

Proposals for the Amendment of Standard Licence Condition 48

A Response by British Gas Trading

Introduction

British Gas welcomes the opportunity to comment on the review of Standard Licence Condition (SLC) 48 further to Ofgem's consultation in August 2003. It is important that this additional dialogue is had prior to commencement of any formal modification process.

British Gas agrees with Ofgem's view that, in the longer term, sector specific regulation of energy sales and marketing may become unnecessary. Indeed against the backdrop of the reduction of energywatch complaints such as the 60% reduction in selling complaints over the past 2 years, and 60% reduction in Erroneous Transfer complaints over the last year, coupled with the development of the AES Code of Practice for Face to Face Marketing (supported by the creation of EnergySure), British Gas strongly believe there will be no requirement for SLC48 in the future. This links well with Ofgem's clear intention, as stated in its Proposed Corporate Strategy 2004-2007, to withdraw from regulation where appropriate and to make greater use of industry codes of practice. However, British Gas also agrees that this time has yet to be reached and SLC48 should continue to allow time to fully demonstrate to consumers and Ofgem that suppliers can effectively self regulate sales and marketing activities.

Within the context of falling complaints, the real progress made by the industry to self regulate and Ofgem's intention to withdraw from regulation, it is surprising that the proposals made in the consultation significantly increase the regulatory requirements that suppliers must meet. Not only do the proposals extend the scope of SLC48 but also raise the regulatory standard for compliance to a level that can never be achieved in practice irrespective of the extent of the controls in place and/or the amount of resources committed. The risk of licence breach will be so high that selling activities may be curtailed thereby stalling customer switching which Ofgem and energywatch are so keen to encourage.

However, a number of the proposals are ones that should be considered further and, where not already included within existing consumer protection legislation, or related Codes of Practice such as the Direct Marketing Association Code of Practice, the proposals could potentially be incorporated into the AES Code. Accordingly, British Gas believe the most appropriate approach is to widen the scope and enhance the requirements in the AES Code, where appropriate, while retaining the current drafting of SLC48 for a further two year period i.e. a co-regulatory approach.

Accordingly, the views expressed below should be considered in this context i.e. support for any proposal is support for the principle of that proposal not necessarily for inclusion in a revised licence condition.

Proposals for Consultation

Face-to-Face and Telesales Sales Channels

British Gas comments are, for the most part, common irrespective of whether the sale is made by a face-to-face or telesales channel. Accordingly, our views are consolidated below for both channels with comments specific to a channel clearly marked.

Prohibitions

British Gas does not support the proposed move to “absolute” licence obligations where a single failure to meet the requirements is deemed a breach of licence. For example, in the case of sales, despite strict controls, instances will occur where an adviser has not followed the correct procedure or there has been a genuine misunderstanding between the consumer and the adviser. In these circumstances, a total prohibition of certain activities within SLC48, would mean a supplier would be in breach of its licence even if the instance only involved one consumer. Such an approach cannot be considered appropriate or proportionate, and therefore inconsistent with Ofgem’s adoption of the key principles of better regulation as quoted in Ofgem’s Proposed Corporate Strategy for 2004-2007.

While British Gas does not agree with the prohibition approach, it does agree with the focus of the six proposed prohibitions i.e.

- misleading information as to the reasons for the supplier’s approach;
- mislead consumers that they are entering a contract;
- forgery;
- selling to consumers under sixteen;
- continue an approach when the consumer has indicated that they wish it to be terminated; and
- carry out sales activity outside the hours of 09.00am to 8.00 pm

Our current policies and procedures clearly state that such practices are totally unacceptable and will not be tolerated. British Gas closely monitor the activities of our advisers to ensure that these practices are not used during an approach or telesales call and, if they are, ensure we can identify and deal with the matter promptly. In support of this approach, with the exception of the proposal to prohibit sales to consumers under sixteen, the areas above are all covered within the AES Code for face-to-face sales although it may be that the current drafting could be reviewed to align more closely with Ofgem’s proposals where similar obligations are not present in other relevant Codes of Practice. In addition, the general principles of the Code could be widened to include telesales.

However, it is important to make the distinction here between inbound and outbound telesales. British Gas believes that a customer making a decision to contact a supplier in order to switch their energy supply should be able to do so at a time that suits them. Therefore, the proposal to prohibit any sales activity outside the hours of 9am and 8pm may not be appropriate in such circumstances. We also believe this is the case for face-to-face sales where a customer has requested an appointment outside of these hours. The proposal as drafted offers no flexibility for this, and it is our experience that customers do expect to have the ability to request appointments at their convenience.

Additional information

British Gas broadly agrees with the proposals to provide additional information at the time of the contact with the consumer although it does have concerns over the practicality of providing written confirmation of all claims made by the adviser. Much of this information is already provided by our field sales advisers e.g. clear identification of name of the supplier and the identity of the adviser (adviser's introduction, ID badges and uniform) and mandated by the requirements in the AES Code for face-to-face sales. However, for the telesales channel, while to include the name of the adviser who made the verbal sale in the contract confirmation pack would be possible, British Gas does not believe this would be necessary or appropriate as discussed below.

