

## **Consumer Direct – Consumer Focus (formerly known as new NCC) Vulnerable Consumer Referral Path**

### **1. Introduction**

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. It 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.

A small group of representatives (Consumer Direct, new NCC, Ofgem, the Energy Retail Association and the Energy Networks Association) was set up at the Ofgem Customer Journey Workshop to draft the definition of the domestic “vulnerable consumer” and to develop principles and guidelines to assist Consumer Direct in the identification of disconnection/prepayment and vulnerable consumer case referrals in order for NCC to fulfil its legislative responsibilities. The output of that group is set out in this paper.

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>1</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, 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.

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

It was agreed by the group that off-supply cases (ie due to network failure) should not be considered as a “disconnection”. Referrals should only be made by Consumer Direct in such circumstances if the consumer was also considered vulnerable and value could be added by making the referral to the new NCC (eg consumer off supply needing electricity to operate essential medical equipment). Disconnections by Network Operators for alleged theft of supply, meter interference or similar misdemeanours would be regarded as a disconnection for the purposes of the duty

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<sup>1</sup> As provided for by sections 12(4)(a) and 13(3)(a) CEAR

under CEAR and should in every instance be referred to the new NCC by Consumer Direct.

Generally, other than if a consumer is regarded as vulnerable (see sections 4 and 5 below), Consumer Direct intends to handle contacts from 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 consumers 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. All cases where a 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;
2. Except as set out in 3 below, all instances where a 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;
3. Cases where the consumer is off-supply as a result of network failure or routine maintenance, shall not be referred unless the consumer is deemed to be vulnerable as set out in the definition and working guidelines on vulnerability;
4. All cases where there is a real and imminent likelihood of a consumer being disconnected shall be referred by Consumer Direct to the new NCC;
5. 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 consumer's perception. However, if the consumer were perceived to be vulnerable (see section 4 below), then the new NCC would still expect the consumer to be referred to it;
6. 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 consumer or some similar communication that clearly makes reference to imminent disconnection, or unless the consumer meets the definition of a vulnerable consumer (see below);
7. Instances where a 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

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

disconnection took place or any sum owed by the consumer in relation to the disconnection (eg cases of alleged theft of supply);

8. All cases where the 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 consumer to charge their meter with credit (eg no charging card)

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

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

#### **4. Definition of “Vulnerable Consumer”**

Many potentially vulnerable consumers will be able to handle their cases themselves and it is expected 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 the group agreed 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 consumer shall be regarded as vulnerable where it is not reasonable to expect that person to be able to pursue their own complaint because of:

- the personal circumstances of that particular consumer; or
- the urgency / criticality of the situation and the inability of the 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 consumer or
- any combination of such factors.

#### **5. Principles in identifying Vulnerable Consumer cases for referral**

1. Each potential referral shall be considered on a case by case basis;
2. If Consumer Direct is in any doubt about the consumer's confidence or understanding of the issues, then the case should be referred to the new NCC;
3. A consumer shall be referred by Consumer Direct to the new NCC if he/she 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 consumer;
  - the urgency / criticality of the situation;
  - the complexity of the problem for that particular consumer;

4. Regard shall be had to the experience of the consumer in trying to resolve the problem to date;
5. Consumer Direct shall also consider what other routes of redress, including referral to the supplier using the agreed empowerment arrangements, are available to the 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 consumer's case.

## **6. Working Level Guidelines in relation to Vulnerable Consumer referrals**

1. Where the vulnerable consumer's issues are partly energy-related and partly not, the consumer should be referred to the new NCC on the energy-related matters and signposted to other relevant organisations for assistance on the others;
2. In addition, consideration should be given to the steps the 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 8 below);
3. Also consideration should be given to what other routes of redress or resolution are open to the consumer and whether options such as advice from Consumer Direct, the consumer contacting their supplier (where that has not already occurred), empowerment or referral to the statutory redress scheme are more appropriate;
4. 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 consumer's reasonable expectations and the capability of another body to articulate and advocate on the consumer's behalf (eg would a referral to the statutory redress scheme be appropriate if the consumer had communication difficulties);
5. When considering the urgency of a situation, regard shall be had to the consequences to the health and welfare of the consumer and whether failure to act promptly will have a significant and imminent impact upon either.
6. A repetition of failure by an energy licensee to address the 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;
7. Consumer Direct staff shall interpret whether a 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 someone from an ethnic minority may be perfectly capable of dealing with a complaint if they understand and are able to speak English reasonably well or have access to alternative language facilities for example);
8. The absolute test shall be whether:
  - the consumer understands the issue;
  - 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 consumer to do so.

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