

21 December 2010

Mr Gavin Jones
Director, Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 520
Melbourne Vic 3000

By email: gavin.jones@accc.gov.au; adjudication@accc.gov.au

Dear Mr Jones,

Energy Assured Limited applications for authorisation A91258 & A91259

We refer to your letter of 10 December 2010 (**Letter**).

Energy Assured Limited (**EAL**) appreciates the opportunity to respond to the questions raised in your Letter and those issues raised by interested parties.

Attached to this letter is a response to the questions raised in your Letter.

If there is any further information you require or we can provide any assistance, please do not hesitate to contact me on (02) 9241 6556.

Yours sincerely



Ramy Soussou
Acting Chief Executive Officer
Energy Assured Limited

Response to questions raised by the ACCC in relation to Energy Assured Limited's applications for authorisation A91258 & A91259

EAL makes the following comments in response to the questions raised by the ACCC in relation to Energy Assured Limited's applications for authorisation A91258 & A91259. EAL adopts the same capitalised terms as those adopted and defined in its original Application for Authorisation.

EAL takes seriously the submissions made by various stakeholders and is grateful for the opportunity to respond. As previously submitted, EAL submits that the EAL Scheme will improve standards of door-step marketing of energy, consumer protection and consumer confidence and goes a significant way to addressing current regulatory compliance concerns, including many of those raised by QCOSS, CUAC and the Queensland Consumers Association.

The EAL Scheme will be an important tool that can be used by its members to facilitate and promote compliance with applicable regulatory regimes. EAL submits that the uncertainties in the regulatory landscape around door-to-door selling in the energy industry (identified by the Victorian Department of Justice) support rather than detract from the need for the EAL Scheme given its capacity to assist members with compliance obligations.

EAL notes that the Energy and Water Ombudsman of Victoria and the Energy and Water Ombudsman of New South Wales have expressed strong support for the proposed EAL Scheme. As two key bodies, well placed to comment on the effect of the scheme in the energy industry, EAL observes that those bodies view the proposed EAL Scheme as likely to supplement existing consumer laws and result in consumer benefit.

Interaction between the code of practice and complaints process and the existing regulatory framework and complaints processes

The Energy Assured Limited (EAL) code of practice and complaints process will sit within an existing and proposed regulatory framework that provides for consumer protection around door to door selling and complaints processes. Paragraph 5 of EAL's submission in support of its application provides a very broad overview of how the code and complaints process sits within these regulatory frameworks.

1. Please provide more detailed information on how EAL considers that the code and complaints process will fit within the existing and proposed regulatory frameworks. For example, the extent to which the code is designed to complement and re-enforce existing regulatory frameworks and/or require higher standards than existing regulatory frameworks.

EAL Response: The EAL Scheme is designed to complement existing regulatory frameworks by reinforcing to members their obligations with respect to door-to-door selling. It is not designed to fit within or replace the existing regulatory framework as the Scheme will not have the force of law. However, the EAL Standards (set out in paragraph 12 of the Code of Practice) set out principles and norms of behaviour expected of sales agents and members which are consistent with and reinforce existing regulatory provisions. As stated above, the EAL Scheme is an important tool that will assist its members to comply with their Code and regulatory compliance obligations. Additionally, the EAL Standards require members to comply with applicable laws, regulations and codes.

Furthermore, the EAL Scheme requires higher standards of compliance than existing regulatory frameworks. For example, it prescribes, in some detail, the on-job and off-job training that must be undertaken by sales agents before they can undertake door-to-door sales and also on an ongoing basis. Also, the entire EAL Register provides for a higher level of scrutiny over the recruitment, conduct and compliance of sales agents than is currently prescribed under existing regulatory frameworks dealing with door-to-door selling.

2. Please explain how EAL and members will deal with any complaints received about conduct that could potentially breach relevant consumer laws and mechanisms that will be in place to report such potential breaches and/or systemic issues to relevant regulatory authorities.

EAL Response: Members must have in place procedures that record Competence Complaints about the conduct of Sales Agents as determined under section 11 of the Code of Practice and clause 12 of the Procedures Guideline. It will remain the responsibility of the relevant member to investigate, seek legal advice and take appropriate action should a complaint reveal a potential consumer law breach (as set out in clause 11.2). Whilst the Code of Conduct and Complaints Process are intended to assist and encourage members to comply with the applicable laws and may, by imposing sanctions on members and sales agents a) reduce the number of

complaints received by regulators and b) even reduce the need for regulators to take action, it is not EAL's role to determine whether a breach of a consumer law has occurred. Rather, that is the role of the relevant regulator. It is the role of EAL and its Panel to monitor the compliance of its members with the EAL Code of Practice and Procedures Guideline.

That said, should EAL become aware, whether through the Complaints Process or Compliance Audits, that a member may have contravened an applicable regulatory requirement, EAL will notify the member that it should look into the matter in more detail.

In addition to this, and in consultation with relevant regulatory authorities, an annual report will be produced detailing potential member breaches or systemic issues that have been identified within the given period and how these have been addressed. An example of what will be covered in EAL's annual report is that contained in the UK's annual report (a copy of which is included with this Response). (*attachment: EnergySure Annual Report to Stakeholders*).

Training

Clause 9 of the code and Clause 10 of the procedures guideline set out minimum requirements for on-job and off-job training of sales agents. QCOSS submitted that the minimum requirements for training of sales agents omit crucial subject areas including: product knowledge, safety, consumer rights and privacy obligations.

3. Please provide the EAL's views about the concerns raised by QCOSS about the scope of the training requirements provided by the code.

EAL Response: Section 9.1 of the EAL Code of Practice provides a non-exhaustive list of matters that a member is required to train its Sales Agents about. The list is included to guide the member about matters that should be covered in training. It is implicit that training would also cover product knowledge and safety.

In any event, section 9.1 provides that the Sales Agent must be trained about "the legislative and regulatory obligations applying to the supply of energy in the [relevant jurisdiction]" and "the knowledge and skills to fulfil the role". Accordingly, product knowledge, safety, consumer rights and privacy obligations would be caught by these categories.

4. Please confirm whether EAL will develop and facilitate training programs for members as indicated in clause 5.1(a) (ii) of the EAL Constitution. There is currently no mention of these programs in the code itself.

EAL Response: EAL will develop and facilitate training programs for members so as to maintain consistency in the competence standards required under the EAL Regime. It is intended that training manuals will be designed to aid members to properly communicate obligations under the Code of Practice and to promote uniformity and consistency of training on the Code of Practice across the industry.

Accreditation process

EAL will administer a register of accredited sales agents under the code. Clause 5 of the procedures guideline sets out that members are responsible for ensuring that the data contained in the register is accurate and up to date. Clause 7.4 of the procedures guideline sets out that the EAL register will automatically change a sales agent's accreditation status from 'provisional' to 'approved' four weeks after the sales agent's start date in the register.

Further the same clause sets out that the EAL register will automatically renew a sales agents approved accreditation status for a further 12 months unless the member advises that the sales agent has not passed the formal competence assessment.

5. Please explain why the onus is on members to advise that sales agents have not passed a formal competence assessment rather than the onus being on members to advise when sales agents have passed the formal competence assessment.

EAL Response: EAL operates as a not-for profit-organisation in which membership and registration fees, payable by members, fund the administration of the scheme. A member must also incur additional costs associated with ensuring that they comply with the Code of Practice and Procedures Guideline including updating the EAL Register, additional reporting requirements that are required under the Code and the establishment of a clear member governance framework that monitors compliance to the Code of Practice (as detailed in Clause 13.1 of the Code of Practice and Appendix C of the Procedures Guideline).

The Register and its internal process have been developed taking into account costs to members (through membership fees, Sales Agent registration fees and indirectly through compliance costs) of administering the

scheme effectively. As such, certain parts of the system have been automated to assist with the reduction in administrative costs. EAL submits that the automated process will not undermine the reliability or utility of the Scheme.

In addition to the usual sanctions that a member might face for failing to comply with the competence assessment procedures, there remains a general obligation on members to ensure that the EAL Register is up to date (under section 5 of the Procedures Guideline). This will assist to ensure that any automatic changes in status that is an incorrect reflection of a Sales' Agent's competence must be corrected by the member.

Also, there is an incentive for members to advise when Sales Agents have not passed a formal competence assessment so that they can avoid payment of registration fees. Registration fees will otherwise be payable to maintain a Sales Agents registration status (as detailed in section 8.1 of the Procedures Guideline).

Standards relating to entering into a contract with customers

Clause 13.2 of the EAL procedures guideline requires members to have post-sale processes in place to verify and confirm with a sample of customers that they have entered into a contract and that they were satisfied with the way the sale was conducted. This validation is to occur prior to commencement of the transfer process and be "undertaken with enough customers to give the member reasonable confidence of compliance".

In its submission QCOSS noted that all customers are contacted under the EnergySure scheme in the UK which the EAL scheme is based on. QCOSS also suggested that the focus of the contact in the EAL procedures guideline is to determine whether the customer gave consent to the contract rather than whether the customer was satisfied with the sales agent.

6. Please provide a view about QCOSS's submission that all customers should be verified rather than just a sample. Please also provide further details about how the number of customers sampled in order to give the member reasonable confidence of compliance will be determined.

EAL Response: The EnergySure scheme in the UK states under clause 5.2.7 of its Procedures Manual that "Members will have in place procedures to verify and confirm to a customer post-sale that they have entered into a contract and that the customer was satisfied with the way the sale was conducted".