Firstly, British Gas advisers are trained (and monitored) to ensure their name is given at the outset of the call and every contract can be tracked back to the adviser who made the sale to enable action to be taken where necessary. Secondly, consumers would naturally ask to speak to the named adviser if they had a query – not only is it not possible to transfer the consumer to the advisor (as most advisors operating within outbound call centres will not have inbound call capabilities) but it would not be appropriate for the same adviser to deal with the matter if the consumer had a complaint.

Clearly British Gas supports the principle that any claim made by the adviser to the consumer must be accurate. In fact, under the AES Code, suppliers are required to leave an appropriate tariff sheet with the consumer. In addition, the British Gas contract packs left with the consumer highlights the primary benefits in taking an energy supply from British Gas. These benefits and the prices on the tariff sheets are the main points used when selling to a consumer. Due to the complexity of different tariffs in the market place (for example, in the Southern supply area alone, uSwitch.com lists 23 suppliers offering 124 different standard domestic electricity tariffs, with up to 7 different payment methods, some of which are likely to offer varying levels of discount or penalty) and their dependency on the use of accurate consumption data in any calculation, specific price comparisons are rarely used to avoid potentially inaccurate quotes being provided to a consumer. However, comparisons with the most common tariffs according to average usage are frequent and there may be merit in considering whether providing consumers with this information in a written form would be helpful. Again, this is a matter that could be addressed within a revised AES Code.

Contract cancellation period

As highlighted in British Gas' response to Ofgem's August consultation, the length of the period for cancellation is not the important issue here but the clarity of the cancellation rights for consumers. The legislation¹ in this area is quite clear. Any contract which is for the supply of goods or services, whether concluded via a doorstep sale or telesales call, the consumer must have a minimum of seven working days cooling off period from the date the contract is concluded. This is the date of the sale on the doorstep (as a written contract and terms and conditions of supply are provided) or for a verbal sale (telesales) the day after the consumer receives the contract and appropriate terms and conditions of supply. We note with interest that the recent consultation on proposed changes to the Consumer Protection (Distance Selling) Regulations 2000 issued by the DTI, also seeks to make consumer cool-off period and cancellation rights clearer, rather than extending them. This is particularly pertinent in energy supply as Ofgem is also the "enforcer" of this legislation under the Enterprise Act 2002.

A mandatory 14-day cooling-off period for energy sales will cause confusion for consumers particularly where non-energy products are also sold at the same time. For example, a customer deciding to switch their energy supply and telephone service to one supplier will be faced with very different cooling-off and cancellation rights where one product could be cancelled after 7 working days, and the other could not. This will no doubt result in a significant increase in the levels of consumer dissatisfaction with that supplier who is merely adhering to its statutory obligations. Accordingly, rather than adding clarity, extending the period to 14 days for energy sales alone would confuse the position, as it would not be fully consistent with the aforementioned legislation.

In addition, British Gas considers implementing requirements that will extend the length of time it will take for a customer to switch, i.e. 14 day cancellation period, is inappropriate at the same time the Customer Transfer Project is seeking to address issues affecting customer transfer timescales. Accordingly, British Gas would not support this extension although it would be happy to discuss further with Ofgem and energywatch how communication of consumer's cancellation rights could be enhanced.

¹ The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987
The Consumer Protection (Distance Selling) Regulations 2000

Internet, On-line and Direct Mail Sales Channels

It is noted that the proposed requirements would significantly extend the current scope of the SLC48, which is primarily limited to oral communication with domestic consumers regarding marketing activities. It should be recognised that internet and direct mail are very different in nature to face-to-face and telesales channels. For internet and direct mail, the consumer has to take the initiative to make contact with the supplier by either completing an on-line or paper application form or making a telephone call to the supplier. Where an application form is completed, British Gas makes totally clear that the consumer is entering a contract. In addition, clear written information regarding the proposition would be either available on-line or in the direct mail communication to enable customers to make an informed decision to switch energy supplier. Where a consumer contacts British Gas by telephone as a result of receipt of a direct marketing communication, any subsequent verbal sale would be subject to the same controls as other telesales whether inbound or outbound.

Prohibitions and Additional Information

Although the nature of the internet and direct mail are different, British Gas' views on prohibitions and additional information for these channels are consistent with those made above for face-to-face sales and telesales i.e. while prohibition is not appropriate, it would be willing to consider the enhancement and increased scope of the AES Code where not covered in relevant existing Codes of Practice or statutory legislation to cover the areas proposed by Ofgem.

Contract Cancellation Period

For internet and direct mail sales, it is not necessary to extend the cooling-off period, especially as the contract will be concluded on the basis of consumer initiated action.

Reporting and Audit

British Gas is a strong advocate of an approach similar to that adopted by the FSA where the compliance controls are reviewed rather than reporting detailed performance in relation to regulatory requirements. Accordingly, it fully supports Ofgem's proposal to place a requirement on suppliers to provide board level confirmation that they have audited and can confirm all due diligence has been exercised to ensure compliance with the condition. British Gas has had a comprehensive sales compliance programme for the past year which includes monthly reporting on key compliance metrics and regular audits of sales channels – this Programme will provide clear information to allow the Board to confidently give such confirmation. British Gas would be happy to include details in this confirmation on the steps taken to protect vulnerable consumers.

