

Making markets work for consumers: The regulation of gas and electricity sales and marketing: proposals for the amendment of standard licence condition 48

Abstract

energywatch welcomes most of the proposals for the amended SLC 48. These must be augmented with the following pieces of consumer protection in order to increase consumer confidence and switching rates.;

- An obligation to positively verify all new contracts
- Introduction of mandatory compensation for consumers in cases of poor marketing
- Production of guidance notes, including definitions and examples, for the proposed prohibitions and when compensation is 'appropriate'
- Inclusion into the licence condition a stipulation that suppliers will receive maximum penalties if it transpires a licence breach involved vulnerable consumers

Introduction

The level of dissatisfaction experienced by domestic gas and electricity consumers in relation to sales and marketing activity remains high enough to deter many consumers from actively engaging in the competitive market. Our response to the initial consultation included a breakdown of complaints which demonstrates this.

Marketing is one of the few occasions where consumers come into unprompted personal contact with domestic suppliers' representatives yet in too many cases sales agents are still misleading, harassing or confusing potential customers. There have been a number of surveys commissioned recently which have sought consumer's attitudes to energy, and other sector, marketing. These are summarised in Annex 1, but the general conclusions are that millions of consumers still believe that energy is not marketed and sold to a standard that encourages them to reap the potential benefits that the market has to offer.

These general conclusions are also being expressed by many MP's constituents. During the last parliamentary session an Early Day Motion (EDM65) received over 150 MPs signatures registering support for **energywatch's** Stop Now! campaign to improve marketing. On the 27th of January this year a 10-Minute Rule Bill [Power Supply (Compensation for Erroneous Transfer)] proposing compensation for consumers switched against their wishes or without their knowledge was debated in the House of Commons resulting in it being supported and ordered for a second reading on 18th June.

energywatch believes that in such a large, yet young, market that offers services essential to a decent standard of living robust and responsive regulation is necessary to provide protection until such a point that consumers are fully aware of their rights and suppliers have demonstrated their responsibility towards this area of the market.

There are four main areas which **energywatch** views as essential to deliver a regulatory environment which makes markets work for consumers in relation to selling and marketing activities. We believe that if these measures are included in the licence condition alongside Ofgem's current proposals they will help not only in 'reducing cancellation and erroneous transfer costs, but also by providing for improved consumer confidence which will lead to an increased propensity to switch'¹

Requirement to verify that consumers wish to proceed with a transfer

energywatch does not believe that introducing a requirement on domestic suppliers to verify all contracts will necessarily increase costs, act as a barrier to switching or remove a competitive advantage.

Whilst the levels of overall complaints to **energywatch** have fallen since the high of April 2002 the fraction of complaints which relate to consumers disputing a contract as a result of a sales pitch has remained steady at ~80% since that time. This satisfies us that consumers are still not acting confidently in the current competitive market and either do not know their rights or are being misled into signing something unawares that it is a contract.

In order to reduce this level of complaints and to increase the tendency to switch we feel that an obligation to verify all contracts is necessary. Without seeing a business case from suppliers which sets out costs of resolving cancellations and erroneous transfers it is impossible to know how much these will be offset if suppliers are obliged to verify all contracts. Nevertheless **energywatch** believes that taking this holistic approach towards the verification process will benefit consumers, regulators and suppliers through increased levels of successful transfers, less time spent on resolving marketing complaints and an environment which offers consumers responsive regulation. In our experience it is inappropriate to suggest that this added piece of consumer protection would be an obstacle to competitive advantage between suppliers as the consumers affected by the activity are not yet customers of the suppliers undertaking the marketing.

Recent research undertaken on **energywatch**'s behalf² shows that nearly 2 in 5 consumers that had experienced a doorstep sales pitch in the last 12 months felt pressurised into signing something, compared to 1 in 5 for sales pitches during the last year via the phone. Again for doorstep sales pitches only 1 out of 3 consumers felt that agents were dishonest during the sales pitch and for telesales 1 out of 5 consumers felt they were not being told the truth throughout the pitch. This reinforces the point made by ourselves and many other commentators that consumers feel more uneasy dealing with sales calls on their doorstep than they do over the phone, and often sign something in order to get rid of the sales agent.

Compensation

¹ 'Making markets work for consumers: The regulation of gas and electricity sales and marketing: proposals for the amendment of standard licence condition 48' — s [1.3]

² Telephone omnibus survey conducted over the weekend of January 23-25 of 1,000 adult consumers representing the socio-political make-up of the UK population.

energywatch refutes the argument that the introduction of automatic compensation payments for consumers who have been adversely affected by a marketing experience will lead to a 'compensation culture' where companies are inundated with bogus claims. Members of the Association of Energy Suppliers face to face marketing code of practice³ [the AES Code] have been obliged to offer £250 compensation in cases where consumer's signatures have been forged to secure a contract since December 2002. In this time **energywatch** notes that the level of these complaints rise and fall at the same rate as other marketing complaints proving that automatic compensation does not encourage consumers to unjustly claim redress. Neither has **energywatch** seen evidence from the AES or suppliers that since this code of practice came into force compensation claims for forgery have increased.

