

**Consumer Direct – Consumer Focus (formerly known as new NCC)  
Non-Domestic Energy Consumer Referral Path  
for Vulnerable and Disconnection cases**

## **1. Disconnections**

As part of the new consumer representation arrangements, the new NCC has a statutory duty under section 13 of the Consumers, Estate Agents and Redress Act 2007 (“CEAR”) to investigate complaints where a consumer has been disconnected, is threatened with disconnection or has experienced a failure in a prepayment meter system. This duty extends to the investigation of instances where a consumer has been disconnected and refused a reconnection or threatened with a refusal to reconnect.

Section 13(7) of CEAR defines electricity/gas consumer as “*an individual*” who is a consumer in relation to electricity/gas supplied by a supplier. The new NCC has interpreted this as meaning any natural person whether domestic or non-domestic. Consequently it would include sole traders. The new NCC view is shared by BERR legal opinion. It is therefore the intention of the new NCC to take up disconnection cases referred to it on behalf of sole traders as a matter of course.

The new NCC also intends to exercise its discretionary powers under section 12 of CEAR and take disconnection complaints referred to it by Consumer Direct or other approved agency on behalf of other forms of SME or not for profit organisations (eg small charities) that meet the micro enterprise definition<sup>1</sup>. This is based upon the premise that as the non-domestic consumer is about to be/has been disconnected or has experienced a ppm system failure, they are de facto vulnerable and require the input of the new NCC, whether that be in the form of advice or more formal investigation of the complaint.

The proviso of meeting the micro enterprise definition for other forms of SME, mirrors the approach taken by Consumer Direct, the statutory energy ombudsman and the complaint handling standards in relation to non-domestic consumers and maintains a consistency of approach.

## **2. Guidelines on Disconnection/ppm referrals**

Generally, off-supply cases (ie due to network failure) will not be considered as a “disconnection”. Referrals should only be made by Consumer Direct or other approved agency in such circumstances if:

- the usage is for combined non-domestic and domestic purposes; and
- the consumer is also considered vulnerable; and

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<sup>1</sup> A business with: (a) an annual consumption of (i) electricity of up to 55,000 kwh or (ii) gas of up to 200,000 kwh; **or** (b) (i) fewer than 10 employees (or their full time equivalent); and (ii) an annual turnover or annual balance sheet total not exceeding €2 million”

- value can be added by making the referral to the new NCC (eg consumer off supply needing electricity to operate essential medical equipment in flat above a shop with no separate supply).

Disconnections by Network Operators for alleged theft of supply, meter interference or similar misdemeanours will be regarded as a disconnection if:

- for the purposes of the section 13 duty under CEAR, the non-domestic consumer is a sole trader; or
- for the purposes of the section 12 power under CEAR, the non-domestic consumer falls within the definition of a micro-enterprise; or
- the usage at the premises is for mixed domestic and non-domestic purposes and the domestic part of the premises cannot be isolated so that its power supply is maintained

and in such instances these cases should be referred to the new NCC by Consumer Direct.

Generally, other than if a consumer is regarded as vulnerable (see sections 5 and 6 below) , Consumer Direct intends to handle contacts from non-domestic micro-enterprises consumers on debt related matters up to the threat of disconnection and will establish operational relations with suppliers' debt recovery or other appropriately skilled teams. The new NCC will take cases where disconnection is a real likelihood (see section 3 below) and intends to establish a similar operational interface but with supplier personnel handling disconnections.

However for the point of clarification, an escalation to NCC from Consumer Direct does not constitute an automatic referral to the supplier. In accordance with the statutory framework, the NCC will undertake a further assessment of the non-domestic consumer's circumstances, taking into account all pertinent information in order to determine what action needs to be taken/ is appropriate relevant to the consumer.<sup>2</sup>

### **3. Working Level Guidelines on Consumer Direct referrals to NCC on disconnection issues**

1. "Non-domestic consumer" in the guidelines below means either a sole trader, a business or not for profit organisation that meets the micro-enterprise criteria.
2. All cases where a non-domestic consumer has been actually disconnected and remains disconnected as a consequence of a deliberate act by a Supplier, Distributor or Gas Transporter, should be referred by Consumer Direct to the new NCC.
3. Except as set out in 4 below, all instances where a non-domestic consumer has been disconnected and is refused a reconnection, or is threatened with a refusal to reconnect should likewise be referred to the new NCC.
4. Cases where the non-domestic consumer is off-supply as a result of network failure or routine maintenance, shall not be referred unless the consumer is

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<sup>2</sup> See Sections 13(3), 13(4) and 13(5) CEAR

deemed to be vulnerable as set out in the definition and working guidelines on vulnerability, or where the usage at the premises is for mixed domestic and non-domestic purposes and the domestic part of the premises cannot be isolated so that its power supply is maintained and is occupied by a vulnerable consumer.

