

# **Decision of the Gas and Electricity Markets Authority following an investigation into compliance by EDF Energy with obligations under Regulation 4(1) of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008**

## **1. Introduction**

- 1.1. Following an investigation, the Gas and Electricity Markets Authority ("the Authority") has found EDF Energy Customers Plc, Seeboard Energy Limited, SWEB Energy Limited, Seeboard Energy Gas Limited and Southern Gas Limited (hereafter collectively referred to as "EDFE") in breach of obligations under Regulation 4(1) of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (the "CHSR").
- 1.2. This document describes the nature of the breach, the background, and the Authority's view on follow-up action.

## **2. The breach**

- 2.1. The breach relates to the obligation in Regulation 4(1) (Annex 1) for the regulated provider to record in written electronic format the details of every complaint received, irrespective of whether such complaint is immediately resolved or not.
- 2.2. On reviewing the monthly complaints returns from all suppliers (received via Consumer Focus or directly) from October 2008 to December 2008, Ofgem noted the total number of complaints recorded was significantly lower for EDFE when compared with other suppliers.
- 2.3. In January 2009, Ofgem queried the findings at that point with EDFE to determine whether EDFE's numbers were accurate. In the months immediately following, the number of complaints recorded by EDFE began to rise and, from April 2009, came into line with the average numbers being recorded by the other suppliers. The Authority is satisfied that EDFE has breached Regulation 4(1) between October 2008 and March 2009.

## **3. Background**

- 3.1. The CHSR were made on 16 July 2008 following extensive consultation and came into force on 1 October 2008 as part of the new arrangements for consumer representation. These arrangements introduced a fundamental package of reforms including the requirement for suppliers to establish in-house systems, processes and procedures to receive and record all complaints in relation to their customers.
- 3.2. Compliance with the Regulations constitutes a legal requirement for energy suppliers. The consequences of non-compliance have a number of knock-on effects in relation to the proper operation of the CHSR as a whole and the management of consumer complaints under them.
- 3.3. On reviewing the monthly complaints returns from all suppliers (received via Consumer Focus or directly) from October 2008 to December 2008, Ofgem noted the total number of complaints recorded was significantly lower for EDFE when compared with other suppliers. This was borne out further when reviewing the numbers for the first six months of the operation of the CHSR as is shown in the table below, published by Ofgem<sup>1</sup> on 12 August 2009:

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<sup>1</sup> Complaints handling: audit, research and performance. The document is about the audit and research Ofgem undertook to ensure that energy companies had properly put the new complaint standards in place.

<b>Complaints received October 2008 - March 2009</b>	<b>Number per 100,000 customers</b>
British Gas <sup>2</sup>	9,819
EDFE	1,300
EON	3,425
Npower	2,715
SSE	2,609
Scottish Power	3,368
TOTAL	5,015

3.4. In January 2009, Ofgem queried the findings at that point with EDFE to determine whether EDFE's numbers were accurate. In the months immediately following, the number of complaints recorded by EDFE did begin to rise and to come into line with the average numbers being recorded by the other suppliers. The numbers appeared to stabilise in line with those of other suppliers from April 2009.

#### **4. Ofgem's investigation of EDFE**

4.1. After examining the monthly complaints returns submitted by EDFE for the first six months, Ofgem decided to open a formal investigation to consider whether EDFE had breached its obligations under the CHSR, specifically its obligation under Regulation 4(1).

4.2. Ofgem asked EDFE to provide information on:

- processes, procedures, and systems in place to ensure that, upon receipt of a complaint, it was appropriately recorded in accordance with Regulation 4(1);
- training/procedures adopted to ensure that all customer service advisors understood the meaning of a complaint as defined in the CHSR and on the use of its complaints processes, procedures, and systems;
- monitoring and quality assurance arrangements;
- steps EDFE had taken to address the issue;
- the methodology used to determine the resource requirements for complaints handling;
- the possible cause of the considerably low level of recorded complaints; and
- the assessment that senior management had made of the implementation of the Regulations.

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<sup>2</sup> British Gas Trading records all contacts not just complaints – which are reflected in the size of its recording figures relative to other suppliers.

## EDFE's Response

4.3. Whilst EDFE recognised the need for a comprehensive training programme and installed a new complaints handling system to ensure compliance with the CHSR, it is not clear whether as designed and delivered EDFE's programme was capable of delivering compliance from the time the obligations came into force in October 2008.

