



Unit 2

Contract Law

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Table of Contents

Document History

Revision History

Reviewed by

Approvals

Unit 2

Introduction

Section 1

Formation and types of contracts

Elements of a contract

Terms

Types of contracts

Miscellaneous contractual matters

Factors which affect the validity of the contract

Summary

Section 2

Standard licence conditions

Referencing the standard licence conditions

Definitions and interpretation

SLC and contracts

Breach of licence conditions

Summary

Section 3

Standards of performance

Guaranteed and overall standards

Connection standards

Handling complaints

Overarching standards

Summary

Document History

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Unit 2

Introduction

When consumers agree to have their gas or electricity supplied by a particular company they are entering into a contract with that supplier so it is important that you understand how contracts are formed and how they work. The general law of contract, based in both common law and statute, regulates how a contract is formed and what remedies are available if it is breached. There are also various other provisions which are relevant too, such as the terms in the contract and factors which may affect its validity.

Basic contractual principles are found in the common law but most of the provisions that protect consumers are based in statute. Liability under a contract is strict.

The stages of the consumer's journey addressed in this unit are as indicated below:



In addition, the energy industry itself has several methods of regulating contracts which work alongside general contract law. In this unit we will examine the relevant areas of contract law, and introduce the standard licence conditions and the performance standards both of which have a bearing on the contract we make with our energy supplier, although more detail will be considered in unit 4.

A contract is enforceable under the civil law and this will be considered in unit 4 'Energy supply contracts'

The headings to be addressed in this unit are as follows:

Section 1: Formation and types of contracts

Section 2: Standard licence conditions

Section 3: Standards of performance

Section 1

Formation and types of contracts

Elements of a contract

People make contracts on a daily basis, often without realising it. Every time something is bought, a contract is formed between the seller and the buyer and the relevance of the contract only becomes an issue when something goes wrong, for example, a higher rate of charge is made for energy consumption than was agreed between the parties. At this point the law of contract, which is concerned with legally binding promises or undertakings, comes into play, by:

- implying certain **terms** into consumer contracts
- regulating the **fairness** of some of these terms, and
- providing **remedies** for any loss or damage resulting from a breach of these terms.

Basic contractual principles are found in the common law but later provisions that protect consumers are largely based in statute. Liability under a contract is strict, which means that there is no need to show that there was an intention to breach the contract or any knowledge that this had occurred.

In the energy sector there are some unusual interpretations of contracts and consumer responsibility for the payment of outstanding bills. These will be discussed as they arise.

It is important to establish that a contract exists between the parties in order to determine if each party has formal legal obligations under the contract to each other. The following five elements must be present to constitute a contract:

- ✓ an offer
- ✓ acceptance
- ✓ some consideration (not always necessary in Scotland)
- ✓ an intention to create legal relations, and
- ✓ the capacity to contract

Practical tip

There is a specific type of contract which exists in relation to the supply of energy, called a **deemed contract**, which does not require all of the above elements to be in place for a contract to be formed. Deemed contracts are discussed in more detail in unit 4 'Energy supply contracts'.

Now let's look at the five basic ingredients of a contract in more detail.

(a) Offer

One party to the contract will usually propose terms while the other party accepts them. So an offer must contain some sort of promise. It does not necessarily come from the person making the first move: they may only be inviting offers in which case they are making what is commonly called 'an invitation to treat'.

An 'invitation to treat' is a statement which encourages or invites the making of an offer. Let us examine some common shopping experiences and consider whether they are invitations to treat or offers.

The display or advertisement of services, including a gas or electricity supply, accompanied by a price indication is likely to be an invitation to treat, as in:

- ✓ prices on display in a shop or shop window
- ✓ a magazine advertisement
- ✓ a website

However, if additional information is given then the statement can amount to an offer depending on the wording. For example, 'The first 50 people to sign up on Monday morning will receive their gas supply at a 20 per cent discounted price off the standard domestic tariff' – is likely to be an offer to sell.

Completing an application form to have a gas or electricity supply or to transfer to another supplier could be an invitation to treat or an offer to buy, depending on the wording. The test would be 'what would an ordinary, reasonable person think?'

It is important to recognise the situations where an invitation to treat will arise as the consumer will not be able to take civil legal action if the trader is unwilling to proceed to contract on the basis set out in the invitation to treat.

Example

Jason calls Citizens Advice consumer service for advice. He is very annoyed as he telephoned a supplier who had advertised in a local newspaper a four per cent discount against their standard rate for pensioners. He was told by the sales representative that the prices had changed since the advert went to print and the special rate was no longer available.

