

Response to the DTI consultation on implementing the EU Directive on Unfair Commercial Practices Directive – Article 10 & 11(1)

8 March 2006

This paper has been produced by the domestic energy suppliers forming the Energy Retail Association (ERA). The Energy Retail Association established in October 2003 is the only dedicated trade association for domestic energy suppliers. All the main energy suppliers operating in the domestic market in Great Britain are members of the association: British Gas, Scottish & Southern Energy, RWE npower, E.ON Powergen, EDF Energy and ScottishPower.

The ERA welcomes the opportunity to comment on Articles 10 and 11 of the Unfair Commercial Practices Directive relating to the use of Codes of Practice. As the contents of the consultation are not specifically directed towards energy selling, we are not making any specific comments on the detail contained within the document. However, we welcome any legislation that reduces the number of rogue traders operating on the doorstep as their dishonest tactics inevitably have an adverse effect on the reputation of all legitimate doorstep traders. Therefore, it may be helpful for the DTI to consider the situation that exists in the energy retail sector as a model for best practice.

Background

Energy suppliers are regulated by licence conditions that are enforced by the Office of Gas and Electricity Markets (Ofgem). The licence conditions are currently under review and Ofgem is conducting the review under the principles of better regulation. Ofgem's intention, therefore, is to remove ineffective and onerous regulation. Energy suppliers have supported this transition to reduced regulatory controls by developing their own self-regulatory processes covering doorstep sales and most recently billing. This has been achieved through the introduction of Codes of Practice that set a standard to which all energy companies must operate. The key to self regulation is strong governance and robust compliance and enforcement policy. This response provides examples of best practice.

Energy Selling

The Code of Practice for the Face to Face Marketing of Energy Supply (the AES Code) was launched in May 2003 and benefits residential consumers by providing added protection to that already enshrined in law, detailing clear standards which energy Sales Agents must follow. Integral to the Code is the EnergySure Accreditation Scheme which all Member companies must operate which covers the rigorous selection and training of Sales Agents. The Code includes a requirement for compensation to be offered when there is evidence that a Sales Agent has fraudulently completed a consumer contract. The Code, which was produced with input from Ofgem and energywatch, exceeds the standards of consumer protection currently required by law and aims to promote consumer confidence.

The Code is sponsored by the Association of Energy Suppliers ("AES") and is committed to the promotion of best practice in energy selling. Since September 2003, the AES has been under the control of The Energy Retail Association (ERA). Governance of the

Code is being undertaken through the AES. The rules of the AES require Code Members to comply with the Code and to be subject to the disciplinary procedures set out in the Code. The Association has appointed a Code Manager to carry out the supervision, administration and day-to-day operation of the Code. The Code Manager acts independently of all Members in operating the Code, putting into place monitoring procedures regarding Member performance, ensuring corrective action where agreed performance standards are not met and setting sanctions consistent with the Code. In addition, an annual audit of individual Member's compliance with the Code is carried out by the Code Auditor, an independent body appointed by AES who is a firm of registered auditors. KPMG were appointed as Code Auditor in July 2004.

Supporting the Code's governance framework is the Code Panel, whose members are independent and come from a variety of backgrounds, including consumer representation and the wider business field. The Panel is the means whereby appeals from Code Members against decisions of the Code Manager will be heard, and it will also take an overview of the operation of the Code and put forward recommendations.

Much work has been undertaken by AES with its members since the ERA assumed responsibility to ensure that Members have appropriate procedures and processes in place which enable them and their Sales Agents to comply with the Code. AES works closely with its Members who are continuously working to improve sales practices across the industry.

Evidence of the success of the AES Code was given in the OFT's Market Study on Doorstep Selling, which acknowledged the efforts made by the energy suppliers, notably the EnergySure Scheme and the AES Code and their contribution to the fall in selling complaints by around 90 per cent since May 2002. The OFT conclude in the report "Given the above, OFT do not make any direct recommendations in relation to energy sales"

Since its launch in May 2003 the level of complaints received by energywatch about energy marketing has fallen considerably from 0.87 to 0.11 complaints per thousand transfers as shown by the following chart: In other words, out of approximately 35 million people approached about switching their energy supplier each year, less than 800 have reason to make a complaint to energywatch.

Building on the success of the AES model, in February last year the ERA announced plans to improve industry billing systems and set new standards in customer service.

Billing

Last year the industry was subject to a supercomplaint about billing, which was brought by energywatch to Ofgem. In its judgement published in July 2005 Ofgem concluded that billing does not lead to significant consumer detriment. However, the industry response is a commitment to establish an energy ombudsman supported by a robust code of practice on billing processes. Energywatch and Ofgem are being consulted on both these measures. The Code will be published later this year and is designed to provide a technical specification to which suppliers can improve their billing systems. The Code provides more transparency about industry billing practice to assist consumer and stakeholder understanding of billing. The Billing Code will be strengthened further by an industry funded ombudsman to adjudicate on unresolved disputes between suppliers and customers. The ombudsman will be in place by July this year. According



to energywatch figures billing complaints have already fallen by over 20% in the last two years and we expect to see a further decline as a result of these new measures.

In our industry billing has become a “catch all” category for anything that is not clearly related to sales or the switching process in which customers change supplier. Therefore, the commitments in the Code complement industry improvements in other retail elements, such as selling, disconnection and transfers. The ERA will be seeking OFT accreditation for the Billing Code under the Consumer Codes Approval Scheme.

It is our opinion that the use of industry driven codes of practice afford significant consumer protection and properly administered can reduce the need for legislative controls on market activity. Codes of practice incentivise retailers to identify and address poor practice, which leads to a level of professional service at which rogue trading cannot be sustained. Therefore, we advise the DTI to explore the options for maintaining legislative and regulatory measures that forms a foundation on which retailers can develop distinct competitive offers and improve customer service.

Further information

We hope that this short paper informs the DTI deliberations on how to implement the Unfair Commercial Practices Directive. If you would like to discuss further the self-regulatory approach adopted by the energy supply sector, please contact me on 0207 930 9177.