

RMR legal workshops - Information Remedies summary

Summary note of workshop on legal drafting of Information Remedies aspects of the final domestic Retail Market Review proposals.	Author	Ofgem
	Audience	Attendees of the RMR legal workshop on Information Remedies
	Date	13 May 2013

1. Attendees

Alun Rees – Energy UK	John Cooper – Utility Warehouse (PM)
Andrew Lindsay – Utility Warehouse (PM)	Louise Pearson - EON
Ann Neate - EDF	Malcolm Henschley– First Utility
Barry Coughlan – Ofgem	Maxine Frerk – Ofgem
Camilla Oakley – British Gas	Pamela Mowatt – Scottish Power
Dann Ohara - SSE	Patrick Whitehead - DECC
David Mannering - nPower	Paul Huffer – Ofgem
David Watson – British Gas	Roger Hutcheon - SSE
Elizabeth Garber - EDF	Ruben Pastor–Vicedo – Ofgem
Fariha Sikondari - Ofgem	Sarah Bradbury - Ofgem
Gillian Cooper – Consumer Focus	Sarah Cardell – Ofgem
Haren Thillainathan– Scottish Power	Stephen Veal – Utility Warehouse (AM)
Holly Tomlinson – Ecotricity	Steve Russell - EON
Jemma Baker – Ofgem	Victoria Volossov – Ofgem

2. Introduction

2.1. Maxine Frerk (Chair) introduced the workshop and presented its objectives:

- Explain legal drafting on RMR Information Remedies proposals.
- Seek suggestions for legal drafting improvements to achieve greater clarity and simplicity (in line with policy intent).

2.2. Jemma Baker presented a summary of the RMR Information Remedies proposals and the associated consultation responses.

2.3. Paul Huffer discussed the approach to legal drafting on the RMR Information Remedies proposals, which is focused on fully transposing the policy intent and avoiding loopholes.

3. Discussion 1: licence consolidation

Principles:

3.1. Participants recommended having separate licence conditions on overarching requirements, where these are substantial. Participants included in this category the Cheapest Tariff Message, the TCR and the plain and intelligible language requirements.

3.2. Participants expressed no concern about increasing the number of licence conditions if doing so creates more clarity.

3.3. Participants recommended being explicit about the specific aspect of an overarching requirement that changes for a particular licence condition, as a text that is almost identical to one previously used might be perceived to be the same.

3.4. Participants suggested that the licence conditions on information requirements are brought together under a specific section.

Cross-referencing:

3.5. Participants recommended avoiding cross-referencing to small bits of text (in the words of one participant, "make the flick worthwhile").

3.6. Participants recommended cross-referencing with licence condition name, not only number.

3.7. Participants had mixed views on whether the cross-referencing should go from specific licence conditions into licence conditions on overarching requirements or both ways: duplication of cross-referencing might help to check consistency.

Definitions:

3.8. Participants recommended making the current rule on definitions explicit (if a definition is used in more than one licence condition then it goes to SLC 1) and a participant suggested to do this in SLC 2. Ofgem noted that it is not the only organisation with power to amend licence conditions and so this change of existing approach might not be possible.

3.9. Participants had different views on how to treat definitions that are used in only one licence condition. The options suggested were:

- Include a note when the definitions appear saying that they are at the end of the licence condition.
- Bring the definitions to the beginning of the licence condition.
- Bring the definition to SLC 1 so that SLC 1 can be used as a dictionary.

Reviewing:

3.10. Participants found it useful to have proposed changes to licence conditions in tracked change mode and suggested that Ofgem tracks all changes made in response to consultation responses, including typos.

3.11. Participants found the visuals published with the RMR final proposals useful to understand licence conditions and suggested that visuals are kept up to date with proposed changes to licence conditions.

4. Discussion 2: licence simplification

Principles:

4.1. Participants thought that consolidating overarching requirements into separate licence conditions would assist in simplifying conditions.

