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Dear Andy and Sean,

ERA Response to Ofgem's Consultation on Direct Debit arrangements

The Energy Retail Association (ERA), formed in 2003, represents electricity and gas suppliers in the domestic market in Great Britain. All the main energy suppliers operating in the residential market in Great Britain are members of the association - British Gas, EDF Energy, RWE npower, E.ON, ScottishPower, and Scottish and Southern Energy.

We welcome the opportunity to respond to Ofgem's consultation on Direct Debit arrangements and would be happy to discuss any of the points made below in further detail with Ofgem, as would individual suppliers. The ERA's members will also be providing individual responses.

Introduction / Setting the Scene

We welcome Ofgem's report on the current situation regarding Direct Debits. As the report points out, Direct Debits are an important way for customers to pay for their energy use, and nearly 15 million energy accounts are paid in this way. Customers paying for their energy by Direct Debit benefit as this payment method can have discounts associated with it. Customers also have the reassurance that they have a plan to cover their energy consumption as they use it and are paying regular amounts over the course of the year. This allows customers and suppliers to manage seasonal peaks during the billing cycle. We were pleased to observe that Ofgem's second investigation into suppliers' processes for Direct Debits again found no evidence that suppliers were increasing Direct Debit levels to improve cash flow.

Currently energy suppliers are not aware of their customers' daily energy consumption but they do make significant efforts to ensure that the levels set for Direct Debits are as accurate as possible. (Until the advent of Smart Metering, which will revolutionise the energy industry, paying for energy consumption via Direct Debits will be complex, as - as Ofgem point out - complex algorithms are employed to set payment levels. These algorithms take into consideration energy usage and the prevailing price¹). It is not in a supplier's interest to set the Direct Debit level too high or too low as this could upset customers and prompt them to switch to a competitor. However, should a customer be unhappy with their supplier's performance they are able to exercise their right to get a better service by expressing their dissatisfaction to their supplier, and also by participating in recognised redress schemes. Ultimately, if customers are still not happy, they can switch supplier.

As Ofgem identify in their report, prior to late 2008 there had been no history of significant problems or complaints relating to Direct Debits. However after a major media campaign carried out by a national newspaper and the Chairman of the Business, Enterprise and Regulatory Reform Select Committee's statements on Direct Debit Ofgem received approximately 1,000 complaints². The level of complaints represents a very small proportion (0.0068%³) of customers who pay for their energy in this way.

Suppliers acknowledge that at times their communications with customers could be clearer, particularly given the impact of changes to energy prices in 2008 and 2009 on the overall level of energy bills. Suppliers have

¹ Ofgem explains these additional costs in its Household Energy Bills Explained:

<http://www.ofgem.gov.uk/Media/FactSheets/Documents1/energy%20prices%20jan08.pdf>

² We have not seen the specific complaints and so do not know the exact figure.

³ 1000 complaints divided by 14.7 million customers.

demonstrated a willingness to address this. However, we believe that the introduction of new licence obligations surrounding Direct Debit communications would be a disproportionate approach which does not recognise that Direct Debits are not unique to the energy industry, and that energy customers are already protected by the Direct Debit Guarantee and general consumer protection legislation. Ofgem has also not recognised that different supplier policies and processes in this area are a necessary and beneficial aspect of a competitive market. Ultimately, all suppliers are committed to putting their customers' needs first.

The introduction of new licence obligations could entail huge costs in IT systems changes for some suppliers which may be of little benefit to consumers. While some changes could be achieved in 2009, the IT systems changes could not, particularly given the large number of other changes that may need to be developed to deliver the remedies envisaged by the Ofgem Probe.

We are therefore disappointed that Ofgem appears unsure of the value of enhanced self-regulation (which has delivered improvements across a number of areas, e.g. Sales, Billing, Transfers), despite the generally positive findings in the report, and the fact that no problems with Direct Debits had been identified by the Probe or prior to mid-2008. Equally, Ofgem's Supply Licence Review in 2007 demonstrated Ofgem's view that the market conditions were stable and it was therefore time to move towards less onerous licence conditions.