Advice

There is no legal obligation on the supplier to provide the special rate as it was not an offer to sell for that price. Contract law states that Jason made an offer when he telephoned the supplier. Here the supplier was not willing to supply the energy for the price offered and was at liberty to decline. The newspaper advert was merely an invitation to treat and was not binding.

Jason may wish to write to the supplier following their complaints procedure.

Note: The supplier may be committing a criminal offence, e.g misleading price indication (CPR's) and therefore the details of this should be clearly referred to in the case notes and the case handled in accordance with RAST protocols.

In relation to energy contracts it is very important to consider who exactly made the offer and who accepted it. Sometimes the supplier may make the offer and the consumer will be accepting. At other times it will be the other way round. This could depend to some extent on how the negotiation is carried out and where the contract is made. From the supplier's point of view, they will need to know who they have a contract with, even a deemed one, so that they know who is liable to pay for the energy consumed. This matter will be addressed later in unit 6 'Paying for fuel'.

Quotes v estimates

It is important to know the difference between a quote and an estimate because, as we are about to see, an agreed quote establishes the contract price. This is not the case with an estimate.

Quotes

In contractual terms a quote is an offer to do the job for the price stated. Therefore, if a detailed written quotation is obtained, this will clearly state the work that is included for the price given. The consumer should not then face a situation where they are asked for more money by the trader than the price quoted. Quotations can be a very useful tool for the consumer to make like for like comparisons and are also good



evidence of what was agreed should a dispute arise later on. Obviously, the consumer should ensure that the quote does in fact include what is expected.

Estimates

An estimate is simply that, namely, the trader's best guess as to how much the work will cost. However, if the trader exceeds the cost estimated in their final bill, a judge, if asked to determine a fair price for a service or work undertaken, is likely to take the estimate into account.

(b) Acceptance

Generally, when an offer is accepted, this is the point at which the contract is made. So it is important to know when acceptance has taken place. In most contracts a party will have to communicate their acceptance to the other party. However, this will not be necessary for a deemed contract.

(c) Consideration

An offer to contract is asking for something in return. Accepting the offer is promising to do, or actually doing, that something. The promise or the act is called the consideration and is another necessary element of a legally binding contract. Both parties must provide consideration. A promise by one party only is viewed as a gift and is legally unenforceable (sometimes a contract is enforceable in Scotland, despite the lack of consideration but this is beyond the scope of these materials and is highly unlikely to be relevant for energy supply contracts).

Practical tip

It is unlikely that you will encounter a legal query concerning consideration whilst giving energy advice. This is more of an issue for general consumer CA advisers. .

(d) Intention to create legal relations

In some domestic or social situations it is clear that even though the parties exchanged promises and provided consideration, they never intended their agreement to have any basis in law. For example, 'The band practice can be at my house next week if it can be at your house the week after.'

It is unlikely that consumers consciously intend their transactions to have legal consequences. The test of whether or not there is an intention to create legal relations is an objective one. It is difficult to formulate precise rules: the facts and circumstances surrounding each situation will need to be examined. It is unlikely that you will encounter many enquiries where this is an issue.

(e) Capacity

Generally speaking, consumers can make any legal contract they choose. However, there are some exceptions to this rule:

Minors

Someone aged under 18 (16 in Scotland, and the rules are slightly more complex) can only be bound under certain contracts, for example, for 'necessaries' or 'beneficial contracts of service'. Necessaries are

goods or services suitable to the condition in life of the minor and to his actual requirements at the time of the sale and delivery. A gas or electricity supply is likely to fall into this category. If a contract is found to be one for necessaries, there is then an obligation to pay a reasonable price for the goods or service received.

Intoxication

If a person is so intoxicated through drink or drugs, so as to lose his reason and be incapable of giving consent, any contract made may be voidable, although this argument has not been used successfully in modern times as the degree of intoxication required before capacity is lost, is likely to be substantial. If the contract was for necessaries there would be an obligation to pay a reasonable price.

Unsoundness of mind

Not being of sound mind is a good defence to an action in contract if the claimant knew the defendant was not fit to contract. The Mental Capacity Act 2005 - aims to protect people who cannot make decisions for themselves due to a learning disability or a mental health condition, for example Alzheimer's disease, or for any other reason. This piece of legislation and its accompanying code of practice provide clear guidelines for carers and professionals about who can take decisions in which situations. Once again, contracts for necessaries will be binding and a reasonable price would have to be paid.