Whilst some EnergySure members do have procedures in place that verify and confirm with all customers post-sale (as highlighted by QCOSS), other members in the UK facilitate this verification process by conducting sample audits through targeted telephone surveys or similar. Where an issue or trend is uncovered then all sales conducted by that agent are then investigated.

Whilst most EAL members currently verify all customers post sale, EAL and its members are of the view that to require each new contract to be verified post-sale would be to impose an overly burdensome requirement on new member entrants to the Code. It is of the view that the sampling process, such as that described above, would, by its nature, likely to yield similar results (a significant one being that Sales Agents know that there is a good chance that their in-field conduct will be scrutinized).

It will be for each member to determine what the appropriate sample size will be so that it can be confident of compliance. It must be highlighted though that most members of EAL currently perform a verification procedure on all customers post-sale. In addition to this, member post-sale procedures will be reviewed independently by the Code Manager and External Auditor. Concerns raised in the course of the review will be identified to the member in the Compliance Audit for action. This is a very similar process to that used in the UK.

7. None of the questions concerning verification listed in clauses 13.2 seek information about whether the customer was satisfied with the way the sale was conducted. How does EAL propose to ensure that members will verify with customers who entered into a contract whether they were satisfied with the conduct of the sales agent?

EAL Response: The EAL Procedures Guideline is focused on establishing both that the contract was properly entered into and that the consumer was satisfied with way the transaction was conducted. EAL submits that the list of minimum questions that must be asked set out in clause 13.2 of the Procedures Guideline deals with both of these issues and in any case goes further than what is currently required under present regulatory requirement. It is a requirement of the Code of Practice that a Sales Agent explains to the customer about the Code of Practice and also provides them with leave behind material that explains the EAL Standards. The question in clause 13.2(4) requires a member to confirm that the Sales Agent has informed the customer of the EAL Code of Practice. This would give the customer the opportunity to express any concerns that they may have about the Sales Agent's compliance. Additionally, the questions contained in sub-clauses 13.2(1) to (3) are three key questions that go, not only to the formation of the contract, but to key disclosures that a Sales Agent should make thereby indicating whether or not the Sales Agent has been performing appropriately.

In any case, the 4 questions contained in clause 13.2 do not constitute an exhaustive list of questions that can be asked in the verification process.

Monitoring on-going performance of sales agents

Clause 11 of the code provides for sales agent competence monitoring, including a complaints handling process developed and administered by the member. Separately to this, the EAL code complaints process provides for EAL to hear complaints about both individual sales agents and EAL members. The code also provides for members to provide compliance monitoring reports to EAL. However, the code does not contain any information about the type of information that will be included in these reports or how they will be compiled. In its submission QCOSS suggested that the code should require members to undertake proactive monitoring of sales agents (rather than just relying on complaints) noting this to be a requirement of the UK scheme.

8. Please identify what proactive measures EAL and members will implement to monitor the on-going conduct of sales agents (i.e. other than responding to complaints).

EAL Response: Complaints have always been a good indicator of a Sales Agent competence. EAL submits that complaints handling processes provide members and regulatory bodies with a good gauge on Sales Agent conduct.

Nonetheless, Sales Agents will be proactively monitored under the EAL Scheme through the post-sale verification process discussed in Questions 6 and 7 above. Annual re-training also provides a means for periodic checks.

Members also currently use other proactive methods that monitor Sales Agents competence such as conducting random field audits on agents, comparing contract cancellation rates of different Sales Agents and monitoring the accuracy of Sales Contract and "walk sheet" completion.

It must be highlighted that without the Code of Practice there is no obligation on members to formally assess their Sales Agents.

Moreover, the EAL Code of Practice will require Sales Agents to undergo a more onerous assessment process in the initial stages of engagement, or on return from an extended period of absence, compared to the EnergySure regime in the UK. Accordingly, EAL submits that through the Scheme Sales Agents will perform at a higher level of compliance from the outset.

Clause 12.2(4) (d) of the code requires sales agents to provide customers with information about the members' competence monitoring process when entering into a contract with customers. Clause 11.1 (2) of the code require members to develop an information pack for sales agents to provide customers when undertaking "sales activities".

9. Please confirm whether this information pack will be provided to all customers contacted by the sales agent or only those with whom a contract is entered into.

EAL Response: Approximately 40,000 homes are knocked on per working day by energy retailers and their representatives. Many customers visited do not even allow a Sales Agent to embark on a sales pitch. The cost associated with distributing packs to all homes would be extremely costly for members. As such, it is intended that only customers that enter into a contract will be given a pack as a matter of course. The information pack will also be given to a customer on request.

Monitoring of compliance with the code by members

Clause 13 of the code sets out that EAL will monitor members' compliance with the code on a regular basis through reviews of monitoring reports provided by and agreed to with the member. In addition clause 13 of the code requires members to submit to an independent compliance audit on a yearly basis.

10. Please confirm who will set the scope of what is provided in the monitoring reports provided by members and the type of information that EAL envisages would be expected to be provided in these reports. For example, will

the competence monitoring records referred to in clause 11 of the code be included in these reports? What other types of information will be included in these reports?

EAL Response: The scope of the monthly reports will be determined by the EAL Board, the independent Code Panel, and where remedial action has been prescribed under a Compliance Audit, by the Code Auditor.

It is not envisaged that the actual Competence Complaint Records made by a member will form part of the monthly reports as they are developed for member's internal use and likely to be overly detailed. However, a high level summary is likely to be included as part of the monthly reporting format. Typical monthly reporting will consist of such things such as:

- the number of Category 1, 2 and 3 complaints received in a given month;
- indicators of the extent to which the EAL Register is maintained (E.g. Statements about the number of Sales Agents with an accreditation status of Provisional, Start Date and Award Date);
- updates on remedial action taken by a member in response to issues identified in the annual Compliance Audit that apply uniformly across the industry;
- updates on remedial action taken by a member in response to issues identified in the annual Compliance Audit of that member;
- updates on any action plans developed and remedial action taken in response to a complaint received by a member; and
- any necessary updates of contact details of personnel responsible for member Code compliance

11. Will the annual report of the independent auditor be provided to the code manager and disseminated more broadly, for example, to relevant regulators?

EAL Response: The detailed annual report of the Code Auditor will be provided to both the individual member to whom the Compliance Audit relates and the Code Manager in confidence.

A consolidated report will be provided to the EAL Board and relevant regulators, again in confidence. The consolidated report can be expected to provide:

- a summary of overall compliance levels;
- an analysis of compliance by Code of Practice subsection;
- an outline of any major or important instances of non-compliance;
- an outline of corrective measures that have been agreed to that address compliance issues; and
- any other relevant observations.

12. Will the annual report of the independent auditor be made publicly available, either in full, or in summary form?

EAL Response: A high level summary of the Code Auditor's report will be made available to the public in EAL's Annual Reports and will be displayed on the EAL website. EAL intends that its Annual Report will be similar to the Annual Reports published under the UK Scheme. As stated above, an example of an EnergySure Annual Report is attached to this response.

13. To what extent does EAL intend to report on the outcomes of its compliance monitoring function more generally?

EAL Response: The Annual Report described above in Question 12 will be provided to relevant stakeholders and will contain information about the operation of the EAL Scheme generally, including the compliance monitoring function. EAL also intends to have regular meetings with stakeholders to discuss the Code of Practice, specific compliance issues and how these are being addressed. Where appropriate, EAL may also consult with stakeholders and provide industry data available to it.

Complaints to EAL about sales agents

The EAL complaints process provides for a process by which complaints about sales agents will be dealt with. This appears to be a separate complaints process to that which members are required to establish under clause 11 of the code. Any person may make a complaint about a sales agent.

14. Please provide further information on how the process for complaining to EAL about sales agents will work. For example, how will customers be made aware of their right to lodge a complaint with EAL? What information will customers be given about where and how to lodge a complaint?

EAL Response: The first port of call for consumer Competence Complaints will be through the complaints process operated by the member in accordance with clause 11 of the Code of Practice.

It is not anticipated that EAL will establish a customer service centre to administer and receive complaints itself. Customers will, however, be given the opportunity to lodge complaints direct to the Code Manager through an independent online web portal managed by EAL, which will introduce a public benefit that is not currently deployed in the energy industry.

Consumers will be made aware of the Code of Practice and the EAL Standards through material that will be left by the Sales Agent at the door and through various promotional campaigns as detailed in Question 26. The promotional material will detail current dispute resolution procedures operated by members, as well as details of how certain levels of complaints will be addressed through the EAL Complaints Process and the web portal. An example of what is provided to customers under the UK EnergySure scheme is included as an attachment to this submission (attachment: EnergySure Customer Booklet)

15. How will the EAL complaints process in relation to sales agents fit with the complaints handling process required to be established by the member under clause 11.1(1) of the code?

EAL Response: The EAL Complaints Process in relation to Sales Agents is available as a mechanism to permit a member to have a Sales Agent deregistered. A member's ability to apply to the Code Manager for the sanctioning of a Sales Agent in such a way will be based on the level and number of Competence Complaints received by the member about the Sales Agent under the member's own complaints processes.

Clause 11 of the Code of Practice will guide members on how to classify Competence Complaints received about Sale Agents. Depending on the severity of a Competence Complaint, it will be classified as being a Level 1, 2 or 3. The Code Manager intends to develop a guideline under clause 4.2(4) to provide for the way in which the EAL Complaints Process will be triggered. For example, two proven level 1 complaints may be considered to be equivalent to a level 2 complaint. 2 proven level 2 complaints may cascade up to a level 3 complaint, at which stage the EAL Complaints Process is enlivened.