At the end of this response we propose additional self regulation measures which we believe will remove the necessity to introduce a Supply License Condition at the moment. We would welcome Ofgem's feedback on our proposals so that should Ofgem decide that self regulation could resolve the issues they have highlighted in their report we are able to continue the discussions and implement the measures as soon as possible.

Responses to the questions in the Ofgem consultation document:

- **Chapter Two**

Question 1 – Do you agree with our analysis of the issues?

Although we were disappointed that Ofgem appears unsure of the value of enhanced self-regulation, we feel that the factual outcome of the report is positive, based on a detailed, comprehensive review and extensive analysis.

Question 2 – Do you agree with the elements of best practice we have identified?

A. Frequency of reassessments

ERA members agree that they must look at how they can ensure that Direct Debit payments are based on the most up to date information, are flexible, and are reviewed frequently, and that significant price changes are reflected in payment levels as quickly as possible to avoid significant build up of credit or debit. Customers must receive clear, timely communication of any changes.

We believe that this in fact reflects current practice (it is required already by the ERA Billing Code⁴), and was also covered in the 'Energy Suppliers' Commitment on Direct Debit Arrangements'. Consumers have the chance to review suppliers' Direct Debit arrangements before signing up to that payment option and if they do not like a supplier's arrangements, they can discuss this with their supplier or, ultimately, choose an alternative supplier. Suppliers agree to strengthen and clearly display this information in any literature during the sign-up process so that it is transparent for the customer.

B. Flexibility on debt rollover

⁴Billing Code clauses 1.5, 3.1, 5.5 and Scottish and Southern Energy's Customer Charter.

We believe that Ofgem's suggestion that suppliers develop their systems to deal flexibly with debt on customers' accounts reflects current practice. As expected within a competitive market place, the approach taken by different suppliers may not be the same but their policies are explained to customers when they sign up to pay by Direct Debit and, where this process is reviewed by suppliers and weaknesses identified, these will be addressed. As some suppliers have explained to Ofgem in their responses to the information requests, they do not change their customers' payment plan unless the debt is over a certain percentage of the overall plan. Customers welcome the flexibility they have in repaying any energy debt⁵ and the repayment option should be agreed between the supplier and the customer as each circumstance is different. We do not believe that a one-size-fits-all approach would best serve customers, nor would it fit with other licence obligations to take account of the customer's ability to pay when setting repayments.

C. Meter readings

Suppliers agree to look at what more they can do to encourage meter readings by customers to ensure that Direct Debits are based on the best available information; it is in the suppliers' best interests to do so, although the estimates that suppliers give in the absence of a true meter reading are not typically wildly inaccurate. Encouraging customers to supply a meter reading does not always result in the customer contacting their energy supplier and we would welcome any efforts Ofgem will carry out to also encourage customers to make sure their supplier has an up to date reading.

An invitation to contact the supplier appears on all estimated bills, as covered in the ERA Billing Code⁶. Suppliers have different methods of encouraging consumers to supply meter readings, but all do invite regular updates based on what would best suit that customer. Smart metering will effectively make this issue disappear.

The ERA will incorporate information on the consequences of not supplying regular meter readings into its educational activity with third parties (such as CAB, charities, MPs etc) – see below for more information.

D. New customers

This issue is connected to the point of sale aspects of the Probe, and any overlap of this issue must be consistent. We feel it would be more appropriate for Ofgem to wait until the issues arising from the Probe (and suppliers' commitment to address the principles of the Direct Debit statement of intent) have been put into action before proposing even more regulation in this area. However in principle suppliers agreed with Ofgem's suggestions and will investigate any necessary changes to incorporate them.

E. Individual explanations of the basis of reassessments

We would welcome the opportunity to discuss this suggestion with Ofgem in more detail. We agree that it is in the best interests of customers that Direct Debit payments are based on the most up-to-date and accurate information, are flexible and frequently reviewed and reflect significant price changes as quickly as possible. It is in the interests of neither suppliers nor consumers that consumers build up large debts due to inflexible and inaccurate Direct Debit payments. However, we feel that there could be duplication between this proposal and the Probe.

