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Dear Annette

The regulation of gas and electricity sales and marketing: a review of standard licence condition 48

British Gas welcomes the opportunity to provide comment on the above consultation. Whilst recognising the difficulty in providing a detailed response without specific proposals, Ofgem is seeking views on the costs and benefits on a number of key areas. We are currently in the process of collating information relating to these, and will provide a supplementary response shortly.

As you are aware, British Gas has been at the forefront of the recent industry developments aimed at improving the way in which energy suppliers market themselves to potential new customers. British Gas, along with other major suppliers have implemented sales agent accreditation and compliance monitoring measures under the energysure initiative, and have played a key role in the development and introduction of the AES Code of Practice for Face-to-Face marketing. British Gas does however recognise the need for further industry development of a similar AES Code of Practice for telesales, and as such, are committed to working with suppliers in order to deliver this.

Whilst we are supportive of Ofgem's approach in the review of Standard Licence Condition 48, we do not believe the result of such a review should place unnecessary regulatory burden on suppliers. Instead, existing legislation and voluntary arrangements such as the AES Code of Practice may deliver the required results, and we have already seen benefits regarding marketing activity since the introduction of these initiatives.

In response to views requested as part of the consultation process, British Gas has the following comments to make:

Ofgem considers it appropriate to retain the requirement to renew the licence condition at regular intervals

British Gas believes there is some merit in retaining the requirement to renew the licence condition at regular intervals. With a constantly maturing market, it would appear sensible to allow the licence condition to be reviewed regularly in order to adequately reflect the market position at any one time. Of course, British Gas expects Ofgem to work with suppliers on an ongoing basis when considering any future review.

There are minor differences in the wording of the marketing condition contained in the gas and electricity supply licences

British Gas fully supports the principle of alignment of the standard licence conditions where this is possible. We see no reason for non-alignment of standard licence condition 48.

Sub-Paragraph 1 defines the scope of the existing condition in that it applies to marketing in respect of the supply to the premises of domestic customers. Ofgem is interested in views on whether this continues to be appropriate -

The way in which suppliers conduct marketing activity to non-domestic customers differs significantly according to the appropriate contract type and volume of supply required.

Larger non-domestic customers, and often suppliers, rely on energy advisors or energy brokers to conduct negotiations for their gas and electricity supply, with smaller non-domestic customers often marketed by suppliers in a similar manner to domestic. It is our strong belief that energy advisors/brokers should not be subject to any regulation as they are clearly seeking the best deal for their client. Any contractual agreement between a large customer and supplier will, in the majority of cases, involve in-depth legal analysis and no party will enter into that contractual agreement without total satisfaction that their party is in any way legally prejudiced.

Whilst marketing to smaller non-domestic customers, most suppliers adopt similar processes to those for domestic marketing in the management of their sales and marketing activity, with sales agents monitored very closely, and appropriate quality audits conducted on an ongoing basis. British Gas is currently in discussion with energysure to begin the accreditation process for our non-domestic sales agents (subject to AES Board approval regarding extending the energysure remit), and we believe other suppliers may follow suit.

We also believe that there is merit in a possible extension of the current AES Code of Practice to include all face-to-face sales practices to ensure consistent high standards across all customer groups. As explained above, this is currently under review by the AES board.

In addition, the current split of domestic and non-domestic customers is defined in the gas and electricity supply licences as amended by the Utilities Act. A move away from these definitions, which were only changed two years ago, may result in the setting of a precedent for other domestic only obligations.

Ofgem is interested in views on whether it would be desirable to make specific provision for vulnerable customers, what that provision might be and how workable definitions could be drawn up

British Gas believes that suppliers should give the same level of protection and consideration to all domestic customers at all times. Whilst there appears to have been a general concern in the industry regarding those customers thought to be identified as vulnerable customers, their treatment should continue to mirror the expectations of all domestic customers. Suppliers should strive to improve all aspects of customer service, including the way they continue to market themselves in the competitive energy supply market.

There is also the issue of the identification of vulnerable customers to consider. Suppliers will obviously make informed decisions on their own particular policy of who, and who not to actively market their products to. In doing this, suppliers have previously been accused of unfairly or incorrectly presuming a customer to be in the 'vulnerable' category.

Suppliers obviously take their responsibility for protection of all customers very seriously, and as such, will continue to develop their own initiatives to differentiate themselves in the market.

Ofgem would welcome views on whether and to what extent the licence condition should be modified to cover all channels for contact with consumers and whether different provisions should be made for different media

British Gas believes that the channels covered in the current licence condition are sufficient. We do not believe that acquisition methods such as internet sign-up, or a customer response to direct marketing material are comparable to activity, which is predominantly regarded as cold-calling.

Customer interactions of these types require the customer to carry out a specific action. In reality, the customer is initiating the contact, and will more than likely have made an informed decision to change energy supplier.

