

Iain Osborne
Director of Supply
Ofgem
9 Millbank
London
SW1P 3GE

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Tel: 0141 568 3207

Dear Iain

Testing domestic consumer take-up of energy services: suspension of 28 day rule

ScottishPower welcomes the opportunity to comment upon the issues raised within Ofgem's recent consultation on the trial suspension of the 28 day rule for customers that enter into energy service contracts.

As Ofgem has noted energy efficiency is a key component of the Government's sustainable energy policy and as such is a major focus for all energy suppliers. However, as we have highlighted in previous discussions, the 28 day rule is only one of the barriers operating against the development of a vibrant energy services sector. Other obvious obstacles include consumer disinterest in energy efficiency and the lack of effective fiscal incentives. Clearly the focus of Ofgem's consultation is the suspension of the 28 day rule, but it should be recognised that to stimulate incremental implementation of energy efficiency measures and to achieve the Energy White Paper target for improvements in domestic energy efficiency a wider package of measures will ultimately be required.

We appreciate that there is a strong wish to progress with the 28 day rule trial in the interim and we support the use of the trial in terms of the contribution that it will make to the knowledge and understanding of all stakeholders in the energy services market. At this early stage it is important that the design of the trial is based on the direct needs and wants of the customers concerned. In view of this we believe that Ofgem should await the results of the on-going customer research that was commissioned by the ESWG before committing to the detailed requirements. While this may compromise the proposed timetable for implementation this would seem preferable to the introduction of the trial without the key input from customers that will be derived from this research.

We believe that clear and robust regulatory guidance will also be required to ensure a full understanding of the pilot rules and a consistent application of these across all industry participants. In particular we believe that it is important that the objections process is agreed and modified appropriately with input from Ofgem as well as all suppliers. The current timetable would appear to allow little over 2 months for the Objections Working

Group to make and implement the appropriate changes necessary for the trial to proceed. Here again we believe that a fair, robust and consistently applied objections process is key to the success of the trial – particularly in achieving and maintaining consumer confidence – and the focus should be on achieving this despite the fact that this may be at the expense of the proposed timetable.

As a general point, while work has progressed relatively quickly in some areas of the proposed trial we believe that there is still a lack of overall clarity and definition in some important aspects. For example, the consultation does not address how finance is to be provided. It is implied, but not clear, that Ofgem envisage a “one stop shop” through which the customer will enter into a contract for the supply and installation of the goods and the finance with the supplier. However, the question of there being a separate finance contract is not dealt with. It would be useful to understand whether suppliers could provide third party finance through banks and finance houses as is presently done in the domestic goods markets.

Assuming that third party financing is allowable then contracts will be need to be negotiated and put in place by suppliers with those parties regarding the terms for providing the finance, including paying possible commissions to the lenders – all of which will involve costs to supplier. There is also the question of what interest rates the lenders will charge to the customers, which will impact on the savings benefits. Such negotiations with third party finance providers will also have to take account of Ofgem’s requirements, e.g. the limit on deposits, repayment periods and early repayment. We would welcome Ofgem’s view on the issues around the financing of energy services contracts as this issue will be important in designing attractive offers for consumers, minimising financial risk for suppliers and ensuring that all legal and regulatory requirements are met.

Finally, we were slightly perplexed to note the considerable differences between Ofgem’s consultation and the ESWG paper to Ministers and would be interested in Ofgem’s view on the reasoning behind the differences that have arisen.

We have provided detailed comments on the content of the consultation below. These comments have been cross-referenced to the paragraph numbering within the document for ease of understanding.

We look forward to reviewing Ofgem’s final proposals for the design of the trial in due course. In the meantime should you wish to discuss any of the comments made in this response please do not hesitate to contact me.

Yours sincerely

Stephanie Tobyn
Regulation, Legal and Commercial Manager

INTRODUCTION

1.3 – 1.4

We welcome Ofgem's acknowledgement that lack of consumer demand is a key barrier to the take up of energy efficiency measures. While the energy services approach can assist in overcoming this barrier we believe that it should be complemented by other measures such as fiscal incentives.

1.6

We believe that the pilot will demonstrate whether it is possible for suppliers to make sufficient margin to overcome obstacles such as the high cost of marketing products to uninterested customers. However, as indicated above, we believe that the successful development of an energy services market will ultimately depend on a wider approach involving measures not within the control of Ofgem or energy suppliers.

TIMETABLE

2.1

We believe that the timetable proposed by Ofgem is ambitious, particularly given the fact that the operation of a robust objections process remains to be defined. The Objections Working Group agreed in principle on 21st January that the objections process could be used as a vehicle for the energy services pilot, but that further detail, impact assessment and definition would be required in order to establish the requirements of a process to support the project. It was further noted that the industry views on the consultation paper were not yet known, and other issues may emerge that could impact on the proposed timetable that was already extremely tight.

LEGAL POSITION

3.11

The Distance Selling Regulations allow a cooling off period of 7 working days.

