



Retail Gas Contract Benchmarks

Decision Paper Amendments to Benchmarks

6 March 2012





About Gas Industry Co.

Gas Industry Co is the gas industry body and co-regulator under the Gas Act. Its role is to:

- develop arrangements, including regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- develop these arrangements with the principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair and environmentally sustainable manner; and
- oversee compliance with, and review such arrangements.

Gas Industry Co is required to have regard to the Government's policy objectives for the gas sector, and to report on the achievement of those objectives and on the state of the New Zealand gas industry.

Gas Industry Co's corporate strategy is to 'optimise the contribution of gas to New Zealand'.

Authorship

This paper was prepared by Jacki Eves, Senior Legal Counsel.

Contents

| | | |
|----------|--|-----------|
| 1 | Introduction | 6 |
| 1.1 | Consumer Outcomes | 6 |
| 1.2 | Objectives of the benchmarks | 6 |
| 1.3 | Assessments to date | 7 |
| <hr/> | | |
| 2 | Benchmark revisions | 8 |
| 2.1 | Interpretation of Benchmark 16 | 8 |
| 2.2 | Benchmark 9.1(d) | 11 |
| <hr/> | | |
| | Appendix 1: Benchmarks and Gas Industry Co Interpretation | 13 |

1

Introduction

1.1 Consumer Outcomes

Gas Industry Co is the co-regulator of the gas industry under the Gas Act 1992 (the Act). As such, its role is to:

- recommend arrangements, including rules and regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- administer, oversee compliance with, and review such arrangements; and
- report regularly to the Minister of Energy and Resources on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

Gas Industry Co's development of policy is guided by the objectives in the Act and the Government's policy objectives as set out in the Government Policy Statement on Gas Governance (GPS) issued in April 2008. With respect to achieving positive outcomes for consumers, one of the key objectives for Gas Industry Co is to ensure contractual arrangements between gas retailers and small consumers adequately protect the long-term interest of long-term users.

On 12 May 2010, the Associate Minister of Energy and Resources endorsed the retail gas contracts oversight arrangements. The arrangements called for the introduction of an assessment scheme based on contract term Benchmarks.

1.2 Objectives of the benchmarks

The objectives of the Benchmarks are set out in the Company's recommendation and can be summarised as follows (the Benchmark Objectives):

To ensure that Consumer contracts for gas supply:

- are sufficiently complete, accessible, and balanced to support the long-term interests of gas consumers;

- clearly set out the respective obligations of the Retailer and Consumer, including any obligations the Consumer has to meter or network owners;
- reflect as far as possible market structures; and
- support the achievement of an effective complaints resolution scheme for Consumers.

1.3 Assessments to date

A 'Baseline Review' of gas supply arrangements was undertaken as at 15 June 2010 (the Baseline Review) by an independent assessor, Elwood Law. As part of that process, Gas Industry Co provided the independent assessor with guidance on how the Retail Contract Terms Benchmarks should be interpreted.

Following the Baseline Review, the independent assessor and Gas Industry Co reviewed the process and determined that the Benchmarks, as originally consulted upon, would benefit from a reorganisation or 'restatement'. That restatement did not substantially alter the Benchmarks. Rather they were reordered and reframed, duplication and irrelevant statements were removed, and clarity was enhanced.

A Transitional Review was undertaken by Elwood Law, as at 1 July 2011. As a result of the findings of the Transitional Review, Gas Industry Co specifically revisited its interpretation of Benchmark 16, which seeks to clarify what are reasonable retailer liability limitations. After two assessment periods it was determined that it would be efficient to align the interpretation with the approach taken by the Electricity Authority to liability limitations.

Gas Industry Co consulted on the proposed amendment to the interpretation of Benchmark 16. One submission was received, which supported the amendment. That submission also proposed a minor amendment to Benchmark 9.1(d). Gas Industry Co has accepted this submission and this document also sets out the amendment to Benchmark 9.1(d).

The two amendments are discussed in the next section.

2

Benchmark revisions

Gas Industry Company Limited (Gas Industry Co) oversees the alignment of retail gas supply arrangements with a set of outcome-based Benchmarks that were approved by the Associate Minister of Energy and Resources in 2010. In September 2010, Gas Industry Co published its initial Baseline Assessment against those benchmarks. In September 2011 we published the results of the Transitional Assessment which tracked how well retailers were doing in improving their contracts from the Baseline assessment. The next assessment of retail gas contracts will be undertaken as at 1 July 2012.

With two assessments completed, Gas Industry Co has reviewed the Benchmarks and, more particularly, their interpretation as set out in *Retail Gas Contracts Benchmarks – Restatement 2011*.¹ Following consultation with industry, Gas Industry Co is amending the interpretation of Benchmark 16, which sets out reasonable retailer liability limitations.² As a result of a proposal in the one submission Gas Industry Co received during its consultation on the amendment to the interpretation of Benchmark 16, Gas Industry Co is also making a minor amendment to Benchmark 9.1(d).

2.1 Interpretation of Benchmark 16

Benchmark 16 states 'Any exclusion of liability in the gas supply arrangements must be clearly specified and reasonable'. While it is relatively straightforward to assess whether an exclusion of liability is clearly stated, Gas Industry Co recognised that assessing the reasonableness of any such limitation can be more difficult. Therefore we developed a straw man set of limitation levels as an interpretation tool to assist the independent reviewer in determining whether limitations of liability were reasonable.

Results for alignment with this Benchmark have been low for both the Baseline and Transitional Assessments. Gas Industry Co has concluded that this is more indicative of the strictness of the interpretation, rather than actual non-alignment of contracts with the outcomes sought by the Benchmarks.

Retailers have suggested that the risks that would lead to a loss of supply are better mitigated by other industry participants (such as producers and pipeline owners), while customers are also able to protect their interests through insurance. Some retailers have also noted that no

¹ A Restatement of the Benchmarks was issued in June 2011 following the Baseline Assessment resulting in a change to benchmark numbering (see http://gasindustry.co.nz/sites/default/files/u180/retail_gas_contact_benchmarks_feb_2011_155227.2.pdf)

² This benchmark was Benchmark 13 in the original Recommendation to the Minister in 2010.

concerns with the reasonableness of similar provisions for electricity supply have been raised in the Electricity Authority’s retail electricity contract review process.

On the basis of these considerations, Gas Industry Co has revised the interpretation of Benchmark 16, using the Electricity Authority’s similar contract review scheme as a guide. There is no change to the Benchmark itself.

