

Supply Licence Review (SLR) Steering Group minutes Meeting 5, 25 January 2006

Attendee	Organisation
Tahir Majid (TM)	Centrica
Roger Barnard (RB)	EDF Energy
Carole Pitkeathley (CP)	Energywatch
Graham Kirby (GK)	E.on
Duncan Sedgwick (DS)	ERA
Jill Ashby (JA)	Gemserv
James O'Connell (JO)	HSE
Laurence Poel (LP)	npower
Ruth Ashworth (RA)	Ofgem
Nigel Nash (NN)	Ofgem (Chair)
Andrew Wallace (AW)	Ofgem
Angela Green (AG)	Ofgem (Secretariat)
Michael Knowles (MK)	Ofgem
Stephanie Tobyn (ST)	Scottish Power
Rhona McLaren (RM)	SSE
Lisa Waters (LW)	Waters Wye Associates (representing Corona Energy Ltd)
Peter Deft (PD)	DTI (Part)

Apologies were received from Mike Gibbons (BRTF), Tony Herbert (Citizens Advice) and Nick Ansbro (Corona Energy).

1. Minutes and actions of the last meeting

The amended minutes of the meeting of 21 December 2005 were agreed.

In relation to the actions, it was confirmed that these had been completed with the exception of arranging a meeting to take forward issues concerning guaranteed and overall standards.

Action: Ofgem

There was a discussion on the letter from the HSE regarding meter inspections which had been previously circulated to the group. The HSE were asked to clarify whether they have independently started an investigation into gas meter safety. It was confirmed that there is a general review of gas safety underway but that it does not specifically focus on metering. Details on the progress of this can be found on the HSE website

(<http://www.hse.gov.uk/gas/domestic/safetyreview.htm>). There was a general view from some members of the group that the comments made by the HSE in the letter needed to be supported by evidence. JO advised the group that he would seek to arrange for a member of the team that dealt specifically with metering issues to attend the next metering workgroup. Ofgem said that in advance of this they would seek a separate meeting with the HSE to discuss.

RB advised that he would prepare a list of the relevant safety obligations of meter operators under the ESQCR and circulate it to the Steering Group.

Action: Roger Barnard, EDF Energy

2. Unfair Commercial Practices Directive – presentation by Peter Deft, DTI (see attached slides)

Peter Deft of the DTI gave a presentation on the Unfair Commercial Practices Directive (the 'Directive') setting out the purpose, scope and structure of the

directive. The Directive focuses on the consumers' decision to purchase, and whether an act (typically marketing or advertising) causes a consumer to make transactional decisions that they would not otherwise have taken. This is measured against an 'average' consumer.

There was a query about whether the guidance that will be provided by the DTI will be sector specific. PD advised that this is unlikely, and there will possibly be general guidance on the directive and where there are specific problem areas more specific guidance will be provided. RB raised a concern regarding the provision of such guidance, which unless kept to a minimum could subvert the deregulatory spirit of the Directive, and PD advised that it was not the intention of the DTI to provide detailed prescriptive rules.

There was a discussion about the use of the Directive in relation to the gas and electricity markets, in particular in relation to the marketing licence condition. The current requirements of the condition are at a much higher level than the Directive, therefore if there was no marketing condition marketing activities would be caught under the general obligations of the directive and it would be for each supplier to make its own decision about how to comply with those requirements. MK pointed out that this would not cover things such as training requirements. PD confirmed that the Directive is aimed at protecting the economic behaviour of the consumer. It would be for the supplier to decide in individual cases whether particular information was material and whether it would affect the consumer's decision.

PD highlighted that there are exemptions to maximum harmonisation under the Directive. The Directive is without prejudice to authorisation regimes and conditions that are attached to authorisation regimes, and is without prejudice to contract law. Therefore, Ofgem could still have conditions requiring pre-contractual information. Contract law matters will continue to be covered by the Unfair Terms in Consumer Contracts Regulations.

PD generally mentioned that the Directive only covers those matters which affect or have the potential to affect the economic behaviour of consumers. He also mentioned that the Directive is generally drafted in a negative way covering those issues that a trader should not do, rather than imposing positive obligations.

MK queried whether, in relation to criminal sanctions, the DTI were looking at which bodies can impose criminal sanctions. PD stated that initial thoughts were that the current status quo would remain, whereby criminal sanctions rest with trading standards departments, but they would consider comments made in response to the consultation.

PD also stated that class action issues are being dealt with separately by the DTI and that this Directive only gives rights to individual consumers to pursue redress. RB stated that these rights of redress were in any event very limited since enforcement powers would continue to reside with the usual legal authorities and not with individual consumers.

There was a desire within the group to discuss the issues further and PD advised that he was happy to meet with suppliers on an individual or group basis and urged people to contact him using the details provided in the presentation. It was also agreed that the details of the presentation and subsequent discussion should be made available to the Duty to Supply, Contracts and Information workgroup.

3. Updates from Workgroups

Ofgem provided updates on the progress of the workgroups.

3.1 Vulnerable Customers and Codes of Practice (VCCOP)

MK provided the update. The discussion at the most recent meeting had focussed on the structure of the regime going forward and the first stage consultation document which is planned for publication at the end of February. Concern was raised by a number of members of the Steering Group about whether all the issues will have been considered sufficiently before this consultation, and why a consultation is needed for this group only at this stage. MK replied that the additional consultation was considered necessary to engage with the broader range of stakeholders representing vulnerable groups who had not been able to attend the workgroup. In addition it was considered necessary to seek views on the fundamental structure of the obligations moving forward, and on the overlaps with the Disability Discrimination Act. RB stated that the group had not yet exhausted its efforts to achieve a broad consensus and certain issues such as energy efficiency had not even been discussed yet. MK replied that there was a degree of consensus on a number of core licence obligations, highlighted in GK's paper prepared on behalf of suppliers. MK added that a key question was on the appropriate structure of other obligations which the consultation would seek views on. DS suggested that the problem was on of timing and that if the first stage consultation is done at a later time then it could be done on the basis of firmer views. A number of options were considered including having a shorter consultation period to allow the consultation document to be published later and holding a number of VCCOP meetings closer together to allow more meetings to take place before the consultation is published. Ofgem agreed to give consideration to these options and update the group on its planned timetable for consulting on the VCCOP issues.

