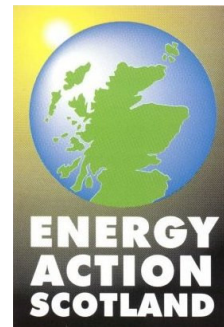


Response to Ofgem Consultation: “Addressing Undue Discrimination – Final Proposals”



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Introduction

Energy Action Scotland (EAS) is the Scottish Charity with the remit of ending fuel poverty. EAS has been working with this remit since its inception in 1983 and has campaigned on the issue of fuel poverty and delivered many practical and research projects to tackle the problems of cold, damp homes. EAS works with both the Scottish and the UK Governments on energy efficiency programme design and implementation.

EAS welcomes the opportunity to comment on the draft licence conditions and guidelines. EAS is more concerned about the potential impact of the proposed licence conditions on vulnerable consumers than the effects on competition and innovation. Accordingly, this response focuses mainly on the aspects of the consultation which relate to fuel poverty.

Fuel Poverty in Scotland

The Scottish Government is required by the Housing (Scotland) Act 2001 to end fuel poverty, as far as is practicable, by 2016 and plans to do this are set out in the Scottish Fuel Poverty Statement. The number of Scottish households living in fuel poverty dropped from 756,000 (35.6%) in 1996 to 293,000 (13.4%) in 2002. Half the reduction was due to increases in household income, 35% to reduced fuel process and 15% to improve energy efficiency of housing¹. The most recent 2007 figures² from the Scottish House Condition Survey in Key Findings Report show that there were 586,000 households living in fuel poverty in Scotland in 2006/07, representing 25.3% of the total.

According to figures produced by the Scottish Government³ early in 2008, for every 1% rise in fuel prices an estimated 8,000 more households would go into fuel poverty. Based on these figures EAS estimates that there are currently 850,000 households, around one in three, in fuel poverty in Scotland. This significant increase in fuel poverty is widely accepted to be due to the dramatic increases in domestic fuel prices and EAS is very concerned about the impact on vulnerable customers.

Response to Section 1 – Introduction

EAS understands that Ofgem’s primary duty is to protect the interests of consumers by promoting competition and that protecting the needs of vulnerable consumers is (despite their obligations under the Gas & Electricity Act) by definition, secondary. However, whilst consumers may well benefit from ‘markets working best when consumers make active choices based on good quality information’, EAS believes that many consumers are not empowered to make active or informed choices because of personal, social, economic or geographic circumstance or because ‘good quality information’ is not readily available.

¹ Fuel Poverty in Scotland: Further Analysis of the Scottish Housing Condition Survey 2002

² Revised Scottish House Conditions Scotland Key Findings Report 2007

³ Estimate of Fuel Poverty Households in Scotland: Scottish House Conditions Survey March 2008

EAS is disappointed that Proposal D (Prohibition of 'cross subsidy' between gas and electricity supply) has been discarded, though implementation of Condition B will address some of the cross-subsidy issues. EAS is surprised to note that Ofgem states that there was only 'limited support' for this proposal. In reviewing the responses published on the Ofgem website EAS believes there to be considerably more support for this than for Condition A (cost reflective pricing between payment methods). Competition is not currently working effectively for vulnerable and fuel poor consumers and therefore Ofgem should not seek to justify higher tariffs by introducing cost-reflective pricing into the energy supply market. EAS remains concerned about the possible negative impact of Condition A on vulnerable and fuel poor consumers and recommends that Ofgem reconsider this issue.

Response to Section 2 – Proposed New Licence Conditions

EAS has no specific comment to make.

Response to Section 3 – Proposed Guidelines

EAS supports the prohibition of undue discrimination as per Condition B. However there are some concerns regarding some of the terms used and their lack of clarity/definition. EAS understands that new customer acquisition is an obvious supplier objective, however targeted offers are not a breach of condition, but EAS feels that some vulnerable customers will not benefit. Time-limited, initial and innovative offers need to be more clearly defined within the guidelines.

Initial and innovative offers which effectively create a price differential will not constitute a breach by suppliers as long as conditions revert after a 'reasonable period of time'. EAS considers this terminology too vague. There is also a chance that suppliers will roll out 'initial offers' or similar on a regular basis and that consumers who are well informed and able to do so will sign up or switch. Unfortunately the vulnerable and fuel poor are the consumers least likely to benefit from this process. Ofgem also uses the phrase 'reasonable period of time' in reference to suppliers sustaining price differentials at above costs to achieve competitive advantage. EAS believes that Ofgem should either be more specific or that suppliers should pass the benefits on to consumers immediately.

With regard to materiality, EAS considers Ofgem's failure to specify a threshold understandable – suppliers might be tempted to 'offend' persistently at a below-threshold level if aware that no sanctions could apply. However EAS is concerned about how and when Ofgem would determine whether a supplier breach was material and therefore subject to enforcement. Whilst Ofgem indicates that it would consider intervention where unfair price differentials impact disproportionately on a relatively low number of vulnerable consumers, EAS feels that there is little clarity about materiality, thresholds, numbers and timescales. Despite its assertion re. 'relatively low numbers', Ofgem also states that supplier conduct will be considered material if it impacts on a 'significant number' of consumers and that 'minimal detriment' would not lead to enforcement action. Ofgem further states that enforcement will not take place if 'detriment is minimal' and that they are likelier to act if vulnerable consumers are 'particularly affected'. There is a real danger that unless the guidelines are more detailed and specific, suppliers will be able to take a 'stealth' approach and apply incremental price increases without apparent breach of licence conditions. EAS considers the contradictory content and repeated lack of clarity to be a concern.

EAS supports Ofgem's stance in ensuring that social tariffs should be exempt. EAS also believes that these tariffs must be more easily accessible. If consumers are to make active choices, Ofgem should ensure that suppliers provide more information. For example suppliers should provide regular statements to all consumers, incorporating information about social tariffs, availability/eligibility criteria and specific information on how to switch to a lower tariff.

EAS also supported Ofgem's recently-stated intention (Fuel Poverty Action Programme) to ensure that suppliers stepped up their targeting of social programmes. EAS is disappointed however that there is little acknowledgement of significant variances in the social tariffs offered by suppliers. EAS feels that while social tariffs should be exempt, the fact remains that social tariffs offered by some suppliers are higher than the standard tariffs offered by others and that this situation must also be addressed.

EAS is pleased to note that Ofgem will 'give weight to the level of consumer detriment arising' with regard to prioritising investigation, but would welcome clarity on definition of this as well as timescales. The latter is of particular importance because the multi-stage approach outlined by Ofgem may be time consuming (and this condition is already time bound by the 'sunset' clause).

Conclusions

EAS supports Ofgem's intent to address undue discrimination. Concerns remain, however, particularly because of the frequency with which the consultation document refers to the negative impact on some vulnerable consumers. EAS considers that Ofgem must clarify the extent to which the proposed licence conditions will impact (the Impact Assessment which complements the Consultation does not address this issue) and incorporate appropriate and specific actions to negate or counterbalance this. EAS further believes that Ofgem must provide more clarity and greater detail with regard to such issues as materiality, timescales and enforcement.