4.4. Upon learning of the low level of complaints it was recording, in January 2009, EDFE introduced a number of changes to manage implementation of the CHSR including:

- team Manager Briefings;
- formalisation of Super User and Regional Champions – support function for all customer facing staff;
- reconfiguration of operational management reporting;
- review of Quality Assurance;
- senior Management Communications; and
- review of training materials.

4.5. These changes were rolled out from February 2009. The monthly complaints returns submitted by EDFE for February onwards show that these changes led to an increase in the number of complaints recorded by EDFE and complaints are now at similar levels to the other suppliers.

4.6. EDFE also acknowledged that the level of complaints it initially recorded under the CHSR regime could not be fully relied upon as being representative of the number of complaints received.

## 5. The Authority's Decision

The Authority's decision on whether a breach of the Regulations occurred

5.1. Regulation 4(1) requires regulated providers to record in written electronic format the details of every complaint received, irrespective of whether such complaint is immediately resolved or not. The obligation is absolute and not qualified by "reasonable endeavours" or any equivalent concept.

5.2. Compliance with the CHSR constitutes a legal requirement upon EDFE. The Authority takes compliance with the regulations very seriously.

5.3. Non-recording of complaints under Regulation 4(1) and so subsequently under Regulation 4(2) and 4(6) where relevant means there will be no clear audit trail of these complaints and their resolution. This will inevitably increase the burden on the complaining consumer if they need to contact EDFE again.

5.4. Non-recording under Regulation 4(1) and subsequently under Regulation 5 where relevant has had an impact on the reporting obligations under the CHSR and the use that can be made of such reports.

5.5. Accurate reporting under the CHSR would allow consumers properly to make a comparative assessment of EDFE's performance against other suppliers. This has not been possible for the year 2008-09 for EDFE since, as EDFE has noted on its website, it cannot be certain of the actual number of complaints it has received.

- 5.6. If any of the unrecorded complaints were serious enough to warrant the need to go to the Energy Ombudsman - the right to which arises eight weeks after a complaint is first made if it remains unresolved - it will not be clear from which point this entitlement should take effect.
- 5.7. From a management perspective, accurate recording of complaints provides suppliers with a more accurate picture of the areas where they need to improve with respect to customer management.
- 5.8. The Authority considers that EDFE has breached Regulation 4(1) between October 2008 and March 2009, for the following reasons:
- over this period EDFE recorded a significantly lower number of complaints compared to other suppliers with a similar market share;
  - following contact about this issue by Ofgem in January 2009 and following the introduction of a number of changes to internal procedures and communications thereafter by EDFE, a material increase in the number of complaints was recorded;
  - the Authority considers this would not have been the case had EDFE's initial complaint recording numbers been accurate; and
  - the Authority notes that EDFE has acknowledged that the level of recorded complaints cannot be fully relied upon as being representative of the number of complaints received in that period.

**5.9. The Authority therefore finds that EDFE breached Regulation 4(1), during the period between October 2008 and March 2009.**

- 5.10. In deciding whether it is appropriate to impose a penalty, the Authority is required to take full account of the particular facts and circumstances of the contravention under consideration together with its published guidelines.<sup>3</sup>
- 5.11. The Authority considers that a failure to record complaints correctly at the outset inevitably affects the operation of the CHSR, which are designed to improve the customer service offered by energy suppliers. The Authority had made clear its expectation that suppliers would take compliance with these regulations seriously. It does not consider the breach to be trivial or that the Authority's duties preclude a penalty. Furthermore, although the Authority accepts that the breach was not deliberate, it considers that a licence holder should be aware of and plan sufficiently for the effective implementation of compliance training including any cultural dimension of any changes it has to make to its business and should monitor how effective the training proves to be in practice.
- 5.12. The Authority notes that EDFE has made payments to two consumer funds of a total of £200,000 to demonstrate its ongoing commitment to the CHSR and to its customers. This is in addition to payments the company would otherwise make to these funds. In all the circumstances of this case – taking into account the nature of the breach, EDFE's acceptance of the problem and the action taken by EDFE to resolve it, the Authority considers that these payments obviate the need for a financial penalty.

**Ofgem  
June 2010**

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<sup>3</sup> Statement of Policy with respect to Financial Penalties - <http://www.ofgem.gov.uk/About%20us/Documents1/Utilities%20Act%20-%20Statement%20of%20policy%20with%20respect%20to%20financial%20penalties.pdf> .