

Consultation paper: A strategy to define and prevent the disconnection of vulnerable customers

In recent months disconnection and, in particular, disconnection of vulnerable customers has become a high profile issue. Energy suppliers avoid disconnection where there are alternative arrangements to recover debt. However, they wish to retain the right to disconnect customers who won't pay, whilst helping those in financial difficulties who can't pay. Energy suppliers wish to eliminate intentional disconnection of vulnerable customers. In February 2004 Ofgem challenged the industry to develop a strategy that would ensure that where it was known that a customer was vulnerable they would not be disconnected.

The Energy Retail Association (ERA), on behalf of its members, has prepared this strategy paper for consultation. The paper covers two broad areas. Firstly it sets out a common definition for "vulnerable customers", which will be universally applied in the industry. Secondly, it sets out how measures could be taken to identify better whether customers are vulnerable. Comments are invited by 4 June 2004 and should be sent to Ofgem and ERA at the addresses given at the end of this document.

Defining vulnerable groups

There are a range of definitions of "vulnerable customers". The definition applied in the context of fuel poverty is as follows:

"Households are considered fuel poor if, in order to maintain a satisfactory heating regime, they would need to spend more than 10 per cent of their income on all household fuel use. Vulnerable households are households containing someone aged 60 or over or under 16, or someone who is disabled or has a long-term illness."

Ofgem and energywatch's statutory functions and duties are laid down in the Utilities Act (2000) and they have a specific duty to "have regard to the interests of:

- a. Individuals who are disabled or chronically sick
- b. Individuals of pensionable age
- c. Individuals with low incomes
- d. Individuals residing in rural areas

A number of other definitions of vulnerable customers have been considered (see appendix 1). There is no common definition of vulnerable within Government departments. Some definitions are inclusive of a wide number of groups. For example, those used by ODPM's Social Exclusion Unit and the Department of Work and Pensions include ethnic minority groups, lone parents and some of the population who have no academic qualifications. Others are more restricted such as the Scottish Executive's consultation on vulnerable adults which excludes those on low income or belonging to an ethnic minority. Another relevant consideration is the water industry. The Department for the Environment, Food and Rural Affairs (Defra) through the regulator Ofwat operates a Vulnerable Groups Scheme that places an obligation on water companies to offer discounted charges for vulnerable customers using a water meter, specifically where there is high water use. The definition for vulnerable is defined in terms of ability to pay and circumstances which incur high water usage.

Proposal:

Based on the examples given and the need for a succinct and practical definition the ERA suggest the following definition of a vulnerable customer in the context of disconnection:

A vulnerable customer at risk from disconnection will be unable to safeguard his or her personal welfare or the welfare of any children in the household, and will be in need of care and attention by reason of age or infirmity, or suffering from chronic illness or mental disorder, or substantially handicapped by being disabled.

The focus is on customers who are elderly, disabled or chronically sick, and those whose circumstances would seem to merit involvement of social services. Children are included in the definition in circumstances where their welfare may be at risk if they reside with a customer in the vulnerable category.

Customers in the above vulnerable categories would be likely to be in receipt of one or more of the following benefits:

- Retirement Pension
- Pension Credit
- Disability Living Allowance
- Attendance Allowance
- Long Term Incapacity Benefit
- Income support
- Income Support with Disability Premium
- Income related jobseekers allowance

However, this is not an inclusive list and many people in receipt of these benefits will not be vulnerable under the proposed definition. It is therefore suggested that this information, where available, could be used for guidance purposes only to help promote consistency of approach, recognising that in most circumstances cases will call for wider judgment. In informal discussion, a representative of The Association of Directors of Social Services has advised that “judgment about a person’s vulnerability is arrived at through a process of individual assessment.” In practical terms any attempt to identify a vulnerable customer will need to be based on a subjective judgment according to the evidence available at that time.

Dealing with vulnerable customers

In the context of non payment, customers will generally follow the same process through a supplier’s debt follow-up procedure up until the point of disconnection. Whilst there may be differences depending upon type of debt (final bill etc), these processes will generally be consistent. Suppliers’ billing systems can indicate those who have not paid their bills, but not necessarily those who may be vulnerable. A universal definition would refine the process of identification.