Practical tip

If somebody's mental state at the time the contract is formed is called into question, it is likely to be a referral, and should be handled in accordance with RAST protocols.

Terms

In order for a contract to be performed and enforced the parties must know the terms that they have agreed. This simply means that they should know which statements made during their negotiations become part of the contract and which do not. We will look at why this is important in unit 3 'Marketing energy'. We will also, later, examine the two main types of terms to be found in a contract. These are implied terms, which are those the law states will be present, and express terms, which are those the parties agree will be in the contract, even if only by realising that they are there. Neither negotiation nor understanding of express terms is required for them to form part of a contract and often consumers are presented with a standard set of terms by a supplier, which they then in effect, agree to.

Types of contracts

Contracts are formed, based on principles in the common law, as discussed, but there are different types of contract which, to some extent, the law treats differently. There are several types of contract which we can identify under the general law, some of which we will return to when we examine the controls on marketing energy (unit 3) and the terms which can be expected to be present in energy supply contracts (unit 4).

(a) Service contracts

An energy supply contract is also what the general law classifies as a service contract and would fall under the Consumer Rights Act 2015. This Act implies certain terms into pure service contracts, such as one to supply gas or electricity, or work and materials contracts, where both goods and a service are supplied, for example, the supply and installation of a central heating system.

(b) Goods contracts

When goods are supplied under a contract, again, terms are implied into that contract, mainly concerning the quality and description of those goods.

Practical tip

Energy advisors are not expected to give advice about goods purchased. If buyers want to know their rights or what to do about a problem with goods they have purchased they should be handled in accordance with RAST protocols. This is more of an issue for general consumer CA advisers.

(c) Doorstep contracts

In addition to being a contract for either goods or services, if a contract was entered into at a consumer's home after a visit by a supplier's representative, the consumer will gain additional protection under The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) (unit 3 'Marketing energy').

(d) Distance contracts

If contracts for goods or services are agreed when the seller and the buyer are not face to face, this is likely to be a distance contract. Such contracts are also regulated by the CCRs, giving the consumer additional protection (unit 3 'Marketing energy').

(e) Consumer guarantees

Sometimes when consumers purchase goods there is accompanying documentation which appears to be a guarantee, usually from the manufacturer. Under the Consumer Rights Act these free guarantees can be treated and enforced as a contract, despite the lack of consideration on the part of the consumer. The Regulations contain provisions requiring certain details about guarantees to be given to consumers at certain times.

The guarantee must:

- ✓ be in plain intelligible language
- ✓ set out its contents
- ✓ set out the essential particulars for making a claim
- ✓ state that C has statutory rights and that the guarantee does not affect them
- ✓ be written in English (if the goods are offered within the UK)
- ✓ contain the name and address of the guarantor
- ✓ include the duration and territorial scope
- ✓ be made available to C within a reasonable time, in writing and in an accessible format

There is no specific statutory remedy for C if these requirements are not met and so it is likely that the CL remedy of damages is the most appropriate. The T could also be subject to possible civil enforcement action by TSS if they do not comply with promises made in guarantees.

(f) Extended warranties

Often the consumer is persuaded to extend a freely given guarantee for a number of years and these extended warranties are contracts which often work in the same way as an insurance policy. They are often fairly expensive and are often sold to try and offset a cheaper price offered for the goods themselves.

There are rules in place to regulate the selling of extended warranties for domestic electrical goods which include a cancellation period and a right of termination (The Supply of Extended Warranties on Domestic Electrical Goods 2005).

Practical tip

Consumer guarantees and extended warranties for domestic electrical goods are not issues which you will be expected to advise consumers about and the brief details above are for information only. Queries about such matters should be handled in accordance with RAST protocols. This is more of an issue for general consumer CA advisers.

1.1.1 Miscellaneous contractual matters

Contract law is a very large subject area and here we will just cover a few miscellaneous matters which may affect a consumer's energy contract. Please note that this is just a brief overview since many of these issues involve very complex considerations. There are lots of different types of contract and the most relevant will be considered in more detail in unit 4 'Energy supply contracts'.

(a) Formalities

As we have seen, most everyday contracts can be entered into verbally (such as when shopping on the high street). There are some types of contracts, however, which must be in writing, for example, those relating to the sale of property / land, and those regulated by the Consumer Credit Act.

There are provisions relating to energy contracts which require certain aspects of them to be in writing too. These are discussed in unit 4, 'Energy supply contracts'.

