

Treatment of customers in payment difficulty: investigation into British Gas Trading Limited's compliance with obligations under the gas supply licence and the electricity supply licence (Standard Licence Condition 27.8)

Case closure decision, November 2011

1. Summary

- 1.1. This document explains Ofgem's decision to close its investigation into whether British Gas Trading Limited (British Gas) may have breached standard licence condition 27.8 of its gas and electricity supply licences which requires suppliers to take all reasonable steps to ascertain a domestic customer's individual ability to pay and requires them to take this into account when calculating instalments.
- 1.2. This case has focused on British Gas' treatment of individual customers. Since we began the investigation British Gas has made important changes to its approach and has confirmed its acceptance:
 - a) of the core principle of taking all reasonable steps to establish each individual customer's ability to pay and to take this into account when agreeing instalments:
 - (i) in all of its interactions with that customer where it is relevant; and
 - (ii) at all stages of the debt path, up to and including warrant stage and where customers are seeking reconnection; and
 - b) of the importance of suppliers building and maintaining a full picture of customer circumstances, over time, and refreshing and taking account of such information as circumstances change, and maintaining records of these.
- 1.3. Ofgem is making clear its commitment to ensuring suppliers deal reasonably with customers facing payment difficulties: individuals matter and each contact with each customer is an opportunity not to be missed. This decision clarifies the high standard required for compliance with these obligations, providing more detail on the application of the Key Principles of ability to pay set out in June 2010¹.
- 1.4. As we set out below, the core principle serves to avoid reliance on historical information and customer data alone and instead promotes, at every interaction, a current, rounded and customer focused approach to be taken when assessing the developing circumstances of a customer, including, when dealing with customers in payment difficulty, their ability to pay. In practice, considering the up to date circumstances and ability of the individual customer to pay on their merits at each interaction (where necessary and appropriate by means of consulting recent records), avoids a tick box approach and ensures that previous exchanges, discussions or information relating to that customer's circumstances are not ignored.
- 1.5. Ofgem will be writing to suppliers to draw their attention to this decision. Ofgem will continue to monitor all suppliers' compliance with their licence obligations around debt management and disconnection.

¹ Appendix 1 of the Review of suppliers' approaches to debt management and prevention (Debt Review), joint Ofgem/Consumer Focus, June 2010, reproduced below as Appendix 1 to this decision.

2. Background

- 2.1. Ofgem investigated the approach taken by British Gas towards customers in debt, and particularly the approach adopted when setting instalment payments to recover accrued debt. Ofgem started the investigation after concerns were raised by Consumer Focus about the impact of change in British Gas' debt management policy which reduced the minimum default repayment term for pre-payment customers.

Protecting customers in energy debt

- 2.2. Ofgem promotes proactive, fair and effective engagement by suppliers with customers who are having difficulty paying for their energy. We have conducted several reviews of how energy debt is managed and how this can be improved; ourselves and jointly with consumer bodies. SLC 27.8 is a part of specific provisions in supply licences which set minimum standards for the handling of customers who are starting to have difficulty paying. These obligations apply from the initial stages through to and including advanced stages of the debt path such as force-fitting a pre-payment meter (PPM) and disconnection.
- 2.3. One of the ways suppliers proactively manage debt is by contacting customers and agreeing repayment plans. These range from full payment in one instalment to longer-term plans lasting for weeks, months or years depending on the level of debt and the customer's ability to pay (ATP).
- 2.4. When licence holders agree repayment plans, the licence requires them to take all reasonable steps to find out what is affordable to the individual customer and to take this information into account to set the repayment plan. In doing this, the licence holder must properly consider any information they are given by third parties (such as Consumer Focus or Citizen's Advice) and, if the customer has a PPM, the value of the total charges that will be recovered.
- 2.5. Compliance with these obligations is important as serious harm can accrue to customers if debt is not effectively managed. Two potential consequences are that a customer may fall further into debt or may have his or her energy supply disconnected. Ofgem has made it clear that it expects all suppliers to take a proactive approach to understanding and responding to the individual needs of their customers, by means of engaging directly and constructively with each one². It is vital that suppliers understand that, when dealing with customers in payment difficulty, the treatment of each individual matters.

3. Ofgem's investigation

- 3.1. Ofgem's investigation was prompted by concerns raised by Consumer Focus that British Gas was not taking all reasonable steps to establish customer's ATP and was not taking it into account when calculating instalments. This included not taking into account information provided by third parties, including Consumer Focus.
- 3.2. Ofgem looked at information from Consumer Focus and British Gas, including information on British Gas's debt collection policies, its approach to training staff, sample telephone calls and written customer records. The three formal requests for information issued to British Gas were followed by informal exchanges aimed at understanding British Gas' current policy position on debt management and ATP.

² 2008 Debt and Disconnection Best Practice Review at paragraph 3.30; and 2009 Vulnerable Disconnections Review at paragraph 2.15.