The triggering of a sanctioning process once a certain level of Competence Complaint is reached provides:

- a uniform and consistent approach for both a Sales Agent and member to understand the competence level that a complaint will receive;
- the industry with an ability to remove rogue agents from further participation that at present can move from retailer to retailer without an avenue for deregistration;
- for an independent and consistent process for Sales Agent sanctioning.

16. At the time of lodging a complaint to either a member or EAL will customers be made aware of their right to seek recourse to the relevant energy ombudsman?

EAL Response: The Code of Practice is designed to complement existing dispute resolution processes operated by members, including in accordance with various marketing codes of conduct or equivalent in each jurisdiction. Those codes of conduct require members to inform customers about their right to seek recourse under a relevant energy ombudsman scheme. Customers will still be made aware of this right.

17. Please advise whether EAL intends to report on the number and nature of complaints about sales agents received by it to regulators and/or publicly?

EAL Response: EAL intends to work with the regulators to develop a reciprocal reporting mechanism that reports on the number and nature of complaints about sales agents. These reports will be designed to complement existing regulatory reports.

Additionally, the Annual Report published by EAL will, at a high level, provide information about complaints received. This will be publicly available.

QCOSS have noted that customers cannot seek a review if they are not satisfied with the handling of their complaint by EAL.

18. Please provide a view about the concerns raised by QCOSS that customers will not be able to seek a review of their complaint.

EAL Response: Customers will always have recourse to raise concerns with the relevant jurisdictional ombudsman and/or relevant regulator. As noted above, the EAL scheme does not remove or replace these rights, but is additional to them

Clause 3.7 of the EAL complaints process states that EAL will review a complaint to determine whether there has been a breach of the code. The same clause also states that if EAL is satisfied that the code has been breached it will decide whether the breach warrants the deregistration of the sales agent.

19. Please outline the criteria that EAL will use to determine whether a complaint about a sales agent warrants deregistration of the sales agent?

EAL Response: The Code Manager will consider the following when making a decision about the deregistration of a Sales Agent:

- whether the Member seeking deregistration has contributed to any contravention of the Code of Practice by the Sales Agent;
- the severity of the complaint and whether the complaint(s) are Level 1, 2 or 3 and the extent of repeated breaches by the Sales Agent;
- whether an application for deregistration has been brought against the Sales Agent previously;
- whether there is any other sanction or remedial action that can be taken as an alternative to deregistration; and
- whether the police were involved.

Complaints to EAL about members

The EAL complaints process provides for a process by which complaints about members will be dealt with. EAL members, the auditor, the energy ombudsmen, any regulatory body or the government may lodge a complaint about an EAL member. A complaint may result in a sanction being imposed on a member.

20. Are individual consumers able to make complaints about members under this process?

EAL Response: The EAL Scheme is intended to complement and monitor compliance with applicable regulations that govern energy retailing. When a consumer makes a complaint about a sales agent it is usually as a result of a specific incident. A consumer is not typically in a position to make a complaint about any systemic problem with a member's compliance.

The EAL Complaints Process is enlivened where a systemic issue has been identified with the member's sales practice, in relation to door to door sales, or as a result of a proven breach of the member's obligations under the Code of Practice. As such, it would not be practical for a consumer to make a complaint about a member under the EAL Complaints Process. Accordingly, it will be the role of another member, the Code Auditor, an energy ombudsman, or regulatory body to raise a complaint about a member. These bodies are better placed to marshal complaints from stakeholders about compliance and accordingly identify and complain about and prove systemic member issues under the Complaints Process.

Of course, any complaint made by a customer to a member about the member's conduct must be investigated and actioned by the member. A customer won't have standing to actually seek a sanction against a member under the EAL Scheme. Customers will, however, continue to have recourse to the ombudsman or regulator.

QCOSS submitted that the sanctions provided for under the complaints process are not strong enough noting that stakeholders and the public would not be informed about a breach until the fifth sanction and that information published on the EAL website about breaches was unlikely to reach a wide audience.

21. Please provide a view about the concerns raised by QCOSS.

EAL Response: EAL is of the strong view that the member sanctions under the Complaints Process are sufficiently onerous to deter and punish breaches of the Code of Practice. The EAL Complaints Process contains a range of sanctions that cascade upwards based on severity and repeated breaches of the Code of Practice. Any sanction higher than a "sanction 1" will impose a tangible cost on the member either be it a material cost (such as audit costs or costs of investigating a breach and answering a letter of admonishment) or a reputational cost (either by reason of being named to the Board or named to the public as having contravened the Code of Practice).

Publication of a member sanction on the EAL website is given as an example of how the public may be informed of a breach. It may be that other publication of the occurrence of the breach occurs. In any case, EAL submits that publication on its website will reach a sufficient audience, just like publications on the ACCC website.

Additionally, these sanctions supplement sanctions available under the applicable regulatory regimes.

Governance arrangements for dealing with complaints

Complaints made under the EAL complaints process will be dealt with by an independent code manager and code panel. The code panel will be composed of four individuals with a variety of professional backgrounds.

22. Please explain the types of persons that you anticipate will comprise this panel. For example, will it be drawn from representatives of energy retailers, consumer organisations and parties with experience in dispute resolution?

EAL Response: The Code Panel will be independent to the members and the Code Manager, and will comprise a committee of four individuals with a variety of professional backgrounds.

In determining the Code Panel composition, the Board will:

- aim to ensure that panel members are located in a range of jurisdictions;
- ensure that the professional backgrounds of each of the panel members are complementary and applicable to the law, energy regulation, energy retailing and consumer interests; and
- choose only individuals with a credible reputation that are independent from members and have no conflicts of interest.

EAL intends that the panel will be diverse and as well constituted as the UK Panel, which in 2009 consisted of:

- Lord Dubs of Battersea (Former Chairman of the Broadcasting Standards Council)
- Caroline Banks (Retired Director of Consumer Regulation Enforcement Division, OFT)
- Tina Tietjen (Chairman: Air Transport User's Council)
- Bryn Aldridge (Former Chairman: The Trading Standards Institute)
- Stuart Sweetman (Retired MD Post Office Counters Limited)

Promotion of the code and the EAL complaints process

The ACCC considers that for a code to be effective it is vital that consumers are aware of the standard of behaviour that are governed by the code and the recourse available to them if they consider that these standards have not been met.

The ACCC notes that the code, the procedures guideline and complaints process is primarily drafted so as to provide guidance to members and sales agents. EAL have not provided any detail about how information about sales agent's obligations under the code will be disseminated to the public.

Clause 11.1(2) of the code states that sales agents will provide customers with an information pack when undertaking sales activities.

23. Please advise what information will be included in these packs. For example will the pack include information about the standards that sales agents have to comply with in dealing with consumers, as detailed in clause 12 of the code, and how to make a complaint to a member, EAL and/or the relevant energy ombudsman (and which complaint mechanism would be appropriate in each set of circumstances)?

EAL Response: The following information will be provided as standard information in the packs:

- What is the EAL Code of Practice
- What to expect from the sales agent and the EAL Standards that they must adhere to
- Relevant member obligations
- How the Code is managed and its independent governance framework
- What may happen to Sales Agents that breach the code
- How customers can provide feedback about the Sales Agent's performance
- Which companies are members of EAL
- How complaints are managed under the Code

- Details of the relevant ombudsman should their complaint not be resolved, or addressed, by the member to their satisfaction, or the consumer would prefer to deal with the ombudsman.

24. Will information about the standards that sales are required to comply with and complaints processes are in a standardised format such that information provided in information packs is consistent across members?

EAL Response: The information packs will include those matters set out in Question 23 and will be required to be replicated by members so that the EAL Standards are communicated in the same or similar way by all members.

25. If EAL does not propose to develop a standardised information pack to be given to all customers who are approached by sales agents then how does EAL propose to make customers aware about the standards that sales agents have to comply with under the code and of the complaints avenues open to them if they consider that the standards have not been met.

EAL Response: A detailed information package will be provided to all customers that enter into a contract with the respective member, or if requested by the customer. Additionally, all sales agents will wear an EAL badge with an identification number that will permit the customer to make further inquiries about the scheme (including seeking information about the EAL Standards on the EAL website).

26. Please also provide further information about how EAL proposes to promote the code and the complaints process more broadly.

EAL Response: EAL proposes to promote the EAL Scheme and Code of Practice in the following ways:

- Through leave behind marketing collateral (as discussed above)
- Establishing an EAL website which contains information about the Code of Practice and other elements of the Scheme;
- The displaying of the EAL logo on sales agent identification badges
- Promotion through various industry associations such as the ERAA
- All members are required to include in their own marketing material that they are EAL members and comply with the Code of Practice (see Clause 2.11 of the Code of Practice)

EAL acknowledges that the viability of the EAL Scheme is dependent on high levels of industry and customer penetration. EAL is also considering:

- Public relations campaigns that promote the Code
- Presentations at industry conferences and presentations on the Code and its development
- Regular promotion of the Code and consultation with relevant stakeholders
- Ongoing media engagement for promotion of the Code

EAL membership

Clause 7.1 of the EAL constitution states that any licensed energy retailer or energy marketer will be entitled to become a member of EAL. In order to become a member of EAL an energy retailer or marketer must pay a joining fee, annual subscription and a registration fee.

EAL will determine the amount of these fees which may differ depending on the class of the member. EAL will determine whether to approve or reject an application but it does not have to provide reasons for refusing an application.