In compliance with existing Codes of Practice, suppliers make considerable efforts to encourage all customers to discuss their circumstances with them directly so that an appropriate payment arrangement can be put in place to recover the debt. Failing that, suppliers have an obligation to offer the installation of a prepayment meter thus avoiding the need to disconnect a supply. The ERA propose an additional safety net to be put in place offering further protection for vulnerable customers:

- Suppliers will, where practical and safe to do so, fit a prepayment meter providing the customer with continued access to a fuel supply or put the customer onto the Fuel Direct payment scheme
- If a prepayment meter is not appropriate or offers of help are refused and the customer continues to be at risk, details will be notified to social services for further support and assistance.

Suppliers will make every effort to meet the customer face to face to promote agreement on the recovery of the debt, whilst using the opportunity to obtain further information about the individual circumstances of the customer; enabling an initial assessment to be made as to their degree of vulnerability and the most appropriate action thereafter.

The Data Protection Act - Guidance

Energy suppliers are committed to the principle of not disconnecting where there is evidence that the customer is vulnerable. Where a customer is identified as being vulnerable, suppliers will put processes in place that enable an energy supply to be maintained in that household. However, in certain circumstances, this cannot be done in isolation as the energy supplier will not be in a position or be qualified to provide the level and type of support needed by the customer. Where this is the case, the energy supplier will therefore reasonably disclose information about the customer in order to refer them to an organisation that is able to provide the most appropriate care and assistance. Where possible the customer's consent will be obtained, but if necessary referral will be made without prior consent. This will only be done where all other available options have been explored and the customer is judged to be at real risk.

This is supported by guidance recently issued by the Information Commissioner (see appendix 2) which states *when an energy supplier has reason to believe that a customer is vulnerable, that is that disconnection may well cause real risk to the customer's health, or others within the household, the energy supplier may legitimately disclose the customer's name and address to a person or organisation who it is reasonable to assume may be able to intervene on the grounds that this is in the best interests of the customer.*

The Commissioner recognises that a representative of an energy supplier will not and should not be expected to be medically qualified to make a judgment about an individual and recommends that *where an official who has visited the premises believes the customer, or someone in the household, is ill or frail, then this would usually be sufficient to justify appropriate disclosure...where such an official makes a judgment on common-sense grounds it will be reasonable for the energy supplier to rely on that judgment.*

For some circumstances it may be possible to draw up a guidance note that, with additional training, suppliers' employees could use at the final visit to make a preliminary assessment about whether disconnection was appropriate or the customer should be referred to social services.

Measures to avoid intentionally disconnecting vulnerable customers – The safety net

Suppliers will work towards ending disconnections for vulnerable customers, according to the agreed definition, in the short term through improvements to existing systems and processes and in the longer-term by working together to share best practice. A safety net procedure will be used to ensure that no vulnerable customers are knowingly disconnected (unless on the grounds of safety).

Suppliers' debt follow-up processes will be clearly defined with regular points at which contact with the customer is attempted. Controls will be put in place that allow suppliers to review the customer's circumstances to ensure that a vulnerable customer has every opportunity to seek help and assistance in avoiding disconnection. Effort will be made to capture relevant information about customers to help in determining whether they may be vulnerable. The emphasis will be on trying to ensure direct contact in order to resolve the matter with the customer, before any decision to refer to a third party is made either with the customer's consent or without this.

Suppliers will adopt systems of due diligence to demonstrate that the safety net procedure has been adhered to. The safety net will incorporate a paper trail to allow an audit to show how a vulnerable customer has been handled by customer service centres.

In this way, where there is evidence that a customer is vulnerable, the ultimate sanction of disconnection will be avoided and the customer will receive the appropriate assistance to help them out of debt.

