new schemes.

The legal opinion suggests that the Climate Change (Scotland) Act 2009 would be an ‘obvious umbrella’ under which to introduce a licensing scheme, for example as a statutory ‘Heating Code for Scotland’. However it highlights that a potential regulator would need to decide whether it would be able to take on the scheme without additional legislation and whether it would need to change its overall competencies to do so.

7.4 Gap analysis

This section looked at what consumer protection measures are already in place in Scotland in terms of the policies and systems suppliers have on their own schemes. This has been summarised in Table 6. This review identified that, in terms of current supplier protections (see column a in the Table), there are a number of protections already in place but these vary between schemes and there are some areas which are not covered. In addition there were some issues which were not covered as part of this research.

The table also outlines protections already in place from legislation (column b), based on feedback from the legal opinion (Section 7.3), although these are not currently codified in one place for application to district heating. This provides an overview to understand what level of protection is supplied and its coverage. However further assessment would be needed to understand how these pieces of legislation apply in terms of the details of the

regulations and coverage of district heating schemes (i.e. whether they apply to all schemes). Finally, a brief overview of what is contained in the Heat Trust is covered in the table (column c). Feedback from suppliers identifies that very few are currently registered or are planning to join the Heat Trust meaning that these protections do not have widespread coverage. However it should also be noted that the Heat Trust has only been operational for just over a year.

Overall this section has shown that there are existing protections in place to ensure consumers have a fair price, receive a good standard of service and are provided with necessary information. However the research suggests there is a case for more comprehensive and clearly defined measures to ensure adequate district heating customer protection, especially given the levels of protections consumers in regulated utilities receive. It should also be highlighted that the research is based on interviews with suppliers willing to be interviewed; this may generate a bias in that suppliers who have done more work in this area may be more likely to take part in the research.

Table 5: Current consumer protection measures in place in the Scottish district heating market

Consumer need		Potential measures	a. Current consumer protection typically offered by suppliers?	b. Current legislation?	c. Contained in Heat Trust?
1. Fair price		Price cap and/ or price control	Varied: some will cap their own prices against other fuel prices	No	No
		Price setting criteria	Most have criteria but these vary	Yes*	Yes
		Not-for-profit schemes	Many schemes (but not all) are run on a not-for-profit basis	No	No
		Publishing of prices	No (prices may be provided to residents but are not publically available)	No	No
2. Warmth, control & comfort		Technical standards	Unknown	No	No
		Compensation for interrupted supply	Unknown	Unknown	Yes
3. Standard of service	a. Fault handling	Fault handling	Yes	No	Yes
	b. Billed regularly	Minimum standards of regularity and accuracy	Yes except where prepayment	Yes*	Yes
	c. Fair heat contracts	Ensure contractual terms are 'fair'	Unknown	Unknown	Yes (limited)
	d. Debt handling	Minimum standards to support customers in debt	Yes	Unknown	Yes (limited)
	e. Support for vulnerable consumers	Obligations to 'know your customer' and specific assistance	Varied: some have specific policies, others do not	Unknown	Yes
4. Easy access to redress		Complaints handling	Yes	Unknown	Yes
		Independent dispute resolution service	No	Unknown	Yes
5. Information providing reassurance	a. Billing information	Breakdown of prices to consumer	Most provide some breakdown	Yes*	Yes
		Benchmarking against other schemes	No	No	Yes (price comparison tool)
	b. Contractual information	Joining and leaving rights	Unknown	Yes**	Yes
		Nature of contractual terms	Unknown	Unknown	Yes

* Heat Network Regulations

** Consumer Rights Directive

8. ANALYSIS OF CONSUMER PROTECTION MEASURES

This section provides further analysis of potential consumer protection measures. Firstly, the section explores the perspectives of district heating suppliers on the need for greater consumer protection and what measures may be desirable or not. Secondly, an analysis of each individual consumer protection measure is provided. This is based on the research team's analysis of the research presented in Sections 3 – 7, and stakeholder feedback.

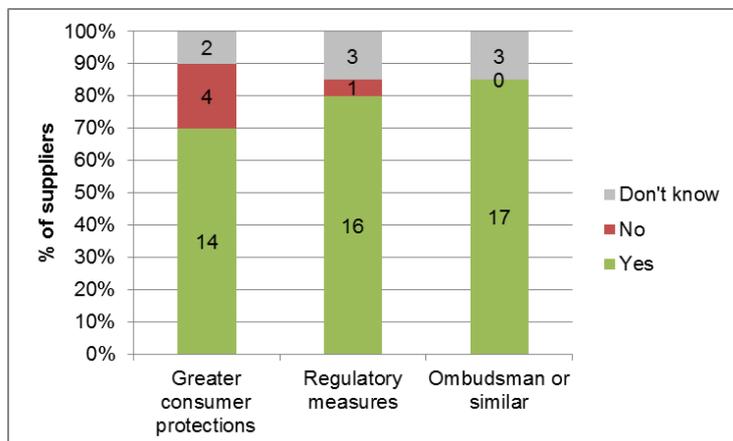
8.1 Suppliers' views on the need for greater protection

This section provides an overview of the findings from the research with district heating suppliers on their perspectives as to whether there is a need for greater consumer protection and what types of measures would be most desirable. This is based on interviews with 20 district heating suppliers, most of whom are social landlords.

a. Views on general protections needed

The research found that 14 out of 20 suppliers (70%) stated that greater consumer protection measures were needed in the Scottish district heating market (Figure 4). Only four respondents disagreed, this being three housing associations/ co-operatives and one private supplier. There was stronger support for regulatory intervention (16 out of 20) and an ombudsman or similar (17 out of 20).

Figure 4: Perspectives on the need for greater consumer protection measures in the Scottish district heating market



Base = 20

One supplier described how the Heat Trust should be sufficient for the industry (instead of regulation), although they were not aware of the low uptake of the scheme (to date):

“Provided that the spirit of the Heat Trust is adhered to I think that’s more than adequate. The whole point of the Heat Trust is that it’s a self-regulation initiative to stave off the need for government regulation which might be cumbersome and not necessarily fit for purpose... For now, the Heat Trust should be given a chance. Its intentions are right. If it’s not achieving the aims it set out to then there needs to be more formal regulation because you don’t want a fly-by-night organisation who doesn’t operate their schemes as they should.”