(b) Privity

Generally, only the parties to the contract can pursue each other for breach of contract. Someone who is not party to a contract cannot enforce nor have obligations imposed upon them by the contract. This is the case even if the contract was for their benefit and they have provided the consideration. This is known as 'privity of contract'.

However, there are exceptions to the general privity rules, in particular where the use of agents is concerned and there are also rules, peculiar to the energy sector concerned with who may be liable to pay the bill and these are covered in more detail in unit 6 'Paying for fuel'.

Agency

There will be an agency relationship where one of the parties, the agent, is acting for a principal, to negotiate and enter into contracts on their behalf. The agent must have authority to act as an agent for the principal who must be providing the consideration themselves. Sometimes the suppliers use third party agents to carry out home visits and telephone sales calls to persuade consumers to switch suppliers. Such agents may well be authorised to enter into contracts on behalf of the suppliers and receive commission for doing so, others may be completely independent and be paid a fee by the customer. Independent brokers or third party intermediaries (TPIs) as they are sometimes called, are not often used by consumers. Business customers use them more frequently and so they are discussed in more detail in unit 11 'Business Advice'.

Whether someone is acting as a supplier agent/representative or is independent is not always clear and any cases where the relationship is unclear should be referred in accordance with the RAST protocol.

Assignment

It is possible for rights under a contract to be assigned or given to someone else, for example, certain debts owed to an energy supplier can be assigned to a new supplier if a consumer switches supplier. This would enable the new supplier to claim the money due from the consumer, even though they were not a party to the original supply contract. This is covered later in unit 8 'Debt and disconnection'.

(c) Unfair terms

Sometimes the parties to a contract may wish to dispute certain terms of the contract on the basis that they are unjust. There are two main pieces of legislation which may offer protection here and they are discussed in more detail in unit 4, 'Energy supply contracts'.

(d) Use of credit

Sometimes the consumer will pay for goods and services using some form of credit, for example by credit card. The consumer's legal position may be affected if they pay by any other form of credit, such as bank loan or hire purchase agreement.

It is unlikely that energy supplies will be purchased under a credit agreement, but consumers can (and do) pay for their energy supply services using credit cards. If a credit card is used for energy payments then protection under section 75 of CCA may be available – this is covered in more detail in unit 4 'Energy supply contracts'.

Practical tip

If the payment method is a form of credit other than a credit card, the advice given may be different and the caller should be handled in accordance with RAST protocols.

Factors which affect the validity of the contract

There are a number of factors which can have the effect of making the contract void (ends automatically) or voidable (injured party can elect for it to end, sometimes subject to certain conditions).

(a) Frustration

A contract is frustrated if, after its formation, events occur, without fault on either side, which make it impossible or illegal to perform the contract further or mean that performance would be radically different from what was envisaged. However, the frustration doctrine only applies if there is no express term in the contract which places the risk of such an event, on one of the parties.

Arguably, severe bad weather, which rendered electricity pylons unable to transmit electricity, could, in the absence of any contractual provisions to cover such an event, amount to frustration of the contract to supply consumers with electricity. There are however, some legal obligations on distributors to reconnect consumers within a specified number of hours or pay out compensation (this will be covered in more detail later) and so such an event would not therefore, amount to frustration of the contract.

(b) Mistake

A party to a contract may be able to escape from the contract where a mistake has been made. This is where one of the parties to the contract has made a mistake and the other part entering into the contract is aware of that mistake or it is so obvious that they should have been aware of it.



Example

A supplier has advertised a unit price for electricity online for £0.02. Alex sees this advertisement and thinks that it should have been displayed at £00.20. Alex decides to take advantage of the error and enters into a contract on line with the supplier. In this case the trader may argue that he should not be bound by the contract because he had made a mistake and Alex should have been aware of the mistake.

There are other types of mistake that may occur that could in theory enable one of the parties to escape from the contract. However, this is a complex area and the courts appear to be quite reluctant to enable people to escape from contracts on the basis of these other types of mistake.

(c) Duress

A person may be able to escape from the contract if they can show that it was entered into under duress. This would mean that the contract was entered into as a result of force or threats.

(d) Undue influence

A contract may be challenged on the basis that it was entered into as a result of undue influence. This will occur where the circumstances do not amount to duress, but improper pressure has been applied to persuade a person to enter into the contract. It is unlikely that most enthusiastic sales techniques that are commonly used would be sufficient. In the past, cases have often involved the exploitation of a personal or confidential relationship between the parties.

