



Citizens Advice Scotland's response to Ofgem's Supplier Guaranteed Standards of Performance for Switching: Consultation on the introduction of further Guaranteed Standards and Automatic Compensation (October 2019)

Citizens Advice Network in Scotland

Citizens Advice Scotland (CAS), our 59 member Citizen Advice Bureaux (CAB) and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Advice for Scotland provides information on rights and helps people solve their problems.

In 2017-18 the Citizens Advice Service network helped over 295,100 clients and dealt with almost 800,000 advice issues for clients living in Scotland. With support from the network clients had financial gains of almost £142.2 million and our self-help website Advice in Scotland received approximately 3.2 million page views. On energy consumer issues in particular, we advised on over 41,000 energy-related issues in 2017-18, generating over £1.8m in client financial gain¹.

Our extensive footprint is important in helping us understand how issues impact locally and nationally across the country and the different impacts that policies can have in different areas.

Who we are

The policy teams at CAS use research and evidence to put people at the heart of policy and regulation in the energy, post and water sectors in Scotland. We work with government, regulators and business to put consumers first, designing policy and practice around their needs and aspirations. We aim to represent the views of different consumer groups using evidence of consumer views and supporting research wherever possible.

CAS advocates for Scotland's domestic and microbusiness consumers on matters relating to energy, and although we are separately funded organisations, we work closely with our colleagues at Citizens Advice in this area. We therefore welcome the opportunity to respond

¹ https://www.cas.org.uk/system/files/publications/cas_energy_advice_detail_2017_18_published.pdf

to Ofgem's consultation on the introduction of further Guaranteed Standards of Performance for Switching and for the payment of automatic compensation to consumers when these Guaranteed Standards are not met. Our response to this consultation is not confidential and it may be published in full.

Executive Summary

CAS broadly welcomes Ofgem's proposals to introduce additional Guaranteed Standards of Performance for Switching. If implemented, we believe these will help drive more consistent consumer outcomes following the receipt of a valid change of supplier request, and will encourage the taking of timeous action by the appropriate party when problems with switching arise. We also believe that the revisions made to the proposed Guaranteed Standards of Performance for Switching since they were initially mooted in June 2018 strike a more appropriate overall balance of liability between gaining and losing suppliers than was previously the case, and we commend the work of the Guaranteed Standards Phase 2 Working Group on their efforts in this area.

CAS believes that the timeous and automatic payment of appropriate levels of compensation when problems with switching occur has the potential to act as a powerful incentive for suppliers to improve their processes and procedures in such a way as to minimise the incidence of such problems over time. We accept that appropriate exceptions and exemptions to the Guaranteed Standards should be provided to prevent a supplier being held unfairly liable in cases where the underlying cause of a switching problem was beyond its reasonable control or influence. It is important, however, that any such exceptions and exemptions do not erode the overriding objective of the proposed Guaranteed Standards, or create confusion in the minds of either suppliers or consumers as to whether the proposed Guaranteed Standards have been met. We are therefore welcome the clarity that the authority has provided on these points in its revised proposals.

Though we are supportive of Ofgem's objectives in introducing the Guaranteed Standards of Performance for Switching, we do have some concerns with the proposals as they currently stand, namely:

- The proposed Guaranteed Standards of Performance for Switching are currently due to apply only to domestic gas and/or electricity consumers in GB. However, microbusiness consumers are also exposed to many of the switching problems the authority is minded to address in the domestic energy market via the introduction of the proposed

Guaranteed Standards, and it is unclear why the opportunity is not being taken to address these issues at the current time