Of course, it is still the responsibility of a supplier to ensure that any information given to the customer intended to assist in the decision making process is both truthful and accurate. With all suppliers' marketing literature under the scrutiny of the Advertising Standards Authority, we believe that there is sufficient consumer protection, and subsequent sanctions for non-compliance on suppliers in this area.

Ofgem is interested to receive views about the need to balance the optimal level of protection to consumers with the need to maintain consistency and avoid unnecessary complexity for consumers

Whilst British Gas believes consumers should receive an optimal level of protection, adding complexity into the process should be avoided wherever possible. Under the current licence condition, suppliers are obligated to confirm that a customer is happy to continue with the transfer of their supply, and British Gas is of the opinion that similar obligations should apply going forward as this process obviously offers consumers an acceptable level of protection in the transfer process. Suppliers should however be offered the flexibility of how to carry out this activity, concentrating on issues such as the quality of the customer experience and levels of customer expectation.

Ofgem considers that the licence condition covers all 'win back' or 'save' activity which may be undertaken by a supplier, but would like views on whether this should be made more specific

We do not feel that 'win back' needs further clarification or definition within the licence condition. British Gas has always regarded 'win back' activity to be subject to the provisions of the current marketing licence condition. Whilst the customer has indeed had a previous relationship with that supplier, a new contractual relationship is starting, and as such, a new sale is made to the customer, requiring the supplier to carry out all of its statutory obligations in the process.

British Gas does however remain concerned with 'save' activity. It is obvious that some suppliers take differing views of their obligations when making contact with customers as part of their 'save' activity. With many suppliers now adopting retention strategies, rather than acquisition strategies, British Gas believes that Ofgem has a key role to play to monitor 'save' activity within the industry.

British Gas believes that 'save' activity concerns will more than likely be identified within the area of objections to a customer transfer, especially when considering the new objection reasons soon to be implemented. With suppliers obliged to provide detailed reporting on their objection activity, Ofgem will have the ability to recognise if a supplier is operating inappropriate 'save' activities.

Ofgem believes that the licence condition should specify minimum requirements for information and is interested in views on the practicality of providing such information and the value it would provide to consumers; and whether there should be different requirements for information according to different sales channels

British Gas does not believe there is a need to specify minimum requirements on information given to customers during the acquisition process. Suppliers are already obliged to ensure that any material produced is accurate and not misleading by the Advertising Standards Authority, and that a customer must

receive all terms and conditions of the supply contract under standard licence condition 44. By adding further requirements under standard licence condition 48, we believe that this will result in unnecessary duplication of existing obligations. As such British Gas believes it unnecessary to extend obligations to non-domestic customers at this point.

Views are invited on the use of terms such as 'reasonable steps' and the suggestion that the licence condition should focus on outcomes and outputs

British Gas supports the principle of focusing on outcomes rather than inputs as this properly allows suppliers to effectively manage their activities to achieve those outcomes rather being determined by prescriptive licence conditions. This is supported, in part, by the existing licence provisions by use of terms such as "reasonable steps". These elements will facilitate the differentiation of services by suppliers, a key aspect of a competitive market.

However, the difficulty arises in the identification of the outcomes to ensure that unforeseen perverse incentives are placed on suppliers. There would need to be certainty that those outcomes are correctly targeted, as suppliers will naturally focus on achieving those outcomes. There is clearly a risk that a "one size fits all" for outcomes would encourage inappropriate treatment for specific circumstances.

Considering the difficulties, British Gas suggest that the current licence approach, with the requirement to take reasonable steps, may be more appropriate to meet the needs of customers while allowing suppliers to differentiate their delivery methodology.

Ofgem would welcome views on the introduction of a mandatory 14 day cancellation period, how this would fit with other legal obligations, how consumers could be made aware of this right and what impact it would have on the transfer process

British Gas does not feel there is merit for mandating a 14 day cooling-off/cancellation period. Whilst we fully support customers having sufficient cancellation rights, we believe that obligations under existing consumer protection rights are sufficient.

Suppliers themselves have to be confident that customers are willing to transfer their energy supply to their preferred supplier. Therefore, it is in suppliers interests to ensure that their sales agents are providing clear explanations of a customers cancellation rights and the length of time the customer has to cancel at the point of sale. As added customer protection, clear written guidance should also be left with the customer, along with the contract copy.

Therefore, British Gas believes that the issue surrounding cooling-off and cancellation rights is not necessarily a question of how long the cancellation period should be, but a question of clarity. Suppliers must ensure that all

customer correspondence used in the acquisition process clearly communicates how a customer can cancel the contract, and the length of time they have to do so.

Some suppliers do not process a transfer without having had positive confirmation that a consumer wishes to transfer, Ofgem is unlikely to propose to extend the licence condition in this way, but would welcome views

We are aware that one supplier introduced this as a reaction to poor sales practice, and we agree that this served its' purpose at the time. However, British Gas does not believe that this could be implemented as a long-term solution for all suppliers, particularly when considering how it would affect new market entrants and customer transfer levels as a whole.