(e) Illegality

If a contract has been made for an illegal purpose or is to be carried out in an illegal manner, then the courts will not enforce it.

(f) Misrepresentation

Often parties have discussions before entering into a contract. Sometimes the parties will then seek to rely on the matters discussed at a later date. They will be able to do so if the subject matter of the discussion became a 'term' of the contract. Alternatively, a party may still be able to hold the other party liable even though their words did not actually form part of the contract, if they can show that a

misrepresentation has occurred. For example, a supplier may tell a consumer that they are the cheapest energy provider in the UK during the pre-contract discussions, which proves not to be the case. More examples of when a misrepresentation may occur and the possible remedies are discussed in unit 3 'Marketing energy'.

Practical tip

Apart from unilateral mistake and misrepresentation, these issues do not arise very often. The normal provision of advice should be made during the call; however the case will also need to be handled in accordance with RAST protocols. For example TSS referral for intelligence purposes.

The factors listed are sometimes referred to using different terminology in Scotland:

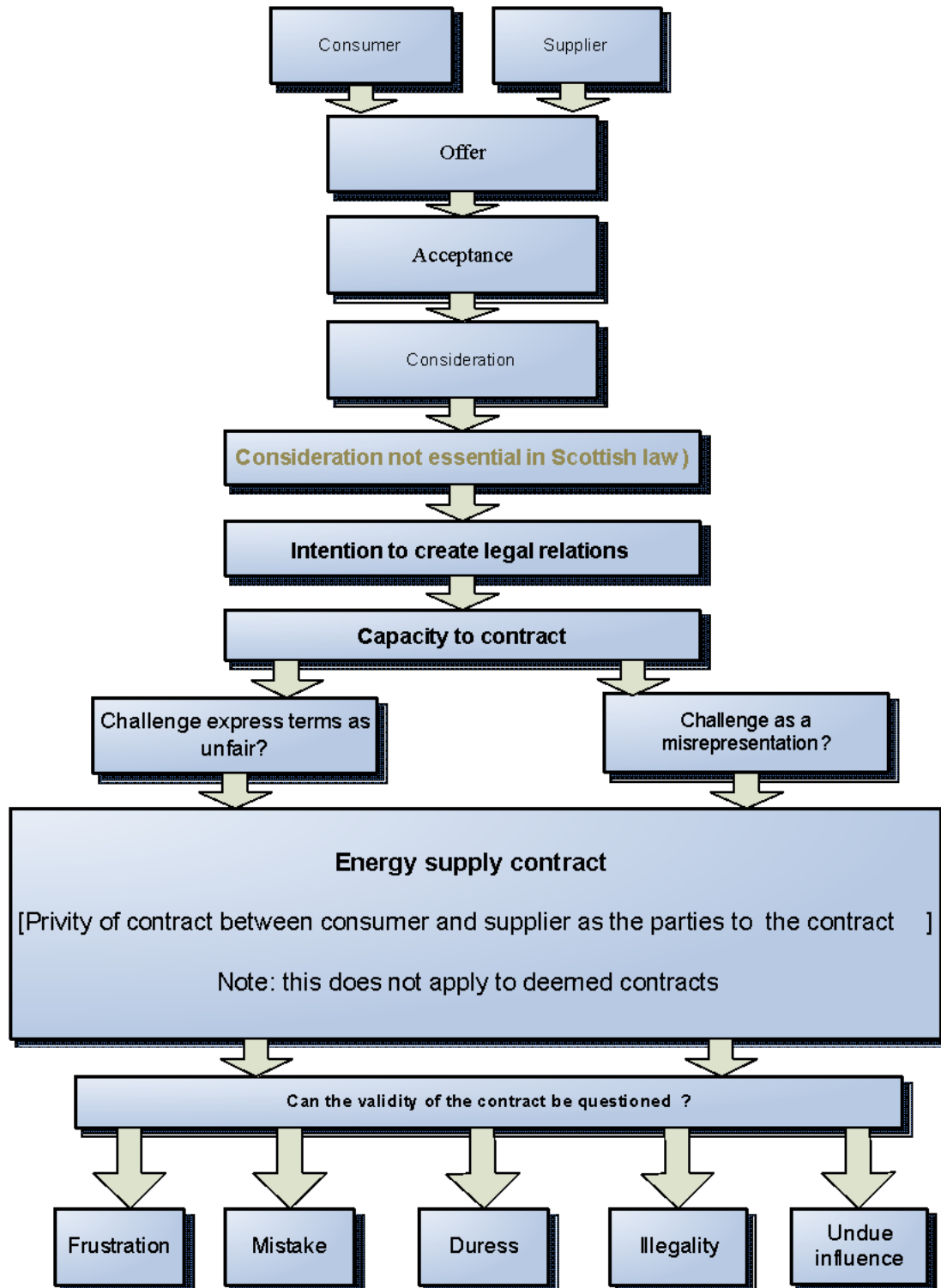
mistake	error
duress	extortion or force or fear
undue influence	abuse of good faith
illegality	<i>pacta illicita</i>

