

Disconnection of vulnerable customers

- NCC response to consultation on 'A strategy to define and prevent the disconnection of vulnerable customers'.

by Linda Lennard

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We do this by working with those who can make change happen - governments, regulators, businesses and people and organisations who speak for the needs of consumers.

We conduct rigorous research and policy analysis and work in an open and collaborative way. We publish our findings, and where needed, campaign for change. We provide independent advice to government.

In all our work we aim to help people come together to advance the consumer cause. The issues of poverty and disadvantage are at the heart of the NCC's work, as often the most vulnerable people find it hardest to be heard.

We have linked organisations in Scotland and Wales, and a close relationship with colleagues in Northern Ireland. And we work with consumer organisations in Europe and worldwide to win a fair deal for consumers. We are a non-departmental body, limited by guarantee, and funded mostly by the Department of Trade and Industry.

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National Consumer Council
20 Grosvenor Gardens
London SW1W 0DH
Telephone 020 7730 3469
Facsimile 020 7730 0191

www.ncc.org.uk
www.epolitix.com/forum/ncc

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For further information on this consultation response contact
Claire Whyley at c.whyley@ncc.org.uk or Nicola O'Reilly at
n.oreilly@ncc.org.uk

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Introduction

The National Consumer Council (NCC) welcomes this opportunity to comment on the proposals by Ofgem and the Energy Retail Association (ERA) for a strategy to improve protection for vulnerable consumers against disconnection from energy supply. However, we are most disappointed at the inadequacy of the approach, especially the lack of clarity regarding key aspects of the strategy, and are surprised that Ofgem has circulated the proposals for comment in their present form. Ofgem and the ERA should revise the proposals as a matter of urgency.

We understand the reasons for these proposals but they must be clarified and strengthened. In addition, it is essential that Ofgem places the proposals within a broader regulatory strategy, aimed at the eventual reduction and elimination of electricity and gas disconnections and self-disconnections for all domestic consumers, as we recommended in the '*Life lines*¹' report.

Affordable access to essential services is a major priority for the NCC. In this regard we are extremely concerned that the recent downward trend in the number of fuel poor households is likely to be reversed by rising energy prices. We await the publication of the government's fuel poverty implementation plan, expected this summer, which we hope will ensure a more comprehensive and strategic approach by government departments, regulator and industry than has hitherto been the case.

Key recommendations

- Ofgem and the ERA should urgently revise the proposals to prevent disconnection at any time of households with anyone over pension age, or with adults or children who are disabled or have a long-term illness, or that contain young children aged 5

¹ *Life lines: the NCC's agenda for affordable energy, water and telephone services* National Consumer Council September 2003.

or under. The role of social services departments must be clarified. The revised strategy should be made part of suppliers' formal licence obligations.

- Ofgem should ensure that these proposals, once revised, form part of a broader strategy aimed at reducing and eliminating electricity and gas disconnections and self-disconnections for all domestic consumers.
- The guidance on data protection should be amended to include 'real risk to health of anyone in a household', and possible supplier referral to individuals as well as organisations. Safeguards on overriding consent to information disclosure should be strengthened, and the guidance should stipulate supplier requirements for staff training and auditing procedures.

Defining and dealing with vulnerable consumers

Defining 'vulnerability'

The ERA is proposing to use the following definition of a vulnerable customer:

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.

As the consultation paper points out, there is no common definition of 'vulnerable' within government departments. For instance, different interpretations are used to define vulnerable households in fuel poverty, and in the qualifying criteria for Warm Front assistance.

However, we are surprised to see the use of anachronistic terms in the proposed definition, such as 'infirmity' and 'handicapped'. In addition, whilst we acknowledge the difficulties in defining 'vulnerable households', the

proposed definition contains some serious deficiencies as it fails to cover many adults and children who would be especially vulnerable to the dangers of energy disconnection:

- Vulnerability only appears to include customers, thereby excluding consideration of other household members who may be vulnerable because of age or disability.
- Children would only be included where their welfare may be at risk if they live with a customer in the vulnerable category. This is not acceptable, especially where children's health would be at risk because they are very young or have a disability or long-term illness.

The proposals should be revised to disallow disconnection of households at any time that contain anyone over pension age, or any adults or children who are disabled or have a long-term illness or condition, or young children aged 5 or under. This should include people with physical disabilities, and/or learning difficulties, and people with mental health problems. We also support the RNIB's view that people on suppliers' priority service registers should be automatically included: this would be an efficient way of identifying many customers whose health would be particularly at risk from energy disconnection. These requirements should be made part of the suppliers' licence obligations and backed up by regulatory sanctions in the event of failure.