- The clarity provided as to extent of the exclusions and exemptions proposed in respect of the Guaranteed Standards of Performance for Switching is welcome. However, there remain a number of areas where a lack of detail could allow for differences in interpretation that would result in inconsistent consumer outcomes
- The proposed introduction of a 21 calendar day switching window is inconsistent with the 21 working days afforded by the extant Guaranteed Standard A1. This risks both supplier and consumer confusion as to whether the Guaranteed Standards for Switching have been met
- For consumers who utilise 'restricted' or 'complex' electricity meters, a lack of clarity as to what constitutes a "valid contract" risks creating both supplier and consumer confusion as to which Guaranteed Standard should apply when problems with switching occur
- In cases where the proposed Guaranteed Standards have not been met, the authority's position on a supplier's liability to make compensation payments for enduring problems with switching means that the financial penalty incurred by a supplier for ongoing non-compliance in a given case is no worse than that imposed at the point of initial non-compliance with the relevant Guaranteed Standard. This does not appear to adequately incentivise suppliers to resolve problems with switching in the shortest possible timescale

We expand on these points below.

Questions

1. *Do you agree with our assessment that the likely costs and logistical difficulties of implementing an allocation of compensation on a case-by-case basis would be likely to outweigh the benefits? If not, why not?*

The evidence from the Guaranteed Standards Phase 2 Working Group strongly suggests that the costs of a case-by-case allocation of liability for the payment of Guaranteed Standards compensation when problems with switching arise will currently outweigh the benefits. CAS therefore does not believe that it would be appropriate for such an approach to be adopted at

the current time. We are mindful, however, that this position may change as technology evolves and initiatives such as the switching program become further developed, and we therefore believe that Ofgem should be open to reviewing the feasibility of adopting a case-by-case approach to the allocation of liability for the payment of Guaranteed Standards payments when problems with switching occur in the future.

- 2. Do you agree that gaining suppliers only should bear responsibility for making compensation payments under Guaranteed Standard A? If not, why not?*

CAS notes that in its original form, the proposed Guaranteed Standard A was set to require the gaining supplier to make an automatic payment of £30 in compensation to a domestic consumer where a transfer of supplier request has not been fully implemented within 21 calendar days. In addition, the consumer would have been able to claim a further £15 in compensation from the relevant losing supplier. As currently proposed, however, that additional compensation from the losing supplier has been removed from the revised Guaranteed Standard A. In effect, this therefore represents a one third reduction in the compensation that it is proposed would be due to a domestic consumer where unreasonable delays to switching have occurred. When referenced against the consumer detriment arising from other behaviours already subject to Guaranteed Standards of Performance, however, CAS believes that the revised level of compensation is appropriate.

In the context of the proposed trigger point at which the 21-day switching window is due to begin, and in the event that the proposed exceptions and exemptions to Guaranteed Standard A are introduced, we also believe that, in the vast majority of cases, the gaining supplier should have both the time and ability to identify and resolve any issues that may present a risk that the 21-day switching target will not be met. With a case-by-case allocation of liability currently deemed unfeasible, we therefore agree that the gaining supplier is most likely to be at fault for switching delays in the majority of cases. Consequently, we agree that in these circumstances it is appropriate that the gaining supplier should be held exclusively liable for making compensation payments under Guaranteed Standard A.

- 3. Do you agree that measuring Guaranteed Standard A from the receipt of sufficient information to ensure that a contract has been entered into by the customer and identify the relevant meter points to which the switch relates allows enough opportunity for the gaining supplier to effectively validate the switch? If not, why not?*

Ofgem is right to note industry concerns about the impact of bank holidays on a gaining supplier's ability to consistently meet the terms of the proposed Guaranteed Standard A, particularly where 2 bank holidays occur within the 21-day switching window. From a consumer perspective, however, providing a clearly defined and consistent switching window is likely to lead to an increased understanding of the requirements that the proposed Guaranteed Standard A will place upon suppliers relative to a more opaque '15 working days' alternative. In addition, the data presented by our colleagues at Citizens Advice in their response to the authority's June 2018 consultation² strongly suggests that, with the proposed exceptions and exemptions in place, 21-day switching should be technically and operationally achievable if suppliers adopt industry best practice consistently.