The original interpretation of Benchmark 16 was as follows:

| GIC Interpretation | |
|--|---|
| <i>Background</i> | |
| <p>Liability exclusions are used to allocate the financial risk of certain events between contracting parties. Gas Industry Co interprets ‘exclusions’ in this sense as including ‘limitations of liability’ and ‘indemnities’ that benefit the Retailer. It does not consider this benchmark currently addresses exclusions to the benefit of Consumers.</p> <p>The benchmark requires that allocations of financial risk be ‘reasonable’. In this case, reasonableness depends on factors such as:</p> <ul style="list-style-type: none"> • what financial risks are involved (their impact and likelihood) • who is best placed to manage the financial risks (including by way of insurance) • what premium has been included in the charges to address the risk. <p>At this stage, Gas Industry Co has not performed a comprehensive analysis of these factors in the retail gas supply market. Instead it proposes the following approach as a ‘straw man’. This approach allows an initial comparison between Retailers that can be refined in subsequent reviews.</p> | |
| <i>Straw Man – Complete Exclusions</i> | |
| <p>Gas Industry Co considers that certain complete exclusions of liability are inherently unreasonable. Accordingly, the liability ‘exclusion’ aspect of this benchmark will be scored as follows:</p> | |
| Benchmark Score | Exclusion |
| Full | No exclusions other than as permitted below. |
| Substantial | <p>No liability for damage <i>to any other person</i>, as it is misleading for arrangements to purport to exclude liability in ways it is not possible to do.</p> <p>No liability for events that are <i>unforeseeable</i>, as they may still be within the Retailer’s control.</p> |
| Moderate | <p>No liability for damage <i>notified to the Retailer outside a specified time</i>, if that time limit is unreasonable.</p> <p>No liability for the <i>quality or character of gas supplied</i>, as Retailers have regulatory obligations to provide quality gas.</p> |
| Low | <p>No liability for anything <i>other than its negligence or deliberate act or omission</i>, as ordinary breach should be actionable.</p> <p>No liability for <i>all acts and omissions of subcontractors</i> (including network operators and meter readers), as Gas Industry Co considers that the Retailer should accept responsibility for subcontractors to the extent the Retailer would be liable had the Retailer committed the act / omission. The Consumer will not necessarily know what services are subcontracted.</p> |
| None | No liability for <i>any of its acts or omissions</i> . |
| <i>Straw Man – Liability Caps</i> | |
| <p>Partial limitations of liability are harder to assess, particularly because of the many different approaches</p> | |

GIC Interpretation

that Retailers can take. For example, a cap may apply to single events or to the contract in aggregate. Caps may apply to individual Consumers, or across multiple Consumers.

The liability 'cap' aspect of this benchmark will be scored as follows:

| Benchmark Score | Single Consumer | | Multiple Consumers |
|-----------------|---------------------------------------|---------------------------------------|--------------------|
| | Per event or series of related events | In aggregate (including in 12 months) | |
| Full | \$500k + | \$600k + | \$100m + |
| Substantial | \$100-499k | \$150-599k | \$10m-\$99m |
| Moderate | \$50-99k | \$80-149k | \$2-9m |
| Low | \$10-49k | \$15-79k | \$100k-\$1.9m |
| None | \$0-9k | \$0-14k | 0-99k |

Straw Man – Permitted Exclusions

Benchmark not failed merely because:

- the Consumer Guarantees Act 1993 is excluded to the extent the Consumer is acquiring gas *for the purpose of a business*
- liability is excluded for:
 - *economic loss* (including loss of profit)
 - *indirect loss*
 - *consequential loss*
 - *reasonable force majeure events* (including events indirectly beyond the Retailer’s control) except to the extent the force majeure purports to exclude events that may (in fact) be squarely within the Retailer’s control (such as malicious acts of its employees)
 - damage caused to *sensitive appliances*
 - damage caused by the Consumer failing to *switch off appliances prior to reconnection*
 - any interruption or reduction in the *supply of gas into the gas network*
- *risk* in gas supplied passes to the Consumer at the point of supply
- the Consumer indemnifies the Retailer against:
 - fines and other penalties due to any *failure of the Consumer’s meter* to comply with industry codes or standards
 - failing to obtain the landlord’s permission to install, modify, remove or replace any part of the network or metering equipment on your property, if the Consumer in fact agreed to this work
- liability limitations also benefit lines companies, network operators, meter readers and meter owners
- multiple Consumers under an arrangement are jointly and severally liable
- the Retailer may choose to replace any damaged property or goods, up to the same maximum amount, instead of paying cash.

The revised interpretation of Benchmark 16 is:

| GIC Interpretation |
|---|
| <p>Liability exclusions are used to allocate the financial risk of certain events between contracting parties. Gas Industry Co interprets 'exclusions' in this sense as including 'limitations of liability' and 'indemnities' that benefit the Retailer. It does not consider this benchmark currently addresses exclusions to the benefit of Consumers.</p> <p>The benchmark requires that allocations of financial risk be 'reasonable'. In this case, reasonableness depends on factors such as:</p> <ul style="list-style-type: none"> • what financial risks are involved (their impact and likelihood) • who is best placed to manage the financial risks (including by way of insurance) • what premium has been included in the charges to address the risk. <p>At this stage, Gas Industry Co has not performed a comprehensive analysis of these factors in the retail gas supply market. Until such time as this analysis is performed, an 'exception approach' is to be applied to the assessment of reasonableness. Under this exception approach the reviewers are to assume that an exclusion of liability is not unreasonable and meets the benchmark, except where:</p> <ul style="list-style-type: none"> • the contract limits all of the Retailer's liability for all acts or omissions; or • the Consumer is asked to indemnify the Retailer from any loss the Retailer may suffer as a result of the gas supply. <p>Gas Industry Co considers that a complete exclusion of all liability and/or requiring a customer to provide a full indemnity is clearly unreasonable, and in some cases may even breach the Consumer Guarantees Act 1993.</p> <p>As a consequence of this assessment approach, it is expected that the assessment of clauses limiting liability will primarily focus on whether any such limits are clearly stated.</p> |

2.2 Benchmark 9.1(d)

As noted, one submission was received on Gas Industry Co's proposal to amend the interpretation of Benchmark 16. That submission also proposed an amendment to Benchmark 9, which sets out the expectations in respect of clear pricing information in gas retail contracts. It currently states:

9. Clear pricing information

| Benchmark | GIC Interpretation |
|--|---|
| <p>9.1. The gas supply arrangements must:</p> <p>(d) in the case of bills based on estimates, include a simple explanation of how the estimate will be calculated...</p> | <p>Benchmark met if the estimate must simply be 'reasonable'.</p> |

While the Benchmark requires an explanation of how an estimate will be calculated to be set out on every bill in order to meet the Benchmark, the interpretation is simply that the estimate is reasonable. The submission received was based on the desirability of alignment between the gas and electricity retail contract benchmark requirements wherever applicable. It noted that while

the intention is similar in both schemes, the wording in the Gas Industry Co Benchmark appears to require descriptions on every customer account, while the Electricity Authority Principles and Minimum Terms only requires the provision of that information at the request of the consumer. Specifically it states that in relation to estimated invoices, a Consumer Contract should:

6.2(f) provide that if a Consumer is required to pay estimated amounts, that:

- (ii) the Company will provide, on request, a simple explanation of how estimates are calculated.*

The submission noted that explaining estimation calculations to consumers is best done on a case by case basis, and that a generic explanation does not suit all situations or necessarily satisfy a consumer query without further communication. It was further noted that estimations can come about from many combinations of events, timings and historic data.