Many suppliers commented that they did not feel regulation was needed because their consumers were already protected due to a combination of their own policies and existing Government regulations.

“I don’t know about the general district heating market, but it’s different for us – our customers have all the protections they need, and there’s always someone on site to help.”

However another supplier commented that whilst they’d like to believe that consumer protection could be achieved on a voluntary basis; in practice not all suppliers may have consumers’ needs at the heart of their scheme so regulation was needed. In general there was recognition that regulation was needed to protect consumers:

“The more regulations there are to make sure the consumer gets a fair deal the better.”

A particular benefit that regulation was considered to bring was an ombudsman that could settle disputes (although one supplier believed consumers could go to the Energy Ombudsman¹⁹). It was also felt that minimum standards would be useful to put all suppliers on a ‘level playing field’ and some commented that district heating should receive the same regulation and governance as the gas and electricity markets.

There was also a feeling from a small number of suppliers that district heating suppliers also needed protection and statutory rights from the Government:

“We’re a local utility and the government should be giving statutory rights to district heating providers. All other statutory powers have protection but we’re seen as a private company. For example, electricity suppliers have statutory powers to lay cables and have wayleaves whereas we have to apply for planning permission and get agreement from individual landowners, etc. This needs reform.”

However there was also a concern that over-regulation could have risks to the market:

“The district heating market is in its infancy and quite fragile at the moment and there might be a risk of over-regulation if customer protections were mandated. In a more mature market with stronger balance sheets I can see it would be beneficial, but not at this stage.”

b. Issues needing most protection and desirable protection measures

Overall, two areas were identified as needing most consumer protection: price and heat supply:

“The two most important things are: making sure customers understand what they’re being charged and keeping the heat on so people can stay warm.”

Specific issues mentioned were price guidance or comparisons, price caps, and protections for those on prepayment meters. Four suppliers felt price caps would be useful although also recognised that it would have to consider different fuels (especially off-gas fuels) and whether it applies (or needs to apply) to not-for-profit schemes. The interviews did not

¹⁹ It is not clear whether this is a correct or incorrect assumption for suppliers not signed up to the Heat Trust

provide any indication that suppliers were themselves, or felt others were, artificially setting high prices. However one supplier was concerned that energy utilities are marking up prices through the Energy Company Obligation (ECO):

“We’ve seen that the ECO value that’s applicable to district heating projects tends to be recovered by energy companies through obligations for ‘managed solutions’ – so they agree to do a lot of the compliance for their own obligation, then put a 15% mark-up on the contract price, which hoovers the ECO back up again. I’m not sure whether exploitation is the right word, but what we’re seeing isn’t within the spirit in which it’s meant to be done. I’d like to see more scrutiny of how contract prices are benchmarked – that would help to show whether tariffs are unfairly set and whether they’re being used to generate an artificial profit.”

Reliability of heat supply was felt to be an important issue and it was suggested that this needed to be dealt with by a good maintenance service, efficient fault handling including minimum response times and ensuring continuity of supply, i.e. a 24/7 service.

A number of interviewees also called for greater transparency in the sector:

“There should be more transparency - we should be saying who our supplier is, what rate we pay, what profit that company gets, etc.”

c. Undesirable protection measures

When asked what consumer protection measures may be undesirable, a number of landlords did not provide an answer as they felt they did not have sufficient information or in one case it was not felt there could be an ‘undesirable consumer protection measure’.

Some suppliers felt that it was important not to over-regulate the market, which could deter smaller operators. Additionally, overly harsh punishments, timeframes for connections and forced installation of meters were considered to be undesirable.

8.2 Analysis of potential measures

Measure specific feedback

Table 6 provides an analysis of each of these measures including pros, cons and an analysis of their applicability in Scotland. An initial version of the table was developed by the research team and then tested and refined with stakeholders at the stakeholder workshop (see methodology in Section 3.6)²⁰. It therefore incorporates the views of a range of stakeholders including suppliers, consumer protection bodies, industry and Scottish Government. Generally, there was consensus on the pros and cons of the different possible measures. In addition, a wide range of potential mitigation strategies were identified, providing approaches which could be adopted which would avoid the identified risks (i.e. ‘cons’) associated with specific consumer protection measures.

²⁰ Delegates were asked to individually think of pros, cons and also for potential mitigation measures for the consumer protection measures noted under each of the five identified consumer needs. Additional consumer protection measures could also be proposed. In groups, the delegates then discussed their thoughts.

Table 6: Potential consumer measures with analysis on their pros, cons and applicability

Potential measures	Pros	Cons	Potential measures to mitigate cons	Applicability to Scotland
Price cap and/ or price control (e.g. RPI-x)	<ul style="list-style-type: none"> Can (a) drive efficiencies in schemes and reduce poor performance or (b) reduce risk of unfair pricing in monopoly situation, i.e. over-charging (based on research and stakeholder feedback the former is expected to be a more prevalent issue) Could support transition from mains gas (i.e. cap against lowest price), or electric heating 	<ul style="list-style-type: none"> Getting price cap right for all schemes may be difficult given differences in fuel, scale, etc. Need to consider how a benchmark is created given these differences Comparison benchmark would also need to take into account price rises May result in some schemes being run at a loss (although not all stakeholders felt this was a problem) where there are low efficiencies Resource intensive Could result in poorer/ cheaper equipment being installed Difficulties in retrofitting and determining price due to differing levels of efficiency Consider how it would apply to schemes with and without standing charges 	<ul style="list-style-type: none"> Relative price control Clarity required on standing charges vs. heat charges The price cap or other price control could be introduced gradually (e.g. pilot with some schemes initially) Could set price against top four gas providers to reflect equivalent – and use same approach for standing charge Could include cap on standing charge and clear guidance on unit price 	<ul style="list-style-type: none"> Applicable to all but need to consider implications for different fuels/ locations
Price setting criteria	<ul style="list-style-type: none"> Makes clear basis on which prices should be determined based on cost base (more like rate of return approach than price cap) so can reflect differences between individual schemes Increases confidence and transparency May be better for suppliers who are running schemes at a loss, compared to a price cap 	<ul style="list-style-type: none"> Setting criteria and auditing/ policing true cost base could be difficult Not clear how it would address poorly designed schemes with unnecessarily high cost base May not necessarily result in low prices if schemes are run inefficiently Consideration would be needed of how it would be implemented in situations of mixed tenure within a scheme or pooled schemes 	<ul style="list-style-type: none"> Owners of private housing could pay annual invoice for service charge Identify certain costs to be included in standing charge and heat charge Technical standards might resolve the issue with poorly designed schemes 	<ul style="list-style-type: none"> Applicable to all
Schemes have to be run on a not-for-profit basis	<ul style="list-style-type: none"> Removes need for 'return to shareholder' in pricing Simple measure that may increase consumer confidence 	<ul style="list-style-type: none"> May result in limited incentive to run schemes efficiently If users self-disconnect this could mean suppliers find it hard to recoup costs May be difficult to sign up private 		<ul style="list-style-type: none"> How would this apply to existing private schemes – likely