While CAS therefore supports the adoption of a universal 21 calendar day switching window for Guaranteed Standard A (subject to the limited exceptions and exemptions proposed), we note that this will create an inconsistency with respect to the existing Guaranteed Standard A1, which affords a losing supplier 21 *working* days to return a domestic consumer from a gaining supplier where the existence of an erroneous transfer has been agreed³. The consultation is silent on the rationale for this disparity and therefore does not address concerns that defining '21 days' in differential terms risks both supplier and consumer confusion as to whether the Guaranteed Standards for Switching have been met. We feel strongly that this is something that should be addressed before the proposed Guaranteed Standards come into effect, and would encourage Ofgem to consider amending Guaranteed Standard A1 to bring it into line with the proposed Guaranteed Standard A. This would also restore the authority's original policy intention for Guaranteed Standard A1, as published in its June 2018 consultation⁴.

We also note that in cases where a gaining supplier has not been furnished with sufficient detail to complete a supplier transfer request, it is proposed that they should attempt to obtain the relevant 'missing' information "on a timely basis". However, we consider that this could be open to a range of interpretations that would lead to inconsistent consumer outcomes. The authority might therefore wish to consider whether it could specify a time period in which a gaining supplier should act to obtain the relevant information, under the potential sanction of financial penalty for non-compliance.

²https://www.citizensadvice.org.uk/Global/CitizensAdvice/Energy/Energy%20Consultation%20responses/FOR%20PUBLICATION_%20Citizens%20Advice%20response%20to%20Supplier%20Guaranteed%20Standards%20of%20Performance_%20Consultation%20on%20Switching%20Compensation.pdf

³ The Electricity and Gas (Standards of Performance) (Suppliers) (Amendment) Regulations 2019

⁴https://www.ofgem.gov.uk/system/files/docs/2018/06/policy_consultation_on_gsop_switching_compensation_for_publication_v2.pdf

In addition, we also note that the consultation is silent on how long a consumer should be given to provide a gaining supplier with any such 'missing' information it may require before a supplier transfer request should be allowed to lapse. Again, we consider that this could lead to inconsistent consumer outcomes and drive consumer complaints which could be avoided if procedures and timeframes were more clearly defined.

4. *Do you agree that gaining suppliers will be able to measure when sufficient information is received for the purposes of reporting on Guaranteed Standard A? If not, why not?*

CAS does not take a view on this.

5. *Do you agree with the proposed exceptions and exemptions which we have applied to Guaranteed Standard A? If not, why not?*

As stated above, CAS believes that any exceptions and exemptions should be clearly defined and limited in number if they are not to erode the overall objectives of the proposed Guaranteed Standards. We therefore welcome the clarity that Ofgem has now provided on what it meant by "valid reasons" in its June 2018 consultation⁴. With the range of exceptions and exemptions now much less open to interpretation, CAS believes that Ofgem has improved both the fairness and transparency of the proposed Guaranteed Standard A, and we feel that the circumstances defined in the consultation now strike an appropriate balance between the interests of consumers and suppliers.

This having been said, we believe further clarity could be provided to suppliers as to their obligations under the proposed Guaranteed Standard A in cases where an objection to the transfer of a given energy supply has been removed by the losing supplier. In cases where a vexatious objection has been issued, we would also welcome the introduction of a requirement for the gaining supplier to assist the consumer in raising this as a compliance issue with the authority.

6. *Are there any other reasons for failing to complete a switch within 21 days which could warrant an exemption from paying compensation under Guaranteed Standard A?*

As stated above, CAS believes that any exceptions and exemptions should be clearly defined and limited in number if they are not to erode the overall objectives of the proposed Guaranteed Standards, and we welcome the clarity that Ofgem has now provided on what it meant by "valid reasons" in the June 2018 consultation⁴. We also believe that the exceptions and exemptions defined in the consultation now strike an appropriate balance between the

interests of consumers and suppliers in respect of the proposed Guaranteed Standard A, and we therefore do not believe any further exceptions or exemptions are warranted.