5. All cases where there is a real and imminent likelihood of a non-domestic consumer being disconnected shall be referred by Consumer Direct to the new NCC.
6. In determining whether the threat of disconnection is real and imminent, Consumer Direct shall adopt an objective test relative to the supplier, network or gas transporter's disconnection policies and not necessarily the non-domestic consumer's perception. However, if the non-domestic consumer were perceived to be vulnerable (see section 7 below), then the new NCC would still expect the non-domestic consumer to be referred to it.
7. If the threat of disconnection is as a consequence of non-payment of supply charges, Consumer Direct shall have regard to the supplier's disconnection process and shall not normally refer the case to the new NCC until a pre-disconnection letter has been received by the non-domestic consumer or some similar communication that clearly makes reference to imminent disconnection, or unless the non-domestic consumer meets the definition of a vulnerable consumer (see below);
8. Instances where a non-domestic consumer has been disconnected but since reconnected, may nevertheless still be referred to the new NCC, or the statutory redress scheme, as appropriate, if there is an issue about the fact or manner in which the disconnection took place or any sum owed by the non-domestic consumer in relation to the disconnection (eg cases of alleged theft of supply);
9. All cases where the non-domestic consumer has experienced a failure of a prepayment system which shall include:-
  - as a consequence of any act or omission by a supplier or any agent of the supplier;
  - a fault with the meter itself or the charging device; or
  - any inability by the non-domestic consumer to charge their meter with credit (eg no charging card)

and where the non-domestic consumer has no supply or is about to lose a supply, shall be referred to the new NCC.

Any failure of non-domestic a prepayment system as a result of any act or omission by the non-domestic consumer shall only be referred by Consumer Direct to the new NCC if non-domestic the consumer is deemed to be vulnerable (see section 4 below).

#### **4. The CEAR power in relation to vulnerable consumers**

The new NCC also has a power, under section 12 of CEAR, to investigate complaints made by or on behalf of vulnerable consumers. The new NCC intends to exercise the power to investigate vulnerable consumer complaints as a matter of course whether domestic or non-domestic. The new organisation envisages that the number of vulnerable non-domestic consumers will be very small and in most instances their

cases will be resolved through escalation within suppliers' own complaint handling systems, or, in the case of unresolved disputes, by referral to the Energy Ombudsman.

Section 12 of CEAR applies to complaints made by or on behalf of "a vulnerable person in that person's capacity as a designated customer". As in law a person can be an individual, a partnership, a company or some other legal entity, the new NCC takes the view that a "vulnerable person" should be regarded as encompassing a domestic or non domestic individual, business enterprise or not for profit organisation so long as it satisfies the vulnerable criteria. Again for consistency, the new NCC proposes to limit the application of this power to businesses or organisations that meet the micro-enterprise criteria. A "designated consumer" is defined in section 4 of CEAR as a mains gas/electricity consumer.

The definition of domestic vulnerable consumers has already been debated and agreed at earlier Energy CJW meetings and the non-domestic definition below is based upon this.

## **5. Definition of "Vulnerable Consumer"**

Given that non-domestic consumers are in business for themselves or are not for profit organisations with a hierarchy of structure, the new NCC believes that in the vast majority of cases where difficulties arise, a non-domestic consumer should be able to resolve their problem for themselves. Typically, they will either possess commercial skills that will enable them to resolve their problem or will have other staff or business partners from whom they can get assistance. However, in a very limited number of instances due to the complexity of the matter or the circumstances of that non-domestic consumer, that will not necessarily be the case. Vulnerability should not be measured by the inability of a single given person in a business or organisation to resolve an issue, but the business or organisation as a whole.

It is also expected that many potentially vulnerable non-domestic consumers will still be able to resolve their own problems and that Consumer Direct will deal with these cases by provision of information, advice, by referral to the supplier or the statutory redress scheme as appropriate. It is for this reason that a broad definition of vulnerability should be adopted rather than stereotyping or labelling the vulnerable, as has happened in the past and which undoubtedly has led to some being classified as vulnerable when they are not. The proposed criteria are:

A non-domestic consumer shall be regarded as vulnerable where it is not reasonable to expect that person, or any other person within that business or organisation, to be able to pursue their own complaint because of:

- the personal circumstances of that particular non-domestic consumer; or
- the urgency / criticality of the situation and the inability of the non-domestic consumer to be able to handle the issue within the timeframe in which he/she needs to act; or
- the complexity of the problem for that particular non-domestic consumer or
- any combination of such factors.