"Bespoke calculations" for each consumer would require IT systems changes, and due to the nature of the competitive industry, suppliers would be starting from very different positions. Implementation of this proposal would necessarily take a long time to complete the required system changes, and would involve a

⁵ It should be noted that typically this debt is repaid interest free.

⁶ Billing Code clauses 2.1, 2.3 and 2.4 and Scottish and Southern Energy's Customer Charter.

great deal of cost. We question whether this approach would be proportionate to the scale of the problem and realise any actual benefit to consumers and whether most consumers would use this information.

Any mandating of such a proposal would negate the purpose of having a competitive market; companies must be allowed to differentiate themselves through customer service. Ofgem has identified two companies who have already adopted this approach (Scottish and Southern Energy and npower). These companies have invested in their systems to give them a competitive position. To mandate other companies to copy two companies is inconsistent with competitive open market principles and Better Regulation.

F. Clear explanations of how Direct Debits work

Suppliers agree that clear explanations of how Direct Debits work should be made available to customers when they first sign up to this payment option and when their payments change, and suppliers should have this explanation on their website.

However suppliers expressed some concerns regarding the high volume of consumers moving on to Direct Debits (which is supported by the outcome of the Financial Inclusion Taskforce report ⁷) and question whether full delivery of this recommendation would be proportionate for all suppliers to carry out.

However ERA understands that there is a key message here to be communicated to customers (via third parties) and will develop messaging as part of its overall communications to customers to address this issue.

G. Willingness to enter dialogue

Suppliers agree with Ofgem's suggestions, and would like to reassure Ofgem that they are always willing to enter into dialogue with their customers. However, increased traffic to call centres must be managed, along with consumers' expectations.

In addition, we question whether Ofgem realistically expects customers would contact their supplier if their circumstances changed. However suppliers agree that it would be ideal for customers to contact their supplier in the event of a major change in circumstances (minor changes are already included within the complex algorithms suppliers employ).

Via ERA communications we will aim to explain which types of change in circumstances would result in a change in Direct Debit levels. In addition suppliers pledge to train their call centre staff to give details of these circumstances in clear terms. This will be incorporated within the Direct Debit Agreements suppliers will sign up to.

H. Informed customer service staff – informed reassessment

Suppliers agreed with Ofgem's suggestion for enhanced training for staff, but feel that the requirement for all communications to be followed up in writing would not be consistent with tailoring the suppliers' approach for individual customers, and would not be in-line with Ofgem's Complaint Handling Standards. However this information can be communicated to customers in alternative, more innovative ways which would allow suppliers to service customers in the ways in which they prefer (mirroring the approach in the Complaint Handling Standards).

⁷ http://www.financialinclusion-taskforce.org.uk/documents/papers/direct_debit_energy_payments.pdf

I. Informed customer service staff – willingness to negotiate

Suppliers always welcome the opportunity to engage with customers and to discuss their accounts. We do not believe that Ofgem’s assertion that some customer service staff had ‘refused’ to discuss Direct Debit changes is accurate.

We feel that this suggestion is inconsistent with the ‘informed reassessment’ suggestion – i.e. if the supplier’s calculation is accurate, they should not reduce Direct Debit payments based on a customer’s request. Suppliers do not want consumers to get into debt.

We also do not believe that all communications with consumers should be followed up in writing, as each customer should be treated based on their individual needs. Such a suggestion is not consistent with Ofgem’s Consumer Complaint Handling Standards Guidelines, which allow for consumer complaints to be processed orally or in writing (including by email), according to the customer’s wishes.

J. Policies on refunds of credits

We feel that Ofgem has not credited the suppliers for their dialogue with consumers on refunds. In addition we feel that Ofgem has not taken into account the fact that a consumer may have a large credit at the end of the summer. Suppliers would not want to refund this credit if this led the consumer to get into debt during the winter. As Ofgem has found that the suppliers are not profiteering from Direct Debit payments, refunds should be made on a customer-by-customer basis. We agree that suppliers should constantly look at their refund policies carefully, to ensure credits are not being unreasonably withheld and that the grounds on which refunds will be made are explained clearly to customers, on the basis that companies are able to adopt different policies, provided these are made clear to customers.