The general contractual principles outlined in this section will apply to gas and electricity contracts, but to some extent some of them are repeated and made specific for the energy industry in the licence conditions which Ofgem impose on those in the supply chain. Of particular relevance are those which the suppliers have to comply with, and they are discussed in the next section.

Summary

- General common law principles on how contracts are formed can apply to the energy industry, so usually the five basic elements of an offer, an acceptance, consideration, intention and capacity are required, although the energy industry does have an unusual type of contract called a deemed contract (Scottish contracts do not always require consideration).
- Offers need to be distinguished from invitations to treat which merely invite one party to make an offer to the other, which can be either to buy or to sell.
- Generally speaking consumers have the capacity to make contracts with whoever they like, however, there are some circumstances when contracts made by minors, those who are intoxicated or of unsound mind, may be avoided due to incapacity, unless they were contracts for necessities, in which case they will be binding and a reasonable price will be due.
- There are various miscellaneous issues which relate to contracts including, privity, whereby only the parties to a contract can generally enforce it or benefit under it, the ability to challenge the harshness of contract terms and the effect of the use of a credit card; agents are sometimes used in the energy industry and they are people who are authorised to make contracts on behalf of the principal.
- Contracts for a gas or electricity supply are essentially service contracts from a general law point of view, but could also be doorstep or distance contracts depending where the contract was concluded, and the law provides additional protection for consumers who enter into contracts in this way.
- A person may be able to escape from a contract if certain factors affecting the contract are present such as frustration, a unilateral mistake, duress, undue influence, illegality or misrepresentation, although giving advice in relation to these complicated areas of law is likely to be outside your remit (Scottish law sometimes uses different terminology to refer to these).

Contract Law



Section 2

Standard licence conditions

As mentioned in unit 1, everyone in the energy supply chain must be licensed by Ofgem to operate. Of particular relevance when it comes to consumer supply contracts, are the standard licence conditions (SLC) for both gas and electricity, which the **suppliers** (S) have to comply with. Copies of all SLC, relating to everyone in the supply chain are available on the Ofgem website www.ofgem.gov.uk in the electronic public register. This includes the most up to date consolidated copies as well as previous versions and also copies of individual licences.

Referencing the standard licence conditions

Ofgem has the power to impose conditions on the licences and the practical tip below shows how the SLC will be referenced throughout these notes.

Practical tip

All references in these notes to the standard licence conditions will be in the following format and will be to those for the **suppliers** (S) unless otherwise stated.

SLC(G&E)1(D/T)

SLC = standard licence condition

G = gas E = electricity 1 = condition number

D = distributor T = transporter S = supplier

As well as standard licence conditions, there are special licence conditions. These relate to specific suppliers and will only be referred to where necessary.

Points to note about the SLCs are:

- ✓ many of the SLCs are the same for both gas and electricity and so use the same number

- ✓ the SLCs are often amended or updated, and references are correct as at Nov 2011
- ✓ some of the SLC apply to all customers (conditions 1 – 21 and 33 & 34), whereas others only apply to consumers (22 – 32) or small businesses (7A)
- ✓ references in the SLC are to 'the Authority', whereas these notes refer to Ofgem
- ✓ references are to SLC for **suppliers** unless otherwise stated

Definitions and interpretation

There are over 70 definitions contained in SLC(G&E)1, some of which are the same, apart from the use of the words, 'gas' or 'electricity', for example, contracts, deemed contracts, domestic customer, principal terms and termination fee.

In addition, SLC(G&E)2 contains general rules about interpretation, for example that words defined in the main Acts have the same meaning in the SLC, and any references to codes, agreements etc. include any amendments made to them.

One of the most important definitions relates to the type of premises being supplied since the contractual requirements are different for businesses and non-businesses and this is covered in unit 11 'Business advice'.