Gas Industry Co has considered this submission and agrees that a revision of Benchmark 9.1(d) is warranted. This will not change the information required to be provided to consumers. Gas Industry Co is of the view that this is a minor amendment that will achieve alignment with Electricity Authority requirements, and the Gas Industry Co interpretation of the Benchmark. Consumers will not be disadvantaged and can still query their estimated invoice at any time. There are no additional obligations on retailers.

The full set of Benchmarks, with the amended interpretation of Benchmark 16 and the amendment to Benchmark 9.1(d) is attached as appendix 1 to this paper. These will be applied by the independent reviewer in the 2012 assessment, which is scheduled to commence on 1 July 2012. There will be full transparency in the 2012 assessment regarding each retailer's compliance, and each assessment will be published on a named basis.

Appendix 1: Benchmarks and Gas Industry Co Interpretation

1. Clear supply commencement

| Benchmark | GIC Interpretation |
|--|---|
| 1.1. The gas supply arrangements must state when supply is to commence, with this to be agreed between the Retailer and the Consumer unless the date is determined by the processes under any relevant regulations or rules governing switching; and | <p>This benchmark concerns <i>supply commencement</i> not contract commencement. It must be <i>reasonably clear</i> when supply commences.</p> <p>The benchmark requires the commencement date to be either:</p> <ul style="list-style-type: none"> • an actual date or a method for determining a date (e.g. 'the earliest possible date' or 'the date you move in' or 'the date you start taking supply from us'); or • as determined by the switching regulations or rules. <p>Benchmark is not met by a statement that supply commences when the Consumer starts taking supply.</p> |
| 1.2. Where the gas supply arrangements are completed after the Retailer has begun supplying gas to the Consumer, the gas supply arrangements will commence from the date that gas is first supplied to the Consumer. | <p>This benchmark concerns <i>contract commencement</i> not supply commencement. Benchmark requires it to be clear that arrangements can be back-dated to the date that supply commenced.</p> <p>Benchmark met by statement that Consumer becomes a customer by:</p> <ul style="list-style-type: none"> • continuing to receive and use gas at premises where a previous customer has left • arranging for Retailer to turn on gas supply that had been previously turned off. <p>Benchmark not met if back-dating of contract commencement date is not mentioned.</p> |

2. Clear safety information

| Benchmark | GIC Interpretation |
|--|--|
| 2. The gas supply arrangements must provide information to Consumers on the following aspects of gas supply and the interruption of gas supply: | |
| (a) the responsibilities of the parties involved in the supply of gas, which may include all or any of the Retailer, Distributors, and meter owners; | <p>Without comprehensive analysis and discussion with each Retailer, it will not be possible for the reviewers to assess whether the responsibilities have been accurately and comprehensively detailed.</p> <p>Specific responsibilities of the parties involved in the supply of gas are already assessed under the following benchmarks:</p> <ul style="list-style-type: none"> • Benchmark 6 – services provided by the Retailer • Benchmark 12 – requirements for metering • Benchmark 14 – faults and planned shutdowns |

| Benchmark | GIC Interpretation |
|--|---|
| | <ul style="list-style-type: none"> • Benchmark 7 – Retailer’s response to supply disruption • Benchmark 11 – site responsibilities. <p>It is not considered that any additional responsibilities need be defined in an arrangement to meet the objectives of this assessment. Accordingly, it is not proposed to score this benchmark 2(a) separately. Gas Industry Co will consider moving this benchmark into the good practice guidelines.</p> |
| <p>(b) where information on emergency procedures is located, including how the Consumer can turn off their gas supply in an emergency and how information on and procedures for reconnection after the emergency will be provided; and</p> | <p>This benchmark requires the arrangement to provide ‘safety information’ to Consumers. Safety issues are also addressed by other industry requirements and Gas Industry Co acknowledges that, in an emergency, safety information recorded in contractual arrangements is unlikely to be immediately at hand. However, contractual arrangements are a mechanism for raising safety awareness.</p> <p>Benchmark met if the specified safety information is contained in:</p> <ul style="list-style-type: none"> • the contract • a document referred to in the contract, even if the contract does not specify what information is contained in that other document. <p>For future reviews, Gas Industry Co will consider:</p> <ul style="list-style-type: none"> • moving this benchmark 2(b) to the good practice guidelines, as other regulatory arrangements address safety and information recorded in an arrangement is unlikely to be immediately at hand in an emergency • amending this benchmark 2(b) to require arrangements to include safety awareness provisions such as: <ul style="list-style-type: none"> ○ when the Consumer must obtain compliance certificates ○ what the Consumer should do to ensure gas safety at the Consumer’s premises, including how to turn off gas supply ○ who the Consumer should call if there is an emergency involving gas at the Consumer’s premises. |
| <p>(c) where the Consumer may access information about supply interruptions, with this information to be updated by the Retailer as often as is practicable.</p> | <p>As this benchmark concerns supply interruptions, it is scored together with benchmark 14.</p> |

3. Clear consumer exit rights (open term)

| Benchmark | GIC Interpretation |
|---|--|
| 3. Open term gas supply arrangements must provide the Consumer with the ability to cease gas supply from the existing Retailer: | If an arrangement has an initial fixed term followed by an open term, both benchmark 4 and 3 are relevant respectively. 'Cease gas supply' includes provisions dealing with disconnection, discontinuing supply, terminating the agreement, exiting and ceasing being a customer. |
| (a) at any time without unnecessary delay; | Benchmark not met if: <ul style="list-style-type: none"> there are restrictions on the circumstances in which the Consumer can terminate (the Consumer should be able to terminate at ANY time) following termination, the charges only cease on a date agreed by the Retailer (as the Retailer could unreasonably withhold its agreement, except under the switching rules) the Retailer can continue its daily fixed charge until gas is decommissioned (as this is outside the Consumer's control). Benchmark may be met where: <ul style="list-style-type: none"> termination is subject to the Consumer allowing the Retailer to perform a final meter reading the length of notice that the Consumer must give is specified, but there is not a corresponding obligation on the Retailer to disconnect (one is implied). There is an <i>unnecessary delay</i> if more than one month's notice of termination is needed. |
| (b) irrespective of any offer that the existing Retailer may make with respect to price or any other aspect of continued supply from that Retailer; and | Benchmark not met where the Consumer can't switch to an alternative Retailer, unless the current Retailer is unwilling to match the alternative Retailer's offer. |
| (c) without incurring any charges other than the direct costs related to termination, i.e. without penalty fees or exit fees. | |

