

Review of the Marketing Licence Condition

**National Consumer Council response to Ofgem's consultation on gas and electricity
sales and marketing**

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Introduction (7.3)

The National Consumer Council is an independent consumer expert, championing the consumer interest to bring about change for the benefit of all consumers. We do this by working with people and organisations that can make change happen – governments, regulators, businesses and people and organisations that speak on behalf of consumers. Issues of disadvantage are at the heart of our work, as often the most vulnerable people find it hardest to be heard. We are a non-departmental body, limited by

guarantee, and funded mostly by the Department of Trade and Industry.

We welcome the opportunity to comment on the review of the marketing licence condition. The 85% increase in direct selling complaints and a 10% rise in transfer complaintsⁱ demonstrate current regulatory practices are failing consumers. Given the upward trend in these complaints we consider it to be essential that Ofgem continue to review the condition in the future in order to protect the consumer because industry is clearly not doing so.

Figuresⁱⁱ have shown that 62%ⁱⁱⁱ of gas customers on pre-payment meters, and 42%^{iv} of electricity customers on pre-payment meters paid more for their energy after switching supplier. This uncovered an astonishingly strong trend where low-income consumers paid more for their energy after they had switched supplier. We are very concerned that vulnerable consumers are most likely to fall victim to mis-selling practices that persist under the current licence regime, yet they are the people least able to afford errors. Due to fewer and comparatively less competitive deals being available to consumers using prepayment meters, and blocks on switching suppliers for some indebted customers, poor consumers are also often paying more for their energy than other consumers.

Research^v has shown that consumers' are unlikely to switch supplier and would rather bear higher costs from the incumbent provider if they perceive switching costs, including time and effort, to be too high. These perceptions have been shown to be incorrect, meaning that some consumers are paying more than they need to because bad marketing practices and other scandals have destroyed their confidence in the switching process. Stephen Byers, (former Secretary of State for Trade and Industry) said that consumers who were prepared to shop around to get a good deal were the driving force in helping to create a truly competitive market. Without consumer confidence this driving force is in danger of stalling, threatening the competitiveness of the market which is counter to Ofgem's role of promoting competition. Therefore this review of the marketing licence condition must seize the opportunity to address these issues of maintaining consumer confidence and preventing unnecessary cost to service users.

Reasonable Steps and Inputs and Outputs (7.23)

The licence condition in its current form uses vague terms such as "reasonable steps", which are too ambiguous and are often unhelpful to the consumer as they provide a get out clause for the supplier. We therefore recommend a shift in focus from the regulation of inputs and outputs to the set up and monitoring of performance against consumer-orientated outcomes. Throughout our response we

have included a number of suggested avenues that could be helpful in arriving at those desired outcomes.

Scope of Licence Condition (7.7)

The NCC's focus is on individual consumers, and therefore the inclusion of non-domestic customers under the licence condition is not a priority for us. However, if they are sold to by the same agents on the same, standard type of "off the shelf" energy contracts, it would seem sensible to extend the scope of the condition to cover these customers. Although, including non-domestic customers would require the condition to define the term consumer thoroughly to prevent any confusion.

Vulnerable Consumers (7.6)

Marketing practices should be to a sufficiently high standard that would meet the needs and circumstances for all consumers including vulnerable people. Therefore, we do not consider it appropriate to introduce specific provision for this group under the licence condition. There is a danger that special arrangements for one group of consumers would create a two-tier system where some consumers receive a lower standard of service, which is not a desirable outcome. Also, designing and implementing special arrangements for vulnerable people is a complicated task that would be difficult for suppliers, given that a consumers vulnerability is difficult to establish before they are contacted, and it can go unrecognised even after they have been approached for a sale.