## **6. Principles in identifying Vulnerable Non-Domestic Consumer cases for referral**

1. Each potential referral shall be considered on a case by case basis;
2. As the potential non-domestic consumer is engaged in commercial activities or is a not for profit organisation with a hierarchy of structure, the threshold of vulnerability for referral to the new NCC shall be higher than for domestic consumers;
3. If Consumer Direct is in any doubt about the non-domestic consumer's confidence or understanding of the issues, and there is no other person within the business or organisation who possesses or can provide that, then the case should be referred to the new NCC;
4. A non-domestic consumer shall be referred by Consumer Direct to the new NCC if he/she (or any other person within the business or organisation) cannot reasonably be expected to handle their issue because of one or more of the factors contained in the definition of "vulnerable consumer", namely:
  - the personal circumstances of that particular non-domestic consumer;
  - the urgency / criticality of the situation;
  - the complexity of the problem for that particular non-domestic consumer;
5. Regard shall be had to the experience of the non-domestic consumer in trying to resolve the problem to date;
6. Consumer Direct shall also consider what other routes of redress, including referral to the supplier using the agreed empowerment arrangements, are available to the non-domestic consumer and whether such other options offer a more appropriate referral in terms of speed of resolution, adequacy of outcome and the ability of other organisations to represent the non-domestic consumer's case.

## **7. Working Level Guidelines in relation to Vulnerable Non-Domestic Consumer referrals**

1. Non-domestic consumer" in the guidelines below means either a sole trader, a business or not for profit organisation that meets the micro-enterprise criteria.
2. Vulnerability should not be measured by the inability of a single given person in a business or organisation to resolve an issue, but the business or organisation as a whole.
3. As the potential non-domestic consumer is engaged in commercial activities or is a not for profit organisation with a hierarchy of structure, the threshold of vulnerability for referral to the new NCC shall be higher than for domestic consumers;
4. Where the issue involves a vulnerable person in a situation of mixed domestic and non-domestic usage (eg a flat above a shop with non separate energy supply), the case should be referred to the new NCC;
5. Where the vulnerable non-domestic consumer's issues are partly energy-related and partly not, the non-domestic consumer should be referred to the new NCC on the energy-related matters and signposted to other relevant organisations for assistance on the others, if appropriate;
6. In addition, consideration should be given to the steps the non-domestic consumer has taken to date to resolve the matter for themselves and whether it is appropriate for them to be referred to the energy licensee or not (see 9 below);

7. Also consideration should be given to what other routes of redress or resolution are open to the non-domestic consumer and whether options such as advice from Consumer Direct, the non-domestic consumer contacting their supplier (where that has not already occurred), empowerment or referral to the statutory redress scheme are more appropriate;

8. In assessing whether other options for redress or resolution are more appropriate, consideration should be given to the speed and nature of service that is offered by other organisations, the ability to broker an outcome that will meet the non-domestic consumer's reasonable expectations and the capability of another body to articulate and advocate on the non-domestic consumer's behalf (eg would a referral to the statutory redress scheme be appropriate if the consumer had communication difficulties);

9. When considering the urgency of a situation, regard shall be had to the consequences to the health and welfare of the non-domestic consumer and whether failure to act promptly will have a significant and imminent impact upon either.

10. A repetition of failure by an energy licensee to address the non-domestic consumer's issue, shall be regarded as a contributing factor as to whether a matter is urgent or whether this consequentially adversely changes the circumstances of the consumer or reflects the complexity of the issue and necessitates referral to another organisation or the new NCC;

11. Consumer Direct staff shall interpret whether a non-domestic consumer's personal circumstances renders him/her vulnerable in its broadest sense and specific indicators (eg financial difficulties, elderly, chronically ill, etc) will be covered in the training Consumer Direct gives to its staff. However, a person shall be regarded as vulnerable not because of any particular attribute, but as a consequence of that attribute (eg a sole trader suffering from mental health problems and unable to deal with their energy problem);

12. The absolute test shall be whether:

- the non-domestic consumer understands the issue;
- there is anyone else within the business or organisation that can deal with the matter;
- understands any advice given by Consumer Direct or others to him/her;
- is able to confidently take their case forward; and
- it is reasonable to expect the non-domestic consumer to do so, given that they are conducting business activities.

If the matter is urgent, then an additional factor shall be whether it is reasonable to expect the consumer to non-domestic be able to act within any necessary time limit.

## **8. General Principles**

Depending upon the nature and urgency of the matter, it is envisaged that the new NCC, upon having a case referred to it by CD, will support the customer by providing effective advice<sup>3</sup> to enable a consumer to pursue their case themselves should this be appropriate (eg some disconnection/ppm cases), through to immediate intervention and contact with an energy licensee, or a full case investigation. As a separate issue,

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<sup>3</sup> As provided for by sections 12(4)(a) and 13(3)(a) CEAR

the new NCC will have to agree its operational interfaces and complaint handling arrangements with industry.

Also for the sake of clarity, it is accepted as a matter of principle that the NCC will deal with cases referred to it by Consumer Direct even if on receipt such cases do not meet the agreed definitions or guidelines. This will prevent consumers being directed back and forth between the two organisations. Non-adherence to the definitions or guidelines will be addressed as a separate learning issue in dialogue between the NCC and Consumer Direct.