



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

Your Ref:
Our Ref:
Direct Dial: 020 7901 0527
Email: colin.sausman@ofgem.gov.uk

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Dear Colleague,

Marketing of energy supply to domestic customers by Third Party Intermediaries¹ (TPIs) – clarification of Standard Licence Condition (SLC) 25 of the gas and electricity supply licences

This letter seeks to clarify the operation of SLC25, which regulates face-to-face and telephone marketing and sales activities with domestic customers by licensed suppliers and their representatives, as it applies to certain TPI activities. This includes clarification of Ofgem's approach to enforcing SLC25 where suppliers and TPIs are engaging with customers as part of the government's "Big Energy Saving Week 2".

We clarify the following. First, there are some face to face TPI activities which are likely to fall outside the scope of SLC 25. These activities would appear to be most relevant to not-for-profit organisations that use publicly available information and have no financial interest in whether (or to whom) a customer switches. Second, we do not consider SLC25 to have the effect of prohibiting TPIs from engaging with customers face-to-face to offer 'across the market' comparisons – if appropriate systems and processes are in place. Further detail supporting these first two points of clarification is provided in the guidance referred to below.

Third, recognising that Big Energy Saving Week 2 is an opportunity to increase customer engagement in energy markets, we do not envisage taking enforcement action in respect of TPI activities undertaken specifically as part of Big Energy Saving Week 2 where TPIs and suppliers are making a genuine attempt to engage with customers in a fair, balanced and informed way in compliance with the objective in SLC 25, even if a breach of the detailed requirements of SLC 25 were to be perceived or alleged. This statement does not apply to TPI activities enduring beyond, or undertaken outside the scope of, Big Energy Saving Week 2.

To assist compliance with SLC 25 outside the scope of Big Energy Saving Week 2, Ofgem has provided more detailed guidance on the application of SLC 25 to face to face TPI activities, a copy of which is enclosed.

¹ For the purposes of this letter, a Third Party Intermediary is an organisation that intermediates on a non exclusive basis between a licensed electricity or gas supplier and a customer, e.g. a switching website. For the avoidance of doubt, this excludes agents who exclusively represent a single licensed supplier or corporate group.

This letter does not remove the need for suppliers and TPIs to satisfy themselves on their compliance with other applicable legal requirements such as consumer protection requirements.

Yours sincerely,

Colin Sausman

Partner, Retail Markets & Research

Guidance on the application of SLC 25 to Third Party Intermediaries²

Ofgem welcomes the role which Third Party Intermediaries (TPIs) can fulfil to increase customer engagement in the energy markets. To facilitate and encourage this, Ofgem is providing guidance on the application of SLC 25 to certain face to face activities which may be undertaken by TPIs. We encourage suppliers to engage actively and constructively with proposals by TPIs to engage in face to face activities – as part of their commitment to make energy markets simpler and easier for customers to navigate. This is intended as a general guide only and does not remove the need for licensees and TPIs to satisfy themselves on their compliance with SLC25 or other applicable legal requirements.

Standard Licence Condition 25

SLC 25 applies to all domestic supply licence holders and their Representatives in respect of face-to-face and telephone marketing and sales activities with domestic customers. One of the purposes of SLC 25 is to ensure that Domestic Customers are able to make well informed decisions when entering into Domestic Supply Contracts. SLC 25 sets out a general Objective which requires that information which such licensees and their Representatives provide to domestic customers in the course of their Marketing Activities or Telesales Activities is complete and accurate, is capable of being easily understood by Domestic Customers, does not relate to products which are inappropriate for the customer, does not mislead the customer and is otherwise fair both in terms of its content and in terms of how it is presented.

The general Objective also sets out standards of conduct for a supplier's (and its Representative's) Marketing and Telesales activities and for any contact with, or behaviour towards, a customer in the course of those activities. SLC 25 also contains more detailed requirements relating to Marketing Activities, for example as regards selection and training of Representatives, pre-contract obligations, obligation at the time of the contract and post-contract contacts.

Where TPIs may be involved in face-to-face and telephone marketing and sales activities with Domestic Customers, licensees will therefore need to consider whether SLC 25 is engaged. This will depend principally on: whether such TPIs are the licensee's Representative; and if so, whether such TPIs are engaged in Marketing Activities.³ These concepts are defined broadly to limit the potential for gaps or loopholes in the protection afforded to customers. Where the TPI is a Representative of the licensee and is engaged in Marketing Activities, the licensee will be responsible for ensuring that the TPI complies with the obligations in SLC 25.

"Representative"

The definition of "Representative" covers any person directly or indirectly authorised to represent the licence holder in its dealings with customers. Ofgem's general view is that in the context of SLC 25 this definition would capture a wide range of commercial relationships between a licensee and a person.

This would include any situation where a person obtains a financial (e.g. through the payment of commission) or non-financial benefit from a licensee through including the licensee's products on the list of products the person informs or advises on; or through making or causing or encouraging one or more Domestic customers to enter into a Domestic Supply Contract with the licensee. This would include situations where the licensee subsequently agrees to make a financial payment even where there was no pre-

² For the purposes of this letter, a Third Party Intermediary is an organisation that intermediates on a non exclusive basis between a licensed electricity or gas supplier and a customer, e.g. a switching website. For the avoidance of doubt, this excludes agents who exclusively represent a single licensed supplier or corporate group.