We recognise the importance of the doorstep sales method to the success of extending competition benefits to consumers in the light of MORI findings which suggest that 61% of switching results from this sales channel. However, consumers, vulnerable or otherwise should not be subjected to undue pressure to complete a contract. To tackle this we propose that sales agents, using any medium, should not be permitted to complete contracts at the time. Doorstep sales agents should provide the consumer with a clearly marked specimen contract to allow them to decide if they wish to proceed with switching. To confirm the sale a genuine contract would have to be posted to the consumer for them to sign in their own time in absence of pressure, just as car insurance contracts have to be signed and returned to the insurer. This would side step the need for third party verification of switching contracts, would allow details to be checked and provide households the opportunity to agree about whether switching supplier was right for them. Given that this verification process takes place in other industries and the checks that it provides on contracts we believe that this is not only a legitimate expense, but a necessary one.

It is vital that a consumer has a copy of their contract to keep, so they should be posted two copies of it from

the new supplier. One copy of the contract should be signed, dated and returned to the supplier for confirmation of the sale, with the other copy being kept for the consumers' reference. We would like to see a large block capital notice above the signature box on the contract stating "This is a contract to change your gas/electricity supplier" so that the consumer is in no doubt about what the document is.

Consumers' post-sale period complaints are high and this needs to be addressed to help relieve consumer anxiety and help prevent them falling into debt. We suggest that the licence condition requires consumers to specify on the contract a date when they wish that contract to commence in case immediately is not convenient, and to provide them with a feeling of certainty and control over the switching process. This date should not be sooner than 14 days from receipt of the contract in order to allow for the cancellation period.

Pressure to complete a contract is not the only problem that consumers experience with doorstep selling. It is important to eliminate the inconvenience or fear that an unexpected stranger selling electricity or other services may cause the consumer. To overcome this we think that it is important for both the consumer's piece of mind and the reputation of the supplier to ensure that the National Doorstep Selling Protocol is integrated into the licence condition. This would oblige the sales agent to:

- Make previously arranged appointments where possible;
- Display and actively show the consumer an identification card; and
- Provide the consumer with a landline telephone number to enable them to check the sales agent's credentials, and make an appointment for them to call at a later date if they want to.

In order to make the sales process clearer and less threatening for the consumer, we think that the following obligations should be placed on all sales agents, using any medium:

- Identify their company at the beginning of every separate contact with a consumer;
- Provide the consumer with a business card naming the agent;
- Terminating a sales approach with out question at any stage when the consumer has requested it.
- Informing the consumer that signing a contract will change their fuel supplier;
- Not forge any consumers' signatures, and be obliged to report any such instances to OFGEM or the police (as appropriate).

Information Provision (7.9) (7.12) (7.15)

In addition to understanding that a sales process is underway by a named supplier, the consumer needs to have seen and understood the following information in order to have made an informed choice about switching fuel supplier:

- Cancellation rights
- Switching rights (for prepayment and indebted consumers)
- Social tariffs
- Price comparison with new and old provider, by each payment method;
- Telephone contact number for the billing section of the new provider;
- Complaints information; and
- Energy efficiency information.

Given the number and nature of complaints about sales agents, we understand that it is difficult to ensure that each sales agent will consistently provide all of this information to the consumer. To solve this problem we propose introducing a checklist on the contract for the consumer to confirm that they have received and understood all of this information. An incomplete checklist would invalidate the contract, and therefore it would be in the supplier's and the salesperson's interest to stress the importance of the checklist and the related information.

Presentation of Information

Having the information presented in a way in which the consumer can make sense of is crucial. Paying close attention to format, language and placement of that information can help achieve this. We strongly advise that pricing information is presented in an honesty box format as used in financial services. This would help consumers easily compare like with like. We suggest that information should be presented in "plain English" wherever possible to ensure that consumers understand the language being used. To ensure that consumers are aware of their cancellation rights it would be sensible, and helpful for the consumer to print brief written details of the cancellation rights and procedures above the signature box on the contract. It is important that the information on cancellation should be set out in the same language style, and a minimum of the same text size as the rest of the contract. Making these suggestions part of the licence condition would prevent any "small print" putting consumers off the switching process and would remind them of their rights.

