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20<sup>th</sup> March 2002

Paul Beard  
Head of Compliance  
Ofgem  
9 Millbank  
London SW1P 3GE

Dear Mr Beard

### **Marketing gas and Electricity consultation - February 2002**

The CAB Service is pleased to have the opportunity to comment on the proposals to extend and modify marketing licence conditions. CABx received 136,068 enquiries about utilities in 2000/2001 and the "erroneous" transfer of clients by fuel suppliers and a range of misleading and unfair sales practices have continued to be a problem for CABx clients.

The consultation requests views on both the continuance of marketing licence conditions and their enhancement. Our response is as follows:

#### **Extending the marketing licence conditions beyond March 2002**

We strongly support the proposal to extend condition 48 of the standard licence conditions for gas and electricity suppliers to the proposed date 31<sup>st</sup> March 2004. Indeed it may yet prove necessary to consider a further extension beyond this date.

Evidence of CABx clients' experiences with fuel suppliers supports Ofgem findings that there has been no significant downwards trend in the numbers of complaints about inappropriate and aggressive selling and erroneous transfers. We welcome Ofgem's recognition of the nature and extent of this problem and are relieved to note your view in paragraph 3.7 'that problems relating to direct marketing activities by suppliers and their agents cannot be ignored'. We have referred to these issues in previous consultations and take this opportunity to reiterate our invitation for you, or colleagues, to review at first hand the examples of CABx clients' experiences we continue to receive from bureaux. This invitation has also been extended to Energywatch. As the data is paper based and contains confidential information about individual clients' personal circumstances a personal visit is required for this.

Patron  
HRH The Princess Royal

Chair  
Sir Graham Hart KCB

Chief Executive  
David Harker

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In relation to discount packages, our evidence is also indicating additional problems relating to selling of multi utility/service packages, where suppliers are offering telecommunication and other services. CABx clients have found, for example, that they have to go through the erroneous transfer correction process for each utility/service of the one mis-sale.

### **Enhancements to the existing conditions**

In August 2000 the CAB Service responded to Ofgem's proposals on modification of licence conditions relating to marketing of supplies for domestic gas and electricity suppliers. We proposed the following modifications to strengthen the licence conditions and have commented on these in relation to current licence conditions. We believe the current licence conditions can be further improved.

- a) The requirements in relation to training of sales representatives should specifically include, within the licence condition, an obligation on the licence holder to ensure staff are trained in relevant legal and regulatory obligations, whether deriving from the licence or any legislation on doorstep selling or sales practices.

*This proposal goes further than paragraph 2(b) of the current conditions. In addition the training should now cover distance selling and all requirements under the current Stop Now Regulations and future relevant consumer protection legislation.*

- b) The licence condition should make it clear that sales representatives are expected to ensure that customers they approach understand the contract they may enter into, and that contracts are not entered into without this understanding, or with consumers who are not responsible for paying the gas/electricity bills at an address.

*Whilst the current paragraph 2(c) reflects this it does not provide for all of this proposal.*

- c) The licence should ensure that follow up contacts, as presently required, happen in all cases. A 'reasonable endeavours' obligation is not sufficiently strong to ensure consumers are protected.

*The 'reasonable endeavours' obligation remains in the current licence conditions and is, therefore, not adequate.*

- d) To ensure that where a contract is found to be unwanted by the consumer during the follow up visit it is not implemented. If for some reason the contract has been acted on the licence should require that the contract is cancelled and the consumer put back in the position they started in within a set time limit, not exceeding 28 days. Compensation should be payable for failure to cancel a contract quickly. The amount of compensation should increase as the period of time it takes to cancel the contract increases.

*The time limits and their relationship with compensation are not currently detailed in the licence conditions.*

- e) To ensure that complaints about marketing are monitored and consumers get appropriately compensated, without needing to make a claim, where mis-selling is discovered.

*Whilst the licence condition requires companies to keep records of compensation they have paid (paragraph 7(c)) the condition does not make any provision for this to happen or for it to happen automatically. CABx evidence indicates it does not happen that consumers are compensated without the need for raising a complaint, normally with Energywatch.*

In addition to the above, current powers should be used effectively and fuel consumers should be made aware of available regulatory action and when it has been used.

CABx evidence indicates that consumers are not aware of the protection embodied in the existing marketing conditions and are failing to reap the benefits of the regulatory powers already available. We are pleased to note, in section 4, Of gem's recognition of dishonest sales practices and that these practices include both lying to consumers about what they are being asked to sign and the use of fraud and forgery. We are also pleased that the failures of the current requirement to use the audit tool to deter sales agents from using these practices is recognised.

We are concerned, however, that domestic suppliers are still able to disassociate themselves from their sales teams, failing to take responsibility for their actions, and that Ofgem is not enforcing the existing licence conditions on marketing. CABx find that the audit tool has become the means of notifying erroneously transferred clients of their new supplier whilst not reacting to these consumers' claims of mis-selling.

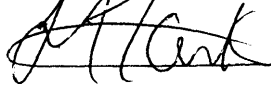
- A CAB client in the Midlands reported a fuel supplier had been adamant the client couldn't cancel an agreement she knew nothing about prior to their welcome letter. The bureau pointed out that the signature on the agreement the company relied on wasn't even the same name as this client.
- Another client from the Midlands reported a fuel suppliers' reluctance to accept their mistake when the client received transfer letters using another person's name. The client contacted the CAB because letters and phone calls to this supplier had failed to resolve this. The client and her deceased parents had been the only people ever to live at the address.
- A CAB in the North report several complaints about erroneous transfers following a 'no strings attached' approach for agreement to receive more information, made to clients in the street and/or at home. One client was very distressed and in tears another found the fuel company refused to move an erroneously transferred account back to the original supplier for 28 days. They insist a phone call elicited the transfer but the client is adamant she didn't agree.

We agree that a named officer within each supply company with responsibility for marketing conditions and consumer protection law compliance would be helpful but expect that current market abuses will only be dealt with if Ofgem is prepared to take regulatory action and to make full use of all the tools in its armoury. As pointed out

in section 5 of the paper, Ofgem already has the powers to employ the use of Stop Now Orders to address the market abuse they recognise.

If you or any colleague would like to access CABx evidence of market abused please to contact me on 020 7833 7132, E-mail: [suan.marks@nacab.org.uk](mailto:suan.marks@nacab.org.uk)

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Marks', written over a horizontal line.

Susan Marks  
Social Policy Officer – Consumer Affairs