



*Promoting choice and value for
all gas and electricity customers*

Holders of Gas Supply, Electricity
Supply licence, consumers and
their representatives and other
interested parties

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Dear Colleagues

Guidance on the marketing licence condition - Standard Licence Condition 25

1.1 This guidance¹ is intended to provide holders of gas and electricity domestic supply licences (suppliers) with greater clarity on certain requirements of Standard Licence Condition 25 (SLC 25), which governs sales and marketing practices.

Background

1.2 The Energy Supply Probe report highlighted that over half of customer switching takes place in response to direct sales activity. Consequently, one of the remedies emanating from the Probe was to make amendments to the SLC 25 of the domestic supply licence with a view to improve the conduct of sales and marketing activities by suppliers through the following measures-

- (a) ensuring that information provided is fair, clear and not misleading, and sales activities are conducted in an appropriate and professional manner;
- (b) providing each consumer prior to any sale with a written estimate expressed in cost per year in pounds and, in certain circumstances, a written comparison with the consumer's current deal;
- (c) providing additional information at or shortly after the point of sale.

1.3 The general requirements ensuring that telephone and face-to-face sales practices are not misleading came into force on 21 October 2009 and the provision for written estimates during face-to-face sales visits came into effect on 18 January 2010. These measures are designed to help address misleading sales and marketing practices by suppliers and to improve the information available to the potential customer while making a switching decision.

1.4 It has come to our attention that suppliers may not be conducting due diligence while executing some of the new provisions of SLC 25. Therefore, we have decided to issue this guidance to help clarify certain issues.

¹ This guidance is being published pursuant to section 35(1) of the Gas Act 1986 and section 48(1) of the Electricity Act 1989.

Ofgem's views

Use of data on consumption and charges in estimates and comparisons (Reference-paragraphs 6, 7 and 8 of SLC 25)

1.5 Following reports from various sources, we have concerns with the approach some suppliers may be taking when providing estimates and/or comparisons.

1.6 In Ofgem's view it is already fully clear from the relevant provisions of SLC 25² that a supplier must always seek to base any estimate or comparison on a customer's actual consumption or actual charges if this information is available. Therefore, the supplier should always seek the relevant information for example bills and/or annual statements³ in the first instance. Alternative means to estimate a consumer's consumption or likely actual charges should only be used if suitable actual consumption and/or actual charges information is not available.

1.7 In circumstances where customers are genuinely unable (or, where applicable, unwilling) to provide the relevant information, Ofgem wishes to make clear that the requirements for a supplier to provide a "best estimate"⁴ would not be satisfied purely on the basis of pre-formulated information that fails to take into account relevant customer characteristics, such as, the age and size of the premises, the number and type of electrical or gas appliances, and the number of occupants⁵.

Requests for further guidance or clarification

1.8 Given the history of the marketing licence condition and the extensive consultation exercises previously carried out (e.g. during the Probe), Ofgem firmly takes the view that suppliers should already be fully aware of, and fully capable of understanding, the spirit and letter of the obligations contained in SLC 25. In the absence of exceptional circumstances or compelling evidence of genuine uncertainty, Ofgem is unlikely to consider it appropriate to provide any additional clarification on SLC 25. It remains the responsibility of suppliers to ensure compliance with all licence conditions and relevant provisions of consumer protection law.

Yours sincerely

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² i.e. paragraphs 6, 7 and 8 of SLC 25.

³ As part of the Probe remedies, amendments were made to SLC 31A in order to require suppliers to provide annual statements to customers which, amongst other things, include (where applicable) details of consumption for the previous 12 months of supply and an illustrated projection of charges for the forthcoming 12 months. The amended version of SLC 31A comes into force on 1 July 2010.

⁴ The relevant obligations are summarised as follows:

- paragraph 6 of SLC 25: where a domestic pre-payment customer is unable or unwilling to provide details of their current gas and/or electricity charges the supplier is required to "...base any comparison...on its best estimate of [charges for gas/electricity] having regard to any relevant information that is available to the licensee at the time the comparison is prepared."
- paragraph 7 of SLC 25: where a domestic customer's "...annual consumption is not known to, and cannot be reasonably be ascertained by, the licensee" an estimate must be "...based on the licensee's best estimate of the relevant Domestic Customer's annual consumption having regard to any relevant information that is available to the licensee at the time the estimate is prepared".
- Paragraph 8 of SLC 25: where a supplier has indicated that lower charges will be payable by a domestic customer, the supplier is required to provide an estimate which is either "...based on the relevant Domestic Customer's actual consumption or the licensee's best estimate of that consumption".

⁵ For the avoidance of doubt these examples are intended to be illustrative and non-exhaustive.

Associated Documents

- 1) Standard Conditions of the gas supply licence
<http://epr.ofgem.gov.uk/index.php?pk=folder97276>
- 2) Standard conditions of the electricity supply licence
<http://epr.ofgem.gov.uk/index.php?pk=folder97275>
- 3) OFT's guidance on the Consumer Protection from Unfair Trading Regulations 2008
http://www.ofg.gov.uk/shared_ofg/business_leaflets/cpregs/oft1008.pdf