Cancellation rights

The NCC welcomes the recommendation for a mandatory minimum 14-day cancellation period, which we believe would boost consumer confidence in the switching process. We consider that current legislation covering cancellation rights to be patchy across the range of

marketing mediums, which offers complicated inconsistent, in some cases inadequate, and overall, confusing protection for consumers. Therefore it is essential that Ofgem use the licence condition to provide cancellation information and procedures that are simple, consistent and accessible to the consumer. We appreciate that cancellation procedures can sometimes be irrelevant, as a consumer can simply sign another contract with an alternative supplier, which effectively terminates the previous contract. However, consumers often do not know this, and therefore, the cancellation information provides them with confidence as they know that they have a get out clause if the service does not meet their needs or expectations. We know that the introduction of the 14 day cooling off period is likely to delay the transfer from one supplier to another, but do not expect this to be a problem for the consumer, just as waiting a short period for a catalogue order or the delivery of a new washing machine from a shop is acceptable. Mis-selling and problems with complaint resolution are far more likely to prevent consumers switching supplier than a two week transfer delay which they will have been informed about and would therefore expect.

Switching rights

Consumers in debt to their fuel supplier for fuel costs or for energy saving equipment payments are currently unable to switch to alternative suppliers as companies are able to block them from doing so. Despite Ofgem's plans to implement licence changes in early 2004 to make improved practices a requirement of suppliers, they are only likely to be of help for people on pre payment meters, with a debt of less than £100. This continues to mean that many consumers are not permitted to switch.

In our report "Life lines" we called for primary legislation to be introduced to enable Ofgem to successfully remove debt-blocking and so create the opportunity for low-income households to benefit from potentially cheaper fuel supplies available from competitors. We appreciate that this is outside the remit of the licence condition. However, it is important that the condition should compel the supplier's sales agent to provide the consumer with written information on their rights with regard to switching, stating:

- A consumer cannot have their fuel supplier switched against their will; and
- A consumer does not have to switch fuel supplier.

Social tariffs

Preventing fuel debt in the first place would obviously be preferable to informing consumers of the reasons that they cannot switch supplier, and this area of work needs more attention. While the joint debt prevention guidelines for energywatch and Ofgem are welcome to improve on existing codes of practice, it is doubtful whether this type of approach alone will be effective in

guaranteeing help for all consumers in payment difficulties. Therefore it is important that sales agents should be required to provide consumers with written information about social tariffs. This will help prevent low-income consumers being sold an energy supply with a cost that is higher than they need to pay, whilst potentially increasing the take-up rate of social tariffs, which may help prevent fuel debt and help consumers who qualify for these schemes access them.

Price comparisons and quotations

Price comparisons and written quotations are a key element of the sales pitch to a potential new customer, and we are keen that the consumer recognises and benefits from savings on their energy bills that are available to them. Consumers should be given a standard quote representing an industry standard medium user's consumption broken down by payment method. It is vital that the sales agent should make it clear to the consumer clear that the quotation is not an actual representation of what their bill would amount to. It is essential that the sales agents should also be required to use the social tariffs to calculate the consumers' quotation if the consumer would be likely to qualify for one of them. They should also have to check if the consumer could be moved onto another payment method to make greater savings. We advise that if the consumer's payment method is changed to a cheaper alternative this would have to form part of the contract to prevent the supplier changing it to a more expensive payment method once the contract was validated. This price guide would allow the consumer to estimate what savings, if any, the selling supplier can offer them, whilst also ensuring that consumers were made routinely aware of energy saving initiatives that could prevent them becoming indebted, fuel poor, or even self-disconnecting. This would also make it clear to the consumer if they would be better off under another payment method with their existing supplier. These steps would have the dual advantage of helping to prevent mis-selling, as consumers can see if a saving is available to them, whilst simultaneously raising awareness of the price savings available under different tariffs and payment methods.

Energy efficiency information

We would like to highlight the opportunity that cross selling presents for introducing consumers to energy efficiency schemes which could assist in tackling fuel poverty and help supplier meet their energy efficiency targets.

Bills

We consider it to be of particular importance that consumers should be informed about when they should expect their first bill from their new supplier and be advised to check on their bill, should it be late or not arrive. The agent should provide contact details (preferably a telephone number) to enable the consumer to

do this. This provides a back up for the consumer if the supplier makes a mistake. It should help prevent people falling into debt.