Obligations owed by suppliers, to potential and actual customers, depend to some extent on whether the customer is a private consumer or someone acting in the course of a business. SLC make a distinction between the following and the abbreviations given will be used throughout the notes:

- ✓ Domestic premises (DP)
- ✓ Non-domestic premises (NDP)
- ✓ Domestic supply contract (DSC)
- ✓ Non-domestic supply contract (NDSC)

SLC 6 defines DP and NDP as follows, both preceded by the words 'Unless the context otherwise requires...'

(a) Domestic premises

'...premises at which a supply of gas / electricity is taken, wholly or mainly for a domestic purpose, except where that premises is a NDP'.

(b) Non-domestic premises

A NDP is one which is not a DP and includes where someone has a commercial agreement to provide residential or other accommodation services at the premises, which includes a charge for the supply of gas or electricity (express or implied), for example a landlord letting out rooms. Once a NDSC has begun it will be treated as such until it ends, even if the customer begins using the energy for a domestic purpose.

SLC and contracts

Not all the SLC relate to the customer's supply contract, some relate to arrangements between suppliers and Ofgem or transporters and distributors. Breaches of SLC do not give rise to compensation claims from customers but could be subject to action by Ofgem as discussed in below. Breach of SLC(G&E)25 can give rise to compensation claims, where appropriate, for a failure to comply with the marketing requirements.

Breach of licence conditions

Ofgem can impose sanctions for breaches of the SLC including a fine of up to a maximum of 10 per cent of a company's turnover. We mentioned some examples in unit 1 'Understanding the energy industry'.

Practical tip

You will not be expected to identify breaches of SLC. Ofgem uses Citizens Advice data to identify issues such as this.

Summary

- Suppliers must be licensed to supply gas or electricity and Ofgem, when it grants such licences, can impose conditions, generally referred to as the standard licence conditions (SLC), and these are available on the Ofgem website in the electronic public register, in consolidated, previous and individual formats.
- The SLC define domestic and non-domestic premises and in addition, legislation defines small business consumers, who are afforded greater protection under the SLC than larger businesses.
- There are over 30 numbered SLC but they are not all in use for both gas and electricity, although, where their use is the same or similar, they use the same number and the same wording as far as is possible.
- Breaches of the SLC will be picked up by Ofgem in their monitoring process and various sanctions can be imposed for non-compliance, including a fine up to a maximum of 10 per cent of turnover. In the past fines have been imposed for mis-selling and preventing consumers from switching suppliers.

Section 3

Standards of performance

As well as complying with the SLC and general contractual principles, the suppliers also have to meet performance standards when carrying out their contracts and dealing with complaints. Breach of the SLC is generally a matter for the regulator, whereas, a failure to comply with performance standards often gives rise to compensation claims from consumers. Most of the performance standards are provided for in various sets of legislation and there are guaranteed, overall and overarching standards as well as specific ones for electricity connections and handling complaints. In this section we will simply be introducing these concepts. More detail will be covered in unit 4 'Energy supply contracts' when we deal specifically with energy supply contracts and we will continue to refer to the standards, where relevant, throughout the materials.

Guaranteed and overall standards

Power to make regulations which give effect to these standards can be found in GA and EA and failure to meet a prescribed standard gives rise to set compensation claims, although this does not affect any other remedy which may be available, for example, under general law.

What is expected by way of performance from the suppliers and or gas transporters or electricity distributors, is contained in three sets of Regulations:

- ✓ the Electricity (Standards of Performance) Regulations 2010
- ✓ the Electricity (Connections Standards of Performance) Regulations 2010
- ✓ the Gas (Standards of Performance) Regulations 2005

The Regulations contain two types of standards:

- ✓ guaranteed standards (GS)
- ✓ overall standards (OS)

Breach of guaranteed standards give rise to compensation claims (subject to certain exemptions), some of which are paid automatically to consumers, others which need to be claimed within certain time scales.

Breach of the overall standards (standards of conduct) does not give rise to compensation claims in this way.

The detail of these standards, and how compensation can be claimed, will be discussed in unit 4 'Energy supply contracts' when the performance of the contract is considered, however, below is a list of the areas covered by the Regulations, some of which apply to both gas and electricity and some which relate only to one or the other. There are also tables indicating the main GS and compensation amounts and also the various exemptions, which can be found in Annexes 1 – 4. The lists include those standards explained below.

