

To: Neil Barnes,
Ofgem,
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London,
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neil.barnes@ofgem.gov.uk

18 March 2009

Dear Neil,

ERA response to Ofgem's regulation of marketing to domestic customers

The Energy Retail Association (ERA), formed in 2003, represents electricity and gas suppliers in the domestic market in Great Britain. All the main energy suppliers operating in the residential market in Great Britain are members of the association - British Gas, EDF Energy, npower, E.ON, ScottishPower, and Scottish and Southern Energy.

We welcome the opportunity to offer comments on Ofgem's proposed regulation of marketing to domestic customers and would be happy to discuss any of the points made below in further detail with Ofgem if this is considered to be beneficial. This is a high level industry response and the ERA's members will also be providing individual responses.

EnergySure Code

Since 2002, when the Association of Energy Suppliers was created to address direct selling, there has been substantial and sustained improvement in the number of complaints against suppliers on the sale of energy contracts on the doorstep. The EnergySure Code ("The Code") ensures that standards are steadily rising, the number of complaints has fallen dramatically (see Appendix 1) and that consumers can have confidence in switching supplier in this way.

The sale of energy door-to-door is a vital element of informing customers who may not have considered switching supplier of their options. This is particularly the case for customers who do not have access to the internet and those on pre-payment meters.

In addition, the cost of supply is not the only benchmark of a competitive market place and reason why a customer may switch supplier. Depending on the customer's needs they may prefer to switch to a higher cost tariff, but one which brings additional benefits such as fixed price or additional environmental elements, or may switch due to the new supplier having enhanced customer service systems or innovative payment methods.

Maintaining the marketing licence condition

We have concerns that additional regulation will overlap existing licence conditions and the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). Ofgem is already working on guidance on CPRs application, and we are keen to work with Ofgem on this and find ways to assist customer protection and market improvement.

Nevertheless, it is important to remember that energy suppliers recognised a need for protecting customers and regulating doorstep sales. The EnergySure Code of Practice & Registration Scheme has assisted in bringing about substantial and sustained improvement in the performance of the members of the Association of Energy Suppliers in delivering its objective of improving consumer confidence in this form of selling. The Code has a very stringent framework of governance and is constantly maintained and developed so that it remains fit for purpose. History has shown that the Code Manager will act on any reports he may receive regarding mis-selling practices. These are fully investigated and changes are implemented within the company where necessary. In addition if Ofgem has needed to investigate a supplier, the Code Manager has undertaken an investigation and cooperatively passed on relevant information to Ofgem.

You may be interested to know that the Association has gone on to widen its initiatives to include campaigns like *Be Safe Be Sure*, aimed at assisting other agencies, such as Trading Standards, to combat doorstep crime and raising awareness of the public in how to protect themselves from rogue traders and distraction burglary. (Please see the attached leaflet.)

Ofgem should not lose sight of the government's effort to establish a better regulation framework hence any regulation that is likely to overlap with the well-established Code and the CPRs should be well thought through and designed so that it does not unnecessarily and disproportionately burden the market.

We note that Ofgem intends to consult on whether the marketing licence condition should be strengthened and, if so, how. We look forward to that consultation and will respond at that time.

We would welcome the opportunity to meet with Ofgem to discuss the EnergySure code further and better understand what additional measures Ofgem believes would reduce any unfair selling practises further.

Yours sincerely,

Frances Williamson
Head of Policy and External Relations
Energy Retail Association,

APPENDIX 1 – ASSOCIATION OF ENERGY SUPPLIERS

EnergySure Code of Practice & Registration Scheme

The main vehicles of the energy suppliers to encourage confidence in face to face marketing of energy supply have been the EnergySure Code of Practice (“The Code”) and the EnergySure Registration Scheme.

The Code is applicable the minute a person applies for a job to sell energy products on the doorstep, right through their entire working life cycle selling energy on behalf of a Member company. The Code guides the recruitment, training, ongoing monitoring and supervision, up until they leave the employ of a Member company and leave the scheme.

Every stage of their development and achievement of the required competence level is monitored and recorded in the EnergySure Register (“The Register”). The Register is now a substantial database of skilled sales agents past and present, as well as a register of those few who fail to maintain the required standards of competence and compliance with the Code.

The EnergySure Register:

- A comprehensive register of all Sales Agents since 2002.
- Searchable and available 24 hours.
- Records key information and personal data including photo and other ID information.
- Allows members to see records of individuals irrespective of their current employer.
- Updated daily and often within hours of a significant status change.

