Review of the Prohibition of the use of Annual Bill or Annual Cost for Quotations or Comparison in the Domestic Marketing Code of Practice

January 2021

About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs, Markets and Networks. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

Our mission

To protect the short- and long-term interests of consumers of electricity, gas and water.

Our vision

To ensure value and sustainability in energy and water.

Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.

Abstract

This consultation paper seeks stakeholder views on our review of the prohibition of the use of annual bill or annual costs quotations to consumers in the Domestic Marketing Code of Practice for Energy Suppliers.

A number of stakeholders have previously raised their views that this aspect of the Domestic Code should be reviewed. As the market has evolved since 2014 and competition developed significantly, the Utility Regulator now seeks responses to the questions set out in this paper to inform the overall review of this matter.

Audience

This document is most likely to be of interest to regulated supply companies in the energy industry, consumer organisations, government and other statutory bodies.

Consumer impact

This paper sets out the UR's reasons for the review of the sections of the Domestic Marketing Code of Practice which currently prohibit the use of annualised bill and annualised tariff quotes. If the prohibition is removed it will allow for consumers to be given comparisons of different tariffs in the market on the basis of an annual average cost. It will therefore have a direct impact on the consumer's sales experience in NI.

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1. Introduction and Background

1.1 In July 2009 the European Union issued the Third Energy Package of EU legislation aimed at liberalising the EU internal energy markets and ensuring adequate customer protection ('the Third Package' or IME3). The package had a new and deliberate emphasis on ensuring that customers, and in particular vulnerable customers, are afforded a "high level" of proper and appropriate protection in their relationship and dealings with energy Suppliers.

1.2 Alongside DETI (now DFE), the UR had responsibility for the implementation of this legislation in Northern Ireland. DETI introduced the formal Third Package enabling legislation in spring of 2011. Subsequently, the UR published a consultation paper "The Implementation of the EU Third Package Internal Energy Package" (IME3) in July 2011. The DETI Minister approved the final set of licence modifications in August 2012 and they are now binding.

1.3 One of the outcomes of those licence modifications is the enhanced protection for customers via Amended Condition 40 in the electricity supply licence and Amended Condition 2.21 in the gas supply licence which state that Suppliers must comply with the Marketing Code of Practice issued by the Utility Regulator.

1.4 A competitive retail market can bring many benefits to energy consumers but also brings with it the possibility of mis-selling or inappropriate marketing behaviour. The UR believes the Marketing Code of Practice is necessary to protect consumers from potential harm from mis-selling or poor marketing behaviours. European wide energy legislation requires regulators to deliver a high level of consumer protection in this area; indeed this was stated in Annex 1 of the Directive on the Internal Energy market which says:

"Customers shall be protected against unfair or misleading selling methods;"[1]

1.5 We are of the view that the Marketing Code is in keeping with that requirement and we worked with the CCNI and the Trading Standards Service in the development of the Code. The Code is also in line with the statutory duties of the UR, which place a high level of importance on customer protection. Currently adherence to this Code is a mandatory licence requirement for all regulated energy Suppliers. Adherence to the Marketing Code is also monitored to ensure compliance. Where necessary and appropriate, enforcement action can be taken and in

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0055:0093:EN:PDF

some circumstances fines or penalties imposed; however any action taken is considered and proportionate.

1.6 Two further important policy contexts are worth also noting at this point:

First, retail energy competition was at an early and immature stage in NI at the time the Code was first drafted. It was essential to protect customers from potential mis-selling or poor marketing. Customers in Northern Ireland were relatively inexperienced with regard to distinguishing between different energy tariff offerings and Supplier packages. This would have been especially true in the domestic sector. This inexperience coupled with inappropriate or misleading marketing information could have given rise to the potential for poor customer decision making and bad switching experiences. This could have proved detrimental not only to consumers, but also to confidence in energy retail competition as a whole in that early period.

1.7 Second, experience from GB indicated that marketing and selling problems in the energy market had some detrimental impacts on customers' experiences of energy competition. In the 2008 Energy Supply Probe, Ofgem noted that in the early stages of retail competition in the GB market, mis-selling was a serious problem and cited evidence of customers being switched without consent and often switching to tariffs that were more expensive than the tariffs they were currently on. In some instances, Ofgem imposed penalties for breach of licence conditions. It was for these reasons the UR decided to develop the Marketing Code of Practice.