Complaints

It is essential that when things go wrong that consumers know where to turn to. We propose, in order to prevent unnecessary delay and frustration for the consumer that the sales agent should be required to provide written contact details for the supplier's complaints department (address and telephone) and contact details for Energywatch.

Standardisation (7.8) (7.9)

We welcome the move to make the wording in the licence condition consistent for electricity and gas, and believe that the standardisation will be helpful. We also believe that it is important that the licence condition should cover all marketing mediums to ensure further consistency and high standards for the consumer. Standardising licence conditions across all marketing channels should make things simpler for both the supplier and the consumer and is likely to increase consumer confidence in the switching process. Although doorstep selling and telephone sales continue to dominate complaints about marketing practices, it is important for the licence condition to extend to all marketing channels to ensure that consumers always understand what they are being offered and have the appropriate information to make an informed choice, irregardless of how they being sold to. Covering all mediums will help ensure that consumers realise that they are being asked to enter in to a contract, even if it is through an unfamiliar channel.

We propose that which ever channel that the contract is agreed under the consumer should have the information mailed out to them.

Consumer redress / Compensation (7.33)

Although the number of people who are affected by problems in switching supplier are only a small proportion of the overall number of switchers, the stress and difficulty that these consumers experience can be extreme. This is because those most likely to be mis-sold to are those least likely to afford the consequences.

We believe that the primary concern for the majority of consumers' when a problem arises is sorting it out as quickly as possible, rather than the compensation that they might receive. Therefore we propose integrating the Erroneous Transfer Customer Charter into the licence condition and replicate its time guide for guaranteed responses and resolutions from suppliers for other complaints that consumers make.

However, in circumstances where the consumer has suffered unnecessarily, there should be a system in place to grant

compensation to them. The £250 compensation paid to consumers for proven forgery cases, under the AES Code of Practice for the face-to-face marketing of energy supply, demonstrates that industry acknowledges the case for compensation under certain circumstances. However, this provision fails to cover all suppliers, all sale channels and all types of issue that should result in compensation for the consumer. We believe that incorporating this compensation measure into the code would allow it to be applied to all suppliers and all sale channels.

For other instances where the consumer has suffered we propose that compensation should be related to the length of time that it takes to resolve a complaint to the customer's satisfaction, with the amount rising for each extra day that the complaint is unresolved. We propose that compensation of £100 should be paid if the consumer has had to wait 28 days for a complaint to be resolved, with a £30 increment for each additional day that the complaint remains unresolved. We believe that this would provide the supplier with a significant incentive to resolve complaints quickly, whilst giving the consumer some recompense. This right to compensation should be made clear to consumers once the supplier has been notified of a problem.

We believe that the compensation regime can work well alongside the "more rigorous enforcement regime", including fining suppliers, which has been implemented since the publication of Ofgem's August 2002 decision document. We would also be very interested in the details of the research that Ofgem said that it would be using to inform its licence review, which was announced alongside the licence condition review announcement and the decision document (4.6). We are keen to any information on differing experiences by social group that the research may have uncovered.

Sales Agents (7.23)

Maintaining consumer confidence in the switching process is important. It is also in the interests of the suppliers to maintain a good reputation. Therefore we welcome the Energysure scheme, which grants official and nationally accepted recognition and accreditation to energy sales agents in electricity and gas. The scheme helps suppliers to identify sales agents who operate bad practices. We suggest that this scheme should remain voluntary as we think that it is more important to concentrate on the outcome of a positive consumer experience of the marketing process.

Reporting Requirements (7.38)

Suppliers who fail to comply the licence condition and provide all consumers with a high standard of service should be exposed. It is important that consumers have access to reliable information about the performance of different suppliers, and that suppliers providing a high

standard of service to their customers are recognised for their efforts. Therefore we would like the licence condition to require suppliers to provide the following data on a quarterly basis to Ofgem and Energywatch in addition to publishing it along side their price comparison information on their website and in written form:

- Proportion of customers and number of complaints by payment method, and social group.
- Proportion of customers and number of account switches by payment method and social group.
- Proportion and number of account switches where consumers saved on their bill, by payment method and social group.
- Amount, proportion of customers and number of times compensation had to be paid to consumers to correspond with any set of compensation in new rules (if applicable). E.g. number of claims paid out after X days, number of complaints settled with compensation after Y days etc.