TRIAL SUSPENSION OF THE 28 DAY RULE

4.2

As noted above we believe that the 28-day rule is only one of the factors operating against the creation of a vibrant energy services sector in the UK. Other key factors - that will not be addressed by this pilot - include:

- Lack of fiscal incentives for consumers;
- Low consumer demand for energy efficiency measures;
- Lack of awareness and understanding of the benefits of energy efficiency.

4.11

It is concerning to note that the trial design appears to be being finalised prior to the completion of the market research commissioned by ESWG. This research will be valuable in identifying potential barriers to the take up of energy services and in assisting all stakeholders in the development of a range of complementary measures to promote energy efficiency. It will also specifically assist Ofgem and suppliers in ensuring that the design of the trial effectively meets the needs of the customers that it intends to target.

4.14

The third bullet point in this section refers to energy demanded from the 'grid'. It is unclear whether this should refer to 'metered energy use' as it could actually be electricity, gas, coal, oil or LPG. In relation to this it would be useful for Ofgem to clarify if the average saving per house type will be produced in the same table format of houses and types of fuel as in current EEC insulation / heating savings.

4.16

While consumer protection is vitally important it should be recognised that there is significant consumer protection legislation in place already, which applies irrespective of the Licences. We believe that Ofgem should avoid excessive measures in this area that will involve more complexity in explaining the contractual arrangements to consumers potentially leading to greater consumer resistance to entering into energy services contracts. Consumer protection measures should also not entail excessive costs that may detract from the ability of suppliers to make a reasonable rate of return on their investment in this area.

The requirement for "bills that state separately charges for energy, charges for energy efficiency measures, and finance charges" does not clearly specify whether this should be captured in a single bill or whether separate bills potentially from separate sources - e.g. a finance company - would be acceptable. The specifics of the "written quote" should also be clearly defined.

4.17

We are concerned to note Ofgem's requirement for a six-monthly board-level statement of compliance. It is unclear why such a statement would be necessary in these circumstances particularly given that statements of compliance are not required for any other licence condition or existing regulatory requirement. It is also unclear exactly what such a statement would require compliance with other than the licence derogation.

4.18

We agree that suppliers should be able to object to the transfer of any customer participating in the trial on the grounds of non-termination of contract but as mentioned under 2.1 above the timetable proposed does not appear to lend itself to the agreement of the necessary processes to support the pilot. It is questionable whether the Objections Working Group – having only first discussed the issue in late January – will be able to successfully resolve this issue before April.

4.19

Community energy schemes were not discussed within the ESWG and offerings to such groups would require special consideration particularly around financing and economic benefits. While in principle we support the inclusion of community energy schemes in the pilot we believe that this issue should be considered separately - potentially under a separate working group - with a view to extending the scope of the pilot to include such schemes at a later point in time.

We would not wish to specifically exclude PPM customers from the pilot but their inclusion presents a number of issues that it may be difficult to overcome. Assuming that the Energy Bill is used to amend the Utilities Act thus enabling energy efficiency goods and services to be collected through PPMs it remains questionable whether customers would choose to pay for additional products through their PPM given the increased risk of self-

disconnection that may result from non-payment for this additional product. Suppliers would also require to consider the additional costs associated with resetting PPMs to recover non-energy debt and the associated customer specific requirements in terms of agreeing debt repayment at an appropriate level.

It is also questionable what level of debt would be deemed to be acceptable to collect through a PPM to ensure repayment over a 5-year period; this in itself could limit the type and scope of energy efficiency measures that it would be possible to install. Taking these issues into account it may be necessary to exclude PPM customers at the outset of the trial but to consider the issues around their inclusion at a later point in time when the fundamental aspects of the trial have been proved to be successful.

DETAIL OF TRIAL DESIGN

5.7

While we recognise and support Ofgem's wish to effectively stimulate the energy services market we are concerned by the suggestion that disproportionate focus on former PES areas by electricity suppliers may be deemed to be anti-competitive. It should be up to suppliers to focus their marketing activities as and where they deem fit. This is particularly important during a pilot project of this nature where the economics remain to be proved and consumers appear to be disinterested from the outset. This issue requires to be viewed in perspective and it would seem highly unlikely that a trial of this size and nature would adversely affect competition in the electricity market or indeed the gas market which we assume Ofgem would also include in their concerns over former monopolists.

5.9.2

We recognise that it may be beneficial for Ofgem to encourage all suppliers to join the Energy Efficiency Partnership for Homes Code of Practice but we believe that it would be overly prescriptive for Ofgem to choose to make this a mandatory obligation for energy service contracts. Such a requirement would not allow all suppliers the necessary choice and freedom to develop and market energy efficiency contracts that may well be necessary to enable successful participation in the trial.

5.9.5

The requirement to offer ALL of the most common energy efficiency measures seems overly prescriptive particularly when a percentage savings target has already been agreed. Ultimately customers will shop around to find the most appropriate package for them and it should be for the market to decide what measures will be offered to achieve the necessary energy reduction.

5.9.6

We support the use of a savings threshold of 15% as appropriate at this time.