Proposal:

The ERA is keen to build on best practice and develop a procedure that operates in parallel to the work of other local agencies, such as social services and charities etc to allow for assistance to be provided to those most vulnerable in the community. Suppliers will in the last resort refer a customer to the appropriate authority, in most cases social services, where there is good reason to believe that the customer is in a vulnerable group and their health is at risk – this referral will be made in accordance with the guidelines set out by the Information Commissioner.

The ERA recognises that it is not possible to be prescriptive about valid warning signs to which disclosure under the Data Protection Act applies. However, it is possible for suppliers to implement a safety net procedure that demonstrates that best endeavours have been made to identify a vulnerable customer at various points when processing a debt case and appropriate action taken.

We propose that all suppliers integrate a safety net procedure, along the lines of the proposed model below, into their existing systems.

Model for vulnerable customer safety net

Effort made to identify customer from ERA definition



Capture information where available



Seek debt management solutions e.g. repayment schemes, PPM, Fuel Direct



Best endeavours made for face to face contact with the customer



Before any decision on disconnection contact social services if there is cause to believe the customer may be vulnerable and at risk.

Comments on this document should be sent to Ofgem and the ERA by 4 June 2004, to the contacts shown below:

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Appendix 1 – Definitions of Vulnerable

1. The **ODPM Social Exclusion Unit** definition takes in older people, lone parents, disabled people, and black and minority ethnic residents as part of its *Neighbourhood Renewal National Strategy Action Plan*.

2. The **Department for Work and Pensions** when conducting the *Labour Force Survey* defines vulnerable as “disadvantaged”. This group comprises:

- a. people covered by the provisions of the *Disability Discrimination Act 1995* (their day-to-day activities are substantially limited by a long-term current disability) or those with a work-limiting disability (the kind or amount of work is affected by a long-term disability - long-term is over 12 months);
- b. lone parents with dependent children aged 0-18 years.; those aged 50 and over and below state pension age (that is, 50-59 for women and 50-64 for men);
- c. those who classify themselves to an ethnic minority background;
- d. the 15 per cent of the working-age population with the lowest qualifications. Up to spring 2002 this covered only those without qualifications.

Note that the disadvantaged groups covered in this indicator (people with disabilities, lone parents, ethnic minority people, the lowest qualified and those aged 50 and over) are not mutually exclusive.

The Department for Work and Pensions has advised that customers in the above vulnerable categories would be likely, though not exclusively, to be in receipt of one or more of the following benefits:

Retirement Pension
Pension Credit
Disability Living Allowance
Attendance Allowance
Long Term Incapacity Benefit
Income Support with Disability Premium

3. In the **Scottish Executive’s** consultation on vulnerable adults the paper stated succinctly:

“a vulnerable adult should be defined...as an adult aged (16 or over) who is unable to safeguard his or her personal welfare, property, or financial affairs, and is:

in need of care and attention arising out of infirmity, or suffering from illness or mental disorder, or substantially handicapped by any disability”.

4. Other dimensions to the definition of ‘vulnerable customers’ considered: (taken from the **Department for Work and Pensions** *Labour Force Survey*)

Low income

In order to achieve a more complete definition of vulnerable those on low income should be added to the above group.

Low-income thresholds are 50, 60 and 70 per cent of median household income (before and after housing costs):

- a. relative low income - median income moving each year;
- b. absolute low income - median income fixed at 1996/97 levels in real terms; and
- c. persistent low income - low income (before housing costs) in three out of the last four years (60 and 70 per cent of median only).

Helped to live independently

Many vulnerable customers will include elderly people who live independently but are reliant on support from family or social services on a day to day basis. This is defined as:

- a. Households receiving more than ten hours of contact and six or more visits during the survey week per thousand head of population aged 65 or over.
- b. People receiving any community-based services per thousand head of population aged 65 and over. There was a change in definitions in 1998/99. The new basis covers a wider variety of services to be counted as helping people to live at home. Additionally, measurement has changed slightly to include people on the books whereas previously it included only those actually in receipt of such services during a sample week.