27. Please give an indication on the fees it is anticipated that will be payable by a retailer or energy marketer on becoming a member of EAL.

EAL Response: As a not-for-profit organisation, EAL membership fees have been developed to cover the costs of administering the scheme.

The membership fee will consist of a small joining fee and a fixed membership fee that provides funding for some of the fixed operating costs (to the extent set out in the below table).

In addition to fees associated with membership, if the member engages Sales Agents, the member must pay a fee per Registered Sales Agent (to the extent set out in the below table). As detailed in Clause 8.1 of the

Procedures Guideline, members must pay a registration fee when the sales agent is first registered on the EAL Register (**Provisional Fee**), when the sales agent attains an Approved Accreditation Status (**Approved Fee**) and annually thereafter.

At present, it is intended that membership, joining fees, and Sales Agent registration fees will be determined on a 6 monthly basis by the Board to ensure that sufficient funds are received from participants to support cash flows and the operation and administration of the EAL Scheme.

The current membership fees proposed to be charged are structured in the following way:

	Large Active Retailer	Small Active Retailer	Non Active Retailer	Energy Marketer
Joining Fee	Fixed one-off fee applied on joining (designed to cover, in part, the cost of the annual report conducted by the Code Auditor)	Fixed one-off fee applied on joining (designed to cover, in part, the cost of the annual report conducted by the Code Auditor)	Not applicable	Not applicable
Membership Fee	Annual Fixed Membership Fee	Up to 35% of Annual Fixed Membership Fee	Up to 18% of Annual Fixed Membership Fee	Not applicable at present
Registration Fees	Based on a set per-agent industry fee that is determined by industry churn and the costs associated with operating the EAL scheme. The fees payable are proportioned based on commercial terms with their energy marketer.	Based on a set per-agent industry fee that is determined by industry churn and the costs associated with operating the EAL scheme. The fees payable are proportioned based on commercial terms with their energy marketer.	Not applicable as retailer does not use door to door agents	Based on a set per-agent industry fee that is determined by industry churn and the costs associated with operating the EAL scheme. The fees payable are proportioned based on commercial terms with their energy marketer.

28. Please explain why EAL does not have to give reasons for rejecting an application for membership

EAL Response: Whilst there is discretion under the Constitution for the EAL Board to reject an application for membership, EAL does not foresee that an applicant would be rejected other than in an extreme case. The objective of EAL is to develop an industry-wide self regulatory Scheme. To achieve that, the more members that EAL has the better it is for the perpetuation and success of the Scheme. That said, if a rejected applicant were to request that EAL provide reasons for its decision, the Board will consider that request and will endeavour to respond to it.

29. Please provide details of any dispute processes for applicants who are refused membership by EAL

EAL Response: A rejected membership applicant does not have any right of appeal under the EAL Scheme itself. However, such an applicant is not prevented from re-applying for membership in the future. As discussed above, EAL does not foresee that a prospective member which meets the criteria for membership and pays the requisite joining fee, would be rejected other than in a rare and extreme case.

Consultation in developing the code

A number of consumer groups have raised concerns that they were not consulted in the development of the code.

30. Please provide details of the consultation process that was undertaken with members and other interested stakeholders such as consumer groups and regulatory bodies in developing the code.

EAL Response: The Code of Practice was developed in partnership with:

- energy retailers that use door-step energy marketing in Australia; and

- energy marketers that may perform these door-step sales on behalf of energy retailers.

The EAL Scheme's goal is predominately to ensure that members recruit, train and monitor agents' competence in a uniform and consistent way. In order to gain an appreciation of how to do so, energy retailers engaged with their energy marketers to ascertain the best, yet most practical operational approach. The energy retailers and energy marketers consulted also provided insights into regulatory issues and likely consumer responses and concerns arising out of the EAL Scheme. In addition to this the ERAA made consumer groups aware of our proposal at the Queensland Retailer Round Table, held in Brisbane on 27 May 2010, and on Code development at the National Consumer Round Table, held in Melbourne on the 14th of October. We received no direct approach from consumer groups to seek further clarification as to our proposal prior to submission. We also forwarded presentations of the Code to relevant stakeholders as to its development and answered various queries as to its operation.

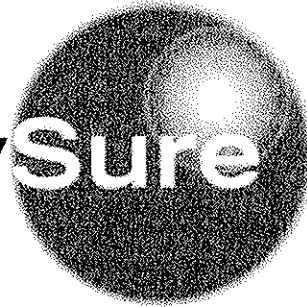
Additionally, regular consultation occurred between the developers of EAL and the operators of the EnergySure scheme in the UK (including in-person site visits in England with member participants and relevant stakeholders).

It must be noted that the EnergySure Code in the UK was developed during a period where there was a limited regulatory framework in place to monitor door-step selling. As such, in some ways, the EnergySure Code had to cover a broader range of likely issues. This is an important factor in understanding the consultation process. The Code of Practice has been designed to complement and support, not replace, an existing Australian regulatory framework which, to date; have been widely consulted on, both by consumer groups and regulatory bodies. This supplementary role and utility of the Scheme is acknowledged in both EWOV and EWON's submission.

Specifically, EWON states that:

"The activities proposed in the Energy Assurance application supplement the consumer protections provided by the National Energy Retail Law. Energy ombudsman schemes will continue to deal with individual complaints from customers about marketing conduct, and we expect a positive relationship and referral process with Energy Assured Limited. We are therefore pleased to support this initiative".

EnergySure



COLLECTIVE MARK

**THE ASSOCIATION OF ENERGY SUPPLIERS
ENERGYSURE CODE OF PRACTICE FOR THE FACE
TO FACE MARKETING OF ENERGY SUPPLY
ANNUAL REPORT
FOR THE YEAR ENDED 31 DECEMBER 2009**

ENERGYSURE CODE ANNUAL REPORT FOR THE YEAR ENDED 31 DECEMBER 2008

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Foreword by Lord Dubs of Battersea

Welcome to the Association of Energy Supplier's 2009 annual report of the Code of Practice for the Face to Face Marketing of Energy Supply ("the Code").

I have been the EnergySure Code Panel chairman since 2004. In the last 6 years, the Governing Board has employed a progressive approach to the Code and this has resulted in the continued development of a scheme aimed at improving confidence in energy sales. The results speak for themselves. Increasing good sales practice and the combined efforts of all the major UK energy Suppliers had a dramatic effect of reducing complaints by over 99% (measured by energywatch, now Consumer Focus) on direct selling of energy products.

This is due in part to the success of the Code and its administration, where compliance with the Code is a necessary part of the induction of any new sales person. For a few this means a swift exit from the industry when they fail to comply. For the remainder, Sales agents who operate to this strict code of conduct are able to see their efforts recognised and deliver a service to those customers who are not able to access these services through any other means.

The Energy Supply industry is changing. Stakeholders are beginning to recognise that those most exposed to increasing cost of energy are those who are most need help with energy efficiency and energy management. These stakeholders are also recognising the role that doorstep activity will have in reaching those most in need of assistance with these new challenges.

I am encouraged to see the Code embrace the new 2009 requirements from Ofgem and to continue to go beyond that defined in regulation and legislation to support consumers.

Introduction

The highlight in 2009 was the discussion and agreements with Ofgem regarding further measures to improve the Customer experience at the doorstep. The results of any changes to the regulations regarding doorstep selling will be reflected in the 2010 Code Review.

EnergySure members have continued to work closely with other agencies including Trading Standards to ensure Consumers continue to have access to energy products and services by professionally trained EnergySure sales agents at the doorstep. It has become increasingly important to help provide members of the public with information and safeguards to protect them from the scourge of rogue builders and others who are prepared to commit crimes on the doorstep to some of the most vulnerable members of our society.

EnergySure, on the other hand, has continued to be cited as an example of how to manage doorstep activity for the benefit of consumers and presents a major achievement compared to other sectors.

The Code itself has continued to change. Further developments were reviewed in 2009 and EnergySure Procedures setting further requirements on member companies and their Sales Agents were published and can be found on the Energy Retail Association website.

Deloitte have continued to provide services to the Association as Code Auditors and successfully reviewed members' compliance with Code for the whole period of 2009. The results of the review are in section 9.

Read on to find out more about the Code and the EnergySure registration scheme for Energy Sales Agents.

An outline of the Code

The code provides a set of requirements which its members must abide by. The requirements are divided into sections and cover the following areas.

Recruitment: Details the requirements on members to ensure that they engage only suitable individuals as sales agents and that they obtain and check references, properly assess their skills and knowledge, have due consideration that individuals will be the public face of the industry, and that appropriate security checks are carried out given the role places the Sales Adviser in direct contact with members of the Public.

Training: Details Sales Agent development of knowledge, their behaviour and appearance and their customer contact skills and that they meet the additional requirements laid out in the EnergySure scheme which includes a probationary period where Sales Agent performance on the doorstep can be assessed.

Registration: Details the requirements for EnergySure scheme registration where accredited agents have completed the EnergySure training scheme and have their details entered on a database. Accreditation may be withdrawn if an agent fails to meet standards, and this is also entered on the database.

Consumer Contact: Details calling times, agent identification, courtesy and avoiding misunderstanding. It also necessitates sales agents to voluntarily cease contact with a consumer who clearly indicates that contact is unwelcome.

Providing Information: The Code provides for clear contract forms, explanation of essential provisions of a contract, explanation of cooling-off period and cancellation rights, contact details; suppliers will have procedures to verify and confirm to a consumer that they have entered a contract and are satisfied.

