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28 January 2008

Your Ref: Ofgem doc 286/07

Dear Nigel

### **Regulation of marketing to domestic customers: open letter consultation**

energywatch welcomes the opportunity to respond to the issues raised in the open letter. This response is non-confidential and we are happy for it to be published on the Ofgem website.

#### **General comments**

It is an accepted fact that consumers are entitled to protection when purchasing goods or services. This protection must exist across the full range of channels open to sellers so that both they and their customers can conduct sales in an appropriate way. Although general consumer protection law exists and may, by some, be deemed sufficient for certain products or services, consumers of energy services have required additional sector-specific protection since market liberalisation. This additional protection has been and still is required because of unique differences between the purchase of energy and other products. In particular: the complexity of the pricing arrangements; the difficulties that exist in the ability of some to compare prices or indeed access the best deals in the market; the ability of the seller to prevent the consumer from switching in certain circumstances; and because of the social dimension that exists within the regulatory arena.

Ofgem's current belief is that it is appropriate to cease the application of standard licence condition 25 (SLC 25) of the supply licences (for face-to-face marketing transactions between energy consumers and suppliers) by setting a new termination date for the obligation of 31 March 2009. This belief is based on the view that existing self regulatory schemes will be complemented by new regulations due to be introduced before that date and thus provide additional protection to energy consumers. Ofgem also feels that the removal of SLC 25 can be regarded as a further extension of better regulation.

energywatch agrees that these new regulations are welcome and may over time enhance the protection that energy consumers ought to enjoy. However, until an appropriate period of time has lapsed in which to judge the impact of these new forms of protection, and whether they complement one another in providing effective protection to domestic energy consumers, it would be premature to

remove the licence obligation. We would also question why better regulation necessitates the removal of the obligation. The mere existence of an obligation does not disproportionately create a burden on a supplier unless there is clear duplication of this obligation with another. It is not clear from the letter where this duplication may arise.

### **energywatch statistics on direct marketing**

We note the reference to the number of direct selling complaints to energywatch between July and September 2007 and the comparison with switching statistics. First, the statistics have undergone no seasonal adjustment by Ofgem, and second, it is unclear whether the reference to numbers of energy consumers switching in that period relates to the number of switching transactions or to actual consumer households switching. It would be helpful to know whether those who are switching are not being counted more than once if the former is the case.

It is also important to note that complaints to energywatch do not provide the definitive picture of consumer behaviour or level of satisfaction in the market. What steps has Ofgem taken to understand the level of complaints received by and dealt with by the suppliers themselves? Surely this provides a much more informative picture about the scale of the issue and whether removing the application of SLC 25 is justified?

Ofgem must satisfy itself that it understands the behaviour of and satisfaction levels of consumers who become involved in sales over the telephone or on the internet. Traditionally, energywatch has not recorded complaints of this nature primarily because the focus was on doorstep sales which were prevalent in the market but of course times change and consumers are now being sold to in different ways. In many cases of telephone sales, consumers have no idea who is contacting them until a long way into the conversation, so may be unsure about whom to complain if they are dissatisfied with the level of service during the call. Many consumers find it easier to terminate a telephone call than to close the door on a salesperson but that does not mean that their level of dissatisfaction is any less or that they are likely to engage more in the market in the future. The same principle would apply to internet sales where a consumer may believe they are signing up for one thing but actually find themselves signed up for another – whilst they can stop the transaction a little easier they may become more reluctant to engage with the market and so eventually stagnation will increase and the market will not work in the way that Ofgem intends. It is, therefore, particularly important that Ofgem focuses on what is becoming the two most important sales channels for use by suppliers and for many consumers and provides protection for consumers until there is clear evidence that consumers are not being disadvantaged.

As energywatch moves towards closure, we have been keen for consumers to become empowered and to take their complaints directly to suppliers. The reliance placed upon energywatch statistics on direct marketing should therefore be treated with caution. It is the overall level of complaints – to suppliers as well as to energywatch – that should be considered when determining whether the application of SLC25 to direct marketing is no longer required.

Ofgem will make an ultimate decision on removing the application of SLC 25 for face-to-face marketing early in 2009. Energywatch will have closed from October 2008 and so Ofgem must clarify on what evidence base (energywatch statistics will no longer be available) it will make that decision. It must be remembered that there will be at best only a few months' worth of data upon which to rely, however it is alternatively sourced.

### **The EnergySure Code and the role of the ESO**

We have seen little published evidence on the effectiveness of the EnergySure Code. Ofgem believes that it is transparent to domestic consumers. Is that the case? How well publicised is the Code? Is there research pointing to the levels of awareness amongst domestic consumers about the Code? What links are there on suppliers' websites to the Code for domestic consumers? Are there FAQs or some other easily accessible means for consumers to understand what the Code offers in terms of protection?

The Code is a voluntary arrangement. What happens if a supplier leaves the arrangement or fails to sign up to it? What sanctions are involved for breach of the Code and how would consumers become aware of a supplier who had sanctions placed upon them? Would consumers be aware of which suppliers are Code signatories at any particular time and how would that information be conveyed to them? There is a real risk that greater reliance on the Code may simply add to consumer confusion. There is no strong evidence provided by consumers that the Code has been effective for them.

Ofgem has noted that the ESO will be considering selling disputes from September 2007. Will the ESO's role complement that of other redress schemes once they are established or will the ESO's role pass to these new schemes? In either case, by the time Ofgem comes to reconsider whether SLC25 should be retained for direct marketing, there may only have been a short period in which to assess the effectiveness of alternative arrangements. It is essential that Ofgem allows more time to judge how effectively these alternative arrangements operate on behalf of domestic consumers before making this crucial decision.

Ofgem has yet to outline in detail the forms of redress schemes and complaint handling processes which will be established as energywatch closes. It is essential that these schemes are in place, are given sufficient time to bed in and are seen to be working and providing clear minimum benchmarks against which to assess suppliers' performance on direct marketing before other protections are removed. Will suppliers be expected to report on the number of complaints received, resolved, outstanding, etc. under any of the various schemes? If this is not the case, how will domestic consumers be able to judge whether these arrangements work for them by the time that Ofgem comes to decide whether to remove obligations under SLC25?

energywatch believes that Ofgem is making a premature judgement about not just how effective these new processes may be, even before they are firmly established, but also how they will dovetail with existing voluntary arrangements such as the

EnergySure Code and the expanded role of the ESO.

### **Other sales channels**

As discussed above, energywatch has concerns relating to SLC25 in relation to telesales and internet sales. Ofgem believes that the Distance Selling Regulations adequately cover these sales channels. Has the effectiveness of the Regulations been tested, and if so against which benchmark, for these sales channels? If the Regulations have not been effective, was it not premature to remove the application of SLC25 from these sales channels? energywatch would urge Ofgem not only to retain the existing protections under SLC 25 but also extend them to cover these two developing channels for selling.

Going forward, we will continue to keep these issues under review as and when they are raised, always considering the possible impact on consumers.

We would appreciate being kept informed of the progress of the consultation and any related issues to enable us to comment as the need arises.

If you do wish to discuss our response further please do not hesitate to contact me on 0191 2212072.

Yours sincerely

Carole Pitkeathley  
Head of Regulatory Affairs