7. *Do you agree that suppliers implementing the Debt Assignment Protocol should not be exempt from making compensation payments if they fail to complete a switch within 21 days? If not, why not?*

CAS agrees with Ofgem's assessment of the likely impact of implementing the Debt Assignment Protocol on 21-day switching compliance. We are therefore pleased that the authority is not minded to alter its previously published position on this matter⁴.

8. *Do you agree with our proposal that responsibility for compensation under Guaranteed Standard C should be borne by gaining suppliers only? If not, why not?*

CAS recognises that there are myriad factors that can result in the erroneous transfer of a given energy supply, and we note that Ofgem's analysis of Electralink data reveals that in the majority of cases these transfers are caused by out-of-date or mis-matched meter and/or address data. We are therefore encouraged that Ofgem has sought to remind suppliers of the measures they can and should already be taking to minimise the incidence of such erroneous transfers, and of the role of gaining suppliers in ensuring that issues identified during the switching process are timeously addressed.

CAS is particularly concerned, however, where erroneous transfers arise as a result of 'misleading sales activities'. Within our definition of 'misleading sales activities', we include instances where domestic consumers who make use of 'restricted' or 'complex' electricity metering equipment are provided with quotes based on accurate consumption data but an inaccurate understanding of how the metering equipment actually works. We also note that in the authority's aforesaid analysis of Electralink data, 10.5% of all erroneous electricity transfers in 2018 arose as a result of misleading information / suspected fraudulent marketing practices / training issues.

As the authority will be aware, both of the Scottish DNO regions have a particularly high prevalence of restricted electricity meters when compared with any other DNO region in GB. Many of these are DTS meters, and a large proportion of these are operated either dynamically or semi-dynamically. This presents a range of issues for suppliers, but while electricity meter profiles in Scotland are many and varied, it is common for Scottish consumers with electric heating to have either 2 Meter Serial Numbers registered to a single MPAN, or a single Meter Serial Number registered to 2 MPANs.

In the case of the latter, both our CABs and the EHU see numerous cases each year where only a single MPAN has been transferred to a gaining supplier, usually leaving the MPAN on which the energy consumed by the property's space heating system is registered with the losing supplier. We understand that the gaining supplier should be able prevent this from occurring if the Meter Timeswitch Codes for the supply address are properly consulted, and improvements in triangulation should also help in this regard. In addition, we also understand that the losing supplier can and should raise an objection where triangulation fails and a gaining supplier effectively requests the transfer of only part of the electricity supply to the relevant meter point. However, our data shows that such incidents continue to occur, and consumers are therefore effectively left live on supply with two different electricity suppliers through the same meter point.

At face value, we accept that this may appear to represent an example of an incomplete supplier transfer rather than as one of erroneous transfer, and in some examples this is indeed the case. It is not clear, however, whether Ofgem would consider that such cases should fall under the proposed Guaranteed Standard A, and greater clarity on this point would therefore be welcomed.

Probing the detail of such transfers, however, often leads to the discovery of a sale conducted under false premises where, for example, a quote has been provided (either by a supplier or a Price Comparison Website) based on the assumed presence of Economy 7-style metering equipment, when the meter(s) in situ would render any quote so produced to be completely unrepresentative of the consumer's energy costs. Similar scenarios can also arise when 'complex' or 'restricted' single MPAN electricity meters such as Economy 10 or Total Heat Total Control are confused with Economy 7.

We believe that in such circumstances it should be considered that there is no valid supply contract in place, and thus any transfer of supply on these terms (including those where related MPANs have been erroneously split) should be considered as an erroneous transfer and subject to the extant Guaranteed Standard A1 and the proposed Guaranteed Standard C. However, it is unclear whether Ofgem is of a similar view, and we believe suppliers would benefit from guidance on this – both to ensure their compliance with the proposed Guaranteed Standards, and to improve the consistency of their quarterly reporting to the authority.

