

Neil Barnes  
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18<sup>th</sup> March 2009.

Dear Neil

**Legal & Regulatory**

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**Regulation of marketing to domestic customers.**

I am writing in response to your letter of 18<sup>th</sup> February 2009 in which you ask for views as to whether the marketing licence condition (MLC) should be retained for a further two years.

British Gas' view is largely unchanged from our response (dated the 24<sup>th</sup> January 2008) to your previous MLC consultation namely that we do not support an extension of the licence condition. Ofgem has been minded to extend the MLC on three separate occasions to date as it was "not sufficiently confident that self-regulation by the industry provided a viable alternative to maintaining obligations in the supply licence".

We understand that there may be a view that the conclusions of the recent Npower investigation demonstrates the need for the retention of MLC. We do not share this view. Whilst we understand your concerns having just concluded the investigation, even without the MLC, customers will continue to be protected by the continued development of the Energysure Code of Practice plus the subsequent introduction of the Consumer Protection from the Unfair Trading Regulations 2008. Indeed Ofgem also has powers under the Enterprise Act 2002. Therefore the MLC does not need to be extended again.

The consumer is now protected by a raft of licence and consumer protection regulations. In particular, the new Consumer Protection from Unfair Trading Regulations introduces a general prohibition on traders not to treat consumers unfairly whilst placing an obligation on business not to mislead consumers through acts or omission; or subject them to aggressive commercial practices such as high pressure selling techniques. This ensures that suppliers must provide consumers with fair and accurate information at the point of sale. In addition, the Regulations provide additional protections for vulnerable consumers in all markets (not just energy), and as such addresses one of the key areas of concern identified in the Energy Supply Probe.

Guidance on the UK Regulations (May 2008) implementing the Unfair Commercial Practice Directive, published by OFT and BERR indicates that appointed Enforcers (of which the Gas and Electricity Markets Authority are designated Part 8 Enforcers by a Statutory Instrument) can use a number of tools to ensure businesses are complying with CPR. These include both civil and criminal action of which imprisonment and/or an unlimited fine is a method of enforcement. On this basis,

Ofgem still retain considerable powers to take action, but under the powers afforded to them under CPR rather than under licence.

Ofgem were minded around 12 months ago to produce their own guidance to support the new Regulations. We believe this guidance is important. If Ofgem has decided this guidance is no longer a priority, it should explain its reason

It is nevertheless clear from your letter and from the proposals in the Probe report that Ofgem are clearly minded to keep the licence condition until March 2011. In addition, your letter confirms your intention to modify the licence conditions during this period as a result of the remedies proposed as part of the Probe so as such, the question as to whether to retain the condition appears to us to be a foregone conclusion. The question going forward is to what extent the licence conditions will change and what benefits will such changes deliver to all consumers.

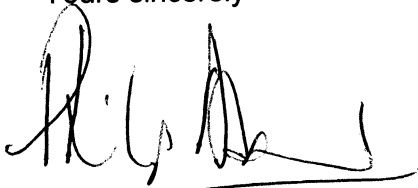
What should be avoided is overly intrusive regulations, which simply leads to less field sales as a result, denying options to customers who value this route to market and restricting the likely development of field sales as a key channel for the take-up of energy services and more bundled propositions.

Doorstep selling continues to play a significant part in encouraging customers to switch suppliers and we remain committed to supporting and developing this sales channel further. We are happy to explore with Ofgem further ways of creating better informed customers and indeed in our response to the Probe's initial findings we put forward a number of solutions, such as utilising industry AQ and EAC data as a best guide to help customers establish their own consumption, for price comparison and energy efficiency purposes.

We believe that this sort of approach is the best way forward to improve confidence in field sales.

Please feel free to contact me in relation to any element of this response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Philip Arend', with a horizontal line underneath the signature.

Philip Arend  
Senior Regulatory Manager.