4. Clear consumer exit rights (fixed term)

| Benchmark | GIC Interpretation |
|---|--|
| 4. Fixed term gas supply arrangements must clearly state: | If application form or terms and conditions do not specify a fixed term, assume that the arrangement is for open term only and that the benchmark is not applicable. |
| (a) the expiry date; | Benchmark met if the expiry date can be calculated as provided in the contract. Benchmark not met if: <ul style="list-style-type: none"> arrangement automatically rolls over for the same fixed term, unless prior notice is given. |

| Benchmark | GIC Interpretation |
|---|--|
| | Gas Industry Co considers that roll-overs should be on an open term basis <ul style="list-style-type: none"> the Consumer can't switch to an alternative Retailer at the end of the term, unless the current Retailer is unwilling to match the alternative Retailer's offer. |
| (b) whether or not there are provisions for early termination (i.e. prior to the expiry date); and | Benchmark relates to the <i>Consumer's</i> right to terminate, not the Retailer's. Benchmark is: <ul style="list-style-type: none"> not met by <i>general</i> right to terminate (eg for breach) or if contract is <i>silent</i> on right to convenience termination met by a statement that the Consumer has <i>no right</i> or has <i>limited rights</i> to convenience termination. |
| (c) the basis on which any early termination charges will be calculated, if early termination is allowed. | Benchmark met if no early termination charge is mentioned. |

5. Clear contract variation procedures (non-price)

| Benchmark | GIC Interpretation |
|---|---|
| 5.1. Open term contracts may permit the Retailer to change the non-price terms and conditions of the gas supply arrangements upon giving the Consumer no less than 30 days' notice of the changes. | Benchmark also applies to fixed term contracts. For those contracts, the benchmark is not met unless the Consumer may terminate the contract before the changes come into effect, and without any obligation to pay fees for the period past the date of termination. If arrangement has separate provisions for price terms, assume that general right to amend contract applies to non-price terms only. Benchmark met if: <ul style="list-style-type: none"> the Retailer has no express right to amend the contract (assume that the Retailer won't change without each Consumer's agreement) one month's notice is given (February is less than 30 days). Benchmark not met if less than 30 days' notice can be given. Benchmark not failed merely because the Retailer can change the arrangement on shorter notice, in the event of temporary supply emergencies. |
| 5.2. The gas supply arrangements must specifically provide for material changes in the terms of the gas supply arrangements or price to be directly communicated to Consumers and not through public notices. | This benchmark relates to non-price variations only. Price variations are addressed in benchmark 8. Benchmark met if all non-price variations must be directly communicated to the Consumer. |

6. Clear supply obligations

| Benchmark | GIC Interpretation |
|--|--|
| <p>6. The gas supply arrangements must describe the services to be provided to the Consumer.</p> | <p>Without comprehensive analysis and discussion with each Retailer, it will not be possible for the reviewers to assess whether the specific services of any Retailer have been accurately and comprehensively described in any arrangement.</p> <p>The following benchmarks already assess services that will be provided by the Retailer:</p> <ul style="list-style-type: none"> • Benchmark 7 – Retailer’s response to supply disruptions • Benchmark 11 – Retailer’s site obligations • Benchmark 12 – Retailer’s metering obligations • Benchmark 14 – Retailer’s obligations under special or emergency operating situations. <p>It is considered that the only service not sufficiently addressed in other benchmarks is the <i>supply of gas</i>. Each arrangement should reasonably include an obligation that the Retailer will supply gas of certain quality to a specified point.</p> <p>Benchmark may be met if:</p> <ul style="list-style-type: none"> • the Retailer’s obligation is to: <ul style="list-style-type: none"> ○ <i>endeavour</i> to supply gas (including ‘best’ and ‘reasonable’ endeavours and ‘aim to’) ○ supply <i>up to a maximum</i> quantity of gas ○ provide an ‘<i>energy service</i>’ or ‘<i>energy supply</i>’ rather than ‘supply gas’ • the point of supply is: <ul style="list-style-type: none"> ○ <i>as defined by reference to gas regulations (see regulation 5 of the Gas (Safety and Measurement) Regulations 2010)</i> ○ <i>the point at which gas exits the meter</i> ○ <i>defined as ‘all energy past the meter is your responsibility’</i> • the Retailer cannot guarantee to provide a <i>continuous supply</i> of gas • the arrangement describes the point of supply, but there is <i>no express requirement</i> for the Retailer to supply to that point (the obligation is assumed) • supply is subject to the <i>safety</i> of the Consumer’s site when connected to the local distribution gas network • supply must be <i>exclusively</i> from the Retailer • in relation to the quality of supply: <ul style="list-style-type: none"> ○ <i>the Retailer agrees to comply with all relevant laws</i> ○ <i>quality may vary for reasons beyond the Retailer’s control</i> • obligations for transporting gas across a distribution network is excluded only where the network operator requires its own agreement with the Consumer <p>Benchmark not met if:</p> <ul style="list-style-type: none"> • the arrangement only describes the point of <i>electricity</i> supply |

| Benchmark | GIC Interpretation |
|-----------|--|
| | <ul style="list-style-type: none"> the Retailer or network company can <i>determine</i> the point of supply (too general) the point of supply is described as '<i>the point</i> at which gas flows from a gas network into the Consumer's installation, appliance or reticulation system' as that point itself is unclear. |

7. Clear supply restoration procedures

| Benchmark | GIC Interpretation |
|--|---|
| 7. Where services are not provided as described, the gas supply arrangements must: | Benchmark relates to how the Retailer <i>responds</i> to interruptions to <i>gas supply</i> , not other service issues. The <i>circumstances</i> in which supply may be interrupted are addressed in benchmark 14. |
| (a) set out how the Retailer will respond to the Consumer where services are not supplied as described; | <p>Benchmark not met by a <i>standard complaints procedure</i>. Supply interruptions should be dealt with more promptly.</p> <p>Benchmark met by:</p> <ul style="list-style-type: none"> reasonable endeavours obligation (e.g. by the Retailer using reasonable endeavours to restore supply as soon as reasonably practicable) the Retailer 'working with the relevant parties to try to minimise any inconvenience'. |
| (b) whether any payments will be made to the Consumer as a result of services not being supplied; and | <p>Benchmark met if:</p> <ul style="list-style-type: none"> arrangements provide there will be no payment 'payment' includes any financial benefit to Consumer (eg discounts) <p>Benchmark not met if the contract is silent as to whether or not payments will be made.</p> |
| (c) make it clear that any redress offered by the Retailer in relation to services not being supplied as described, is in addition to and does not detract from, the Consumer's rights under the Consumer Guarantees Act 1993. | <p>The objective behind this benchmark is to clearly notify Consumers of their rights.</p> <p>Benchmark not met by:</p> <ul style="list-style-type: none"> <i>general</i> statement that the Retailer will comply with laws as this does not notify Consumers of this important statutory protection statement that the Consumer Guarantees Act is <i>excluded to the maximum extent permitted by law</i> as non-business Consumers may wrongly assume they have no Consumer Guarantees Act rights. <p>Benchmark met by:</p> <ul style="list-style-type: none"> reference to 'Consumer protection legislation' instead of 'Consumer Guarantees Act' statement that arrangement does not exclude or limit rights under the Consumer Guarantees Act exclusion of the Consumer Guarantees Act as permitted under that Act (i.e. for businesses) |