		developers, particularly new-build schemes (though they may not want to leave their investment even if not making huge profits) – could lead to reduction in new developments		opposition?
Publishing of prices (incl. benchmarking)	<ul style="list-style-type: none"> • Straightforward • Could encourage pressure from consumers on supplier for improvements (by seeing comparisons) 	<ul style="list-style-type: none"> • May create limited pressure for scheme efficiency (since doesn't address monopoly advantage) • Some schemes may lack data on some factors (e.g. heat loss) • Would need to be accessible to consumers for them to use it • May be difficult to create valid comparisons on benchmarks 		<ul style="list-style-type: none"> • Applicable to all - unmetered schemes may have difficulty in publishing some data
Technical standards	<ul style="list-style-type: none"> • Makes clear what standards customers can expect • Should drive better design, install, operation and customer support (e.g. prevent risks of summer overheating) 	<ul style="list-style-type: none"> • May be difficult to determine whether standards are met (given range of factors determining warmth/ overheating etc.) and not all (e.g. insulation levels, customer behaviours) are necessarily in control of scheme operator • Only effective if policed and failure has consequences 	<ul style="list-style-type: none"> • NB: The Heat Trust mandates the use of CIBSE Code of Practice for new schemes and is currently looking at how it could work in existing/ retrofit schemes too. Also developing a network certification scheme 	<ul style="list-style-type: none"> • Applicable to all
Compensation for interrupted supply	<ul style="list-style-type: none"> • Basic right that consumers should be compensated for lack of supply • Would incentivise suppliers to reduce number and extent of breakdowns • Bring district heating suppliers in line with other power companies 	<ul style="list-style-type: none"> • Cost to supplier • Needs to have straightforward claim and payment system to be effective (could be difficult to implement) • Needs to consider situations where interruption is fault of third party (e.g. electricity network failures) • Need to define 'interruption' • Possible overlap with existing housing regulations – could members of the Heat Trust end up compensating residents twice? 	<ul style="list-style-type: none"> • Would need to consider how breakdowns are covered in existing housing regulations and whether these are incorporated or replaced 	<ul style="list-style-type: none"> • Applicable to all
Minimum level of service regarding fault handling,	<ul style="list-style-type: none"> • Assuming good standard is set, should result in good service • Minimum level of service should allow cover 	<ul style="list-style-type: none"> • Only effective if policed and failure has consequences • Failure needs to be defined – is the 	<ul style="list-style-type: none"> • Fault handling may already be covered by other policies/ standards 	<ul style="list-style-type: none"> • Applicable to all

including response time	<p>for different faults and should state what an acceptable 'response' is</p> <ul style="list-style-type: none"> • A system would help identify one-off or network faults 	<p>consequence a fine or something else? Would the fine be based on turnover?</p> <ul style="list-style-type: none"> • Working out what the consequences are to determine sanctions and enforcement • Need to distinguish between individual property faults and full network outage • May be covered by existing regulations (such as Local Authority's 'Right to Repair' standard) – how would these fit together? 	<p>(e.g. related to compensation)</p> <ul style="list-style-type: none"> • Would need to consider how fault handling is covered in existing housing regulations and whether these are incorporated or replaced 	
Minimum standards of regularity and accuracy for billing	<ul style="list-style-type: none"> • Basic consumer right • May reduce risk of build-up of large bills or confusion around billing 	<ul style="list-style-type: none"> • None 		<ul style="list-style-type: none"> • May not apply to prepayment meters or those on heat with rent
Ensure contractual terms are 'fair'	<ul style="list-style-type: none"> • Clear set of terms which have been assessed as 'fair' gives consumer confidence • Reduces risk of operator taking advantage of monopoly • Minimum contractual standards would be of benefit 	<ul style="list-style-type: none"> • Is there one set of terms which can apply to all schemes? • May be covered by existing regulations (such as Local Authority's 'Right to Repair') • Would the heat contract need to be covered as part of the tenancy contracts anyway – would there be overlap 	<ul style="list-style-type: none"> • Heat trust may provide workable model 	<ul style="list-style-type: none"> • Applicable to all
Debt handling	<ul style="list-style-type: none"> • Supports consumers not to get into debt, assists with repayments where debt builds up and supports consumers to avoid disconnection 	<ul style="list-style-type: none"> • May be covered by Local Authority's 'Right to Repair' 		<ul style="list-style-type: none"> • Applicable to all
Obligations to 'know your customer' and specific assistance to address relevant vulnerabilities	<ul style="list-style-type: none"> • Matches obligations now placed on gas and electricity network operators and suppliers around Priority Service Register (PSR) which provides additional protection and support for those most in need of it • Addresses risk that monopoly provider will fail to understand customer adequately 	<ul style="list-style-type: none"> • Risk that costs are high • Only effective if policed and failure has consequence (DNO/ GDO currently has incentive approach to drive better practice) • May be covered by Local Authority's 'Right to Repair' 	<ul style="list-style-type: none"> • Emergency/ friendly credit schemes 	<ul style="list-style-type: none"> • Applicable to all
Complaints handling, including an independent dispute resolution	<ul style="list-style-type: none"> • Gives consumers a proper opportunity to have disputes resolved • Should encourage operators to resolve disputes quicker without recourse to independent service 	<ul style="list-style-type: none"> • Enforcement of dispute resolution decisions required • Need to determine how cost of service is met (likely to be by supplier unless vexatious claim) 	<ul style="list-style-type: none"> • Energy Ombudsman • Separate regulations for private and social landlords, as there are in housing regulations 	<ul style="list-style-type: none"> • Applicable to all