Consumer Complaints: Code members are required to establish complaint handling procedures and pay prompt attention to complaints. They record complaints and analyse causes to be used for managing agent performance and improving procedures.

Compensation: When occasionally it does go wrong, the code ensures the concern is answered promptly and compensation is paid where service has been below the Code's high standards where gross misconduct occurs involving proven forgery, a compensation payment of £250 will be made.

The Code is available in its entirety on-line at: <http://www.energy-retail.org.uk/>

Our People

Members go to substantial lengths to ensure they employ only appropriate people to undertake the role of an EnergySure sales agent. It is testament to these efforts that consumer satisfaction has been maintained while many new employees have entered the service of the energy suppliers.

Sales Agents who provide services by visiting householders are by their very nature one of the few concrete 'public faces' of the energy supply companies. As such their behaviour and appearance is required to be second to none, and increasingly our staff are called upon to be good Citizens. Doorstep crime, particularly rogue traders and distraction burglars, is committed on those members of society more vulnerable than most. We ask our sales agents to be vigilant for these kind of individuals and if these see anything suspicious to report it to their supervisors or to the police. Fortunately crimes of this kind are rare and new legislation will further curtail the actions of rogue traders and burglars.

Overall, our Sales Agents are trained to recognise those members of society who are vulnerable and to treat them with respect and care. The vulnerable and the elderly deserve to feel safe in their own home and not to be excluded from normal society and the energy suppliers fundamentally agree with these needs.

Measuring our Success

With the changes to consumer representation occurring in 2008 with the passing of Energywatch and the emergence of Consumer Focus as a national advocate and Consumer Direct's advisory service, the information around energy sales previously presented is not yet publicly available. Members were content that the previously publically available information demonstrated a substantial and sustained reduction in customer complaints and that this trend from our own analysis has continued during 2009.

Governance and Administration

The Code is sponsored by the Association of Energy Suppliers (the Association') and is committed to the promotion of best practice in energy selling. Since September 2003, the Association became part of the Energy Retail Association (ERA). The ERA represents suppliers in the competitive UK energy market and all the main energy suppliers operating in the domestic market in Great Britain are members of the ERA – British Gas, EDF Energy, npower, E.ON, Scottish Power, and Scottish and Southern Energy.

Governance of the Code is being undertaken through the Association. The rules of the Association require Code Members to comply with the Code and to be subject to the disciplinary procedures set out in the Code. Whilst membership of the Association is voluntary, compliance with the EnergySure Code is mandatory for Association members.

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, putting into place monitoring procedures regarding Member performance, ensuring corrective action where agreed performance standards are not met and setting sanctions for any breach of 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 the Association who is a major firm of registered auditors.

The Association of Energy Suppliers Board

The operations of Association and the Code are directed through the Association's Board of Directors. There are seven members of the Board, six of whom are nominated by the ERA Member companies and the Chairman who also holds the post of Chief Executive of the ERA. The current (December 2009) Board Members are:

- Garry Felgate (Chairman of the Association and Chief Executive of the ERA)
- Nigel Howard (British Gas)
- Mark Garnett (EDF Energy)
- Alan Hannaway (npower)
- Helen Hayes (E.ON)
- Nigel Hobbs (Scottish Power)
- Mark Alden (Scottish & Southern Energy)

The Board met on a regular basis during 2009.

The ERA works closely with the Association who are continuously working to improve sales practices across the energy supply industry.

The Code Manager

David Laird was appointed in 2006 as Code Manager. The role of the Code Manager is to carry out the supervision, administration and day-to-day operation of the Code. The Code Manager reports directly to the Chairman of the Association and 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.

To facilitate effective working relationships between the Code Manager and Member Companies the Association's Board established a Code Operations Group, comprising operational management from each Member Company. The Code Operations Group, chaired by the Code Manager, met on a regular basis during 2009.

The Code Auditor

Deloitte were appointed as Code Auditor in August 2007. The Code Auditor carries out an annual audit of individual Member's compliance with the Code. This audit involves visiting each Member's operations and carrying out sample testing of the systems and controls that a Member has in place to enable compliance with the Code. Through the audit process, opportunities for improvements in the way in which Members ensure compliance with the Code are identified.

To ensure openness within the Code's governance framework, the Code Auditor has produced an in-depth report on the results of the Code audits that has been closely reviewed by all of the Members. Additionally, each Member receives their own in-depth report on the audit findings relating to that Member.

The Code Manager and the Code Operations group also consider detail issues arising from the Code Audit to assist in improving day to day operational compliance performance.

The Code Panel

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.

The Members of the Code Panel during 2009 were as follows:

- Lord Dubs of Battersea (Former Chairman of the Broadcasting Standards Council)
- Caroline Banks (Retired Director of Consumer Regulation Enforcement Division, OFT)
- Tina Tietjen (Chairman: Air Transport User's Council)
- Bryn Aldridge (Former Chairman: The Trading Standards Institute)
- Stuart Sweetman (Retired MD Post Office Counters Limited)

The Code Panel met regularly in 2009. The Panel were not called upon to hear any appeals from Members.

Delivering and Monitoring compliance with the Code

The Association and its Members have allocated significant time and resources to ensuring that Members are complying with the Code and that the Code has an impact on improving the face to face marketing of energy supply. Within each Member organisation there is a dedicated EnergySure Compliance Manager whose responsibility is to ensure that the organisation is complying with all the requirements of the Code.

Members are required to submit monthly returns to the Code Manager to demonstrate their levels of compliance with the Code. Where the returns indicate there may have been difficulties with compliance, the Code Manager will discuss a rectification plan with the Member.

A very important part of the audit process is the identification of opportunities for Members to improve processes and procedures. Detailed reports are provided by the Code Auditor to each of the participating member companies after the annual code audit.

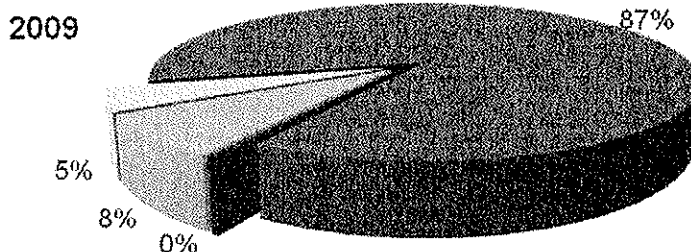
The results of the 2009 Code Audit were reviewed by the Code Manager. The issues arising from the audit which resulted in action plans were also reviewed with members on their completion. As in 2008, the results of the 2009 compliance audit will be carefully considered by all of the Members and the Code Manager.

Code Audit Findings - Summary

In 2009, the Code Auditor reported a small number of areas where members were non-compliant with the Code over the 12 month period since the last audit.

The level of compliance for the whole 12 months across all elements of the Code and all members is shown below;

- Excellent results across all members
- Extensive week long testing
- 87% of all tests carried out showed full compliance with the Code
- Corrective Action Plans produced on all areas identified



Classification	Description
Major	High impact, pervasive, systemic or repeated failure causing non compliance
Important	Medium impact, occasional instances of non compliance
Minor	Low impact, isolated instance of non compliance
Compliant	No instances of non compliance identified

In interpreting the above analysis it should be noted that the classifications of important and minor are defined as medium impact and/or occasional or low impact and/or isolated instances of non compliance and, in such cases, a Member may otherwise be compliant for a substantial part of the audit period or subject matter being tested. Furthermore, where remediation action was taken by a Member during the year to prevent further non compliances occurring, the original non compliance continues to be reported. In the majority of cases, non-compliances were single failure of compliance (previous examples include not completing the annual reassessments paperwork properly) or procedural (failures which were identified and corrected before the Code Audit took place).

Enforcing a successful Code of Conduct

To ensure full disclosure and openness concerning the pro-active role that the Code Manager has taken in respect to alleged breaches of the Code and subsequent investigations of such alleged breaches, the Code Manager presents reports to the Board and to the Code Panel containing details of Code investigations and emphasising any areas in which Members' non-compliance has led to a breach of the Code. Appropriate remedial action is confirmed by the Code Manager or the Code Auditor and where necessary sanctions were issued in line with Code Governance.

There were no instances this year (and four in 2008) where Code Members were investigated for breaches of the Code.

Appeals

The Code Manager works closely with all Members and strives to assist Members to comply with the Code without the need to apply formal sanctions.

There were no appeals made to the Board or Code Panel in 2009 regarding decisions made by the Code Manager on sanctions or other actions taken to ensure compliance with the Code.

Members have stringent procedures in place to recognise ongoing competence of Sales Agents and identifying conditions which would result in an EnergySure registered Sales Agent losing their registered status. Sales Agents are afforded the right to appeal against such a decision both to the Member withdrawing the registration and also an appeal to the Association itself. The conditions under which EnergySure registrations are withdrawn can be found in the EnergySure Code of Practice.

There were ten instances this year where Sales Agents appealed to the Association against decisions to withdraw their EnergySure registration status. An independent adjudicator was appointed in each instance and evidence presented by both Sales Agent and Code Member. The independent adjudicator determined that the original decision to withdraw the registration should stand in each of the 10 individual cases.

Report from the Chairman

2009 has seen some significant developments of the Code to embrace improvements in practices in doorstep selling of energy.