| Benchmark | GIC Interpretation |
|-----------|--|
| | <ul style="list-style-type: none"> an exclusion of liability clause not excluding Consumer Guarantees Act liability eg 'except to the extent of any liability arising pursuant to the Consumer Guarantees Act'. |

8. Clear price increases

| Benchmark | GIC Interpretation |
|---|---|
| 8. In order to increase the price of gas supplied under the gas supply arrangements, the gas supply arrangements must state: | |
| (a) the length of notice that shall be given before the price increase takes effect, which shall be not less than 30 days from the giving of notice; | |
| (b) the method by which notice shall be given... | <p>Benchmark not met:</p> <ul style="list-style-type: none"> by provision that Consumers can request the cause of a price increase where the method of notice is unclear. <p>Benchmark met by public notice (eg on website or newspaper).</p> <p>Benchmark may be met by a general notice clause specifying how all notices from the Retailer will be given.</p> |
| ...provided that, if the increase in price is more than 5%, a separate notice of the increase must be individually communicated to the Consumer in writing... | <p>Benchmark not met by:</p> <ul style="list-style-type: none"> public notice (eg on website or newspaper) automatic price review (eg annual) that is not notified in accordance with benchmark 6.1, despite it being 'communicated' in the arrangement. <p>Benchmark met by:</p> <ul style="list-style-type: none"> emailed notice notice in next invoice. |
| ...as soon as possible; and | This benchmark does not need to be scored, as benchmark 8(a) requires that not less than 30 days' notice be given. |
| (c) that the notice will include the reasons for the increase. | Benchmark met if contract only requires notice of the general reasons for the increase. |

9. Clear pricing information

| Benchmark | GIC Interpretation |
|---|--|
| 9.1. The gas supply arrangements must: | |
| (a) refer to the relevant prices or pricing schedule (as may be produced by the Retailer from time to time) of products and services available to the Consumer; | <p>Without comprehensive analysis and discussion with each Retailer, it will not be possible for the reviewers to assess whether prices are accurately and comprehensively described in any arrangement.</p> <p>The benchmark requires the prices to be clear to the Consumer, whether in the arrangement itself (eg application form) or publically available (eg on the Retailer’s website or in another publically accessible location).</p> <p>Benchmark met if a price plan is referenced to in the arrangement but the arrangement does not describe where Consumers may find the price plan, provided the price plan is in fact available on the Retailer’s website.</p> <p>Benchmark not met:</p> <ul style="list-style-type: none"> • if arrangement does not specify <i>where</i> price information can be found • if the specified location of price information is not publically available. |
| (b) state that the Consumer is liable for the charges, but only for those charges, for all of the services provided under the gas supply arrangements; | <p>Benchmark met if contract <i>clearly specifies</i> the charges that the Consumer will be liable for.</p> <p>Benchmark not met if:</p> <ul style="list-style-type: none"> • Consumer liable for <i>unspecified charges</i> (eg ‘all other costs’) • the amount of any charges are open ended (does not apply where the Consumer will receive advance notice of change to these charges). |
| (c) state the time from which the Consumer will be liable for the charges; | The intention behind this benchmark is adequately addressed in benchmark 1. No need to assess here. |
| (d) in the case of bills based on estimates, the Retailer will provide, on request, a simple explanation of how estimates are calculated. | Benchmark met if the estimate must simply be ‘reasonable’. |
| ...and of the process that will be used for correcting any estimates; | <p>Benchmark met:</p> <ul style="list-style-type: none"> • if Retailer will invoice according to a meter reading performed by the Consumer • even where the Consumer’s right to request a correction is limited (eg because Consumer can only request a test annually). |

| Benchmark | GIC Interpretation |
|---|--|
| (e) provide that if the Retailer makes an error and charges an incorrect amount to the Consumer, then upon becoming aware of the error the Retailer will promptly refund any amount that has been overcharged... | <p>Benchmark met if:</p> <ul style="list-style-type: none"> over-charging will be <i>credited</i> against next invoice an <i>appropriate adjustment</i> will be made. <p>However, benchmark not met if:</p> <ul style="list-style-type: none"> the time frame is not mentioned ('next invoice' is acceptable) the Consumer can only request metering tests each 12 months and adjustment only extends back to the date of testing (as refund may exclude many months of overcharging). |
| ...and may invoice the Consumer for any underpayments subject to sub-clause (f); and | <p>Benchmark relates to under-charging by Retailer, not under payment by Consumer.</p> <p>Benchmark not met if arrangement does not provide that under charging may be invoiced.</p> <p>Benchmark met if:</p> <ul style="list-style-type: none"> under-charging can be included in subsequent invoice the under-charged amount is payable after the dispute resolved, even if the amount is not required to be invoiced. |
| (f) the gas supply arrangements will state the term limitations that will apply for the recovery of underpayments. | <p>Benchmark relates to under-charging by Retailer, not under payment by Consumer.</p> <p>Benchmark not met if arrangement does not provide any term limitations.</p> <p>However benchmark may be met if the Retailer can charge beyond a specified term limit if:</p> <ul style="list-style-type: none"> it should not reasonably have been expected to have been aware of the error the Consumer contributed to the error, or could have reasonably been expected to have known about the error. |
| 9.2. If the Retailer offers alternative payment options to Consumers, a simple explanation of how those options operate must be set out in the gas supply arrangements. | <p>Benchmark met if arrangement <i>does not provide</i> for payment options (assumed that Retailer does not offer any).</p> |
| <p>9.3. Metering:</p> <p>In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe:</p> <p>(a) any additional costs associated with providing, correcting, changing, or removing metering equipment, which may be listed in a separate schedule;</p> | <p>Benchmark met if the arrangement:</p> <ul style="list-style-type: none"> <i>does not mention</i> any additional costs (assume there are none) says costs may be payable (eg inspection, repair and/or replacement costs) but <i>does not specify the amount</i> of those costs provides that the Consumer will be informed prior to taking any action on a meter which may incur a charge. |
| (b) the process to be followed in the event that either the Retailer or the Consumer suspects that a meter is recording or reading incorrectly... | |

| Benchmark | GIC Interpretation |
|--|--|
| ...and the method for correcting previous billed consumption if found to be incorrect. | Benchmark not met by: <ul style="list-style-type: none"> dealing with the method of testing without describing the correction process providing that consumption will be 'adjusted accordingly'. |