service		<ul style="list-style-type: none"> • May also be overlap with service provided by Heat Trust • Possible overlap with housing regulations – risk of social landlords addressing issues twice 	<ul style="list-style-type: none"> • Need to determine how new regulations might apply differently to private and social landlords • Take into account any overlap with existing regulations 	
Breakdown of prices to consumer	<ul style="list-style-type: none"> • Gives consumer opportunity to see what contributes to cost (and what savings could be available by reducing use etc.) 	<ul style="list-style-type: none"> • Too much detail could confuse rather than enlighten. 	<ul style="list-style-type: none"> • Regulations for Metering and Billing should be adhered to 	<ul style="list-style-type: none"> • Applicable to all
Benchmarking against other schemes	<ul style="list-style-type: none"> • Gives consumers and operators chance to compare performance (and push for improvement if below average) 	<ul style="list-style-type: none"> • Would need to consider how different types of schemes can be effectively benchmarked and what information is useful to the consumer. • Need to understand what comparisons are being made (e.g. need to compare apples with apples) 	<ul style="list-style-type: none"> • Effective data collection by regulatory body 	<ul style="list-style-type: none"> • Applicable to all
Joining and leaving rights	<ul style="list-style-type: none"> • Ensures consumers have access to heat when joining a scheme/ moving in 	<ul style="list-style-type: none"> • Can be problems when mixed tenure properties are connected to a network • Different contracts may be required 		<ul style="list-style-type: none"> • Applicable to all
Nature of contractual terms	<ul style="list-style-type: none"> • Gives consumers basic rights on contracts • Provides clarity to suppliers on what heat contract could look like 	<ul style="list-style-type: none"> • Would need to look into whether there is a legal liability risk 	<ul style="list-style-type: none"> • Take independent legal advice • Provide template for suppliers on what a heat contract could look like • Provision of advice on other bodies than can be contacted for support 	<ul style="list-style-type: none"> • Applicable to all

Other comments

There was clear feedback from the groups at the stakeholder workshop on the important topics, which included:

- **Regulation overlap** – there is overlap with other regulations (Consumer Protection Act, housing) and duplication should be avoided. A balance between regulation and not deterring new entrants to the market is required.
- **Impact on consumers** – the implementation of a regulatory body should not adversely impact consumers through increased costs.
- **Customer awareness of service standards** – are customers aware of the standards of service they should be getting?
- **Requirements for different and mixed tenure schemes** – does tenure or scheme ownership make a difference when setting a price cap?
- **Price setting criteria** – is there a link between technical standards and pricing? Is there a role for price control to improve performance? How should a price cap be set?
- **Design and technical standards** – as important as consumer protection.

It was noted that there may also be a need to consider what protections to put in place for consumers whose supplier had gone bust or in the event of a major long-term technical fault.

8.3 Introduction of measures – stakeholder views

A final plenary session in the stakeholder workshop captured the delegates' thoughts on the practicalities and challenges for implementing any consumer protection measures. Key issues to be considered included:

- **Supply chain skills** – is the supply chain adequately skilled and available (geographically)?
- **Managing a regulatory regime** – how would the regime be paid for? The regime cannot be static, and would need to be updated. Could it be implemented in stages?
- **Incentivising uptake of regulatory regime** – should it be a requirement of public funding that grants for district heating can only be spent on regulated schemes.
- **Policing and supervision** – any regulatory regime would need to be policed properly (and fairly) and have sanctions for non-compliance. Who should be the regulator? Would they operate nationally or locally?

In the sessions, it was confirmed that a number of the proposed consumer protection measures could be covered by use of the Heat Trust scheme guidance, and it therefore could form the basis of a licensing regime for district heating. However, protections related to price control could not be included as the Heat Trust are unable to set pricing or contract length requirements due to rules set out by the Competition and Markets Authority. Price control measures would need to be added via another route, e.g. via a licensing regime implemented in Scotland to protect consumers. However it is not currently clear to what extent this is possible.

8.4 Summary

Support for greater consumer protections was high amongst suppliers including introducing regulation and an ombudsman. It was generally felt that this needed to focus around protecting consumers from high prices and providing a reliable heat supply. Undesirable measures included timeframes for connections, price caps and, in general, too much regulation or overly harsh punishments.

Wider feedback from stakeholders also echoed this with general support for consumer protection measures in district heating, and in particular with those measures explored in this study.

Detailed analysis of each type of measure reveals their pros and cons, along with potential mitigation strategies to reduce the likelihood of negative consequences. Stakeholder perspectives were generally positive about the potential of each measure, though there remain questions of applicability to some schemes, for example based on fuel type, unmetered schemes and tenure. The introduction of measures would need to consider how they might fit with existing regulations, particularly those that apply to social housing, and also the Heat Trust, especially if that were to be put on a statutory footing.

9. CONCLUSIONS

Key findings

Overall, this research has highlighted the need for a greater level of consumer protection for Scottish district heating consumers. Satisfaction rates amongst district heating consumers are generally high, with three-quarters of residents surveyed in the source A research preferring the new district heating to their previous heating system and the majority of focus group attendees in source B research very happy overall with their district heating. However despite this, many have faced issues such as poor fault handling, lack of billing information or over-heating. Whilst there are consumer protection measures already in place, these are not present or consistent across the sector. Further, feedback from suppliers suggests that most are unlikely to join the voluntary Heat Trust, at least in the near future. Therefore, without mandatory protection measures it is likely that other district heating consumers will suffer; a problem which is likely to grow as the prevalence of district heating increases.