Contract Verification

British Gas believes there are already sufficient safeguards in this regard within the current drafting of SLC48 to protect consumers. British Gas attempts to contact all domestic consumers by telephone (where a number is available) who have entered a gas and/or electricity contract to ensure the consumer understands that a contract has been entered into, is happy to have entered that contract and is content with the way the sale was made. Results of those calls are recorded and included in the monthly sales compliance report. Where contact has not been made, or a telephone number is not available, a letter is sent to the consumer raising the same issues and providing a contact number if the consumer has any concerns. Clearly, if the consumer does contact us and wishes to cancel the contract, British Gas will undertake all reasonable steps to do so provided the registration of the supply has not commenced i.e. passed to Transco or the MPASs for processing.

If additional contract verification were introduced, this would have a significant impact on the efficacy of the transfer process. In particular, where a consumer could not be contacted by telephone, under the Ofgem suggestion, the contract could not be progressed unless the consumer provides a positive consent in response to a letter from the supplier. These consumers would have to take an additional process step in order for the contract to progress by contacting the supplier. This would mean consumers would have to invest more time in the transfer process and the consumer would perceive the process as becoming more difficult.

The ease of switching is a key criterion that Ofgem have used when conducting its customer surveys and there is a significant risk that this additional step would result in a rise in the proportion of consumers who found the process difficult. This would have a knock –on effect on other consumer’s perception and may deter them from switching suppliers. This would be counter to the objectives of the Ofgem and energywatch supported Customer Transfer Programme that is trying to simplify the switching process for customers.

The need for positive consent would not only complicate the process but also add costs to suppliers in two main areas. First, additional processes and resources would be required to handle incoming consumer contacts (for British Gas in excess of £2 million) and second, increased drop out rates where the consumer could not be reached or did not respond. If these rates were in excess of 25% (based on the experience of another major supplier who adopted a similar approach), this would, in broad terms, add a similar proportion to the cost of sales. This increase in sales costs will most impact suppliers who are seeking to grow their customer base, primarily smaller suppliers or new entrants.

Clearly, this dropout would dramatically decrease consumer churn rates throughout the industry; a criterion often used by energywatch and Ofgem as one measure of success of competition.

Obligations removed from the licence condition

The proposal to remove the recruitment and training obligations is a welcome sign of Ofgem to deal with outputs rather than inputs and withdraw from prescriptive regulation where appropriate. However, British Gas still considers these activities as a critical part of its quality process for sales and will continue to internally monitor, irrespective of whether it remains a licence obligation, notwithstanding the self-regulation requirements of the AES Code of Practice.

Obligations retained within the licence condition

The original intention of the requirement to contact consumers if they are not supplied within 60 days of the contract date was to deal with the phased opening of the domestic market to competition. During that period, suppliers were marketing propositions and securing contracts with consumers in areas where the market had yet to open. This requirement ensured that in these circumstances, the consumer was kept informed of the progress of their supply transfer.

In today's fully opened market, a customer transfer takes approximately 6 weeks and it is in the supplier's, and customer's, interest to start supplying as soon as possible (subject to the constraints of Consumer Protection legislation and industry processes). Where a transfer does not progress e.g. due to missing data, British Gas contacts the consumer to explain the delay and resolve the problem that is stalling the process.

Accordingly, this licence requirement has served its original purpose and is no longer necessary. In line with the approach to withdraw from specific regulation where appropriate, British Gas suggests that, were SLC48 to be revised, this paragraph is removed.

Other Issues

British Gas notes the suggestion for suppliers to apportion part of their marketing budgets to local advice agencies to confirm savings. It agrees with Ofgem's view that this would be inappropriate to mandate within the licence although suppliers could independently chose to do so. However, there are already many sources of price information that can be readily accessed by consumers including energywatch and the price comparison web sites.

Summary

British Gas believe there is strong evidence to support the view that suppliers have taken their responsibilities regarding sales and marketing practices seriously over the last 2 years. Indeed, following Ofgem's investigation into the sales activity of London Electricity and its associated brands, and the Authority's decision to impose a substantial financial penalty, suppliers have obviously realised the damage and impacts that non-compliance has on them, and the subsequent effects on the industry as a whole.

However, we accept that there is a need for the energy industry to continue to strive for improvements to their sales practices to improve consumer confidence in the competitive energy market. The introduction of the EnergySure initiative and AES Code of Practice demonstrates a strong commitment to this, and the overall reduction in complaints and Erroneous Transfers provides encouraging results and benefits of a co-regulatory approach.

Accordingly, British Gas believes that Standard Licence Condition 48 as currently drafted should remain, and that further work should be undertaken by suppliers to develop and extend the scope of the AES Code of Practice for face-to-face sales to other sales channels.

British Gas
30th January 2004