There are obvious difficulties that suppliers would face by implementing such an initiative, and additional acquisition costs are likely to be excessive. Although every effort will be made to obtain customer contact details at the point of sale, it does not guarantee that a supplier will make contact to seek positive confirmation. As a result, suppliers will have to extend the period before the contract can be progressed and, in many cases, cancel contracts which may well be against the customers wishes.

Ofgem thinks it unlikely that the introduction of third party verification could be achieved at a reasonable cost and without unduly slowing or halting the transfer process, but is interested in wider views

British Gas shares Ofgem's view that the costs of implementation of third party verification would be too high. With customer acquisition costs already high, we do not see any benefit of insisting on an expensive third party verification process.

We also believe that certain British Gas requirements could not be achieved. For example, in order to operate a robust third party verification process, British Gas would not be comfortable unless our own service quality team could be dispatched within the teams carrying out verification calls. Our experience of working with third party service providers leads us to believe that it would be difficult to obtain agreement to allow such a requirement.

When considering the issues of verification for verbal sales over the telephone, introducing third party verification would in effect, introduce a two-stage verbal sales process adding what we believe to be unnecessary complexity possibly causing customer confusion.

With verbal sale and team leader verification call recording already common practice, suppliers can already demonstrate effective sales monitoring activity. Diligent suppliers will also have strict compliance monitoring procedures in place to regularly audit and review their verbal sales activity. Couple these activities with the additional fulfilment and consolidation requirements, we believe there are sufficient consumer protection measures already in place.

With current arrangements, we believe we can manage customer expectations far more effectively and are able to make changes to processes and scripting regularly, following ongoing analysis and feedback from calls made. We are also able to highlight any potential problem sales advisors much more effectively, and information can be fed to our National Sales Managers both efficiently and accurately in order for them to take appropriate action.

Ofgem invites views on whether compensation payments should be specified in the licence condition, in what circumstances and in what amounts

British Gas does not believe that compensation payments should be specified within a licence condition. With suppliers gaining agreement to a fixed level of compensation under the AES Code of Practice for proven forgery, and the subsequent review expected shortly, we believe there is already sufficient work being taken forward in this area.

Whilst it can be argued that there are a few clearly definable compensation categories, the consequences of mis-selling can be vastly different in each case. Therefore, suppliers should be allowed the flexibility to agree compensation with customers according to the nature and severity of the complaint, judging each case on its own merit.

Views are sought on what information should be made available to the public and in what form

We believe there is already relevant information available to customers, but do agree that there could be benefit from additional customer related information to be made public. However, any such additional information must be appropriate for customers to be able to make relevant comparisons between suppliers. For example, we do not see any logical benefit for a supplier to have detailed compensation reporting made public as each supplier will deal with service recovery differently, adopting varying approaches for agreeing an amicable resolution with the consumer, whether it is in the form of monetary compensation or even in the form of a gift, such as flowers.

We would expect customers to have visibility of the information relating to the energysure initiative. Information confirming that all sales agents representing a supplier are energysure accredited and agent performance could be valuable to a customer who is thinking of changing supplier. Also, general information could be made public regarding supplier performance following the periodic audits carried out by Enstra as part of the energysure accreditation process.

Much work is still required regarding how such information should be communicated to customers. Currently, customers with internet access can access supplier information on the energywatch website, or contact

energywatch by telephone to request it. However, suppliers are unaware of the number of customers who have actually sought to view the information or verbally requested information currently available to them.

It would be helpful for energywatch to provide some detail of numbers of requests made, or 'hits' onto the relevant pages within their website. It may also be useful for Ofgem to gather any analysis or research that may have been undertaken to try to understand what information customers want and how they would expect to obtain it.

Conclusion

British Gas accepts the need for a review of licence condition 48, and understands the reasoning for Ofgem to seek views on the wide range of issues contained within the consultation document. It is clear that the energy market has developed significantly since market opening and the regulatory requirements need to reflect the current market position.

We should also recognise that the energy industry has carried out a significant amount of work drawing up voluntary initiatives in order to address areas of concern. Whilst these initiatives are not compulsory, all suppliers have incentives to operate within the guidelines agreed, and as such, these voluntary initiatives bring benefits to suppliers and provide a similar, but far more effective vehicle for compliance to mandated obligations.

Due to the wide range of options available, and the extent of current statutory obligations on energy suppliers, we believe the revision of standard licence condition 48 should be conducted with further input from all industry participants in order to achieve the required balance of effective consumer protection, coupled with unnecessary regulatory burden. British Gas will of course be pleased to assist in this process wherever possible.

We trust you find our comments are useful. Should you require any further assistance, do not hesitate to contact me directly on 0208 734 9370.

Yours sincerely

Jason Stevens
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