³ Telesales Activities are also defined in SLC 25. Whilst some of the commentary in this paper may be relevant to the application of SLC 25 to Telesales Activities, the intention of this note is to focus on Marketing Activities.

existing contractual relationship between the licensee and the person engaging in Marketing Activities at the time he engaged in those Marketing Activities.

Where no financial payment is made by the licence holder, other factors may point towards the licence holder having given direct or indirect authorisation. For the purposes of this definition, authorisation may be given directly or indirectly by the licensee prior to the person (the potential Representative) dealing with customers or by subsequent ratification by the licensee of previous dealings. Authorisation may include the licensee's provision to a person of bespoke material or information which is not generally available and which may be used for a particular purpose by that person (such as sales or marketing). It may also include arrangements or practices where a licensee expresses a willingness to give authorisation, or where a licensee indicates to a person that he may seek authorisation, for activities carried out which relate to the licensee. For example, this would include situations where processes exist for contracts to be submitted to a licensee, whether or not those contract are ultimately accepted.

"Marketing Activities"

"Marketing Activities" is defined in SLC 25 and "means any activities of the licensee, that:

- (a) take place with the simultaneous physical presence of the licensee or any Representative and a Domestic Customer; and
- (b) are directed at or incidental to identifying and communicating with Domestic customers for the purpose of promoting the licensee's Domestic Supply Contracts to them and includes entering into such contracts with such customers."

Ofgem's general view is that a broad range of activities involving the simultaneous physical presence of a licensee or Representative and a Domestic Customer are likely to be considered as "identifying and communicating with Domestic customers for the purpose of promoting the licensee's Domestic Supply Contracts to them" and hence would be captured by this definition. In particular, we would note that even if the Domestic Customer's agreement to enter into a Domestic Supply Contract is not given during the simultaneous physical presence of the licensee or Representative and the customer, but could occur later, (for example, during follow-up Telesales Activities or via the internet), the initial contact could fall within the definition of Marketing Activities.

It would not be necessary for such a follow-up actually to occur in connection with a particular Domestic Customer; it would only be necessary for it to be a possibility during the activities occurring with the simultaneous physical presence of the licensee or Representative and a Domestic Customer. For example, where face to face interactions between a Representative and a Domestic Customer involve discussions of the licensee's Domestic Supply Contracts and arrangements may be made during that interaction for a follow-up telephone call with a view to the Domestic Customer entering into a Domestic Supply Contract.

Ofgem would also note that a person may be a Representative of and engage in Marketing Activities on behalf of more than one licensee (whether those licensees are Affiliates of each other or not); the fact that a person is Representative of more than one licensee does not necessarily mean that its activities will fall outside of the definition of Marketing Activities. Similarly, the promotion or sales of other goods and services alongside promotion of a Domestic Sales Contract does not necessarily mean that the activities will fall outside of the definition of Marketing Activities.

Activities outside the scope of SLC25 as it relates to "Marketing Activities"

In light of the above, a person is unlikely to be considered as a Representative of a licensee engaging in Marketing Activities where all of the following circumstances apply:

- a) there is no possibility of a person obtaining a financial or non-financial benefit from a licensee through:
 - i. including the licensee's products on the list of products the person informs or advises on; or
 - ii. making or causing or encouraging one or more Domestic customers to enter into a Domestic Supply Contract with the licensee (which Ofgem notes would include any form of commission payment);
- b) there is no other commercial relationship between that person and the licensee; and
- c) no other arrangements or practices exist which would point towards authorisation (for example, there is no provision of bespoke materials or information by the licensee to that person) or subsequently result in authorisation (for example, arrangements are not made to facilitate the Domestic Customer entering into a Domestic Supply Contract by directing that customer to a website, email address, telephone number or by arranging for someone to conduct a form of follow-up contact with that customer).

If one (or more) of these circumstances is absent in respect of a person's activities, it does not necessarily mean that person will be a Representative of a licensee engaging in Marketing Activities; it means that the person and relevant licensees will be required to undertake a detailed assessment in light of the above guidance.

Activities within the scope of SLC25 as it relates to "Marketing Activities"

If activities by TPIs are captured by the scope of SLC 25 our current understanding is that compliance may be achieved through the design and adoption of appropriate systems and processes. This requires collaboration between energy suppliers and TPIs, and we encourage suppliers to engage actively and constructively – as part of their commitment to make energy markets simpler and easier for customers to navigate.

The following is a non-exhaustive list of areas requiring consideration in seeking to adopt appropriate systems and processes in respect of marketing activities undertaken by TPIs when acting as a representative of one or more licensed supplier:

- recruitment, training and ongoing supervision of staff;
- arrangements for reacting to and addressing the consequences of inappropriate behaviour by representatives;
- systems used for estimates and comparisons;
- information and document retention;
- rules as to when sales should not proceed; and
- monitoring information and associated review processes.