4.2. Participants suggested labelling Schedules.

4.3. Participants recommended presenting definitions on calculations using mathematical formulas.

SLC 31A. Bills, statements of accounts and Annual Statements

4.4. Participants recommended grouping requirements by communication, with no preference as to whether this is done within SLC 31A or splitting it.

4.5. Participants noted that repetition in this licence condition would assist in doing checklist compliance and so it might warrant an exception to the principle that overarching requirements should be brought into separate licence conditions.

4.6. Participants requested a definition of statement of account.

SLC 23. Notification of Principal Terms

4.7. Participants thought that the problem was not so much the number of schedules but to identify which are the relevant ones in each instance. Labelling them would make this easier.

4.8. Participants suggested having a table of schedules at the end of SLC 23.

4.9. A participant pointed out that Schedule 4 did not provide sufficient flexibility for the display of the unit rates of time of use tariffs. Ofgem noted this point.

4.10. A participant pointed out that the display of charges exclusive of VAT was not consistent with other licence conditions. Ofgem noted this point.

5. Open questions

Definitions

5.1. A participant asked where the definition of 'Website' is. Ofgem answered that it is provided in SLC 1 and that as it is not a new definition it does not appear in the proposed changes to licence conditions.

5.2. A participant asked whether Ofgem could provide more clarity on the meaning of 'received' in relation to mailing of communications and suggested this should be 'mailed' or 'provided' for the avoidance of doubt. Ofgem noted this point.

5.3. A participant asked what the difference is in the definition of "Affiliate Licensee" and "[Gas/Electricity] Affiliate Licensee" in SLC 1. Ofgem clarified that "Affiliate Licensee" capture affiliates of both gas and electricity suppliers in the same corporate group and "[Gas/Electricity] Affiliate Licensee" only captures affiliates of a gas or electricity supplier within the same corporate group e.

5.4. A participant asked whether the removal of 'significant' in the criteria for triggering a unilateral variation notice implied the notice had to be provided for any change that was to the disadvantage of the customer, regardless of how small the change is. Ofgem clarified that this is the case and that this is in line with the provisions of the gas/electricity directives. Ofgem also referenced a recent European Court of Justice judgement (Case C-92/11) which is relevant to price increases notifications and the fairness of prices increases and unilateral variations.

Implementation timelines

5.5. A participant pointed out that that the rules on when the price increase notice and the unilateral variation notice are triggered come into force on day 1 of implementation but the rules regarding the communications come into force on March 31st 2014. Ofgem replied that an updated version of the implementation timetable with this point corrected is available on the Ofgem website.

5.6. A participant noted the implementation date for the requirement for contract terms and conditions to align with licence conditions is considered impracticable both due to it not allowing enough time as well as requiring staggered changes to a consumer's contract with administratively burdensome and less than ideal from a consumer experience perspective. Ofgem noted these points.

Cheapest Tariff message

5.7. A participant asked for the reasoning behind including payment method as a consideration in the definition of 'Relevant Cheapest Evergreen Tariff' and omitting it in 'Relevant Cheapest Tariff'. Ofgem clarified that this is due to the former being the default tariff that the customer would go to at the end of the fixed term contract if no action is taken, so payment method needs to be accounted for.

5.8. A participant asked whether the definition of meter type could be written in terms of the number of rates that the meter has, rather than listing all the possible meter types. Ofgem noted that it is considering a clarification to the definition taking into account the consultation responses to the domestic RMR final proposals and the discussions in the RMR legal workshops.

Tariff Information Label (TIL)

5.9. A participant asked for a clarification on the requirement in SLC 31B.7 that the TIL is provided for each tariff for which a representative provides information and suggested setting a minimum threshold of information exchange that triggers the requirement. Ofgem answered by noting the 'all reasonable steps' aspect of the requirement and clarified that the TIL can be provided verbally if appropriate (as is the case with principal terms).

5.10. A participant asked whether the payment method entry of the TIL can be filled with 'any' where tariffs are identical except for payment method, to avoid producing multiple TILs. Ofgem answered that this would not be acceptable as one of the purposes of the TIL is to inform existing customers of the characteristics of their tariffs and the wording 'any' would not achieve this purpose.