The legal opinion commissioned by CFU as part of this work suggests that the Scottish Government has the competencies to set up a licensing regime for district heating suppliers. This seems like the most appropriate route, therefore, to enforce suppliers to meet certain consumer protection standards. However with the relatively recent introduction of the Heat Trust, consideration is needed as to how these schemes could fit together. Positively, feedback from district heating suppliers in this research supports a call for greater consumer protections, particularly around price ensuring consumers receive adequate (but not too much) heat, and the provision of an independent dispute resolution service. Further work is required however to understand exactly how a potential licencing regime should be designed, implemented and operated in practice.

Consumer needs

The research identified five key consumer needs for district heating consumers:

1. Fair price
2. Adequate levels of warmth and comfort
3. A decent standard of service
4. Easy access to redress in the event of poor practice or failed standards
5. Information that provides reassurance that these needs are being well met on their scheme.

A review of research findings with consumers highlighted that, whilst satisfaction rates with district heating tend to be high, many consumers have faced issues. These include concerns around standing charges, poor complaints handling, slow response times to faults, lack of information and over-heating.

Potential protection measures

This research identified 16 possible consumer protection measures as follows:

- Price cap and/ or price control
- Price setting criteria
- Schemes having to be run on a not-for-profit basis

- Publishing of prices (including benchmarking)
- Technical standards
- Compensation for interrupted supply
- Minimum level of service regarding fault handling, including response time
- Minimum standards of regularity and accuracy for billing
- Ensuring contractual terms are 'fair'
- Debt handling
- Obligations to 'know your customer' and specific assistance to address relevant vulnerabilities
- Complaints handling, including an independent dispute resolution service
- Breakdown of prices to consumers
- Benchmarking against other schemes
- Joining and leaving rights
- Nature of contractual terms.

The majority of these measures exist in one or more European countries, as highlighted in a review as part of this research. However further research would be needed to understand the precise detail of what is required in the Scottish district heating industry, and how each measure could or should be set up.

Current protections

This research demonstrated that many of these consumer protection measures are already in place in Scottish district heating schemes but that coverage is intermittent and inconsistent. Protections exist through:

- The Heat Trust: this voluntary scheme provides most of the protection measures above to some degree, with the exception of price. However coverage of the Heat Trust is low with only one Scottish scheme currently registered, and feedback from suppliers indicating that few were intending to join, at least in the near future. It should be noted that this is a relatively new scheme.
- Current legislation that regulates district heating schemes on relevant issues. This includes the Heat Network (Metering and Billing) Regulations which cover metering and billing, and the Consumer Rights Directive. However despite the existence of protections in legislation, they are not codified in one place, and so are not regulated or enforced in practice.
- District heating suppliers' own protections. These include:
 - Areas in which they are already required to adhere to regulations or procedures (particularly as part of existing social housing regulations), such as complaints handling and dealing with faults.
 - Procedures and policies set up to protect, support and inform consumers such as ensuring they receive sufficient information about their bills, debt support and strategies to keep prices low (including being run on a not-for-profit basis or benchmarking to other fuels).

The next steps: greater level of consumer protections

Feedback from district heating suppliers and wider stakeholders highlighted widespread (but not unanimous) support for greater consumer protections in the Scottish district heating

market, including regulation. The two areas considered of greatest importance are ensuring consumers receive a fair price and provision of adequate warmth and comfort. Further, a dispute resolution service is regarded as being important.

There was broad support from stakeholders for the 16 measures listed above with many of these being viewed as a basic consumer right, and/ or putting the district heating market in line with other utilities. However there are questions of applicability for some consumer protection measures across all types of tenure, for unmetered as well as metered schemes and with different fuel types.

The legal opinion commissioned as part of this work suggests that the Scottish Government has the competencies to set up a licensing regime for district heating suppliers. It is the understanding of the authors that any consumer protection measure *could* be implemented through such a licensing regime, although there remains a question as to whether price controls, in any form, could be²¹. However it would also need to be clearly addressed how any licensing regime would fit in with current legislation and the Heat Trust.

The Heat Trust has already developed and tested extensively with stakeholders a reasonably comprehensive and carefully crafted set of consumer protection measures, including contract terms, customer service standards and redress and compensation arrangements. It would therefore make sense to build any mandatory/ statutory licensing scheme in Scotland on the content of the Heat Trust, with the caveat that this would still need answers to important considerations (given the Heat Trust is currently voluntary and self-regulated), as outlined in the Recommendations in Section 10.

²¹ This was not an issue explored in the research or examined in the legal opinion however it was considered that this might be a more complex area to regulate.

10. RECOMMENDATIONS

It is recommended that the Scottish Government looks into introducing a licencing regime for district heating suppliers that would include measures to protect consumers. To understand how this could be implemented and operate in practice, further consideration is needed to identify:

- An appropriate Regulatory Body. It is likely that this body would be required to keep a register of schemes, enforce the regulations to ensure compliance and bring enforcement procedures in the event of non-compliance, and carry out inspections (routine and/ or on demand from dissatisfied consumers). Such a body would need the legal powers, financial resources and technical skills to carry this out.
- The cost implications of introducing the licensing regime, including the introductory and ongoing costs. A balance would need to be struck between the benefits of protecting consumers from different types and levels of harm, and the potential costs which doing so may create for suppliers (and potentially their customers). In this regard, it is important to establish a consumer protection regime which does not in its implementation and operation create cost burdens which threaten the overall viability of either existing or new schemes.
- How it would apply to different types of scheme including existing schemes and different scales of schemes.
- Whether it could include a form of price control.

Further, it is recommended that the Scottish Government:

- Looks to build on the content of the Heat Trust which has already been developed and tested extensively with stakeholders.
- Considers how a potential licensing scheme could fit with the Heat Trust.
- Identifies how a licensing regime would build on other pieces of legislation to ensure suppliers are not over-regulated.

Further research is also needed into the detail of potential consumer protection measures to understand more precisely what measures are necessary and desirable, building on the research presented in this report.