The paper recognises that customers who would be considered as vulnerable according to the proposed definition are likely to be in receipt of benefits, such as retirement pension, disability benefits, or means-tested benefits. However, the paper points out that many people in receipt of these benefits would not be classified as 'vulnerable' under the proposals. Consequently it suggests that information on receipt of benefits would be used for guidance purposes only, and

that 'In practical terms, any attempt to identify a vulnerable customer will need to be based on a subjective judgement according to the evidence available at that time'.

This approach is fraught with potential problems. Assessment of a person's vulnerability can be a very difficult process for trained social workers, let alone for the staff of an energy supplier, or of an agency contracted to a supplier, who would have to make the subjective judgements referred to in the paper, for instance in situations where people may have learning difficulties. An error on their part could place people's health in danger, or result in someone dying, if their electricity or gas is cut off because they have been wrongly assessed as not being 'vulnerable.'

We recognise that our recommendation for the proposals to be revised to disallow disconnection of households with adults or children who are disabled, or have a long-term illness or condition would not entirely address this issue. It would still necessitate a judgement to be made by suppliers' or agency staff. This underlines the need for a much more comprehensive strategy to achieve stepped reductions and the eventual elimination of electricity and gas disconnections and self-disconnections.

Adequacy of the 'safety net'

We do not consider that the proposed 'safety net' is adequate. The proposals state that, in compliance with codes of practice, suppliers make considerable efforts to encourage customers to discuss their circumstances directly so that an appropriate debt recovery payment arrangement can be put in place. Failing that, suppliers have an obligation to offer a prepayment meter (PPM). The paper states that the ERA is proposing an additional safety net to offer 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.*

If this is meant to be a safety net against disconnection, it should state explicitly that vulnerable households will not be disconnected. The letter from Ofgem (26 April 2004) that accompanied the proposals said that the paper '*...contains a clear commitment from suppliers not to disconnect vulnerable customers*'. The paper itself states that '*A safety net procedure will be used to ensure that no vulnerable customers are knowingly disconnected (unless on the grounds of safety)*' and that: '*...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.*'

There should be a third bullet point stating that: '*Vulnerable households will not be disconnected*'.

In addition, the first part of the proposed 'safety net' (page 3) only refers to the possible installation of PPMs or putting the customer onto Fuel Direct. These payment methods may well be inappropriate or inaccessible for many customers who may be considered to be 'vulnerable'. People with physical disabilities, learning disabilities or mental health problems may be unable to use PPMs or to go out to recharge the meter. Many people will not qualify for Fuel Direct as it is only available to people on Income Support or Jobseekers' Allowance.

It is our understanding that suppliers are required to offer a variety of payment methods, including weekly or fortnightly payments. The proposals should be amended to state that all customers will be offered a full range of payment methods, and arrangements made so that they are

able to use the one that is most appropriate for their circumstances.

However, the proposals do nothing to solve underlying problems of self-disconnection associated with prepayment meters, tariff differentials, and inappropriate payment methods that continue to affect many low income consumers.

As well as potentially referring customers to social services departments (see below), the paper refers to a range of action to be taken by suppliers to avoid intentionally disconnecting vulnerable customers. These include: controls that allow suppliers to review a customer's circumstances, information-gathering, trying to ensure direct contact to resolve the matter, and a paper trail to allow an audit to show how a vulnerable customer has been handled by customer service centres.

We welcome the explicit commitment to these actions but, as far as we are aware, these are not new, and amount to no more than what is already expected from suppliers.

Role of social services

There is a disturbing lack of clarity surrounding the further support and assistance that social services would be expected to provide. As a result we have had to conjecture about their potential role.

Social services are described in the proposals as an integral part of the 'safety net' against disconnection: *'...details will be notified to social services for further support and assistance'* (page 3). But what is the nature of that support and assistance? Social services would not be able to help people directly to pay their energy bills. Is the expectation that a social worker would carry out a benefits check, possibly put people in touch with local charities, or advise on a repayment arrangement?

Or would social workers be expected to do an assessment to see if someone is really vulnerable, and then let the company know either way? The implication would be that an energy supplier could - on the basis of that assessment - decide that a customer is not vulnerable and disconnection could go ahead (they are regarded as a 'won't payer'), or that the customer is considered to be vulnerable and should not be disconnected ('a can't payer'). Or would the role of social services be more advisory in nature, that is, helping the supplier to ascertain whether life changes have made someone suddenly vulnerable?