Original Publication of the Marketing Code of Practice and Further Updates to the Code since 2014

1.8 The process for the development and consultation of the Marketing Codes of Practice ran throughout 2013 and 2014. The Marketing Codes of Practice were developed for gas and electricity domestic customers as well as small business customers. The current threshold for application of the Code requirements to non-domestic small business customers is for customers who consume less than 732,000 kWhs in gas. The current threshold for application to non-domestic small business customers is less than 70kVA or an annual consumption less than 150MWh in electricity.

1.9 After the Codes became 'live' there were a number of occurrences whereby advertising carried out by suppliers appeared to have not been in keeping with the relevant sections of the Code.

1.10 As a result the Codes (both domestic and non-domestic small business) were updated in June 2015 to help alleviate this and make them clearer for suppliers.

1.11 Following the June 2015 update a number of ongoing issues came to light in the domestic market. Further clarifications and changes were made to the Code for domestic customers, which helped remove any ambiguity that was perceived in the domestic Code. These came into effect in September 2017.

1.12 Most recently, in January 2020 the UR published a decision paper which highlighted the latest changes which were going to be made to the Marketing Code of Practice for <u>non-domestic</u> small business customers. This update was largely an exercise in mirroring the changes previously made to the domestic Code in 2017.

1.13 In the current Marketing Codes of Practice there is a prohibition on the supplier or any agents showing comparisons on an annual bill basis, or tariff quotations on an annual cost basis, in any marketing material. This includes agents such as price comparison websites who often use assumed annualised costs to provide comparisons between suppliers' tariffs.

1.14 The prohibition of the use of annual comparisons is stipulated in both the current domestic and non-domestic Codes from Section 3 – Section 10.

Rationale Prohibition of the use of Annual Bill or Annual Cost Quotations in the Marketing Codes of Practice

1.15 During the initial creation of the Marketing Code of Practice, the UR was keen to ensure that there would be no misrepresentation of annual costs or of the potentially confusing estimates of savings that could be made by the customer from switching supplier. To avoid problems or confusion caused by varying consumption levels, suppliers and agents were prohibited from offering any quotes for the supply of energy to customers on an annual bill or annual cost basis. Instead, all quotes had to be based on <u>actual price per unit supplied</u> (rather than £ estimated annual savings).

1.16 This was a comprehensive approach to ensure in the early days of competition in the market that customer confidence in switching was not inhibited as a result of potential mis-selling, which may have led to customers being sold energy deals that appeared to be good value initially, but in fact turned out to be more expensive in the long run.

1.17 To further support the UR's reasoning for including the prohibition of annual cost quotations, there had been issues in GB surrounding the mis-selling of energy deals to customers. Oversights in the GB market *'contributed to sales agents quoting inaccurate comparative savings, providing a misleading guarantee of cheaper prices… and failing to behave fairly and professionally.'* [2] These are failings the UR sought to prevent with the publication of the Marketing Codes of Practice.

1.18 Additionally, at the time of the first publication of the Domestic Marketing Code of Practice in 2014, the market was in the early stages of developing with domestic customers being offered only flat unit rate based tariffs by suppliers. In this context, comparisons using unit rates were appropriate and useful. Customers could see the percentage difference between the unit rate they were currently paying and the unit rate being offered. We were of the view that this comparison was adequate for customers to make informed choices and that marketing could still be effective and informative without annual bill comparisons.

1.19 The same prohibition of the use of annual comparisons was reflected in the non-domestic Code. Generally customers in this sector of the market were usually quoted on a unit rate basis. However the UR was of the view that where possible the Codes should remain consistent whilst taking into consideration the differences in the sectors.

[2] https://www.ofgem.gov.uk/publications-and-updates/economy-energy-pay-250000-mis-selling-and-management-failings

2. Proposal to remove of the prohibition of the use of Annual Consumption

2.1 NI energy supplier domestic tariff products have evolved considerably since the prohibition on annual comparisons was first installed. There are now various tariffs that include such things as "sign-up" bonuses or free electricity to incentivise customers to switch. Indeed some of these tariff offerings may have actually emerged in response to the prohibition to put an annual benefit in terms of money.

These more sophisticated tariffs cannot be compared easily with tariffs that are solely based on a unit rate. In this more complex tariff environment now existing in NI, tariff information based on annualised cost (based on a standard annual average unit consumption) would make comparison of different types of supplier contracts/tariff offerings more easily understood for customers.