Question 3 – Are there any other elements of best practice you think we should consider?

Within a competitive industry, suppliers must be free to compete on all aspects of customer service, including Direct Debit arrangements. As such, we do not think it is appropriate for a Regulator to mandate Best Practice⁸ in this area. Such regulation would restrict companies’ ability to innovate and would stifle the service or new products offered to consumers by the industry.

- **Chapter Three**

Question 1 – Is a licence condition needed in this area? Please give reasons.

We do not believe that a licence condition is necessary to resolve the issues that Ofgem highlight in the report, and do not believe that a licence condition would benefit customers or be in the spirit of Better Regulation.

We believe that a licence condition would be inconsistent with Ofgem’s findings that suppliers are not profiteering through Direct Debits and would urge Ofgem to consider alternative options before going down this route.

⁸ ‘Business Link’, along with the Department for Business, Enterprise and Regulatory Reform (BERR) and Cranfield School of Management has defined Best Practice: “Best practice means finding - and using - the best ways of working to achieve your business objectives.” and gives advice to individual companies on how they could develop it internally to become more competitive, increase sales and develop new markets, reduce costs and become more efficient, reduce waste and improve quality, and respond more quickly to innovations in the sector. As such, we do not feel that Ofgem should mandate Best Practice for all suppliers in the industry.

Question 2 – Do you consider that suppliers could deliver the improvements we have identified through self-regulation?

We believe that self-regulation has delivered benefits for consumers and that Ofgem should put more emphasis on resolving this issue via self-regulation.

In the consultation Ofgem state that “the ERA and the main six domestic suppliers have been receptive to making some changes and the ERA sent us the “Energy Suppliers’ Commitment on Direct Debit Arrangements”, agreed by all suppliers.” Ofgem goes on to say that “This commitment would improve on the current position and reflects some of the elements of best practice we have highlighted to the industry during our review of direct debit arrangements”. However Ofgem continues saying “In our view they [the “Energy Suppliers’ Commitment on Direct Debit Arrangements”] do not go far enough”.

We are disappointed that Ofgem has adopted this view-point. The timescales given to the ERA and suppliers during the information gathering stage were very tight, coinciding with a large number of other stakeholder requests, and Ofgem was unable to share with the ERA or its members the issues it had found when going through the suppliers’ submissions. Therefore the Energy Suppliers’ Commitment on Direct Debit Arrangements was not developed based on all of the evidence Ofgem could have provided.

The ERA is keen to work with Ofgem and suppliers, now we are party to all of the issues, to develop robust, appropriate, self-regulation practices. As part of this we would encourage Ofgem to carry out a review of the situation after a given period. If after this period Ofgem found that enhanced self-regulation was not working, they could re-visit the possibility of a licence condition. We believe this would be a much more pragmatic approach, and one which would be delivered in much quicker timescales. Following this period, changes would have been implemented and results understood against improved market conditions.

In addition, the ERA could initiate an independent review of suppliers’ communications with consumers, and provide the results to Ofgem for discussion and identification of any changes.

Furthermore, we believe there is a role here for the Energy Ombudsman (EO), should a customer have complaints and we would not wish Ofgem to dismiss or undermine the important, independent, role the EO plays for customers who have complaints about their energy company.

- **Chapter Four**

Question 1 – Which of the options A, B or C do you consider would be the better approach? Are there any other models we should consider?

We believe Ofgem should not continue with either Option A, B or C and should consider self-regulation as a proportionate response to the issues.

Question 2 – Should any obligation apply to small business consumers as well as domestic consumers?

The ERA does not represent small business consumers. However we do not think it would be appropriate for Ofgem to introduce a new supply licence condition on any energy supplier without having carried out the appropriate research. In addition the SME market is significantly different to the domestic, with many more suppliers than just ERA members and a much smaller percentage of customers paying by Direct Debit.

Question 3 – What would be a realistic timescale for implementation?