10. Clear bond obligations

| Benchmark | GIC Interpretation |
|---|--|
| 10.1. Where the Retailer requires a bond from the Consumer, the gas supply arrangements must state: | Benchmark met in full if arrangement does not reference bonds (assume that bonds are not required). If arrangements provides that 'other lending criteria apply' it is assumed that bonds may be required. |
| (a) the requirement for the Retailer to provide to the Consumer the reasons for requiring a bond; | Benchmark not met if arrangement says 'if we have concerns about your ability to pay we may require a bond'. The arrangement must oblige the Retailer to give more detailed reasons in each case. |
| (b) the period of time within which the bond must be paid to the Retailer; and | This benchmark does not need to be scored. It is reasonable for bonds to be paid before supply commences. Any additional time for payment allowed by a Retailer will not prejudice the Consumer. |
| (c) how long the Retailer will keep the bond. | Benchmark met if arrangement: <ul style="list-style-type: none"> describes the <i>circumstances</i> in which the bond will be released, rather than a specific time period provides an indefinite period for retaining bonds, provided the bond will be returned on <i>termination and payment</i> of outstanding charges. |
| 10.2. If the Retailer keeps the bond for longer than 12 months, it must provide: | Benchmark not met if arrangement includes no restriction on the time that a bond may be kept (assume it may be kept for longer than 12 months). Benchmark met if arrangement provides that the balance of any bond will be repaid after 12 months if you have paid all invoices on time (assume that reason for keeping it is non-payment of invoices on time). |
| (a) its reasons for doing so; | |
| (b) information on how the bond will be refunded; and | |
| (c) whether or not interest is payable on the bond. | |

11. Clear consumer site responsibilities

| Benchmark | GIC Interpretation |
|--|---|
| 11.1 The gas supply arrangements must: | |
| (a) describe the physical point at which the Consumer's responsibility begins; | The requirement to define the point of supply is assessed in benchmark 6. No separate assessment required. |
| (b) explain the Consumer's responsibilities in relation to gas lines, meters and other equipment on the Consumer's premises and for compliance with all safety and technical requirements under regulations and codes of practice; | 'On the Consumer's premises' includes both sides of the point of supply. Benchmark not met if the Consumer is required to provide certification in relation to the Retailer's equipment at the Consumer's site. |
| (c) state the rights of the Retailer and/or their agents to gain access to gas lines and equipment located on the Consumer's premises; and | 'On the Consumer's premises' includes both sides of the point of supply. |
| (d) the consequences the Consumer may face for not granting access. | Benchmark not met by <i>general statement</i> that the Retailer may terminate or suspend the arrangement for breach. |
| 11.2 Metering. In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe the Consumer's responsibility for protecting, not tampering with, and providing access to meter(s) for maintenance and reading purposes. | |

12. Clear metering obligations

| Benchmark | GIC Interpretation |
|---|--|
| 12. In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe: | See also benchmarks 8 and 11. |
| (a) the requirements for metering relevant to the pricing options selected by the Consumer; | The arrangement must make it clear who has responsibility for: <ul style="list-style-type: none"> providing the meter maintaining the meter. |
| (b) the frequency of meter readings; and | The arrangement must: <ul style="list-style-type: none"> clearly describe the frequency in which the Retailer will read meters be consistent with the Retailer's legal obligations for frequency of meter reading. |

| Benchmark | GIC Interpretation | | | | | | | | |
|---|--|-----------|------------------|----------------|---|---|---|-----------------------------|--|
| | <p>Gas Industry Co assumes all TOU (time of use) meters will comply with legal frequency obligations. In terms of Retailer's legal obligations for frequency of non-TOU meters:</p> <ul style="list-style-type: none"> • the Gas (Downstream Reconciliation) Rules 2008 require (in general terms) that Retailers <i>must</i> read meters as follows: <ul style="list-style-type: none"> ○ for expected consumption between 250 GJ pa and 10 TJ pa, monthly ○ for all lower expected consumption: <ul style="list-style-type: none"> ▪ each individual meter at least once every 12 months, unless exceptional circumstances prevent; and ▪ at least 90% of the meters once every 4 months (Gas Industry Co notes that this aggregate obligation cannot be applied at the level of individual arrangements) • Under the EGCC's Gas Code of Practice meter readings <i>should</i> take place a minimum of four times a year, unless the Consumer agrees individually otherwise or does not provide the Retailer with reasonable access to the meter. For the purpose of this benchmark, the code is not a legal obligation unless the Retailer agrees in the arrangement to comply with it. <p>Accordingly, arrangements must provide at least the following:</p> <table border="1" data-bbox="1012 751 2078 1150"> <thead> <tr> <th data-bbox="1012 751 1393 810">Frequency</th> <th data-bbox="1393 751 2078 810">Arrangement Type</th> </tr> </thead> <tbody> <tr> <td data-bbox="1012 810 1393 935">Monthly</td> <td data-bbox="1393 810 2078 935">'Business' or 'Business/Residential' (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)</td> </tr> <tr> <td data-bbox="1012 935 1393 1059">Four times a year (including 'plans to' or 'should' do so, but not 'several times a year')</td> <td data-bbox="1393 935 2078 1059">'Residential Only' where the Retailer <i>agrees</i> in the arrangement to comply with industry codes of practice (or relevant industry codes of practice)</td> </tr> <tr> <td data-bbox="1012 1059 1393 1150">Once every 12 months</td> <td data-bbox="1393 1059 2078 1150">'Residential Only' where Retailer <i>does not</i> agree in the arrangement to comply with industry codes of practice</td> </tr> </tbody> </table> <p>The 'individual agreement' noted in the Code of Practice cannot be contained in the Retailer's standard documentation but must be provided individually (for example a Consumer may agree that the Retailer may miss a meter read where the Consumer recently provided its own estimate).</p> <p>The benchmark is not met if the arrangement states that a longer time between readings is permitted for rural meters.</p> | Frequency | Arrangement Type | Monthly | 'Business' or 'Business/Residential' (where expected consumption could reasonably be between 250 GJ and 10 TJ pa) | Four times a year (including 'plans to' or 'should' do so, but not 'several times a year') | 'Residential Only' where the Retailer <i>agrees</i> in the arrangement to comply with industry codes of practice (or relevant industry codes of practice) | Once every 12 months | 'Residential Only' where Retailer <i>does not</i> agree in the arrangement to comply with industry codes of practice |
| Frequency | Arrangement Type | | | | | | | | |
| Monthly | 'Business' or 'Business/Residential' (where expected consumption could reasonably be between 250 GJ and 10 TJ pa) | | | | | | | | |
| Four times a year (including 'plans to' or 'should' do so, but not 'several times a year') | 'Residential Only' where the Retailer <i>agrees</i> in the arrangement to comply with industry codes of practice (or relevant industry codes of practice) | | | | | | | | |
| Once every 12 months | 'Residential Only' where Retailer <i>does not</i> agree in the arrangement to comply with industry codes of practice | | | | | | | | |

