

Consultation response

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DATE: 14th May 2010
TO: Meghna Tewari
RESPONSE BY: Dr Fiona Cochrane
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RE: Supply License Condition 23- period for notifying unilateral contract variations and related matters

Which? consultation response.

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Introduction

- 1 Which? is an independent, not-for-profit consumer organisation with over 700,000 members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and is funded through the sale of Which? consumer magazines, online services and books.
- 2 Which? welcomes the opportunity to respond to Ofgem's consultation on the notification period for unilateral contract variations¹. We have previously stated² that the current arrangements are unfair and balanced in favour of the supplier; we did not and do not agree with Ofgem's previous position that the changes set out in the Energy Supply Probe: Retail Market Remedies were adequate to address this³.
- 3 However it is very positive that Alistair Buchanan acknowledged Which?'s role in having 'touching a nerve' with this issue⁴; and critically, recognition of the unfairness of the situation by Parliament, with the subsequent inclusion of an amendment in the Energy Act 2010 to give the Secretary of State powers to modify supply licenses in relation to giving notice of unilateral changes to domestic supply contracts, including for price changes⁵.
- 4 In response to the proposals set forward in this consultation:
 - > Which? supports the proposal to require advance notification of price changes;
 - > Which? recommend that suppliers be required to provide advance notification of all unilateral contract changes that disadvantage consumers;
 - > Which? recommends that consumers are given 65 working days notice of all unilateral contract variations that disadvantage consumers;
 - > Which? recommends that all tariff offerings must be guaranteed for 12 weeks from the point a consumer initiates a switch to a new tariff;

¹ 'Supply License Condition 23- period for notifying unilateral contract variations and related matters' consultation document, Ofgem, March 2010

² Which? response to the Ofgem Probe Initial Findings, December 2008; Which? response to Ofgem's Open letter on 65 day notice period for unilateral contract variations, March 2009; Which? response to Ofgem's Proposed Retail Market Remedies, June 2009; Which? Response to Ofgem's Revised License Drafting, July 2009; Which? response to Ofgem Decision Document, September 2009; Which? letter to Alistair Buchanan 1st of February 2010.

³ Increasing the period customers have to notify suppliers they are switching in response to an increase in prices from 10 to 20 working days, clarify within the license condition that maximum period allowable of 65 working days is a backstop, give due prominence to the right to switch to avoid retrospective increases and ensure that this information be clear, easy to understand and placed in a prominent position, and the introduction of a 30 working day period for indebted customers who try to switch away have to repay the debt and still be able to switch in response to retrospective notice of a price increase or notice that is provided less than five working days in advance of the date the variation has effect, Paragraphs 3.26- 3.33, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2007

⁴ "I think Which? is touching on a very strong nerve when they talk about why companies have 65 days. We have just created a consumer panel of 100 people; we are going to ask them to have a look at this...if we think this needs particular action sooner than that, then we will pursue that." Alistair Buchanan, December 2nd, Evidence to Energy and Climate Change Select Committee

⁵ Section 25, Part 3, Chapter 27, Energy Act 2010

- > Which? recommends that Ofgem amend the license conditions to ensure that consumers are not penalised due to inefficiency on the part of suppliers during the transfer of a customer from one supplier to another;
- > Which? recommend Ofgem undertake a review the range of outstanding debt that consumers face when switching, and whether the 30 working day repayment period is adequate.

Advance Notification for Unilateral Contract Variation

Notification of Unilateral Contract Variations

Notification of all changes that disadvantage consumers

- 5 Which? supports the proposal to align the requirements for notification of unilateral contract variations⁶. **We recommend that for all unilateral contract variations that disadvantage consumers, suppliers should be required to give their customers advance notification of the changes**, not just for tariff rate increases and those deemed to result in a ‘significant’ disadvantage⁷.
- 6 By aligning notification periods for all unilateral contract variations which disadvantage consumers, Ofgem set out a clear framework for consumers and suppliers and removes the ambiguity of the term ‘significant’, which is subjective and open to interpretation. In addition, it will ensure that consumers have equal protection should there be a shift in suppliers practices to changes to other components of the tariff such as discounts, penalties and contract lengths, which could affect the overall cost of the tariff to consumers.

Period of Notification

Supplier to consumer

- 7 We welcome Ofgem’s analysis of the current arrangements, the negative impact on consumers, how they compare to practices in other sectors and importantly the recognition that the current arrangements are indefensible⁸.

