

31 January 2011

By email: Ljuban Milcevic
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Dear Ljuban,

Consumer Focus response to Ofgem consultation on classification of premises for the purposes of the standard conditions of the gas supply licence

How should the definitions of a Domestic Customer and/or Domestic Premises be amended within the SLCs to clarify the position that in certain circumstances, a supply of gas to legal entity acting on behalf of individual residents is a supply to Domestic Premises and to a Domestic Customer?

We are extremely glad that Ofgem has taken up this issue as cases involving clearly domestic (in the 'real world' sense) consumers of both gas and electricity being denied a domestic supply contract have been matters of concern for us for some time. Given this, we do not understand why Ofgem is not considering cases involving electricity supply as well as gas. In our experience the same definitional issues arise with electricity as for gas in residential blocks and similar properties. Ofgem may be missing a chance to sort out both issues once and for all. Indeed in the blocks in question electricity is likely to be more prevalent than gas, both in individual flats and also for key communal facilities such as lighting and lifts. There are clear health and safety issues involved with disconnecting electricity supply to communal facilities that need to be resolved, and such examples are not uncommon.

Regardless, the purpose of changing the licence conditions is for Ofgem to send a clear signal to suppliers who, we know from discussions with us, are keen to have clarification on offering domestic contracts in 'unconventional' supply situations. Suppliers and the regulator need to recognise that not every consumer has an individual meter and lives in a discreet dwelling that is clearly domestic. Sometimes there are more unusual supply setups. Indeed this seems to be partly the reason that the maximum volume limit was removed from licence conditions; it is not fair for suppliers to decide who is domestic on measures such as volume alone when the end need is the same. The cases that we have been involved in, such as industrial buildings converted into blocks of flats, only differ from standard domestic demand patterns in terms of overall volume consumed.

The overriding principle behind domestic status in our view is that of the end user (either in heat or fuel) rather than the purchaser of energy at meter point. This should be easy to establish should individual cases prove difficult; for example suppliers might ask to see evidence of whether the premises pays business rates or the status of buildings held by the Land Registry or other official bodies.

There should then be no doubt as to the status of the residents in the building and consequently of their right to a domestic supply contract. Commentary should be produced alongside the revised conditions so as to make things clear to suppliers.

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Hence to establish this end-user idea in the licence conditions may require an additional sentence in Standard Licence Condition (SLC) 1 making it clear that the Domestic Premises in question is the individual dwelling(s) and not the entity that has the direct contractual relationship with the energy supplier.

The current Department of Energy and Climate Change (DECC) work on implementing the European Court of Justice's Leipzig airport directive may have connections to this issue. SLC 6 can then elaborate on the necessary not-for-profit nature of the relevant managing agent; the existing Maximum Resale Price regulations mitigate any over-charging to end-users already.

We do not think any licence condition can be drafted regarding the possibly bespoke nature of contracts supplied; again, separate guidance from Ofgem for suppliers would be more useful. We would be concerned should such bespoke arrangements end up with pricing levels similar to that of non-domestic supply contracts so some limitation should be established, even if informally. We further believe that the question of heat regulation should be considered, because of cases such as this and the likely prevalence in the near future of widespread district heating arrangements. It is important that someone regulates heat, whether or not that is Ofgem; as we have tried to stress above, the artificial distinction between heat and the fuel source is a spurious one to the ultimate consumers and the end-user principle must prevail. Ofgem guidance for managing agents in this area would be useful.

How should the obligations placed on suppliers in SLCs 22–32 change, if at all, where a supply of gas to a legal entity acting on behalf of a number of individual residents can, in certain circumstances, be a supply to Domestic Premises and to a Domestic Customer?

We do not think that there needs to be semantic changes to SLCs 22–32 if SLCs 1 and 6 are amended as we suggest above; the resulting changes impact on the later conditions as a natural consequence of extending and clarifying the definition of domestic. That is not to say that there will not be possible problems, but that the conditions are not the best place to describe mitigating strategies.

A good approach from Ofgem would be to encourage suppliers to see 'customer' as either the managing authority or the actual person respectively so as to follow the original spirit of the licence conditions. For example, gas safety obligations under SLC 26 are relevant to the relationship between the supplier and the agent, whereas anything referring to disadvantaged types of consumer clearly should be compared against the actual residents of such a block. The highlighted example of SLC 27 does not seem to be a change from the current situation, whereby if just one person judged to be vulnerable is in a dwelling, everyone else living in the same dwelling effectively free-rides on the ban on disconnection in winter. A block of flats in relation to one flat is the same situation albeit on a bigger scale.

It might be worth highlighting, in some future consultation, Ofgem's suggested changes so that stakeholders can comment on what the regulator may already be considering. However we are particularly keen to ensure that consumers receive the protections under SLC 26.

Yours sincerely,

Andrew Hallett
Policy Advocate