The obligation

- 3.3. SLC 27 includes protections for customers who are in payment difficulty (SLC 27.5 to 27.8) and in situations where the supplier is considering disconnection for unpaid charges (SLC 27.9 to 27.11). Where a customer is finding it difficult to pay for their energy, SLC 27.5 requires that services under SLC 27.6 must be provided to them. These services include the option to pay by regular instalments in accordance with SLC27.8.
- 3.4. SLC 27.8 sets out the requirement to take ability to pay into account:
- “27.8 The licensee must take all reasonable steps to ascertain the Domestic Customer’s ability to pay and must take this into account when calculating instalments, giving due consideration to:
- (a) relevant information provided by third parties, where it is available to the licensee; and
 - (b) where instalments will be paid using a prepayment meter, the value of all of the charges that are to be recovered through that meter.”

Proactive – all reasonable steps

- 3.5. The proactive nature of the obligations applies, initially, to information gathering. Suppliers should make full use of information available to them³. Ofgem considers that suppliers must approach contacts with customers in payment difficulty sensitively; it should not only be a call chasing payment but designed to identify and provide assistance with problems⁴. The obligation is not usually satisfied by remaining silent about a customer’s circumstances even where the customer does not volunteer information. Here, as always, the supplier must probe the customer’s individual circumstances⁵.
- 3.6. Asking a customer to contact the supplier at an early stage is a very welcome approach. However, it does not discharge the obligation to take into account ATP – the latter applies where the supplier is calculating instalments. Taking all reasonable steps necessitates exploring ability to pay once the agent is in fact engaging with the customer. Once contact is made, at that point asking the necessary questions is a reasonable step.

Employment does not guarantee ability to pay

- 3.7. Establishing that a customer is in employment may be insufficient to satisfy the obligation to take all reasonable steps, as establishing employment does not establish income level, or outgoings. Further steps are likely to be necessary to establish ATP.

The ability to pay is that of the customer

- 3.8. The obligation is clear that it is the ATP of the Domestic Customer who is in payment difficulty that is at issue. The circumstances of friends or relatives who are not responsible for that customer’s energy bills are irrelevant. It is wholly unacceptable to imply, suggest or require that a customer should seek charity or loans from

³ Paragraph 5.22 of Debt Review (available at: <http://www.ofgem.gov.uk/Sustainability/SocAction/Publications/Documents1/Debt%20Review%20Report.pdf>). Consumer research looking at general industry practices carried out as part of this review found that in situations where further information was already available about the customer or was established during the telephone conversation, this information was not always fully utilised.

⁴ Debt Review at para.3.10

⁵ Debt Review para 5.21

friends or relatives in order to pay their energy bills. Similarly, if customers are encouraged to pay their debt by credit card, we would have concerns about the potential risk of falling into even greater debt as a result of the interest charges the customer may incur in using this payment method on a sustained basis.

Maintaining an up to date picture of that customer's circumstances

- 3.9. The core principle is for the supplier to take all reasonable steps to establish each individual customer's ATP and to take it into account in all of its interactions with that customer where it is relevant.
- 3.10. It is important for suppliers to build and maintain a full picture of customer circumstances, over time, and to refresh and take account of such information as circumstances change, and to maintain records of these. If up to date information on ATP is readily available to and used by the agent during an interaction, this is likely to alleviate the need to re-establish or confirm ATP in that interaction.
- 3.11. It is not safe to assume that a customer's circumstances are entirely static over time. Where significant periods of time have elapsed between successful interactions with the customer, it is a reasonable step to confirm whether there have been any changes to the customer's circumstances in the intervening period.
- 3.12. The principle serves to avoid reliance on historical information and customer data alone and instead promotes, at every interaction, a current, rounded and customer focused approach to be taken when assessing the developing circumstances of a customer, including, when dealing with customers in payment difficulty, their ATP.
- 3.13. In practice, considering the up to date circumstances and ability of the individual customer to pay on their merits at each interaction (where necessary and appropriate by means of consulting recent records), avoids a tick box approach and ensures that previous exchanges, discussions or information relating to that customer's circumstances are not ignored.

Listening to and acting on information supplied by third parties

- 3.14. Third party agencies such as Citizens Advice, Money Advice Trust (MAT) and charities, for example Macmillan and Age Concern, provide a valuable service to customers experiencing difficulty paying their bills, particularly those that are vulnerable. Following Ofgem's Fuel Poverty Summit in April 2008, all suppliers now have dedicated contact numbers for third parties. These numbers allow agencies to contact suppliers directly and speak to a person able to deal with vulnerable customer issues⁶. Ofgem expects suppliers to make use of these third parties as an information resource, to maximise the additional protection for those in payment difficulty provided by these third parties.

Acting on what has been learned about that customer's ability to pay

- 3.15. Once ascertained, ATP must be taken into account. Agreements with customers must be sustainable; it is in customers' and suppliers' interests that they are. While the consequence for suppliers is that they will not receive payment, the consequences for customers are more serious. For example customers on prepayment meters may be left without energy supply.
- 3.16. ATP applies at all stages of the debt recovery process. Although a customer may have been unable or unwilling for whatever reason to engage with the supplier, ATP is still relevant when contact is made. This includes the latter stages of the recovery

⁶ Debt Review at para.4.21

process, for example when a warrant to enter the customer's premises has been applied for, granted or executed⁷.