2.2 The NI market has also now seen the emergence of "standing charges" in NI supplier tariffs in the domestic market. This makes comparisons based on unit rates alone of much less value than they were when the domestic market had only flat unit rate tariffs. It is unreasonable to expect consumers themselves to calculate an average cost for a year (even if they knew their own consumption) of a tariff with standing charges and compare that against a tariff that does not have standing charges.

2.3 Also, the Consumer Council for Northern Ireland (CCNI) have in recent years developed a website for domestic customers that compares all tariffs on an annual bill basis. This website has been well received by the market and there is a simple fact sheet that shows each suppliers domestic tariffs, all of which are calculated on the basis of an annual bill assuming customer consumption of 3,200 units per year for electricity and 12,000 units per year for gas. This has proved useful for customers and suppliers alike. Currently, whilst suppliers cannot show customers annual bill comparisons of their tariffs against others in the market, they can point the customer to the CCNI website which does. This would seem to make the current Marketing Code prohibition on such comparisons redundant in today's scenario.

2.4 In addition, the UR has had several contacts from Price Comparison Website (PCW) developers who have enquired about setting up a PCW in Northern Ireland. They have made strong representations to the UR that the current prohibition on annual bill comparisons makes developing a site for customers that can be easily understood without any human discussion very difficult. It is also the case that the PCWs in GB and RoI make comparison based on annual bills. The UR understands this position and notes that the CCNI website followed the same model as the PCWs in GB and RoI. The UR does not want to inhibit the development of PCW or switching sites in NI. Removing the prohibition would eliminate one major obstacle for developers who might wish to enter the NI market.

2.5 Competition is now well developed in the electricity market in NI but less so in gas. However, it is true that given the churn rates in electricity that a large number of customers will have been through the switching process at least once. Now that competition has emerged, the URs concern around mis-selling in the early days of competition as occurred in GB have lessened and we see a transition to allowing annual bills comparisons as a sensible way forward. We will monitor developments on these matters alongside both CCNI and Trading Standards, with whom we have good working relationships.

2.6 We therefore conclude, for the reasons outlined above, that it is appropriate to remove the prohibition on annual bill comparisons from the domestic marketing code.

2.7 In addition to the removal of the prohibition on the use of annual bill comparisons or quotations in any form of marketing, we are proposing that where suppliers are marketing their tariffs they must show a typical annual bill. The updated Code (Annex 1) we publish with this consultation clearly sets out what information should be included so that the customer has all necessary information to make an informed decision.

2.8 We envisage that for domestic comparisons an assumed average for electricity of 3,200 units should be used and an assumed average for gas of 12,000 units. Whilst these assumptions are not perfect they are used currently on the CCNI website in NI and have been accepted by the market as reasonable. We have considered allowing the use of the customers' actual consumption (where it was known) however are of the view that this has the potential to cause confusion. Through setting the annual usage amounts it should create consistency across mediums as well as across suppliers. This should allow clarity for customers if they are exposed to comparisons from two different suppliers, as they will be derived on the same basis.

2.9 We are not proposing to remove the prohibition of the use of annual comparisons in the non-domestic marketing code. We are of the view that whilst this is a tool that is preferred in the domestic market for ease of comparison, it has not been a feature in the non-domestic market and there doesn't appear to be an issue with this prohibition to date in the non-domestic code. In this context, the non-domestic Code will remain unchanged at this time.

3. Consultation Questions Next Steps and Timelines

3.1 The UR is keen to hear the views of interested stakeholders and invite representations on the following questions:

Q1) Do respondents have any objections to the removal of the prohibition on annual bill comparisons that is currently in the Domestic Code of Practice

Q2) Are there any issues with the deletions and/or new drafting in the Domestic Code of Practice (Annex I to this consultation paper).

How to Respond

3.2 Responses to this consultation should be forwarded to reach the UR on or before 4pm on 11th February 2021 to:

Nicola Parker

The Utility Regulator

Queens House

14 Queen Street

Belfast

BT1 6ED

Email: Nicola.Parker@uregni.gov.uk

Next Steps

3.3 Once all the responses to this consultation paper are received, the UR intends to issue a decision paper which will analyse stakeholders' responses to this consultation. The anticipated timeline for this report to be issued is Q2 2021.

ANNEX I