APPENDICES

Appendix A: Topic Guide for supplier interviews

Introduction

- Introduce yourself and Changeworks - a Scottish environmental charity
- Introduce the project: Changeworks is carrying out research for Citizens Advice Scotland into possible consumer protection measures in the Scottish district heating industry. We are looking at what measures other European countries have implemented, what has been successful and what could apply in Scotland.
- About the interview: We are speaking to owners and suppliers of district heating schemes to understand what protection consumers currently get and what protection measures might work. This will inform our results and analysis.
- Confirm interviewee permission [**Interviewee to confirm**]
- The interview is anonymous and confidential. There are no right or wrong answers, please be as honest as you can. It will last around half an hour.
- Finally, are you OK for me for me to record this interview? [**Interviewee to confirm**] This is to ensure that Changeworks have an account of what you said. The recording will only be used internally and will not be shared with anyone else.

Background on schemes

1. [See data] Can you confirm how many district and communal heating schemes you have?
2. For each scheme please can you tell us:
 - a. Whether it is installed or under development?
 - b. Its location (name of town/ city)
 - c. The number of domestic consumers served (50 or under; 51 – 100; 101- 200; over 200)
 - d. The tenure of domestic consumers
 - Social housing only/ private housing only/ mix of social and private
 - e. Which organisation:
 - Owns the scheme
 - Manages it
 - f. Whether there are any other third parties involved in operating the scheme?

Knowledge of voluntary schemes

3. Are you aware of the Heat Trust?
 - Yes/ No
 - a. If YES, are you:
 - Already a member/ planning to join/ not planning to join it/ have not yet decided/ don't know
4. If you are not yet decided, how likely do you think you are to join it?

- Very likely/ likely/ neither likely or unlikely/ unlikely/ very unlikely/ don't know/ not applicable

5. [Provide a description of the Heat Trust to those who are unaware of it.] Can you explain, from your perspective, what you think are:
 - a. The main costs or barriers to joining the Heat Trust (if any)
 - b. The key benefits of joining the Heat Trust (if any)

Current consumer protections

6. We are interested to know what support you already offer to your customers, including policies or procedures you have in place. Can you tell us what, if anything, you have on the following topics for your heat customers?
 - a. Clear and sufficient billing information
 - b. Fair and transparent pricing
 - c. Price comparison
 - d. Debt handling and disconnection processes
 - e. Complaints handling procedure
 - f. Special services for those on a priority services register
 - g. Support and information on heating system for new customers
 - h. Process for reporting faults

Perspectives on consumer protections measures

Finally, we are interested to hear your views on what consumer protection measures might be needed and work-able in the Scottish district heating market.

7. In terms of the Scottish district heating industry, do you think there is a need for:
 - a. Greater consumer protections than currently exist YES/ NO
 - b. Regulatory measures (as opposed to voluntary schemes only) YES/ NO
 - c. An ombudsman or similar organisation YES/ NO
 - Any comments on the above?
8. Are there any consumer issues you think particularly need to be addressed? E.g. capping prices, complaints handling, etc.
9. Do you have any thoughts on what sort of consumer protection measures would be:
 - a. Most effective
 - b. Not desirable
 - Can you tell us why you think that?
10. Do you have any final comments?

Thank you very much for taking part.

Appendix B: Literature and sources reviewed for review of protection measures in European countries

[The Consumer Disputes Board \(Sweden\)](#)

[Consumer Protection Act](#) No 948/2011 (Finland) – Unofficial translation

[Consumer Protection Act](#) 38/1978; amendments up to 29/2005 included (Finland) – Unofficial translation

Danish Energy Agency [Regulation and planning of district heating in Denmark](#)

[Ecoheat4eu](#) project website – country profiles (accessed November and December 2016)

Evaluatie Warmtewet en toekomstig marktontwerp warmte (February 2016) Ecorys

Fjärrvärme (2009) An International Comparison of District Heating Markets

[Heat Act](#) (The Netherlands)

[The Heat Supply Act](#) (Denmark) - Unofficial translation from Danish

[International Energy Agency](#) (accessed November and December 2016)

International Law Office - [New Heat Act is entered into Bulletin of Acts and Decrees](#)

Lexology (2011) [Amendment of the Heat Act](#) (The Netherlands)

London Economics (2015) [Best practice from Denmark in price setting for heat tariffs](#) – Presentation to the Vanguards District Heating Conference

Netherlands Authority for Consumers and Markets (2015) [ACM favors study into the Dutch Heat Act](#)

Royal Ministry of Petroleum and Energy [Acts relating to the energy and water resources sector in Norway \(unofficial translation\)](#)

University of Edinburgh (2015) [Regulatory options for district heating in Scotland - Report to Scottish Government Working Group on District Heating](#)

Wissner, M. (2014) Regulation of district-heating systems, Utilities Policy

Appendix C: Legal opinion

OPINION OF SENIOR COUNSEL

for

THE CONSUMER FUTURES UNIT OF CITIZENS ADVICE SCOTLAND

Introduction

I have been asked to consider a Memorial which addresses a number of questions about the regulation of district heating schemes or networks (“DHS”) in Scotland and in relation to the protection of consumers who buy their heat, often without having any choice in the matter, from a supplier.

In particular, the Memorial asks for advice on the extent of the powers of the Scottish Parliament to introduce legislation for new and existing DHS which would specifically introduce “statutory consumer protections”. The CA document “Analysis of Information Request” – January 2016 -- sets out the current state of matters well, although it is my view that since “heat” is energy, the extent of existing current consumer protection is somewhat understated there. Guidance from official sources, whether for suppliers or customers, does not seem to be codified in any way, but I understand that to be an ambition of the Scottish Government.

Summary and conclusion

My view is that the power to regulate the creation and licencing of existing and future DHSs is devolved to Scotland, and that there is nothing to prevent the SG devising a compulsory licencing regime by means of subordinate legislation which incorporates required and proportionate protective measures for both the physical standards for DHSs, and for consumers.

However, the power to *legislate* expressly for consumer protection for heat energy consumers is reserved and NOT devolved, and so cannot be assumed. Further, in my opinion it is probably

unnecessary to legislate further specifically for this issue in light of the protective provisions already in force across the UK.