| Benchmark | GIC Interpretation |
|--|--|
| (c) the obligation to ensure metering is conducted in accordance with relevant industry standards and codes of practice. | <p>Relevant standards and codes of practice include:</p> <ul style="list-style-type: none"> • NZS5259, which has legal effect under the Gas Act on all meter owners • EGCC’s Gas Code of Practice, which is not legally binding in itself. <p>Benchmark met if Retailer agrees to comply with:</p> <ul style="list-style-type: none"> • ‘relevant’ industry standards and codes of practice, rather than all of them • ‘industry requirements’, rather than standards and codes of practice <p>Not met if Retailer merely agrees to comply with ‘laws’ as the EGCC Code of Practice is not a law and NZS5259 is not directly binding on Retailers.</p> |

13. Clear disconnection process

| Benchmark | GIC Interpretation |
|--|---|
| 13.1. The gas supply arrangements must: | <p>Benchmark addresses <i>disconnection, termination or suspension</i> by the Retailer for the Consumer’s breach. These are distinct to ‘disconnections’ dealt with in other benchmarks:</p> <ul style="list-style-type: none"> • Benchmark 3 (How to stop being a Consumer of your current Retailer) • Benchmark 14 (Faults and Planned Shutdowns). |
| (a) set out the conditions under which Consumers can be disconnected other than in accordance with clause 13.2 below; | <p>Benchmark met if:</p> <ul style="list-style-type: none"> • the Retailer can disconnect on any grounds • there is no ability to disconnect other than under clause 14 below. |
| (b) provide that any notice of such disconnection will describe the actions that the Consumer can take to prevent disconnection. | <p>Benchmark not met if the arrangement is silent on this, even if the actions the Consumer can take to prevent disconnection are notified <i>in practice</i>.</p> |
| 13.2. A Retailer may only disconnect a Consumer for non-payment where the non-payment relates to validly invoiced charges for the supply of gas, gas retail services, line function services, and/or gas related bonds. | <p>Benchmark not met if the Retailer can discontinue gas supply for non-payment of an invoice for another form of energy (particularly applicable in dual energy arrangements).</p> |
| <p>13.3 Except for emergency disconnections, or in the case of disconnections under the provisions of the Gas Act 1992 or Gas Regulations, or where a Consumer requests disconnection, the gas supply arrangements must provide:</p> <p>(a) for the receipt by the Consumer of at least 7 working days’ written notice of warning of disconnection after allowing 3 days for the delivery of the notice;</p> | <p>Notice requirement not met if arrangement:</p> <ul style="list-style-type: none"> • merely provides that the Retailer will give notice, without specifying the length of notice • allows Retailer to attempt to give the required length of notice (although force majeure clause may apply). <p>‘Emergency disconnections’ relate to disconnections for the purpose of protecting health, safety or damage to property. Grounds for disconnection under regulatory arrangements are primarily focused on safety.</p> <p>Accordingly, the following wording does not meet the benchmark as the wording may</p> |

| Benchmark | GIC Interpretation |
|---|---|
| | extend beyond emergency or safety purposes: <ul style="list-style-type: none"> • instructions from a Lines Company or Network Operator to disconnect • breach of contract by the Consumer • mere suspicion that there has been tampering with a meter, equipment, pipes or fittings (it may not be the Consumer's fault) • failing to advise the Retailer of any damage to metering or network equipment • tampering, hacking into, or interfering with any metering network equipment • deliberately taking advantage of the fact that the meter was inaccurate or not working properly. |
| (b) for the receipt of a final warning by the Consumer, no less than 24 hours before disconnection and after allowing for a reasonable period of time between the receipt of the written warning under (a) and the final warning. | Benchmark not met if arrangements merely provide that Retailer: <ul style="list-style-type: none"> • will give notice, without specifying the length of notice • will try/attempt to give the required length of notice (although force majeure clause may apply). |
| 13.4. If a dispute resolution under the gas supply arrangements has been initiated by the Consumer in regard to the cause of any disconnection, then disconnection action specifically related to that cause must be delayed until after the conclusion of the dispute resolution process or when the dispute resolution processes have been exhausted. | Benchmark met if Retailer may still disconnect if dispute is not in good faith or is frivolous or vexatious. |
| 13.5. The gas supply arrangements must set out the charges that will apply to disconnection and/or connection and where information on those charges is located, and the circumstances under which the charges will apply. | Benchmark not met: <ul style="list-style-type: none"> • by the arrangement merely providing that 'charges will apply' • if prices are available online, but the online price plan is not referenced in the arrangement • if an online price plan is referenced in the arrangement, but the online price plan does not specify disconnection and connection charges. Benchmark met: <ul style="list-style-type: none"> • if prices are available online and the price plan is referenced (anywhere) in the arrangement. |

14. Clear supply interruption procedures

| Benchmark | GIC Interpretation |
|--|---|
| 14.1. The gas supply arrangements must clearly: (a) describe the circumstances under which supply may be interrupted without prior warning; | Benchmark met with any description of circumstances (assume the description is comprehensive) including 'for reasons beyond our control'. |