We would suggest that Ofgem reviews this situation at the end of 2009 to determine whether self-regulation has addressed consumers and Ofgem’s concerns. Ofgem would be able to monitor activity and progress via communicated key milestones and on-going dialogue with energy suppliers.

Option D... The Self-Regulatory Route

The ERA strongly believes that any issues surrounding communicating Direct Debits to customers can be addressed via self-regulation. Should Ofgem wish to further consider self-regulation we would welcome discussions on the following proposals:

- We propose to modify the ERA Commitment on Direct Debit Arrangements in light of the new information reported in the Ofgem consultation document. For example, this could include adding specific points to cover, for example, suppliers' intentions on meter readings and a promise to explain which types of change in circumstances would result in a change in Direct Debit levels. In addition suppliers pledge to train their call centre staff to give details of these circumstances in clear terms. We would also be keen to understand what else Ofgem, Consumer Focus, the Energy Ombudsman and other relevant organisations feel would be useful to include within it.
- We propose to carry out an annual, independent, review of suppliers' activities surrounding Direct Debits, which could include: communications to customers, flexibility on debt rollover, reassessments and other issues flagged in the Ofgem report. If we carry out this review, we will communicate with Ofgem throughout this process, so that should Ofgem identify specific issues we can tackle them together.
- We propose to discuss with members, Ofgem and other stakeholders any arising priority issues in this area when required.
- We will review the outcome of the Billing Code Audit 2009 to ensure any issues surrounding Direct Debits are addressed in a timely manner.
- We will also consider further the issue of what 'teeth' the Commitment will possess and the role the Energy Ombudsman has in protecting customers.
- We are currently developing an industry-wide customer-facing communications activity via third party agents (i.e. Political Representatives in Westminster and the devolved administrations, CAB, MALG, MAT etc) to improve the transparency of all payment methods and their benefits and disadvantages to customers and to promote the Commitment on Direct Debit Arrangements. Attached is our leaflet on Direct Debits, which forms part of the first phase of our communications campaign.
- We believe that Direct Debits are one way customers can pay for their bill, and depending on their circumstances and their understanding of Direct Debits this method is extremely user-friendly. However customers need to understand their options for paying for their energy. In addition we will be promoting our Billing Code⁹ to a number of identified audiences, and Direct Debits will have a principal part to play in this campaign.
- We, and our members, have been in discussions with the Financial Inclusion Taskforce on its Report on Direct Debit Energy Payments and - particularly - the Payments Council and we will continue to work with them in delivering our activities.

ERA educational activity with third parties

Discussions are already underway with the following stakeholders, who are all supportive of the ERA's initiative to inform customers about their direct debits: BACS Consumer Direct and the CAB. We wish to develop these discussions on our activities with other stakeholders, to involve organisations such as Consumer Focus, the Consumer Credit Association and the Money Advice Liaison Group.

ERA's media engagement programme will include the following activities:

- Direct debits leaflet to be hosted on ERA website
- Briefings with personal finance journalists
- Feature pitching and article generation with trade and personal finance magazines
- Press release announcing the new material available from energy companies

⁹ And Scottish and Southern Energy's Customer Charter where appropriate.

To coincide with the publication of the direct debit leaflet, the ERA will send hard copies to:

- ECC Ministers, Conservative and Lib Dem shadows and ECC Committee members
- BESEC Committee (referencing the report Jan 2009)
- All Party Parliamentary Groups: Debt and Personal Finance and Warm Homes
- Any Parliamentarians who have asked PQs or signed EDMs about DDs
- Equivalents in Holyrood and Cardiff

In addition to this, an embedded email version of the leaflet may be sent to every Parliamentarian for information.

We feel that tackling the issues raised in the Ofgem report by the measures listed above will ensure customers have access to the right information, when they need it and are protected should they have cause to complain.

We would welcome the opportunity to discuss our response with you at the earliest, most convenient time. Industry is always willing to discuss with Ofgem ways in which self-regulation can be enhanced, to address Ofgem's concerns and to ensure that customers continue to benefit from a competitive energy market. I look forward to hearing from you soon,

Yours sincerely,

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