Disability

According to the **Disability Rights Commission** disability covers everyone who has a physical, sensory or mental impairment which seriously affects their day-to-day activities - including people with heart disease, diabetes, severe disfigurement, depression, schizophrenia, dyslexia, epilepsy, Downs syndrome and many other types of impairment.

5. Vulnerable Groups Scheme operated by Ofwat. Specified in the ***Water Industry (Charges)(Vulnerable Groups) Regulations 1999*** as:

“Large families on low incomes i.e. families with three or more children aged under 16 where a member of the household is in receipt of Income Support, Income-based Job-Seekers allowance, Working Families Tax Credit, Disabled Person’s Tax Credit, Housing Benefit or Council Tax Benefit.

Customers with medical conditions requiring significant extra water use with a need to be protected against hardship which could be caused by high measured

bills, where a member of the household is in receipt of Income Support, Income-related Job-Seeker's allowance, Working Families Tax Credit, Disabled Person's Tax Credit, Housing Benefit or Council Tax Benefit.”

Appendix 2 – Guidance from the Information Commissioner on the Data Protection Act 1998 and the disclosure of the name and address of individuals who may be, or have been, disconnected

Summary

The DPA98 requires businesses that hold information on individual customers to ensure that such information is used within the broad expectations of those customers. Obviously an energy supplier has to hold consumption and payment information. Disclosures should usually only be made where this is essential to provide the service in question, where there is a legal requirement, or where the customer has agreed. However, disclosures may be made without the customer's consent, or even knowledge, where there is a compelling reason. Therefore, when an energy supplier has reason to believe that a customer is vulnerable, that is that disconnection may well cause real risk to the customer's health, or others within the household, the energy supplier may legitimately disclose the customer's name and address to a person or organisation who it is reasonable to assume may be able to intervene on the grounds that this is in the best interests of the customer.

Vulnerable Customers

On what basis is it reasonable for an energy supplier to determine that a customer is vulnerable? It is difficult to be prescriptive. However, where an official who has visited the premises believes the customer, or someone in the household, is ill or frail, then this would usually be sufficient to justify appropriate disclosure. We appreciate that such officials will not be medically qualified. However, where such an official makes a judgment on common-sense grounds it will be reasonable for the energy supplier to rely on that judgment. Other grounds might include the fact that disconnected premises, that appear to continue to be inhabited, have not been reconnected by the time the 'winter months' begin.

Annex

The First Data Protection Principle requires that organisations that hold personal information for business purposes ensure that the individuals concerned are aware of the purposes for which their information will be used. (Schedule 1, Part I and Part II, paragraph 2). Where disclosures outside the expectations of the customer concerned are intended, or may be made, then these should be drawn to the customer's attention. (Schedule 1, Part II, paragraph 2(3)(d)).

However, there will be circumstances where disclosures outside the expectation of the customer concerned will be justified where there are good grounds for believing disclosure to be in the customer's interests. In such circumstances the disclosure will be justified on 'fairness' grounds, that is that in the circumstances it is on balance fair to make the disclosure. There are two points to emphasise here. Firstly, such a decision will only be justified in cases where otherwise the consequences may be serious, that is there is a real risk to health, even life. Secondly, there must be good reason to believe that there is a chance that the disclosure might achieve something, that is positive intervention by another party.

Finally, all processing of personal data must satisfy a Schedule 2 condition. Disclosure involves processing. In cases where an energy supplier believes a customer to be vulnerable, and that disclosure is likely to be to that customer's advantage, condition four ("The processing is necessary in order to protect the vital interests of the data subject") is likely to apply. In addition, where data falling within the definition of "sensitive personal data" (s2) are involved then a Schedule 3 condition must also be satisfied. Where an energy supplier is aware that a customer has a medical problem, and in order to emphasise the seriousness of the situation, discloses details of that problem they will disclose sensitive personal data. In such circumstances the processing involved may well satisfy the Schedule 3 condition that applies where the processing is necessary to protect the vital interests of the data subject or another person. Where disclosure is made with the clear agreement of the individual concerned then condition one ("consent") of Schedule 2, and condition one ("explicit consent") of Schedule 3 will be satisfied.