| Benchmark | GIC Interpretation |
|--|---|
| <p>(b) provide a minimum notice period before a planned shutdown, which should be no less than four business days unless agreed otherwise with the Consumer; and</p> | <p>Benchmark not met if arrangement merely provides that the Retailer will:</p> <ul style="list-style-type: none"> • 'give notice' without specifying any time period • 'give notice where practical' • 'try to give notice' • 'use best endeavours to give advance notice' without specifying any time period. <p>Benchmark met if Retailer:</p> <ul style="list-style-type: none"> • must give 'as much notice as is reasonably practicable' as a typical force majeure clause would excuse delays beyond the Retailer's control • notice period is subject to the network operator or meter owner (whichever is responsible for the shutdown) giving sufficient notice to do so. <p>The phrase 'unless agreed otherwise with the Consumer' refers to a case specific agreement and thus reference to a shorter notice period in the arrangement itself is insufficient.</p> |
| <p>(c) describe the Retailer's rights and obligations under special or emergency operating situations.</p> | <p>Specifically, this benchmark addresses 'critical contingencies' under the Gas Governance (Critical Contingency Management) Regulations 2008. Under these regulations, Retailers must:</p> <ul style="list-style-type: none"> • notify each of their Consumers to apply to the Retailer if the Consumer wishes to be classified as an 'essential service provider' or 'minimal load Consumer' (regulations 44 and 45). In practice, this classification will not be relevant to the vast majority of Consumers on standard gas supply arrangements and the necessary notice may be covered in an application form, in the gas supply arrangement or elsewhere. Accordingly, compliance with this requirement not been assessed for the purpose of compliance with this benchmark • during a critical contingency, comply with directions from a transmission system owner given under the regulations (regulation 55(1)) • on receiving such a direction, urgently notify each of their Consumers affected by the critical contingency to curtail demand in accordance with the direction (regulation 56(1)). Directions for a Consumer to curtail its demand are only of practical relevance for Consumers with very large consumption or agreed 'minimum load' requirements. For the purpose of this review, it is assumed that minimum load Consumers are on bespoke agreements. For the Consumers covered by this review it is understood their gas will either be supplied in a contingency or curtailed • if applicable, urgently notify each of their Consumers affected by the critical contingency that supply has resumed (regulation 56(1)). <p>Accordingly, all arrangements (business or residential) must:</p> <ul style="list-style-type: none"> • permit the Retailer to curtail supply in a critical contingency situation. The following |

| Benchmark | GIC Interpretation |
|---|---|
| | phrases meet the benchmark: <ul style="list-style-type: none"> ○ the Retailer may curtail supply to the extent required by law ○ the Retailer does not guarantee supply <ul style="list-style-type: none"> • require the Retailer to urgently notify the Consumer of supply resumption following a critical contingency situation. A simple statement that the Retailer will 'comply with laws' is not sufficient as most Consumers would not be aware of this particular legal requirement. |
| 14.2. Provision of information to Consumers The gas supply arrangements must provide information to Consumers on where the Consumer may access information about supply interruptions, with this information to be updated by the Retailer as often as is practicable. | Benchmark not met unless the information is referred to in: <ul style="list-style-type: none"> • the contract • a document referred to in the contract • the contract does not need to specify what particular information is contained in a referenced document. |

15. Clear privacy obligations

| Benchmark | GIC Interpretation |
|---|---|
| | Benchmark applies to residential arrangements and to business arrangements (to the extent personal information is held about individuals in that business). |
| 15. The gas supply arrangements must provide that the Retailer will comply with the provisions of the Privacy Act 1993, and accordingly the gas supply arrangements must: | Benchmark met by obligation to comply with relevant privacy laws, without mentioning the Act. Benchmark not met: <ul style="list-style-type: none"> • by general obligation to comply with laws • if arrangement purports to exclude privacy considerations relating to personal information obtained from a business. |
| (a) set out the purposes for which the Retailer may collect personal information from the Consumer; | Benchmark not met: <ul style="list-style-type: none"> • by a right to use the personal information for any purpose • by general obligation on the Retailer to comply with privacy laws • by arrangement merely providing that the information will be used for the purpose for which it was collected (without having specified that purpose). |
| (b) confirm that individuals will be able to access personal information held about them... | Benchmark not met: <ul style="list-style-type: none"> • by general obligation on the Retailer to comply with privacy laws • by arrangement merely providing that individuals may access telephone recordings of themselves. |

| Benchmark | GIC Interpretation |
|---|---|
| ...and have the opportunity to correct this information; and | Benchmark not met by general obligation on the Retailer to comply with privacy laws. |
| (c) set out where the Consumer can get information about how the Retailer collects, uses, discloses and stores personal information about the Consumer. | Benchmark not met if the information is in an online privacy statement, unless the privacy statement is referred to in the arrangement. |

16. Reasonable retailer liability limitations

| Benchmark | GIC Interpretation |
|---|---|
| 16. Any exclusion of liability in the gas supply arrangements must be clearly specified and reasonable. | <p>The benchmark requires that allocations of financial risk be 'reasonable'. In this case, reasonableness depends on factors such as:</p> <ul style="list-style-type: none"> • what financial risks are involved (their impact and likelihood) • who is best placed to manage the financial risks (including by way of insurance) • what premium has been included in the charges to address the risk. <p>At this stage, Gas Industry Co has not performed a comprehensive analysis of these factors in the retail gas supply market. Until such time as this analysis is performed, an 'exception approach' is to be applied to the assessment of reasonableness. Under this exception approach the reviewers are to assume that an exclusion of liability is not unreasonable and meets the benchmark, except where:</p> <ul style="list-style-type: none"> • the contract limits all of the Retailer's liability for all acts or omissions; or • the Consumer is asked to indemnify the Retailer from any loss the Retailer may suffer as a result of the gas supply. <p>Gas Industry Co considers that a complete exclusion of all liability and/or requiring a customer to provide a full indemnity is clearly unreasonable, and in some cases may even breach the Consumer Guarantees Act 1993.</p> <p>As a consequence of this assessment approach, it is expected that the assessment of clauses limiting liability will primarily focus on whether any such limits are clearly stated.</p> |

17. Clear dispute resolution

| Benchmark | GIC Interpretation |
|---|---|
| 17. The gas supply arrangements must: | |
| (a) advise Consumers, either directly or by reference to other accessible documents, of the process they should follow, including timelines, to bring a complaint to the Retailer, for resolution directly between the Retailer and the Consumer; and | Arrangement will be marked down if: <ul style="list-style-type: none"> contract procedures inconsistent with internal code of practice not clear where Consumers should address complaints to individual Consumers must appoint person from within their 'organisation'. |
| (b) advise Consumers that complaints not resolved to their satisfaction may be taken to the scheme approved under the Gas Act 1992. | Benchmark requires reference to: <ul style="list-style-type: none"> 'the Electricity and Gas Complaints Commission scheme' 'an independent dispute resolution scheme approved under the Gas Act'. Benchmark not met by: <ul style="list-style-type: none"> reference to 'any independent complaints resolution process' offered by the Retailer a restriction of the time within which the Consumer may refer the matter to the EGCC for investigation. |

18. Clear communication

| Benchmark | GIC Interpretation |
|---|---|
| Consumers to Retailers 18.1. The gas supply arrangements must provide advice to the Consumer on practicable and effective means for the Consumer to communicate with the Retailer on any issues over which they have concerns or need information. | Not met by contact information on a website, as the information must be contained in the arrangement. |
| Retailers to Consumers 18.2. The gas supply arrangements must specify how notices from the Retailer will be delivered to the Consumer... | This benchmark relates to general notices, not specifically addressed in other benchmarks. |
| ...and must specifically provide for material changes in the terms of the gas supply arrangements or price to be directly communicated and not through public notices. | Assess this benchmark together with benchmark 5 (Changes to gas supply arrangements). |