The main changes have been the review of the Code in relation to the increasing demands for higher quality of customer information to allow a more informed choice at the doorstep. During 2009 the market review carried out by Ofgem highlighted the importance of direct selling in this market and acknowledges the efforts made by the Association's members (the 6 large energy suppliers in the UK) to improve. Whilst we have striven to highlight the performance of the energy sector in this regard, we have recognised the need to maintain and improve the Energy Supply industry's reputation and will adopt further measures aimed at improving customer satisfaction with doorstep energy sales through 2009 and into 2010.

In 2009, complaints about energy sales represent a very small fraction of consumer concerns received by the Association's members and this continues to be the case. Members continue to improve their working practices to ensure the sources of such complaints are minimised or eradicated.

The success this year in the Code Audit, where members performance exceeded all previous years, is testament to the significant focus on getting it right. The Code Audit is no light exercise. Members are subjected to a week-long audit of their procedures and on-the-ground practices and the auditors provide a clause by clause report of their findings. The audit is a positive activity for members and the auditors often provide further recommendations and observations to help members in the design and development of their approach to doorstep selling.

We share the important overall results of the Code Audit with key industry stakeholders to demonstrate transparency and members' commitment to the Code.

In December the Code Panel hosted the first Stakeholder workshop where senior members of consumer representative groups were invited to review the Code and current issues with Doorstep Sales in general. This was a very productive event and has allowed the Association to review its activities and objectives for 2010.

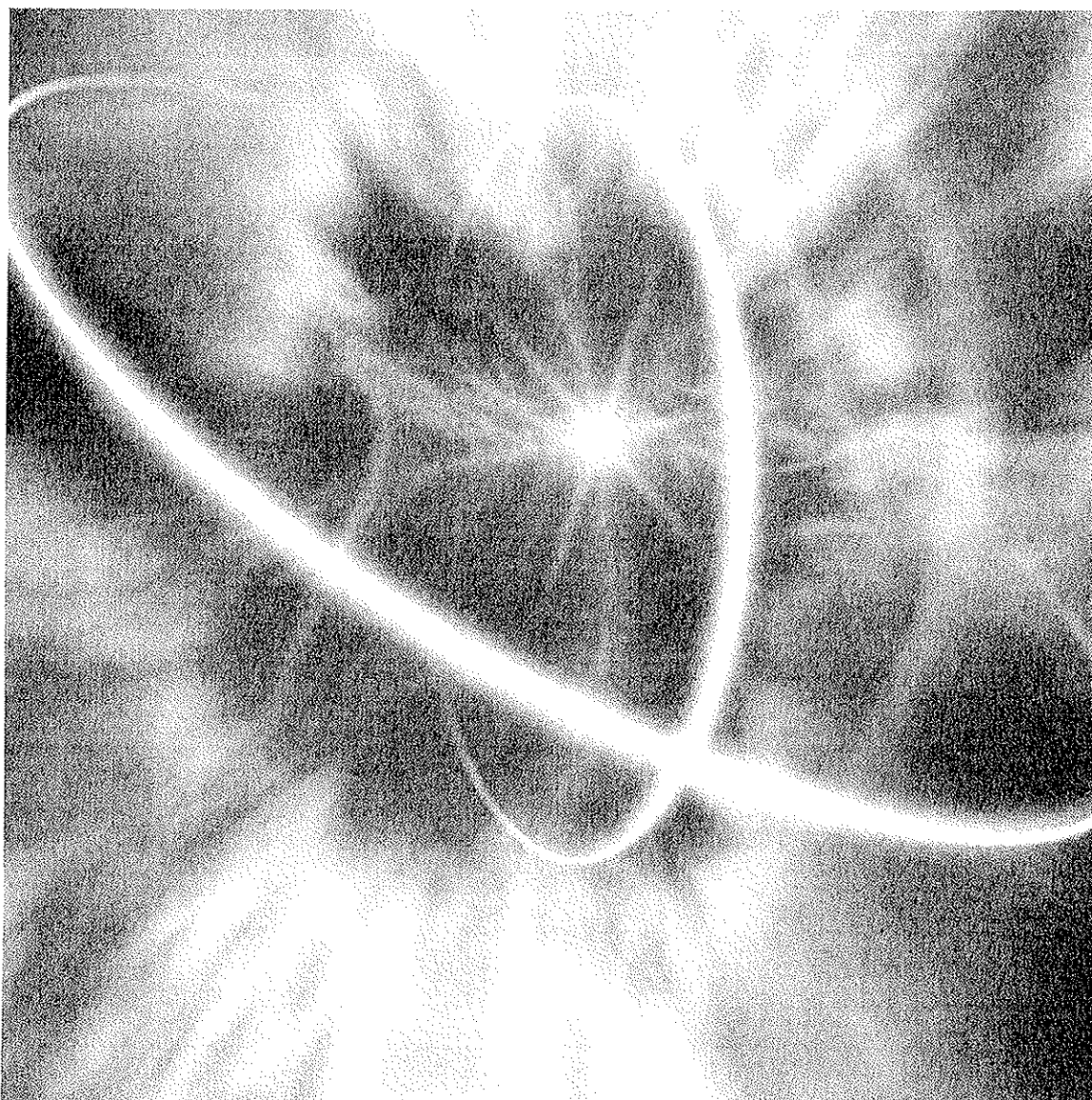
On a broader front, and to help make the doorstep a safe and welcoming place, we have engaged with key stakeholders to assist the police and other agencies fight real doorstep criminals, i.e. those who have no compulsion for asking for a fortune for poor workmanship or stealing life savings or who care little for destroying the life of vulnerable or elderly people. We do care and we would add our support to those agencies who are prepared to tackle rogue traders and doorstep criminals to the full extent possible of the law. The doorstep is frequented by many whose job is to deliver a top class service from the Avon Lady to the Kleeneze catalogue man. We seek proportionate measures which allow these and all honest traders to operate and provide their valuable service but take away the rogue trader at the doorstep for good.

Finally, may I take this opportunity to thank the many thousands of Doorstep Agents working for member companies who have provided such a positive customer experience and in many cases real economic benefit. Sales agents have a tough job to do as they are seek is to ensure customers get the best energy deal, no more no less.

Garry Felgate
Chairman
Association of Energy Suppliers

CODE OF PRACTICE

for the face-to-face
marketing of
energy supply



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In this issue:

New Clause 7.4.3b, confirming the requirement on Sales Agents when visiting properties with a notice indicating the consumer does not want uninvited doorstep callers.

1 DEFINITIONS, INTRODUCTION AND OVERVIEW

1.1 Definitions

The following definitions are used throughout this Code of Practice:

- 1.1.1 "the Association" means the Association of Energy Suppliers.
- 1.1.2 "Code" or "EnergySure Code of Practice" means this Code of Practice for the Face-to-Face Marketing of Energy Supply.
- 1.1.3 "Code Auditor" means the independent body (which will be a firm of registered auditors) which carries out an annual audit of individual Member's compliance with the Code.
- 1.1.4 "Code Manager" means the individual appointed by the Association of Energy Suppliers Board of Directors to carry out the day to day administration and management of the Code.
- 1.1.5 "Code Membership Rules" mean the rules that Code Members must comply with in addition to the rules in this Code.
- 1.1.6 "Code Panel" means the Panel comprising a maximum of six people who are independent of the Association of Energy Suppliers and the Members whose role is to hear appeals from the Members.
- 1.1.7 "EnergySure" and "EnergySure Scheme" means the training and accreditation scheme for Sales Agents.
- 1.1.8 "EnergySure Register" means the register of Sales Agents accredited under the EnergySure Scheme.

1.1.9 "ERA" means the Energy Retail Association, the parent body of the Association of Energy Suppliers.

1.1.10 "Erroneous Transfer Procedure" means the procedure set out in the Ofgem Erroneous Transfer Customer Charter.

1.1.11 "Face to Face Verbal Contract" takes place when a customer verbally agrees (during the sale verification call) to the energy supplier's terms and conditions for the supply of energy.

1.1.12 "Member" means an energy supplier within the Association of Energy Suppliers membership who has agreed to adhere to this Code.

1.1.13 "Sales Activities" means the face-to-face marketing of energy supply to domestic consumers. Face-to-face sales include those made at events or on third party retail premises.

1.1.14 "Sales Agent" means any individual authorised by a Member who solely represents a Member (and/or a Member's associated companies) for the purposes of engaging in Sales Activities where the principal function of such individual is to market energy supply alone or energy supply and other domestic utility services to domestic consumers.

1.2 Scope

1.2.1 This Code sets out a clear framework within which Members will conduct Sales Activities. It is aimed at promoting consumer confidence in Sales Activities and providing consumers with standards of protection over and above those provided by law.

1.3 Benefits of the Code

1.3.1 Adherence to the Code will ensure that high standards are achieved in face to face sales to consumers. Specific benefits include:

1.3.1.1 Rigorous selection and training of Sales Agents.

1.3.1.2 Protection of all domestic consumers regardless of their circumstances.

1.3.1.3 Sales practices which place the onus on Sales Agents to conduct all sales in a fair, transparent, appropriate and professional manner.

1.3.1.4 Compensation where applicable caused by failure to meet these standards.

1.3.1.5 Action taken against the Member if standards are not met.

1.3.2 Members' performance in meeting these standards will be audited by an independent Code Auditor, who will report to the Code Manager and/ or the Association of Energy Suppliers Board.

1.3.3 Members intend application of the Code to eliminate mis-selling in Sales Activities and deliver low complaint levels.

1.4 Promoting the Code

1.4.1 Members will ensure that their representatives are aware of the Code and its contents, and will make copies of the Code available to consumers on request.

