

## **energywatch response to “A strategy to define and prevent the disconnection of vulnerable customers” a consultation document by ERA and Ofgem**

### **Context:**

In the past three years almost 70,000 disconnections have deprived consumers from access to warmth, light and power. In some cases the accounts were still in dispute, or disconnection occurred as a consequence of debt caused by billing errors or estimated reads. There has been a recent decline in disconnections activity which directly followed pressure from energywatch, politicians and the media. We welcome this but do not believe that this will be a long term trend and we believe safeguards need to be put in place to protect vulnerable consumers from policy changes by energy companies in the future. Indeed with the continuing increase in energy prices and the growing level of consumer debt generally, we can only expect the level of disconnections to increase with this in mind. energywatch is calling for an end to disconnections for vulnerable consumers.

### **Summary:**

In late April 2004, the energy industry, through the Energy Retail Association (ERA) published a consultation on “a strategy to define and prevent the disconnection of vulnerable customers”. energywatch welcomes the opportunity to respond to the above consultation but is disappointed that ERA chose not to have preliminary discussions beforehand since we share an interest in preventing disconnection of vulnerable consumers.

energywatch is campaigning for much of the same goals as the ERA to end disconnections. As ERA is aware, it is energywatch's goal to see an end to disconnection by dealing with its causes such as billing errors, erroneous transfers, data quality and data capture.

On a general note we welcome the effort put into this work in trying to develop an industry-wide definition of 'vulnerability' as this may begin to standardise the way suppliers treat such consumers. We further welcome the attempt to identify safeguards and methods for information sharing and gathering. energywatch acknowledges that the ERA is on the right path and proposes measures which we believe will assist the ERA to better achieve its aims. However without these essential changes, as are detailed below, we believe that industry processes will continue to fail vulnerable consumers.

Industry needs, as a minimum, to

- Simplify the eligibility criteria for being defined as vulnerable;
- Extend the definition of eligibility to include those on low-incomes and other household members of contractual parties;

- Quickly establish industry-wide best practice in relation to identifying vulnerable consumers;
- Commit to accepting that they need to use best endeavours to prove that a household is not vulnerable before disconnecting a supply;
- Give Social Services a role in deciding what should happen to a vulnerable consumer where a ppm is inappropriate or the consumer refuses offers of help;
- Ensure that the proposals for vulnerable customers are consistent with those already committed to under the Debt and Disconnection Guidelines; and
- Commit to implementing the pre-warrant statement outlined later in this response at the earliest possible time.

### **Definition of vulnerability**

#### **energywatch views**

While there is an attempt to reach an industry-wide definition of vulnerable, the proposal offered is still too narrow. The proposed industry definition is as follows:

*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.*

energywatch's emerging view is that a better starting point for defining a vulnerable consumer is provided in The Water Industry (Charges) (Vulnerable Groups) Regulations 1999 because of its inclusion of consumers on benefits;

*"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."*

If this definition were to be converted to make it suitable for the energy needs of vulnerable consumers, combined with the existing eligibility criteria for PSR, it would provide a good basis for the industry and has the benefit of having being endorsed by Parliament.

A more informed and well rounded definition of vulnerable should have a special regard for younger children. energywatch is seeking assurances from

industry that it will make best endeavours to consider a more practical and reasonable approach to dealing with households with younger children.

### **Industry definition**

#### ***High barriers to entry***

We believe that the proposed definition has too many hurdles - to be 'vulnerable' a person must satisfy three steps. Firstly, the person must be the contractual customer of the supplier. Secondly, the person must need care and attention because s/he is elderly, has a chronic illness, a mental disorder or who has a disability which makes her/him 'substantially handicapped'. Lastly, this must result in her/him being unable to safeguard her/his own or his/her children's welfare.

In our view the goal must be to ensure that wherever the ability to safeguard welfare is at risk, then vulnerability exists.

In practice this means that the definition of vulnerability should include any household containing a member who falls into the vulnerable categories identified above by energywatch, and not only the person named on the contract. It will also mean that consumers do not have to prove that they are in need of care and attention.

#### ***Potential for perverse incentives***

The aim should be to end all and not just the intentional disconnection of vulnerable consumers. Clearly there may be difficulties in uncovering information regarding 'vulnerability'. However, to achieve the aim as it currently stands suppliers who make no effort to uncover relevant information will be more able to reach the aim than those who make an effort. There is therefore potentially a perverse incentive within the aim to avoid gathering relevant information regarding vulnerability so that disconnections of vulnerable consumers may occur unintentionally. We doubt that the ERA's intent is to create the perverse incentive above and ask that the ERA alter the wording of the objective.