- 3.17. Having received information about the customer's situation, including but not limited to by means of reading customer records, this information must be factored in to whether it is appropriate to request immediate payment of the outstanding amount. Insistence on substantial upfront payment is not consistent with taking ATP into account⁸.
- 3.18. Our assessment of the obligation is that the individual customer's ATP is relevant and applicable at every stage of the relationship.

4. Ofgem's findings

- 4.1. Pursuant to this investigation, Ofgem established the following from the information provided by British Gas and Consumer Focus:
 - within a set of just under 50 cases over which Consumer Focus raised concerns in December 2009, Ofgem identified just over a quarter (13) of these where customers had received such poor service from British Gas that it raised concerns of non-compliance with SLC 27.8. These concerns are summarised below;
 - within a sample of 60 cases sought from British Gas directly, Ofgem did not identify any examples of such poor service as it had seen in the cases raised by Consumer Focus; and
 - British Gas did have policies and procedures in place, with the purpose of establishing and taking into account customers' ATP when setting instalments. However, some of these were ambiguous in parts, and they had, in the context of the instances of poor service Ofgem had identified, been inconsistently applied and/or ineffectively monitored.
- 4.2. The concerns we identified were that in individual instances British Gas had:
 - failed to take account of third party information;
 - failed to probe the customer's individual circumstances in order to establish ATP, including: enquiring solely as to whether or not the customer was in employment – failing to probe the customer's actual income and finances; prompting customers to seek financial support from friends/relatives; and/or suggesting credit card payments; and/or
 - failed to take account of ATP, including: making inflexible demands for substantial upfront payments, even where ATP showed that they could not afford it; and/or failing to consult and take account of relevant information in customer records.

5. British Gas' actions

- 5.1. British Gas introduced changes to its debt recovery approach in October 2008 and commenced a project to develop its approach to debt recovery and debt management called Project Evolution which was signed off in 2008 and roll-out of which started in May 2009.
- 5.2. Since this investigation commenced, British Gas has improved its current policies and processes, implemented a number of new policies and amended its processes and it completed Project Evolution in December 2010.

⁷ Debt Review para 5.27-5.29

⁸ Debt Review para 5.30

- 5.3. It has improved its relationship with Consumer Focus and assured us of a close and constructive relationship with a number of third parties including consumer groups, charities, and specialist debt advice agencies such as: Citizens Advice; RNIB; Money Advice Trust/National Debt Line; Consumer Credit Counselling Service; Carers UK; Age UK; and Zacchaeus 2000 Trust (Z2K).
- 5.4. It has also implemented and embedded all of the Key Principles for ability to pay by June 2011.
- 5.5. Furthermore, it has confirmed its acceptance of the core principle of taking all reasonable steps to establish each individual customer's ATP and to take it into account in each and all of its interactions with that customer where it is relevant. It has also confirmed adoption of practices and policies to address these issues where they relate to the later stages of the customer debt path.
- 5.6. We note that British Gas contends that it has not contravened its obligations under SLC 27.8, although it acknowledges that in some of the instances we identified as being of concern, its agents could have better handled the conversations.

6. Ofgem's decision

- 6.1. On the basis of the changes in British Gas's approach, the apparent historic nature of the problems we initially examined, and our ongoing monitoring work in this area we have decided to close the case on administrative priority grounds.

Appendix 1 – Key Principles for ability to pay

The Principles reflect key considerations which the Authority will look for, and take into account, along with any other relevant factors, when assessing compliance with supply licence condition 27.

Having appropriate credit management policies and guidelines

- Allowing for customers to be dealt with on a case-by-case basis
- Linking staff incentives to successful outcomes not repayment rates

Making proactive contact with customers

- Making early contact to identify whether a customer is in payment difficulty
- Regularly reviewing methods of proactive contact to ensure they meet the needs of customers
- Using every contact as an opportunity to gather more information about the customer's situation

Understanding individual customer's ability to pay

- Providing clear guidance and training for staff on how to elicit information on ability to pay and monitoring the effectiveness of this
- Making it easier for customers to raise concerns
- Making full use of all available information
- Proactively exploring not only payment amount but appropriate payment methods

Setting repayment rates based on ability to pay

- Where default amounts are set it should be made clear that these are guidelines only and in any event the levels should be reasonable
- Ensuring all available information is obtained and taken into account including the customer's circumstances identified on the warrant visit or when installing a PPM on a warrant
- Not insisting on substantial upfront before reconnection.

Ensuring the customer understands the arrangement

- There must be clear communication with the customer which allows them to understand:
 - how much they are repaying each week;
 - when the debt will be repaid; and
 - what to do if they experience difficulties.
 - For PPM customers this includes explaining that debt will be recovered regardless of usage (eg over the summer).

Monitoring of arrangements after they have been set up

- Individual arrangements must be monitored:
 - for credit customers' broken arrangements;
 - and for PPM to check whether it is being used initially and on an ongoing basis.

- There should be monitoring of agreed repayment rates across staff using call listening and other techniques to encourage a consistent approach
- Monitoring of failed arrangements to understand whether inappropriate rates are being set
- Monitoring of overall repayment rates and recovery periods to understand trends.