We would like Ofgem and Energywatch to publish this information broken down by supplier so that consumers can see a ranking of suppliers' performance. This would help consumers make informed decisions and encourage suppliers to improve their performance.

Cross-selling

We are already seeing cross-selling occurring in the energy market with energy efficiency equipment and energy maintenance contracts and so we believe that it would be a big mistake to leave it out of the licence condition. It is important that cross-sold products do not involve a payment plan that hinders the consumer's rights to switch fuel supplier. Therefore, although we recognise that it is outside the licence condition we recommend the use of a third party to handle payments for cross-sold goods or services that are paid for in instalments. We are also concerned about service bundling and we want to ensure that fuel switching is not sold as part of a package, as this would be likely to lack price transparency and could be confusing for the consumer. It is important that the licence condition deals with this in order to prevent large-scale problems later on. We strongly recommend that each separate service sold should be required to have a separate contract.

Regulation and consumer protection

The NCC fully recognises the need to balance consumer protection with workable and affordable regulation. We consider that the extra provisions in the licence condition which we have called for are proportionate. Unfortunately, we have seen that the industry's voluntary initiatives, including the Code of Practice^{vi}, are not working for consumers. This was most recently demonstrated by the most recent energy mis-selling scandal, brought to you by n-power^{vii}, where consumers were not being made aware that they were being asked to signed

a contract with a new supplier, but were being duped into believing that their current supplier was offering them a discount rate that needed to be signed for.

In order to restore consumer confidence in switching energy suppliers, and to prevent scepticism hitting switching confidence in the telecoms market further than it has done already, the licence condition needs to be strengthened, by the introduction of new obligations and by making some existing voluntary measures, including the National Doorstep Selling Protocol and the AES Code of Practice on mis-selling obligatory and applicable across all sales channels. Those suppliers who are already applying these voluntary arrangements to their marketing are unlikely to consider this to be excessive regulation and will not incur further costs, and those who do apply these practices are failing in their duty to the consumer and therefore the regulation is necessary.

What about the consumer?

We noted with great concern that under the mechanism for collective licence modifications, alterations to the licence condition can be vetoed by the 20% of suppliers, or suppliers with 20% of the market by them raising a statutory objection. The absence of a similar check or balance for the consumer gives this consultation a strong industry bias, and we would be very interested in a detailed explanation as to why the consumer should be at such a disadvantage, considering that it is industry's unacceptable marketing practices at the expense of the consumer that brought about the continuing need for this licence condition review. As Ofgem's primary duty is to protect the consumer interest we would expect the licence condition to at least put the consumer on an equal footing with industry.

ⁱ Energywatch annual report 2002/2003

ⁱⁱ Draft copy of "Spoilt for Choice? The Costs and Benefits of Opening UK Residential Energy Markets" By Professor Catherine Waddams Price. Table 4 Survey data gathered between 1998-mid 2000. Research paper due for publication in November 2003.

ⁱⁱⁱ Draft copy of "Spoilt for Choice? The Costs and Benefits of Opening UK Residential Energy Markets" By Professor Catherine Waddams Price. Table 4 Survey data gathered between 1998-mid 2000. Research paper due for publication in November 2003. Sample size 95

^{iv} Draft copy of "Spoilt for Choice? The Costs and Benefits of Opening UK Residential Energy Markets" By Professor Catherine Waddams Price. Table 4 Survey data gathered between 1998-mid 2000. Research paper due for publication in November 2003. Sample size 137

^v "Consumer Choice and Industrial Policy: A Study of UK Energy Markets" March 2003 from the Center for the Study of Energy Markets by Monica Giulietti, Catherine Waddams Price, Michael Waterson

^{vi} Code of Practice to clamp down on mis-selling introduced by Association of Energy Suppliers (AES) on 9 December 2002, formally announced in May 2003.

^{vii} "Inside Out" BBC South television programme aired at 7.30pm on 13 October 2003.