1.4.2 Members should state in their marketing literature that they have adopted and will comply with the Code.

1.4.3 Failure to observe the Code may lead to a withdrawal of the right to claim membership of the Code.

1.5 Review of the Code

1.5.1 The Code will be reviewed periodically by the Association of Energy Suppliers in consultation with Members and Ofgem.

1.5.2 The Code is maintained by the Association of Energy Suppliers.

2 THIRD PARTIES

For clarity, where a Member contracts with a third party for the provision of Sales Agents, the Member must ensure that the third party complies with all components of the Code, in relation to Sales Activities. The Member will ensure that the Code Auditor has access to the third party for auditing compliance.

3 RECRUITMENT

- 3.1 Members will ensure that they only engage suitable individuals as Sales Agents. As an intrinsic part of the recruitment process, the Member must:
- 3.1.1 take into account the knowledge and skills of the individual in relation to the knowledge and skills required for the role and
- 3.1.2 take reasonable steps to obtain sufficient information about the individual's previous relevant activities and training.
- 3.2 Whilst operating within current employment legislation, Sales Agents will be recruited with due regard to:
- 3.2.1 Behaviour and appearance – the important role that the Sales Agent plays as the 'public face' of the industry must be recognised.
- 3.2.2 Security – due regard must be given to the checking of appropriate references in assessing the appropriateness of the individual to the role of the Sales Agent.
- 3.2.3 Sales Agent registration – reference must be made to the EnergySure Register.

- 3.3 The following are also explicit requirements in the selection of Sales Agents:
- 3.3.1 Sales Agents must provide proof of NI number (or temporary NI number), proof of address and two references. Where a temporary NI number is provided a valid passport must also be provided.
- 3.3.2 Referees must not be related to the applicant.
- 3.3.3 A primary reference must be a business reference and preferably their last employer with either a criminal record report or EnergySure register reference should they have been engaged by an EnergySure Code member previously. If a criminal record check or EnergySure register reference is not available, a secondary business or professional/character reference is required.
- 3.3.4 If a Sales Agent ceases to represent the Member, a copy of his or her records will be retained by the Member for a minimum period of three years.

4 TRAINING

- 4.1 Members must ensure that the Sales Agents acting on their behalf receive training to the standards laid out within EnergySure.
- 4.2 EnergySure standards will as a minimum:
- 4.2.1 take into account the knowledge and skills necessary to fulfil the role.
- 4.2.2 take into account changes in the market and to products/services, legislation and regulation.
- 4.2.3 be reflective of consumer ethnicity and diversity.
- 4.2.4 provide training on the recognition and treatment of vulnerable consumers.
- 4.2.5 be compliant with relevant equal opportunities employment legislation.
- 4.2.6 be linked to a verifiable standard of competence measurement.
- 4.2.7 include a probationary period for all new recruits.
- 4.2.8 include defined monitoring procedures to ensure consistency of training delivery.
- 4.2.9 be effective and up to date.
- 4.3 Members will only permit the Sales Agent to engage in Sales Activities if:
- 4.3.1 the Sales Agent has been assessed as competent in the Sales Activities or

- 4.3.2 the Member has taken steps to ensure that the Sales Agent has adequate knowledge and skills to act whilst under supervision. If the Sales Agent has not been assessed as competent, the Member must ensure that the Sales Agent is appropriately supervised until assessed as competent.
- 4.4 Members must adopt the standards as laid out within EnergySure to:
- 4.4.1 maintain systems for monitoring Sales Agents' competence.
- 4.4.2 make and retain records of Sales Agents' levels of competence.

5 SALES AGENT REGISTRATION

- 5.1 All new Sales Agents must be registered on the EnergySure database.

6 SALES SUPPORT MATERIALS

- 6.1 Sales support materials used by Members must not give false or misleading information.

7 CONTACT WITH CONSUMERS

- 7.1 Sales Agents must only make sales calls between 9am and 8pm, unless it is at the consumer's request.
- 7.2 Where there is sheltered housing, approval must be gained from the warden or other person in authority before making any approach to the residents.
- 7.3 Sales Agents will, as soon as possible on making contact, identify themselves, the Member they represent and their purpose. The Sales Agent will produce an identity card, which clearly displays the Member's name, the Sales Agent's name and photograph, and an expiry date for validity of the card. Sales Agents must not misrepresent themselves or the purpose of their visit.
- 7.4 Sales Agents will:
- 7.4.1 take account of the consumer's personal circumstances.
- 7.4.2 voluntarily cease contact with a consumer who clearly indicates that contact is inconvenient, unwelcome or inappropriate
- 7.4.3 (a) not call on premises in recognised* no cold calling zones where there is a message prominently displayed from the consumer in the form of a written note or sticker.
- 7.4.3 (b) not call on any premises where there is a message prominently displayed in the form of a visible, clearly worded and unambiguous notice indicating that a consumer does not wish to receive uninvited doorstep sales callers.
- *Members will recognise Local Authority no cold calling zones as lawful where they meet the requirements of proportionality as set out by the Office of Fair Trading in their letter to the Association and Local Authorities dated February 2008.

5

9 ENTERING INTO A CONTRACT

- The comparison must:
- 9.1 Sales Agents will take appropriate steps to satisfy themselves that the consumer can take responsibility for the energy bills at the premises.
- 9.2 Members must design contract forms such that the nature of the form is clear to the consumer entering into a contract (and where the consumer signs a contract document, contains a statement of the nature of the document immediately adjacent to where the consumer signs, so that the word CONTRACT cannot be obscured or concealed).
- 9.3 Sales Agents must explain the nature and the essential provisions of the terms of supply, so as to ensure as far as possible that the consumer understands what they are committing themselves to.
- 9.4 Sales Agents must take all reasonable steps to ensure that the consumer has understood:
- 9.4.1 that they are entering into a contract to transfer their energy supply.
- 9.4.2 the appropriate tariff, relevant to their supply.
- 9.4.3 the existence of a right of cancellation and the actions necessary to cancel or terminate the contract, including any charges or benefits forgone.
- 7.5 Sales Agents will end the discussion and leave the premises immediately at the consumer's request.
- 7.6 A contact number must be left with any consumer, on request.
- 7.7 Sales Agents must not exploit a person's inexperience, vulnerability, credulity or loyalties.
- 7.8 Sales Agents must at all times:
- 7.8.1 be courteous and professional.
- 7.8.2 seek to avoid the consumer misunderstanding any information given or making false assumptions, in particular over potential savings.
- 7.8.3 avoid the use of high pressure tactics.
- 7.9 Sales Agents must provide the consumer in writing or by means of an electronic display, an estimate of the total annual charges for energy before entering into a contract. The estimate must:
- 7.9.1 be based on the best information available to the Sales Agent.
- 7.9.2 set out clearly the basis for the estimate.
- 7.9.3 for direct debit payments a clear explanation of how the payments have been calculated and how these amounts relate to the estimated total annual charges.
- 7.10 In addition to the information provided in 7.9, for all prepayment consumers and consumers where the Sales Agent had stated they can save money the Sales Agent must provide a comparison of charges for energy used, in writing or by means of an electronic display.
- 7.10.1 be based on the best information available to the Sales Agent.
- 7.10.2 be for the same period (usually one year) and same consumption level.
- 7.10.3 include any relevant differences.
- 7.11 Where the consumer enters into a contract the member must provide the consumer with a copy of the written estimate (and if a prepayment consumer or savings have been claimed, a comparison) either at the time of the face to face contact or as soon as reasonably practicable thereafter.
- 7.12 Members will maintain records for not less than three months including the date of contact with the consumer to allow the positive identification of the Sales Agent involved. This will assist in dealing with any complaint or query.
- 7.13 The Sales Agent can only conduct Sales Activities on behalf of the Member with whom they are currently registered on the EnergySure Register.

8 CONSUMER PROTECTION AND OTHER LEGAL REQUIREMENTS

- 8.1 Members, their agencies/contractors and Sales Agents must comply with all applicable licence and legislative obligations.