5.11. A participant asked how it is possible to make all the TILs available on websites by using address or postcode only and at the same time allow for filters to reduce the number of TILs that are displayed. Ofgem clarified that it expected the default position of the filters to be 'Show all' or related wording and noted that it would consider whether the drafting on filters could be made clearer.

5.12. A participant noted that current legal drafting allowed for filters on websites for the TIL but not for the TCR. Ofgem replied that it will consider this point.

Fixed term contracts

5.13. A participant asked whether the possibility that VAT increases in the future can be written into the terms and conditions of a fixed term contract to allow suppliers to adjust for this. Ofgem highlighted that this was an existing issue with SLC 23 and agreed to consider the matter further and whether it was appropriate to provide any clarification on this point.

5.14. A participant argued that the title 'Prohibition on further fixed term period' in SLC 22C is not accurate as the licence contains exemptions. Ofgem noted this point.

5.15. A participant asked what length of contract can be offered to an existing fixed term contract customer whose contract is ending. Ofgem clarified that the only restriction is on where a fixed term contract is being extended (the extension cannot be greater than the original contract length) but if entering into a new contract there is no restriction in length.

6. Discussion 3: specific issues

Costs over a 12 month period in the Annual Statement

6.1. Participants recommended that the definition of costs over a 12 month period excludes the amount paid at the beginning of the period that corresponds to a previous period, prorated by time.

6.2. Participants noted that at the time the annual statement is produced there might not be a meter reading available for the end of the period and recommended that the definition uses "estimated amount of money".

6.3. Participants suggested that the definition of 12 month period allows the annual statement to be sent out on the anniversary of the contract or anniversary of the last annual statement, as otherwise there will be a transitional period for customers whose annual statement is currently sent out at a time different from when their contract began where they may receive more than one annual statement in 12 months.

6.4. Participants suggested that the 12 month period should be aligned with when the meter reading is available rather than the anniversary date to prevent confusion and ensure information is as relevant as possible to the consumer when they receive it. The annual statement would be triggered only if the meter reading is not collected after a certain number of days after the anniversary date.

6.5. Participants suggested that the definition takes into account any deductions and Green Deal payments.

Caveat on credit worthiness in the Cheapest Tariff Message for prepayment customers

6.6. Participants produced legal drafting to capture the above caveat: "if the licensee has reasonable grounds to believe that it is likely that the domestic customer will incur outstanding charges once the meter is changed from a prepayment meter".

7. Presentation on TCR and Personal Projection and open questions

7.1. A participant asked whether Warm Home discounts and Green Deal payments are included in the calculations of the TCR and the Personal Projection. Ofgem clarified that they are not. This led to a discussion as to whether they should be included, on which there were mixed views. Some participants argued that these discounts and payments should be included in the calculation as they are a legal requirement and hence non-contingent. Other participants disagreed with these discounts and payments being included in the calculations, arguing that it is not possible for a supplier to know in advance whether a consumer is eligible or not.

7.2. A participant indicated a concern with the 2 month implementation time for TCRs of time of use and staggered tariffs being a too short period. Ofgem clarified that 2 months is a minimum implementation time and that it will consider the appropriate implementation time on the basis of the TCR methodology for time of use and staggered tariffs, on which it hopes to work with industry.

7.3. A participant asked how the Personal Projection is calculated for a fixed term tariff with less than 12 months time left. Ofgem clarified that an annualised figure is produced using the charges and discounts of the fixed term tariff.

7.4. A participant noted a concern that the Personal Projection of a staggered tariff which varies with a frequency different than once a year would appear more expensive due to seasonal weighting. Ofgem noted this point.

8. Next steps

- 8.1. Ofgem will consider the issues raised at the workshops and provide further clarifications where appropriate.
- 8.2. Any further representations need to be made to rmr@ofgem.gov.uk by 15 May.