

Annette Lovell
Head of Customer Contact and Compliance
Ofgem
9 Millbank
London SW1P 3GE

17/10/2003

Dear Annette

Response to the Review of Condition 48

We are pleased that Ofgem acknowledges the substantial improvement in sales quality which suppliers have achieved over the last two years. The introduction of the EnergySure scheme and the development of the Face to Face Sales Code of Practice have led to a more uniform application of best practice. Complaints have fallen and it is now much harder for the worst kind of sales agent to continue to work in the industry.

However, it is too early to be confident that self-regulation is more effective than the application of Condition 48, and we support its extension for a further period. Over the next year we would expect the Face to Face Code to be proven and a Telesales Code to be introduced. It would be helpful if Ofgem could indicate a year or so before the next renewal date what level of performance would support the removal of Condition 48.

We also support the consideration being given to various proposals to change Condition 48 – the Licence needs to evolve, and to be challenged. The attached annex provides comment on each issue raised.

Many of the issues raised are desirable, but hard to implement. For instance a definition of vulnerable customers, or the extension of Condition 48 to small businesses, without a regulatory burden on sales to larger businesses.

The principle of other Codes of Practice in the Licence is that there are a very few core obligations, each supplier prepares its own Code, and has to stick to it. This approach is flexible in its implementation of detailed issues but also effective in raising standards if coupled with positive publicity generated by energywatch and Ofgem in response to supplier initiatives.

Whether such a significant change in approach is worth it would depend on the degree of consensus over the changes suggested in the Consultation Document – though there would seem time for further discussion between analysis of the responses to this consultation and initiating the Licence Modification procedure in February.

Please do not hesitate to call me on 0115 906 2680 if you would like to discuss any of these issues further.

Yours sincerely

Graham Kirby
Retail Regulation Manager

Annex – Views Requested

Paragraph	View
7.3	Agree – retain Condition 48, subject to regular review
7.4	Agree – Gas and Electricity consistent
7.5	See 7.7
7.6	The F2F Code requires sales agents not to exploit a consumer’s vulnerability and suppliers have developed different ways of achieving this. The disadvantage of a prescriptive method (“don’t sell to the over 65s”) is that it makes it harder for over 65s to benefit from competition, whilst a method based on the sales agents and their supervisors’ judgement may make a mistake. Every supplier should have a policy on vulnerable customers, but it would be inappropriate for Condition 48 to seek to prescribe what it is.
7.7	Our organisational structure means that there would be little additional cost in requiring our sales agents to SMEs to formally follow the obligations of the F2F Code. However, other suppliers may have quite different organisations, and particularly those which are focussed on business customers may find the additional requirements onerous, and a barrier to entry. If there was a business marketing licence condition it should be separate, both for clarity and to avoid inclusion of inappropriate items, such as any mandatory cooling off period. If there was such a condition we would restrict it to sole traders, which is a generally recognised definition in the business market.
7.8	The impact of extending Condition 48 to new sales channels would seem limited to clauses 5 (customer informed on a protracted transfer), 7 and 8 (reporting). We doubt any supplier has different policies under clause 5 for non-oral and sales and therefore oppose the proposal as an unnecessary extra cost.
7.9	This issue can only be assessed on a case by case basis, but in principle we would expect customers to be better served by the application of standard consumer protection legislation than ‘tailor made’ arrangements
7.10	It should be clearer – it is possible to construe save activity as not “a sale.”
7.12	The F2F Code requires sales agents to “seek to avoid the consumer misunderstanding or making false assumptions, in particular over potential savings.” However, if practicable, this focus should be tightened up to ensure that customers have a record of any calculation of predicted savings. There would be an additional cost in such a procedure. Ofgem should institute a review with interested suppliers in the mechanics of such a process; we would be please to participate. The other information requirements listed are standard practice.

7.15	We do provide a 14 day cancellation period, but would not want to see this as mandatory as it could easily be in customers' interest to have less of a delay in the transfer process, assuming that the requirement of Clause 4 for a follow-up contact can be delivered. However, although the case for extending standard consumer legislation rule is not made, there may be an argument for covering any acknowledged shortcomings in standard legislation – for instance the lack of any cancellation period if the sale is made following an appointment.
7.23	A focus on outcomes is desirable (see 7.12 above), but it is hard to define the requirements. We are also surprised that Ofgem finds difficulty in applying “all reasonable steps” as it seems to allow considerable latitude to Ofgem in the definition of “all.” The difficulty may be reduced by the development of the F2F Code, as the Code Administrator, will be able to provide information on what steps other suppliers have found reasonable to implement.
7.28	Agree – telecoms experience has been that such a move reduces the effectiveness of the market
7.30	Agree – clearly a sale needs to close with a verification script, but most telesales agents do this well - this can be monitored, and further verification instituted if necessary. The cost of a more prescriptive and formal process is not justified.
7.31	Agree – the current arrangements work well in giving households flexibility to take-up sales offers, whilst the cooling off period allows an easy change of mind.
7.33	This issue needs to be looked at again when the F2F Code Administrator reports on AES Member's application of their individual compensation policies to Category 2 and 3 complaints, but we cannot see how a mandatory policy can both give appropriate compensation when there has been distress or material inconvenience and not overcompensate for minor failings.
7.38	All reporting carries a cost and it is unclear what value the information collected under clause 7 has. However, we rely on Ofgem's judgement in this matter, and have no objection to information collected being made public.
7.39	We are unable to provide a detailed assessment of costs, but note that the cost-effectiveness of direct selling has worsened over the last two years, despite it being an effective means of overcoming the switching cost to customers of seeking information on the market. Any additional costs should have a very clear, and certain, customer benefit.