Moreover, the proposals do not explain what may happen if social services are too hard pressed by other urgent casework to deal with cases referred by energy suppliers. For instance, if no reply is received within a few weeks from social services, could a supplier go ahead and disconnect the customer?

The nature of the support and assistance to be provided by social services must be made clear for the sake of all concerned: consumers, social services departments and the staff of energy suppliers.

The proposals should also refer to possible two-way exchanges of information between energy suppliers and social services departments so that the latter are given supplier contact points. For instance, a social worker might consider someone's health is at risk if they are not using as much heating as they need because of payment worries. The advice of the Office of the Information Commissioner should be sought on the terms of such exchanges and the guidance should comply with that advice.

Lack of teeth

The status of these proposals is a matter of concern as it does not appear that they will have any legal force. NCC considers that protection against disconnection must be enshrined in the suppliers' licence conditions. This

is essential if consumers are to be adequately protected, and so that consumers' rights are clear. If the suppliers are sufficiently committed to ending disconnection of vulnerable consumers, we do not see why there would be a problem in formalising the commitment within licence conditions. However, we must add the proviso that the proposals need to be significantly improved before this is done.

Data protection

We welcome the recognition of the urgent need to clarify the requirements of the Data Protection Act 1998 regarding disclosure of information to third parties. However, we have the following reservations about the proposed guidance on the Act.

Scope

In our view, the first paragraph of the proposed guidance on the Data Protection Act does not accurately reflect the extract from the Information Commissioner's guidance for the following reasons:

- The proposed guidance only refers to a customer and not to other members of the household. However, the Information Commissioner's guidance also refers to the legitimacy of information disclosure where disconnection may well cause a real risk to the health of others within the household. The guidance should be revised to include other household members so suppliers take action when there is a real risk to the health of others in the household.
- The proposed guidance refers to '*real risk*' whilst the Information Commissioner refers to real risk to health. The guidance should be revised so that it states '*real risk to health*'.
- The proposed guidance only mentions referral to organisations and not individuals. In some situations it may be more appropriate that

individuals (such as family members or a GP) are contacted. The guidance should allow for referral to individuals as well as to organisations. In addition, the guidance should provide information on possible organisations or individuals that it may be appropriate to contact to provide additional support.

Consent

While consent should always be taken seriously, we accept that there are certain circumstances when the level of potential risk to someone's health is such that the need for individual consent to information disclosure can be overridden. The question is whether appropriate safeguards are in place for such situations. In its present form, we do not consider that the proposed guidance contains sufficient safeguards:

- Further written guidance and training for staff are required on how to recognise an *'at risk'* person, and when to take action without consent. For example, the guidance provides very little advice on what would be *'all other available options'* that will be explored, or how to make a judgment on *'real risk'*. The proposed guidance only says that *'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 on whether disconnection was appropriate or the customer should be referred to social services'*. (page 4). This is far too weak - thorough guidance and training are essential.
- Auditing - the proposed guidance does not provide information on putting in place relevant systems to promote accountability when consent has not been obtained (for example, notification to a person charged with ensuring that guidance is followed). Ofgem and ERA need to build an appropriate model to promote accountability and provide information on

this in the guidance - Caldicott Guardians, for example, are used in the NHS and the computerisation of patient records is incorporating access and auditing controls.

We recommend:

1. The industry and Ofgem should revise the proposed strategy as a matter of urgency. It should be based on requirements not to disconnect at any time households containing anyone over pension age, or adults or children who are disabled or have a long-term illness, or young children aged 5 or under. These requirements should be made part of the suppliers' licence obligations and backed by regulatory sanctions in the event of failure.
2. The proposals should be revised to state that all customers - including those considered to be 'vulnerable' - should be offered a full range of payment methods, and arrangements should be made so that they are able to use the one that is most appropriate for their circumstances.
3. The potential role of social services departments must be clarified in the revised strategy.
4. Ofgem should ensure that the revised proposals form part of a broader strategy aimed at eliminating electricity and gas disconnections and self-disconnections for domestic consumers. Ofgem should establish, through consultation, a clear set of targets for reducing and eliminating disconnections and self-disconnections over time.
5. The guidance on the Data Protection Act should be revised so that it refers to '*real risk to health*' and includes other members of a

household, as well as the customer. It should provide for possible referral to individuals in addition to organisations, and give advice on potential organisations and individuals it may be appropriate for suppliers to contact. The guidance should be expanded to include advice on how to recognise an 'at risk' person and when to take action without consent, and requirements for suppliers to provide staff training. It should also set out requirements for suppliers to put relevant systems in place to promote accountability when consent has not been obtained.