Positive and auditable procedures must be put in place that will allow a supplier to make and record an enquiry against the various headings of vulnerability.

### **Emphasis and onus**

energywatch has concerns regarding the terminology of "can't pay" versus "won't pay". The Lord Chancellor's Department's recent report highlighted that some energy suppliers may have adopted a 'hard business approach' to recovering debt beginning with the assumption that people are 'won't pay' until proved otherwise<sup>1</sup>. Our experience gives us no indication that this is the case and we believe that suppliers must start from the assumption that people cannot pay, for whatever reason, and are in need of help in agreeing budgeting, wider

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<sup>1</sup> The Lord Chancellor's Department 'Can't pay or won't pay' (2003)

money advice management, payment and repayment plans and are offered appropriate assistance (e.g. trust funds, energy efficiency advice etc).

In reaching the objective of ending disconnections for vulnerable households the onus should be upon the supplier to demonstrate that a household is not vulnerable before moving to disconnection. It can do this by ensuring that robust processes are in place that afford it every opportunity to identify whether a customer (or household member) is vulnerable. Industry can demonstrate its commitment to this by undertaking quickly to develop and share best practice in the identification of vulnerable consumers as it implements these proposals and by giving a commitment to use best endeavours to identify those who are vulnerable. Such best practice measures will include vigorous pre-warrant checks as outlined below.

### **Social Services:**

The ERA's consultation paper states that:

*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.*

It is unclear whether social services would be able to cope with large numbers of referrals and what they would be able to do as a consequence of the reference. Referring to Social Services cannot be a complete answer since it is merely transfers a commercial responsibility to an already burdened welfare system without some ability to affect whether or not the disconnection happens. If the industry plans to place this function on Social Services it is appropriate that it comes with the power to prevent additional vulnerability that would arise through loss of energy supplies by having a decision-making role in deciding whether a disconnection takes place. We expect ERA to issue further information about how this will work based on consultation and discussion with Social Services.

### **Debt and disconnection guidelines**

In 2002 energywatch and Ofgem undertook a project to identify good practice in the prevention of debt and disconnection, and the management of debt recovery. An Advisory Group was set up, consisting of suppliers, consumer groups and government, to assist the project. The project identified a range of good practice and other areas where greater efforts were needed. The guidelines focused on 6 areas – minimising billing errors; using incoming calls to identify consumers who would benefit from energy efficiency advice or other assistance; using consumer records to target energy efficiency; demonstrating flexibility in debt recovery; working with others to offer sustainable solutions to consumers in difficulties; and helping consumers who are unable to manage their affairs.

energywatch is disappointed at some of the statements made in this consultation regarding the safety net, since these appear to contradict commitments already made by industry under these guidelines.

For example, under “Dealing with Vulnerable Customers”, the document unequivocally states that “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”, energywatch was surprised to see this statement, which is contrary to the principles suppliers were required to adopt under the “Debt and Disconnection Prevention Guidelines’ (published jointly by Ofgem and energywatch in 2003). We believe that this is not in line with Aim 4 of the above mentioned guidelines which states that “a more flexible approach to debt management should enable suppliers to reduce the number of disconnections by increasing the likelihood of contact and *ensuring that arrangements suit a consumer's circumstances*” (own emphasis).

It is also the case that there is little in the new proposals, other than the reference to social services that goes beyond the debt and disconnection guidelines.

### **Disconnection safeguard checklist**

energywatch believes that further safeguards are needed before any disconnection occurs. energywatch recommends that prior to any application for a warrant enabling entry on a premises for disconnection be improved along the lines of a pre-action protocol set out in the Lord Chancellor's report referred to above. We also recommend that the pre-action protocol be copied to the consumer along with the warrant application notification in order to assist the consumer in any dispute arising due to fact or process.

### **Evidence of compliance**

In order to satisfy the safety net outlined in the consultation paper we believe that in the case of any disconnection a named senior official of a supplier should attest that based upon enquiries and to the best of his or her knowledge and belief that;

- all relevant provisions of licence conditions and codes of practice have been followed (for example the supplier has provided the consumer with information about how bills might be reduced in future by the more efficient use of electricity);
- all reasonable checks have been made to ensure that a debt is due and payable by the person named in the warrant;
- the bill is not in dispute;
- the address is correct both in relation to the supply point and the debt and is currently occupied by person responsible for the debt;
- steps have been taken to establish that the customer is eligible to be on the Priority Services Register or otherwise vulnerable;

Even in the event that all of the above steps are undertaken, it should also be the case that if on the arrival at the premises by the supplier or agent it appears to them that there is a vulnerable household member present then the disconnection should not take place.

**energywatch**  
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