⁶ Paragraph 6.2, *Supply License Condition 23- period for notifying unilateral contract variations and related matter*, Consultation Document, Ofgem, March 2010

⁷ Paragraph 6.2, *Supply License Condition 23- period for notifying unilateral contract variations and related matter*, Consultation Document, Ofgem, March 2010

⁸ ‘retention of the current rules unchanged does not appear to be a defensible options’ paragraph 4.3, *Supply License Condition 23- period for notifying unilateral contract variations and related matters*, Consultation Document, Ofgem, March 2010

As Which? has previously stated⁹, energy suppliers have been gifted a privileged position unseen in other sectors, that is unfair on consumers and which the Probe remedies¹⁰ failed to appropriately address. With data gathered by Consumer Focus clearly demonstrating that suppliers take advantage of the current arrangements- following one set of rules when increasing prices and another when lower prices¹¹. In addition and as cited in this consultation, Which? research shows 98% of people want their supplier to notify them ahead of price changes¹².

- 8 Which? recommends that Ofgem require suppliers to provide their customers with at least 65 working days notice of any disadvantageous unilateral contract variations.** A period of 65 working days will provide consumers adequate time to explore other tariff options, switch tariffs and suppliers where desired and plan budgets to address increases in energy costs. In addition, an advance notification period of at least 65 working days will enable suppliers to notify many of their customers in their regular billing cycle, which suppliers have emphasised is important to reducing billing costs¹³.

Supplier Guarantee

- 9 To ensure that protections aligned across existing and new customers, Which? recommends that all tariff offerings must be guaranteed for a set period of time, and that that period be 12 weeks¹⁴.** This would prevent a situation in which consumers switch to a new tariff only to find that by the time the switch has been completed, the price has increased leaving them on a worse deal than they would have had with their original tariff. Given the emphasis on improving the quality of switching¹⁵ and the recognition that there can be delays in the switching process due to poor practices and errors on the part of the suppliers¹⁶, this is the logical additional protection to take, not even considering that eight in ten consumers (gas - 83%, electricity - 82%) agree that new tariffs should be fixed for a certain period.

⁹ See footnote 2

¹⁰ See footnote 3

¹¹ Annex 1, Consumer Focus response to Ofgem consultation: Supply License Condition 23 - Period for notifying unilateral contract variations and related matters

¹² 7,215 Which? panel members responded to an online survey between 26 May - 12 June 2009. 3,357 respondents answered about their gas supplier, while 3,957 respondents answered about their electricity supplier.

¹³ Paragraph 3.27, *Energy Supply Probe: Proposed Retails Market Remedies, Decision Document*, Ofgem, August 2009; *Open letter on 65 day notice period for unilateral contract variations*, Ofgem, 20 February 2009.

¹⁴ Which? believes consumers should be given notification of a price increase equal to the amount of time that it will take to shop around and switch. On average it takes a consumer 6 weeks to switch energy tariff, followed by a further 6 weeks before they are on the new rate - totalling 12 weeks.

¹⁵ Paragraph 3.3, *Energy Supply Probe: Proposed Retails Market Remedies, Consultation*, Ofgem, April 2009

¹⁶ Section 5, *Supply License Condition 23- period for notifying unilateral contract variations and related matters, Consultation Document*, Ofgem, March 2010

Consumer to supplier

10 We support the proposal¹⁷ that the customer would be able to give notification of their intention to end or change the contract to the supplier at any point during the advance notification period. This will allow consumers adequate time to shop around for the best tariff for them, respond to new offerings as they become available and make appropriate budgetary decisions.

Supplier Notice to Transfer

11 Which? does not believe that it is fair for consumers to be penalised due to poor administrative practices by suppliers. Once a consumer has initiated a switch, the responsibility for the switch then passes to the existing and new supplier to organise. As the consumer has little or no role in this process it is unfair to penalise them if there are delays or other issues. Which? welcomes Ofgem's proposal to amend the current supplier notice to transfer arrangements to ensure that consumers are no longer penalised through no fault of their own.

12 In order to develop appropriate license conditions to provide consumers with this protection Ofgem must develop a switching protocol with timeframe for current and smart meters; set a maximum switching timeframe after which the customers is guaranteed to get their new rate whether the actual switch has occurred or not.

Arrangements for repaying debt

13 Which? is concerned that the 30 working days that consumers have to pay any outstanding debt¹⁸ is not adequate in all circumstances. **Which? recommends Ofgem undertake a review the range of outstanding debt that consumers face, and how the 30 working day repayment period compare to other sectors.**

Which?
May 2010

¹⁷ Paragraph 4.14, *Supply License Condition 23- period for notifying unilateral contract variations and related matter*, Consultation Document, Ofgem, March 2010

¹⁸ Standard Gas and Electricity License Condition 23