(a) Gas and electricity

- ✓ response times for restoration of supply after interruptions
- ✓ notice of planned interruptions
- ✓ offering timed appointments
- ✓ keeping timed appointments
- ✓ making compensation payments on time for breaches of guaranteed standards
- ✓ explanations / investigation of meter inaccuracy (visit with appointment if necessary)
- ✓ repair or replacement of PPM (response times)
- ✓ provision of quotations
- ✓ accuracy of quotations
- ✓ schedule of dates for connections or alterations work
- ✓ substantial completion of connections or alterations work

(b) Gas only

- ✓ reinstatement of property after maintenance work
- ✓ provision of alternative heating and cooking facilities for priority consumers when supply is disrupted

- ✓ response to land enquiries, e.g. to find out where gas pipes are located in a garden
- ✓ response to complaints (initial and substantive)

(c) Electricity only

- ✓ budget estimates
- ✓ response times following failure of a distributor's fuse
- ✓ response times following rota disconnections
- ✓ response times following multiple supply interruptions
- ✓ explanation / investigation of voltage variation (visit with appointment if necessary)
- ✓ response times to account queries (this applies to the ex Public Electricity Suppliers only, customers of whom are an ever decreasing group of people since they are those who never transferred their supply following deregulation)

Connection standards

The Electricity (Connections Standards of Performance) Regulations 2010 came into force on 1/10/10 and lay down standards for dealing with electricity connections and alterations. The main areas covered by the Regulations have been included in the lists above and relate to the provision of the following:

- ✓ budget estimates
- ✓ quotations
- ✓ schedules of dates for completion of works
- ✓ schedules of dates for energisation

Handling complaints

The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 came into force on 1/10/08 and they prescribe standards for suppliers and also distributors and transporters, for:

- ✓ handling complaints, and



- ✓ providing information about standards and compliance

The Regulations do not give rise to compensation claims for non compliance but r.3 does require suppliers to include in their schemes, compensation as a remedy for failures to comply with SLC(G&E)25(Marketing), where appropriate.

Whether companies have appropriate complaints procedures and whether they provide the relevant information concerning compliance, will be matters which Ofgem will monitor.

The Regulations are discussed in further detail in unit 4 'Energy supply contracts'.

Practical tip

If there is a dispute over whether compensation should be paid out for a failure to meet a guaranteed standard, and the matter is not resolved by discussion with the provider concerned or after referral to an advice agency such as Consumer Focus or the Energy Ombudsman, it may be possible for Ofgem to make a determination.

This is discussed in further detail in unit 4 'Energy supply contracts'.

Overarching standards

These were mentioned in unit 1 'Understanding the energy industry' and you may remember that they were brought in as a result of the Probe in order to promote better competition. Consumer Focus refers to these new requirements as 'overarching standards', and Ofgem refers to them as Standards of Conduct. They require suppliers to:

- ✓ only sell their customers a product or service which they fully understand and which is suitable for their needs
- ✓ not change anything material concerning a customer's product or service without explaining clearly why this is happening
- ✓ not prevent customers switching suppliers or products without a good reason
- ✓ not offer products which are unnecessarily complex or confusing
- ✓ make it easy for customers to contact them and act promptly and appropriately when dealing with mistakes made

Since these requirements have no legal backing, Ofgem cannot penalise suppliers for non-compliance, nor can they require consumers to be compensated for failures, however, a decision to incorporate them into either SLC or delegated legislation could be made at a later date if the suppliers do not comply with them.

Summary

- As well as complying with SLC and general contractual principles, the suppliers also have to meet performance standards when carrying out their contracts and dealing with complaints.
- Breach of SLC is generally a matter for the regulator, whereas, a failure to comply with performance standards often gives rise to compensation claims from consumers.
- Most of the performance standards are provided for in various sets of legislation and there are guaranteed, overall and overarching standards as well as specific ones for connections and handling complaints.
- Some of the guaranteed standards apply to both gas and electricity, such as, response times for restoration of supply after interruptions, notice of planned interruptions, offering timed appointments, keeping timed appointments, making compensation payments on time for breaches of guaranteed standards, explanations / investigation of meter / PPM inaccuracy, provision and accuracy of quotations, dates for connections / alteration work and substantial completion of such work.
- Those which only apply to gas relate to reinstatement of property, provision of alternative heating and cooking facilities for priority consumers when supply is disrupted and response times for land enquiries and complaints generally.
- Those relating solely to electricity supplies require timely responses to a failure of a distributor's fuse, rota disconnections and multiple interruptions, explanation / investigation of voltage variations, and response times for certain account enquiries for the ex Public Electricity Suppliers.