6

10 CONSUMER COMPLAINTS

- 9.5 The Member will either at the time the contract is entered into or as soon as reasonably practicable thereafter provide the consumer with confirmation of their terms of supply which shall include:
- 9.5.1 Details of the contract, consistent in all respects with the contract the consumer has entered into and any estimate, comparison or other supporting information provided to the consumer (except in the case of an electronic or verbal transaction where the copy of the terms will be provided within 5 days).
 - 9.5.2 Confirmation of the tariff(s).
 - 9.5.3 An explanation of what will happen next.
 - 9.5.4 A reminder to the customer to check that the product they have signed up to is appropriate for them including where to find impartial advice.
 - 9.5.5 An explanation of how the contract can be cancelled.
 - 9.5.6 Information about what the consumer can do if they have any concerns including details of how Consumer Direct can be contacted.
 - 9.5.7 The Sales Agent's name and Member ID number.
- 9.6 In the event of a face to face verbal contract, the supplier must ensure that the contract verification call confirming the requirements of 9.4 and 9.5 to the consumer is recorded. The contract can only be processed if these requirements are satisfied.
- 9.7 Members must within 14 days of entering into the contract, take all reasonable steps to contact the consumer to confirm that the consumer:
- 9.7.1 understands that they have entered into a contract.
 - 9.7.2 understands the principal terms of the contract.
 - 9.7.3 is content to have entered into that contract.
 - 9.7.4 has received or been shown, by means of electronic display, the estimate or the comparison in writing.
 - 9.7.5 is content with the information provided and is satisfied with the way in which the sale was conducted.
- 9.8 Members will, in confirming a contract for the supply of energy, advise the consumer of the expected date of commencement of supply.
- 9.9 Where a consumer has entered into a contract the member must maintain a record of the information provided to that consumer for a minimum of 2 years.
- 9.10 Where the consumer indicates in response to 9.7 that they are not content to have entered into a contract the member must take all reasonable steps to ensure that:
- 9.10.1 the contract is ended.
 - 9.10.2 the member does not begin to supply the consumer.
- 10.1 All representatives of the Member and all Sales Agents who deal directly with consumers must be made aware of the member's complaints and escalation process.
- 10.2 Members must investigate mis-selling reported through the Erroneous Transfer Procedure as if it were a complaint direct from a consumer.
- 10.3 Members' complaints procedure must set out how consumers may complain about Sales Activities.
- 10.4 Members must deal with complaints, including complaints passed on from external bodies in accordance with the members' code of practice.
- 10.5 A full and accurate record of each complaint must be retained and used for the purposes of managing Sales Agent performance and competence as well as for improving Members' procedures. This will include as a minimum:
- 10.5.1 the root cause of the consumer dissatisfaction.
 - 10.5.2 a description of how the consumer complaint was resolved.
 - 10.5.3 detail of any compensation made to the consumer.
- 10.6 Reasons for complaint will be categorised into three groupings, each grouping indicating the severity of the complaint. This will be used as a framework for identifying poor Sales Agent performance and the consequential action to be taken when/if the complaint is found to be proven after investigation.
- 10.6.1 Category 1 – Gross misconduct refers to complaints of a magnitude that if substantiated will result in the dismissal of the Sales Agent and involvement, where appropriate, of the Police. The Member will be responsible for ensuring the EnergySure Register is updated for all cases of gross misconduct and this may result in the Sales Agent's accreditation being withdrawn even in the event that the Sales Agent no longer carries out Sales Activities for that Member. The Member has the right to inform any other Member of the withdrawal of the accreditation. The Member will review other sales made by the Sales Agent and consider whether action is required to correct any mis-selling to other consumers.
- 10.6.2 Category 2 – Misconduct, refers to complaints about the behaviour of the Sales Agent which Members are not prepared to tolerate as it falls outside the norm of what is deemed acceptable. Complaints of this nature will normally result in a disciplinary sanction which if repeated may result in dismissal of the Sales Agent.
- The Member will be responsible for ensuring the EnergySure Register is updated for all cases of dismissal and this may result in the Sales Agent's accreditation being withdrawn even in the event that the Sales Agent no longer carries out Sales Activities for that Member. The Member has the right to inform any other Member of the withdrawal of the accreditation.
- 10.6.3 Category 3 – Competence, refers to complaints about the general competence and behaviour of the Sales Agent or the consequence of poor procedures, where either coaching or retraining is the most appropriate measure.

11 COMPENSATION

11.1 Where a Category 1 complaint is proven as forgery ("proven forgery") by a Sales Agent a fixed compensation payment of £250 will be paid by the Member to the consumer. For the avoidance of doubt proven forgery shall be where it is proven that a Sales Agent or any person induced by the Sales Agent has deliberately forged the consumer's signature for the purposes of effecting a legally binding contract.

11.2 For the purposes of the compensation payment referred to in paragraph 11.1, and where the means of entering into a contract does not require a signature, proven forgery shall also occur where it is proven that a Sales Agent or any person induced by the Sales Agent has deliberately and falsely represented him/herself to be a consumer for the purposes of effecting a legally binding contract.

11.3 In the absence of a signature or the recording of the verification call a fixed compensation payment of £250 will be paid by the Member to the consumer.

11.4 For all other complaints, and where appropriate, the Member will apply its individual company compensation policy.

12 CODE MEMBERSHIP, MONITORING COMPLIANCE AND ENFORCEMENT

12.1 Conditions of Membership

12.1.1 Suppliers wishing to become Code Members will be required to satisfy the Association that they meet the necessary requirements, including those relating to the EnergySure Scheme. Retention of Code Membership will depend on continuing to meet these requirements.

12.1.2 The Rules of the Association require Code Members to comply with the Code and to be subject to the disciplinary procedures set out.

12.2 Monitoring Compliance

12.2.1 Members are responsible for ensuring that they have an adequate control framework in place and can evidence controls, processes and systems which enable compliance with the Code.

12.2.2 Members must make regular audits of systems, procedures and documentation to prove compliance with the Code.

12.2.3 The Code Manager will monitor Members' compliance with the Code on a regular basis through reviews of monitoring reports provided by the Members.

12.2.4 There will be a formalised annual audit conducted by the Code Auditor who will provide an independent assessment on individual Member's compliance with the Code.

12.2.5 Members will respond promptly to questions from the Code Manager to monitor compliance under 12.2.3.

12.2.6 Members will give the Code Auditor access to the information necessary for the purposes of auditing compliance under

12.2.7 Reasonable notice of an audit will be given by the Code Auditor.

12.2.8 The Code Manager may publish standards of good practice from time to time, subject to commercial sensitivities.

12.3 Enforcement

12.3.1 The Code Manager will propose sanctions where:

12.3.1.1 The Member has materially infringed the Code and it is not possible to resolve the matter satisfactorily; or

12.3.1.2 There is evidence of a serious or persistent failure by the Member to observe the Code; or

12.3.1.3 The Code Manager has previously warned the Member of an infringement and has given sufficient notice that continued non-compliance will result in sanctions.

12.3.2 The Code Manager will minimise the costs of compliance for Members by ensuring that any action required is proportionate to the risks. As far as the law allows, the Code Manager will take account of the circumstances of the case and the attitude of the Member when considering action.

12.3.3 Advice from the Code Manager will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale and making sure that legal requirements are clearly distinguished from best practice advice.

Before enforcement action is taken, the Code Manager will provide an opportunity to discuss the circumstances of the case and, if possible resolve points of difference, unless immediate action is required. Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and any sanction applied must be proportionate to the extent of non compliance.

12.3.4 Where sanctions have been proposed by the Code Manager the Member may appeal to the Code Panel. Where no appeal is made the Code Manager will confirm the sanctions at the end of the notice period as laid down in the Code Membership Rules and will inform the Panel.

12.4 Code Panel

12.4.1 Where an appeal is made the Code Panel will operate a formalised grievance procedure and will be entitled to:

12.4.1.1 confirm or vary the sanctions proposed by the Code Manager.

12.4.1.2 require the Member to refrain from claiming that they operate in accordance with the Code until they are satisfied the Code Manager that they are now compliant.

12.4.1.3 require the Member to undertake remedial and corrective action within a defined timescale to reach an agreed level of compliance.

12.4.1.4 suspend the right of the Member to refer to the Code in their marketing.

12.4.2 The Code Panel may issue a public statement following suspension from the Code in accordance with 12.4.1.4.

APPENDIX 1 – CODE GOVERNANCE

Governance of the Code is being undertaken through the Association. The rules of the Association require Code Members to comply with the Code and to be subject to the disciplinary procedures set out. The Association has appointed a Code Manager to carry out the supervision, administration and day-to-day operation of the Code, as described in Section 11. The Code Manager will act independently of all Members in operating the Code, putting into place monitoring procedures regarding supplier performance, ensuring corrective action where agreed performance standards are not met and setting sanctions where necessary, consistent with the Code. In addition an annual audit of individual Member's compliance with the Code will be carried out by the Code Auditor, an independent body appointed by the Association who is a firm of registered auditors.

The Code Panel comprises a maximum of six people. The Panel Chairman and other 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.

EnergySure Code Manager
The Association of Energy Suppliers
1 Hobhouse Court,
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SW1Y 4HH
email: codemanager@energy-retail.org.uk

APPENDIX 2 – CONSUMER COMPLAINTS PROCEDURE

In the case of a complaint the consumer should in the first instance complain to the Member concerned, giving it a chance to put the matter right.

Members contact details are as follows:

British Gas
Tel: 0800 048 0707

Write to:
British Gas
PO Box 3055
Eastbourne
BN21 9FE

Text phone: 18001 0800 072 8626

EDF Energy
Tel: 0800 092 9292

Write to:
EDF Energy
Freepost RRYZ – BRIT – CBJS
Osprey House
Osprey Road
Exeter
EX2 7WN

Npower
Tel: 0845 070 4856

Write to:
Customer Relations,
PO Box 97, Peterlee, SR8 9AP.
or visit
www.npower.com/customerservice

E.ON
Tel: 0800 0150987

Write to:
Residential Sales Quality Team
Newstead Court, Little Oak Drive
Annesley, Nottingham
NG15 0DR
Email: MBSalesLiaison@eonenergy.com

SSE
Tel: 0800 117 116

Including:
Atlantic Electric and Gas
Scottish Hydro Electric
Southern Electric and Gas
SWALEC Electric and Gas
Write to:
Head of Customer Service
Grampian House
200 Dunkeld Road, Perth,
PH1 3GH
Email: headofcustomerservice@sse.com

Scottish Power
Tel: 0141 568 4673

Fax: 0141 568 2189
Write to:
Quality & Compliance Section 24
Cathcart Business Park
Spean Street, Glasgow
G44 4BE
Email: energysurecompliance@scottishpower.com

If the complaint is not resolved by the supplier to your satisfaction, you may take your complaint to the energy supply ombudsman, details of how to do this can be found on the energy supply ombudsman website www.energy-ombudsman.org.uk



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