Code Governance

The operations of the Association and the Code are directed through the Association's Board of Directors which is responsible for Code development and management. There are seven members of the Board, six of which are nominated by the ERA Member companies and the Chairman, who also holds the post of Chief Executive of the ERA.

The Code Manager retains day to day supervision of Member compliance, carries out performance reviews and investigates alleged Code Breaches. The Code Manager reports directly to the Chairman of the Association of Energy Suppliers and acts independently of all Members in operating the Code, putting into place monitoring procedures regarding Member performance, ensuring corrective action where agreed performance standards are not met and setting sanctions consistent with the Code.

The Code Panel is chaired by Lord Dubs and retains the overview of operational performance. It will also hear appeals from Code Members against decisions taken by the Code Manager, and will also oversee the operation of the Code, putting forward recommendations to the Association and the Code Manager.

The Code also benefits from a Code Auditor and Deloitte was appointed to serve that role in 2007. The firm carries out an annual audit of individual Member's compliance with the Code. This audit involves visiting each Member's operations and carrying out sample testing of the systems and controls that a Member has in place to enable compliance with the Code.

Code Review

The Code was subject to a substantial review during 2008 to ensure it remained fit for purpose. The results of the review confirmed its purpose and allowed additional methods of contract completion specifically the inclusion of verbal contract processing. As technology and the environment changes, the Code must be able to respond to further opportunities to develop and embrace these changes. Consumer behaviour and expectations are also changing and the challenges that this brings are being met by suppliers.

The EnergySure Code of Practice will continue to develop and adapt so that it may continue to deliver its objective of providing consumer confidence in face to face marketing of Energy Supply, and the Board maintain an open door to additional changes which are in the interest of improving consumer satisfaction.

Be Safe Be Sure

The Association of Energy Suppliers launched the Be Safe Be Sure campaign to support local authorities in early 2008 to fight the scourge of rogue traders, distraction burglars and other doorstep criminal activity.

It has resulted in tens of thousands of leaflets being distributed to elderly residents and vulnerable members of the community through local authorities and local trading standards.

Its simple message was developed with a number of enforcement agencies to get its target audience to take precautions to prevent criminal activity and keep such vulnerable members of society included when many initiatives simply exclude to protect.

Members have engaged extensively with Local Trading Standards Officers during 2007/8 and this has successfully raised the profile and awareness of EnergySure accredited Sales Agents and the standards that EnergySure accreditation represents.

Performance to Date

The activities of the Association of Energy Suppliers have ensured that standards are steadily and substantially rising – which can also be exhibited via the falling number of complaints regarding direct selling (see Fig.1 below)

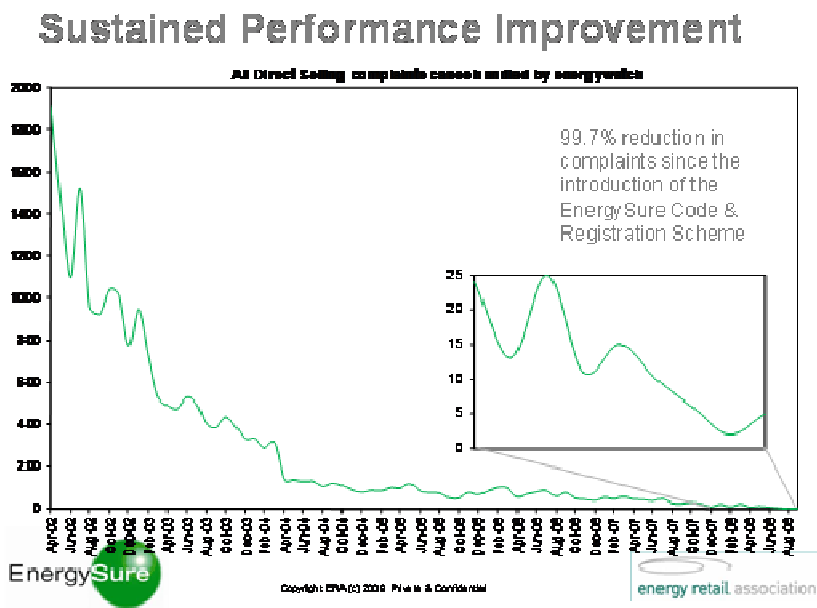


Figure 1