More broadly, we also believe that Ofgem should require gaining suppliers to report separately on the number of erroneous transfers arising from mis-selling in which they have been involved.

9. *Do you agree that the trigger for making a compensation payment under Guaranteed Standard C should be the agreement between suppliers that a switch was undertaken with no valid contract in place? If not, why not?*

CAS agrees that the point at which an agreement between suppliers is reached that a switch was undertaken with no valid contract in place is an appropriate trigger point for the implementation of the proposed Guaranteed Standard C. As stated above, however, we believe that clarification is needed on what constitutes a "valid contract".

10. *Do you agree with the proposed exceptions and exemptions which we have applied to Guaranteed Standard C? If not, why not?*

Yes. We also agree with the limitations to the exceptions and exemptions to Guaranteed Standard C that are described in the consultation, and particularly welcome the limits to the exemption for suspected fraudulent customer behaviour described within paragraph 4.62. This appears to place a high burden on the gaining supplier to ensure that the customer that has entered into a contract for the supply of energy to a given address is the same customer that is responsible for the payment of charges relating to the energy consumed at that address. We believe this is a positive move which holds significant potential to reduce the incidence of erroneous transfers arising from fraudulent customer behaviour.

11. *Are there any other reasons under which a supplier should be exempted from making a compensation payment under Guaranteed Standard C?*

As stated above, CAS believes that any exceptions and exemptions should be clearly defined and limited in number if they are not to erode the overall objectives of the proposed Guaranteed Standards. While we recognise that an exemption may be required in the circumstances described in the consultation, we therefore do not believe that any further exceptions or exemptions from the proposed Guaranteed Standard C are warranted.

12. *Do you agree that responsibility for compensation for issuing a final bill after six weeks should be borne by losing suppliers only under Guaranteed Standard E? If not, why not?*

Yes.

13. *Do you agree with the proposed exceptions and exemptions which we have applied to Guaranteed Standard E? If not, why not?*

As stated above, CAS believes that any exceptions and exemptions should be clearly defined and limited in number if they are not to erode the overall objectives of the proposed Guaranteed Standards. While we recognise that an exemption may be required in cases where the issuance of a final bill is affected by a pre-existing dispute, we also agree with the limits to this exemption described within paragraph 4.85 of the consultation.

14. *Are there any other reasons for failing to issue a final bill within six weeks which warrant an exemption from paying compensation under Guaranteed Standard E?*

As stated above, CAS believes that any exceptions and exemptions should be clearly defined and limited in number if they are not to erode the overall objectives of the proposed Guaranteed Standards. While we recognise that an exemption may be required in cases where the issuance of a final bill is affected by a pre-existing dispute, we therefore do not believe that any further exceptions or exemptions from the proposed Guaranteed Standard E are warranted.

15. *Do you agree with our assessment that it would not be proportionate to implement an open-ended requirement to pay compensation for enduring issues of detriment? If not, why not?*

CAS notes that Ofgem does not consider it appropriate for suppliers to be subject to an ongoing liability for Additional Standards payments beyond an initial payment owed when the relevant deadlines have been missed and a Guaranteed Standards payment has not been issued in the required timeframe. This appears to reverse the position adopted by the authority on this issue in its June 2018 consultation⁴. We are unclear, however, how this adequately incentivises suppliers to resolve problems with switching in the shortest possible timescale since, in effect, the financial penalty incurred for ongoing non-compliance with the proposed Guaranteed Standards in a given case is no worse than that imposed at the point of initial non-compliance.

We consider that with adequate exemptions in place to mitigate against liability for issues outwith the reasonable control or influence of the responsible supplier, supplier conduct in respect of each of the proposed Guaranteed Standards of Performance for Switching could be better incentivised were further penalties potentially due in cases which greatly exceed the relevant targets.



16. *Would changing the reporting requirements allow Ofgem to collect data on the time taken to issue final bills or repay credit balances present a significant additional cost when compared with the current requirements?*

CAS does not take a view on this.