5.9.8

In terms of including alternative generation within energy service packages it should be noted that there are currently no EEC savings agreed for alternative generation such as micro-CHP. It should also be noted that the standardised energy savings in place are as close to carbon savings as possible therefore there is no requirement to calculate carbon avoided as this is already built into the methodology.

5.9.9

Ofgem should recognise that some customers may wish to make a full or substantial payment up-front, rather than paying off an interest bearing loan. Such circumstances should be allowed for within the trial for the products and pricing mechanisms that may be developed but we acknowledge that Ofgem would wish to consider whether the 28 day rule would be applicable in such instances.

5.12.2

Price certainty will be an important component of any energy services offering. Ideally suppliers should be free to choose what pricing mechanism to adopt but it is recognised that this could be problematic in terms of price comparisons, but it may be that Ofgem could effectively assist in providing customers with advice or guidance in such circumstances. Indexation is clearly one option but we believe that such mechanisms would not be readily understood by the majority of consumers and would significantly complicate the sales process and potentially the success for the pilot.

Whatever mechanism is adopted it will be important for Ofgem to consider the implications of SLC 44.6 in relation to price increases throughout the duration of the contract.

5.12.5

In relation to the quote including the consumption assumptions and the expected energy reduction it would seem logical to use the EEC derived savings that will calculate both. For the expected financial savings over the customer's current service again EEC gross energy savings should be utilised. It will be important to agree a standardised percentage for the increased comfort derived from the installed measures and consequently a reduced saving.

5.12.6

It is unclear whether customers should have the option of an independent second opinion or whether Ofgem intend that this requirement should be mandatory. The provision, or indeed the offering of a second opinion is not a concept normally used in consumer arrangements – e.g. mortgages – and as such it is questionable why such an additional requirement should be necessary.

Suppliers tend to use a National Home Energy Rating system, which is based on BREDEM, for giving advice, energy savings and cost savings via a tailored energy audit. This will produce different savings from the EEC model and the EEAC system is different again. This should be taken into account particularly in relation to the proposal for an independent second opinion where customers may be confused by varying calculations.

5.12.7 – 5.12.8

We welcome Ofgem's proposal to rely on the cooling off periods required under existing consumer protection provisions. However, it should be noted that there will be cooling off periods for the finance contract and for the supply / installation contract. These will need to fit with each other so that neither the customer nor the supplier is left with one contract in place but not the other.

5.12.9

Clarity in the area of termination is essential for both customers and suppliers. We would welcome some further information from Ofgem in this area particularly whether there is

any perceived difference between the “reasonable charge to cover administration and the costs of a supplier’s hedging arrangements” and a standard termination fee which would NOT normally be payable on change of tenancy but where suppliers would still incur additional costs.

In addition, as mentioned above on cooling off periods, there will have to be a fit between the termination of the supply / installation contract and the finance contract.

We are also concerned that suppliers may reasonably believe that their forms of supply / installation contracts (and the finance contracts) comply with the Licences but that Ofgem may decide that they don’t but only after the supplier has contracts already in place with consumers. To assist the trial it would be advisable for Ofgem to approve the forms of contracts beforehand.

5.12.10

We believe that existing product guarantees should be sufficient for the period of the pilot and as such any development other than this should be left to competitive market forces. If this was not the case suppliers would be put in the position of a “second warranty” provider, which is not a risk that suppliers should be expected to bear.

5.15

Reporting requirements should mirror those in place for EEC activity. As discussed above we do not agree that an additional statement of compliance is necessary or justified in these circumstances.

5.21

Most suppliers will have a high volume of telemarketing activity. To maximise the efficiency of this it would be useful to be able to exclude customers on energy services contracts and we would support the use of a national database in this context.

5.22

Ofgem have a key role to play in considering issues relating to objections for customers supplied on energy service contracts and this should not be seen as an issue entirely devolved to the industry. It should also be recognised that providing the Objections Working Group with little over 2 months to finalise requirements in this area is extremely ambitious and a robust agreement in this area, if at the expense of the timetable, would be the preferred outcome for both customers and suppliers.

5.25

One of the major issues not addressed by the trial is consumer apathy towards domestic energy efficiency measures. While this endures, the costs to promote the energy services concept could outweigh the potential return, even with a relaxation of the 28-day rule.

EVALUATION

6.1

The overall carbon impact of the trial should be evaluated as the trial itself has stemmed largely from the Government’s Energy White Paper 5MtC target saving for domestic energy efficiency.

6.2

Customer surveys should be designed to cover more than just consumer protection issues. It would be valuable to understand customer perception and understanding of supplier offers, including which approaches were found to be most successful. This type of information would be useful in considering future development in this sector. However, Ofgem should also consider the outcome from the current market research before finalising the details of the trial including the programme of evaluation to be implemented.

APPENDIX 1 – REGULATORY IMPACT ASSESSMENT

1.6

The cost to suppliers of participating in the trial should be evaluated on the basis of all the trial requirements that Ofgem have deemed to be mandatory. For example, the pilot calls for energy billing processes and systems to cope with a product that they are fundamentally not designed to handle. Therefore, the development costs of a robust energy services billing platform could in fact be as much if not more than the marketing costs required to create demand for the concept.