Results from the telephone omnibus survey commissioned by **energywatch** quantify consumer's attitudes towards expected responses during complaint resolution. Almost 9 out of 10 consumers expected suppliers to acknowledge and to investigate a complaint. If, after an investigation, the supplier (or agent of) is found at fault then more than 4 out of 5 respondents would expect an apology, just under three quarters expect the person at fault to receive retraining and over half expect some form of compensation.

energywatch urges Ofgem to take these points into consideration and introduce mandatory compensation as it will demonstrate to consumers that industry treats their concerns seriously. It will also encourage agents to comply with regulation, give consumers proper redress for the financial and mental stress which can result from sub-standard marketing and resulting transfer to another supplier and help rebuild consumer confidence in the maturing market. We urge Ofgem to define exactly when it is 'appropriate'⁴ to pay compensation if, as stated in the proposal document, the section covering compensation is left unchanged as the current compensation amounts paid are pitifully small.

Clear Obligations

energywatch agrees with Ofgem that 'there is a significant advantage to be gained from clear obligations which relate to how individual consumers are treated. This approach would provide certainty for both consumers and suppliers and allow for more effective monitoring and evaluation of compliance and more effective compliance in practice'⁵. In order for this to be the case it is essential that the proposed prohibitions are explicitly defined, with practical examples of how they would apply in expected circumstances to avoid any doubt over interpretation. The definition of a Category 1 complaint in the AES Code is an example where an activity is prohibited yet ambiguity surrounded its interpretation until it was more explicitly redefined.

In particular **energywatch** wants to see guidance notes which include agreed definitions and worked examples of how the following proposals should be applied practically in the following scenarios:

³ Electronic versions of the code are available at www.aes.org.uk

⁴ Standard Licence Condition 48 – s. 6

⁵ 'Making markets work for consumers: The regulation of gas and electricity sales and marketing: proposals for the amendment of standard licence condition 48' — s. [5.21]

- To prohibit misleading consumers about nature of the approach or the fact they are entering into a contract;
- To prohibit forgery of a customer's signature;
- To prescribe that the following material must be provided to consumers once a contract has been agreed:
 - Written confirmation of any claims made on price or savings.
 - Identity of sales agent who made the approach.
 - How to complain details (including **energywatch** contact details).
 - Details of cancellation period and how to cancel.
- Instances where compensation is 'appropriate'.

Vulnerable consumers

energywatch is fully aware of the sensitivity and potential dis-benefits of including a specific regime in the licence condition which defines vulnerable consumers. We urge Ofgem to write into the licence condition that if it transpires during an investigation that a licence condition was breached at the expense of vulnerable consumers then suppliers can expect Ofgem to impose maximum penalties. **energywatch** welcomes the proposal that suppliers will be required to confirm their compliance with this licence condition at board level but would like to see more information relating to the requirements in relation to the particular steps the suppliers have taken to protect vulnerable consumers.

Summary of recent research findings into consumers attitudes towards marketing

1. Telephone Omnibus survey commissioned by energywatch

Sample size: 1,000 Date results presented: January 2004

Findings:

General

- 64% of respondents had been marketed gas or electricity at least once during the last 12 months.
- 38% of respondents had been approached on their doorstep
- 35% of respondents had been approached via a phone call
- 14% of respondents had been approached in a public place

Marketing on the doorstep

- 37% of respondents felt pressurised to sign a contract
- 33% of respondents felt they were being misled at some point

Marketing via the telephone

- 20% of respondents felt pressurised to sign a contract
- 21% of respondents felt they were being misled at some point

Expectations during complaint resolution

- 87% of respondents expect a supplier to acknowledge and investigate a complaint
- 83% of respondents expect an apology if their complaint is upheld
- 72% of respondents expect the agent to receive further training if their complaint is upheld
- 53% of respondents expect some form of compensation to be offered if their complaint is upheld

2. Qualitative and quantitative research commissioned by Ofgem⁶

Sample size: 2,000 Date results presented: October 2002

Findings:

All respondents had experienced direct selling within the previous four months.

⁶ Summary of findings published in 'Making markets work for consumers: The regulation of gas and electricity sales and marketing: a review of standard licence condition 48.A consultation document'. August 2003. pg. 12 - 14

Attitude of sales agents

- 26% of respondents considered the sales agent 'a nuisance'
- 25% of respondents found the agent had been 'quite pushy'
- 36% of respondents sold to on the doorstep were quite or very dissatisfied
- 10% of respondents believe banning direct selling would be a positive step

Consumer experience

- 13% of respondents failed to sign because of the 'sales approach'
- 4% of respondents failed to sign because of 'horror stories'
- 25% of respondents who signed a contract went on to cancel it
 - 40% cancellation for doorstep sales contracts
 - 36% cancellation for contracts signed on the street/public place
 - 0% cancellation for telesales contracts
- 30% of respondents failed to receive an audit call or letter from the new supplier once they had agreed to switch supplier
- 11% of respondents had been transferred without their knowledge
- 2% of respondents said their signatures had been forged

3. Public survey of householders attitudes towards all doorstep traders and callers undertaken by Trading Standards Institute⁷

Sample size: 8,832

Date results presented: February 2003

Findings:

General

- 95.7% of respondents do not want doorstep callers (all industry sectors)
- 16.7% of respondents who reported problems complained to authorities such as the police, trading standards, citizens advice bureaux and watchdogs (all industry sectors)
- 31.6% of respondents considered doorstep cold calls to be a nuisance (all industry sectors)

Energy

- 15.6% of respondents who had received a caller on their doorstep in the past 3 months had been from energy companies (the highest for all industry sectors)
- 5.6% of respondents reported having a 'bad experience' with energy doorstep callers in the past 2 years (the highest for all industry sectors)

⁷ Research available at www.tradingstandards.gov.uk/itsa/coldcall.pdf