Action: Ofgem

MK noted that the last VCCOP meeting had also reviewed the issues of payment methods and security deposits that had been handed over from the Duty to Supply, Contracts and Information workgroup. TM pointed out that the prevalence of PPMs and security deposits may be affected by the outcome of the debt blocking study being sponsored by Ofgem.

3.2 Duty to Supply, Contracts and Information

The group had previously reviewed a draft impact assessment on the duty to supply issues. energywatch had provided feedback. Feedback had been promised from some suppliers a couple of weeks before the next meeting on 9 February.

At the 12 January meeting there was an initial discussion in relation to contract obligations in relation to whether supply should be taken through a contract, what form the contract should taken, what information needed to be provided to the customer, and supplier behaviour in relation to the contract, for example on objections.

Ofgem confirmed that an invitation to tender had been sent out in relation to an independent piece of research on the merits of debt blocking. There was a discussion about the Terms of Reference ('ToR') within the ITT and some specific concerns were raised. DS stated that there is extreme concern regarding the ToR which he felt contained emotive statements which were in some cases incorrect. He stated that the terms of reference should have been written to promote a balanced outcome and that the drafting pointed to the outcome being pre-judged.

He asked Ofgem to consider whether this was the right basis upon which the work to be done. This view was generally supported by suppliers. CP was concerned about the scope of the study, stating that some areas are quite generic and some quite specific and that energywatch would be writing to Ofgem with comments and asking whether it is too late for amendments to be made. Other members of the group raised concerns about the tone of the wording in the ToR and about the questions asked. RB said that the ToR, on which suppliers had not been consulted, were so tendentious that nobody would be able to place any value on the conclusions of a study based on them. It was also pointed out that debt objections had been debated at length in the industry as part of a number of previous areas of work. ST questioned whether the ToR had taken into account the SOHN report. Other suppliers suggested that assertions in the ToR contradicted Ofgem's views as set out in the response to the billing super-complaint.

NN said that the aim is to try and balance whether regulation is a better tool for protecting customers than competition. The ability for a supplier to prevent a customer switching to another supplier removed the protection of competition for that customer at that point of time. Therefore the circumstance in which objections can be made and the regulation of their use was significant in the assessment of the SLR. Ofgem remained committed to conducting this piece of independent research. This would inform Ofgem's view on whether the current debt blocking arrangements operated to the advantage or disadvantage of customers. NN said that suppliers and energywatch would be invited to become involved in briefing the consultants and in reviewing the outcome of their research.

Suppliers [would consider what action to take with regard to the planned study.](#)

3.3 Industry Codes

The group noted the written report on the workgroup's progress. The next meeting is on 17 February 2006.

3.4 Metering

NN advised that a consultation document on innovative metering was due to be issued at the beginning of February. The group had so far considered the two-year inspection/read requirements and the requirements in the licence to provide meters. The group had not yet addressed a number of issues (for example, rights of entry) in any detail.

DS advised that an ERA/ENA paper on theft was due to be issued to the rest of the industry shortly for review. RB advised that Gerald Jago had been asked to present findings on this paper at the next meeting.

RB stated that he felt that the Metering workgroup is struggling in relation to the other workgroups. The original structure of the group was that it would be half of a two part group along with Section B issues, which has not yet started. He felt that the Metering workgroup is the only workgroup where the parameters are in considerable flux. In view of the fact that Ofgem is about to launch a consultation on smart metering, and in view of the ongoing HSE investigation on safety in the gas market and various Competition Act investigations, RB asked whether it would be appropriate to delay further metering discussions for a couple of months and concentrate instead on other Section B issues such as supplier of last resort.

NN stated that some useful exploratory work regarding two-year meter inspections had taken place. He agreed that it would be sensible to cancel the February meeting but that work on some issues will still need to continue in the background, for example the proposed meeting between Ofgem and the HSE (mentioned above) on the requirement for the two-year meter inspection.

The Steering Group agreed that the work of the Metering workgroup should be suspended for two months and that, meanwhile, work on other Part B issues should be commenced forthwith.

4. SLR timetable update

AW circulated an updated timetable and a schedule showing the work of the workgroups to date and planned discussions for future meetings. The revised timetable included details of forthcoming meetings for the new Section B and Section D issues workgroups.

A concern was raised about whether Ofgem has the resources to meet the increased number of meetings. AW confirmed that Ofgem would need to keep the timetable under review.

There were discussions about the scheduled work for some of the workgroups in particular in the light of other discussion today and Ofgem agreed to update the schedule and re-circulate it to the Steering Group and workgroups.

Action: Ofgem

5. Issues register

Outstanding issues on the issues register were discussed. In light of the discussions it was agreed that Ofgem will update the issues register and circulate it prior to the next Steering Group meeting.

Action: Ofgem

6. Any other business

A clash with another industry meeting taking place on the proposed date of the next scheduled meeting of the Steering Group was noted. It was therefore agreed that the Steering Group meeting will be put back a week. The date of the next meeting will be 1 March 2006.