Analogue – Water Industry

Although the Memorial asserts that “other licensing regimes” have taken a broadly comparable approach to the introduction of consumer protection rules in Scotland, only one example is cited. That is the Water Industry, where the Water Industry Commission for Scotland publishes advice on supplies, billing, service standards, and its work on behalf of the consumer. It is able to require its suppliers, by means of a licencing system, to offer a default level of service and range of tariffs to any business customer. This is said to assure (sic) choice, even in remote areas. However, while broadly comparable to District Heating, in my opinion, Water Supply Services is not really a safe analogue, as there are many differences between the industries, not the least of which is the existence of Scottish Water, with its own overarching powers and responsibilities, and a clear split in its functions between domestic and business customers. SW is in turn accountable to an established regulator. The Water Industry is also subject to the Scottish Public Services Ombudsman. DHSs are not. The Water Industry Commission is able to regulate pricing and tariffs. There is no comparable regulator for DHSs. That is not to say that there could not be, but for the purpose highlighted in the Memorial, namely Consumer Protection, that does not appear to me to be necessary. Nevertheless, the comparison is informative.

The hypothetical outcome

The hypothesis advanced by the Memorial is that when responsibility for a particular policy area is fully devolved, there is by implication a power given to the Scottish Government to regulate or legislate for “consumer protection” in that area. Thus, so runs the argument, if DHS are devolved, then so is the power to *legislate* for the benefit of consumers.

With respect, I do not believe that to be correct, simply because the right to *legislate* for “consumer protection” is a Reserved Matter.

However, there should not be any confusion between the power to legislate, and the power to control (by registration and licence) and to require a DHS supplier to include certain terms in his supply contracts. The effect may be the same, and can achieve the desired outcome.

Protections for consumers

The Memorial refers to “statutory consumer protections” which it incidentally defines by illustration in §3.1 – minimum service standards, clear and full billing; metering, access to an Ombudsman; access to a Priority register; debt protection; and information and advice. There are other forms of protection, such as rejection (of goods, but one cannot of course reject heat, only the supply contract), automatic right of redress, ADR Schemes, and no doubt others. It is to the compulsory introduction of such protection that the Memorial is directed.

Heat Trust

There is a non-statutory voluntary Heat Trust¹ Scheme for suppliers, which has limitations, including the absence of a “supplier of last resort” if an existing supplier ceases to operate. The Trust is just one year old, but is clearly populated by experts in the field. The Scheme is said not to be popular with DHS suppliers, presumably because they find it unduly onerous. The Scottish Government is represented on the Heat Trust Committee. I am sure it has developed its objectives beyond what can be seen on its website, and can provide sophisticated advice. Its website says

Heat Trust is leading customer protection for the district heating sector. Launched in 2015, Heat Trust puts in place a common standard in the quality and level of customer service that is provided to domestic and micro-business customers by their heat energy supplier. It also provides customers free access to the Energy Ombudsman.

¹ <http://www.heattrust.org/index.php>

The wider picture

Europe

Looking first at the wider picture, the Consumer Rights Directive (2011/83/EC) aims to achieve a satisfactory balance between a high level of consumer protection and the competitiveness of supplying enterprises. It covers water, gas and electricity, and DHS (§25 of the Preamble and Article 3, Article 5, 7, 8, 14, 27). The CRD is transposed into UK Law by the Consumer Rights Act 2015. Plainly, it applies to Scotland. It defies easy summary, but perhaps it is easiest to describe its intention to be a complete Code for the protection of consumers. Consumers include those who enter contracts for the supply of heating to their homes by way of a DHS.

The Energy Efficiency Directive (2012/27/EU) (EED) provides for a range of efficiency targets, with which we need not be concerned here. However, Article 9 requires that final customers for electricity, natural gas, *district heating*, *district cooling* and hot water should have a competitively priced individual meter that accurately reflects their energy consumption and provides information on the time of their energy use (with exceptions based on technical and financial grounds).

Article 11 of the EED gives a right for final customers to receive bills and billing information for their energy consumption free of charge. Member States are required to lay down rules on effective, proportionate and dissuasive penalties applicable in case of non-compliance with the national provisions adopted pursuant to Articles 9 to 11 (Art. 13). This also applies to Scotland, as part of the UK. In this link

https://ec.europa.eu/energy/sites/ener/files/documents/mj0214530_en.pdf

the reader can see in non-technical language the extent of European protection for electricity and gas consumers, *and users of DHS*.

Transposed legislation

The transposition of the EED's requirements is to be found in the *Heating Network (Metering and Billing) Regulations 2014*. Those regulations are of UK-wide application, and define a

“Scottish Network” and create a range of criminal offences around metering and billing and more generally the provision of some additional consumer-relevant information to participants in a DHS. DHSs require to be licenced in order to operate in the first place. These Regulations are a little cumbersome, and only deal with part of the consumer protection issue being discussed here.

OFGEM, the energy regulator, does not have any role in guaranteeing standards or prices in DHSs. Neither does the Energy Ombudsman, or the Local Government Ombudsman have any role in the adjudication of complaints about the operation or the value of a district heating or cooling system, unless reference to a “Complaints Scheme” or some such title is written into the supply contract. That is not to say that any of these organisations could not be brought alongside a new Scottish regulation system, if desired.

Scotland

The Scotland Act 1998 reserves the regulation of Consumer Protection to Westminster (see Scotland Act, 1998, Schedule 5, Pt II, Head C7, as amended on 23 May 2016 by the Scotland Act 2016, s. 50(2)(b) and 72(7)) which added reference to Consumer Advocacy.

It reserves, *inter alia*

- (a) *the regulation of the sale and supply of goods and services to consumers, and*
- (b) *guarantees in relation to such goods and services....* (to the UK Parliament)

Head D of Schedule 5 of the Scotland Act reserves “*Electricity....Generation, transmission, distribution and supply of Electricity; and the subject matter of Part II (2) of the Electricity Act 1989.*” That has to do with the organisation or reorganisation of the electricity industry.

Under the general Head of “Energy” the Scotland Act includes Electricity, Oil and Gas, Coal and Nuclear Energy. There is no space here to explore the many ways in which each of these may be

used to generate heat or to power heat distribution schemes such as DHSs. The more focused question is whether the regulation of DHSs in particular is a reserved or a devolved matter. In my opinion, regulation of DHSs is not reserved.

The principal characteristics which any Guidance or Licencing regime by the SG or local authorities would seek to protect seem to me to be twofold. Firstly, questions of safety – the standard of construction and the protection of the public, householders and end users from any physical danger from below-standard installations for example, coupled with overall efficiency and output. Put simply - does it do its job? Secondly, user protection in the wider sense, meaning not only safety issues, but also tariffs, choices, right to leave a DHS, value-for-money questions, complaint handling and the rest of more conventional consumer protection issues.

As we have seen, *legislation* for Consumer Protection is reserved, but in my opinion, control by licencing is not. It is the overall regulation of distribution of heat to consumers which is the issue of interest, not legislation for policy creation. I cannot see any reason why the Scottish Government could not regulate the terms and conditions of supply of heat in any DHS, existing or to be constructed, by introducing a compulsory licencing regime proportionate to the project in question. The components of that licence are questions for another day, but a licence to supply could easily enshrine existing consumer protection law, and be authorised under the Climate Change (Scotland) Act 2009 (see below). Whether a regulator would be able to take this on without additional legislation would be for it to decide, and in particular for it to decide whether it needed a change to its overall competencies.

Existing protection

As matters stand, my view is that those entering into DHS contracts with a supplier have statutory consumer protection rights for the matters covered by the contract – entry into the scheme, participation in it, the supply of heat, pricing, [the right to switch], the right to terminate, the right to information, metering and billing, the right to complain, and to have a complaint dealt with, and other relevant consumer orientated contractual rights.

However, the “right to switch” supplier will be problematic, because by its nature a DHS means that there is a monopoly supplier, whatever the scale – a few houses, or an entire village or town. The option in the licence would have to be a right to discontinue/terminate and to provide an alternative supply for oneself.²

In summary, this is an area where it appears to me that consumer protection, properly understood, is in place and not obviously lacking. It is too easy to say “DHSs are unregulated”. They are not. The regulation may not be easy to find in one place, but that is a different matter.

Subject to well defined exceptions (hotels, prisons etc) a DHS supplier, throughout the UK, already has to undertake certain notifications to the Scottish Ministers in order to operate (see the 2014 Regulations, above).

The Heat Policy Statement of 2015 (HPS)

The Scottish Government published the HPS in 2015, building on earlier work in 2005, 2010 and a consultation in 2014. It says this

*“Historically, the scale of the market has not been sufficient to require regulatory intervention. However, as more homes and businesses connect it is important to ensure that existing and potential consumers have confidence that the supply is reliable and bills are transparent. As the market grows, the Scottish Government plans to develop appropriate regulation, commensurate with the scale of the heat market, ensuring both consumer protection and further industry development. We have established the **Special frameworks** for district heating and provide advice to Government late this Summer. **We will consider these recommendations working with industry and heat user representatives to develop any further regulations in such a way that they support development and do not act as a barrier at this early stage in the growth of the heat supply market, nor place excessive costs on the sector which could be passed on to consumers.**”*

² This question arose some years ago in Wick, when the “ring main” supplying heat to houses did not incorporate the ability to disconnect, which turned out to be a very expensive mistake when the DHS failed.

It is clear that what the author of this guidance has in mind is not merely Consumer Protection, but also the encouragement of the DHS industry subject to suitable safeguards. There is a whole range of “low carbon” objectives to sit alongside the protection of users. I cannot find (in the public domain) any evidence of this promise being taken forward so far, beyond interdepartmental and policy discussions, which are numerous.

However, were it to be taken forward, I cannot find any good reason why a licencing scheme should not incorporate existing DHSs. Thus the announcement of a DHS Registration Scheme would require and allow existing DHSs to come forward and register, subject to inspection and certification that the installation is built to a prescribed standard and incorporates the protections which the policy requires. Such a Scheme would also, obviously, apply to new DHSs as they are brought forward.

How would a licencing scheme be introduced?

The obvious “umbrella” for what is discussed here would seem to be the Climate Change (Scotland) Act 2009. Section 96 contains wide ranging powers to create legislation by means of statutory Instrument. One can envisage a statutory “Heating Code for Scotland” incorporating both a clear rationale and the terms which should be reflected in licences for DHSs.

Renewable sources

Both the Feed In Tariff Scheme and the Renewable Heat Incentive have been subject to change from time to time, generally in the direction of making them less and less available to developers of heat systems, and, as we can note from the UK Press, as the available money runs down. The two schemes are now effectively extinct. While the Renewable Energy Directive itself contains certain protective measures for consumers, they are not relevant to the discussion here.

Questions in the Memorial

I therefore answer the questions as follows

- a) The SG has responsibility for policy for the development, encouragement, licencing and regulation of DHS in Scotland. DHS are not a Reserved Matter.
- b) I do not see any legal distinction between DHS powered by renewable or non renewable sources, save so far as subsidisation of DHS may be concerned. Power to heat water for use in a DHS may come from private, embedded, or grid-based sources. In terms of the protection of consumers, it does not seem to me to make any difference. In terms of the attainment of climate change targets (whether political or scientific) it may well do. Discussion of subsidisation, though interesting, is not a matter for this Advice.
- c) As in b) above, I do not believe the source of the energy used in a DHS makes any difference to the question of licencing and regulatory responsibility for DHS.
- d) This question does not need to be answered.
- e) No, for the reasons explained above.
- f) The expression “statutory regulations for consumer protections” is a wide one. I cannot see any reason why DHSs should not be licenced (see 2014 Regulations, and the Climate Change (S) Act 2009, above), nor why a standard form of agreement designed for the protection of “ordinary” and Vulnerable Consumers” (as that term is well understood in the industry) could not be required of them before they are allowed to operate. The actual operation of such a system “on the ground” could, I expect, become a matter for local Trading Standards or Housing Officers.
- g) This question is answered above.

THE OPINION OF,
JOHN CAMPBELL QC

**Advocates Library
Parliament House
Edinburgh EH1 1RF
10 December 2016**