



Consultation response

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TO: Meghna Tewari
RESPONSE BY: Dr Fiona Cochrane
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RE: Proposals for amending Standard Licence Condition 23 - Period for notifying unilateral contract variations and other consequential issues

Which? consultation response.

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for all consumers

Introduction

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.

Which? welcomes the opportunity to respond to Ofgem’s proposals for the amending Standard License Condition (SLC) 23¹. As we have previously stated² 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.

However we welcomed Ofgem’s previous consultation on SLC 23 and Government support⁴ for changing this unfair situation.

Proposals for amending SLC 23- period for notifying unilateral contract variations and other consequential issues

Q1, What are your views on our “minded to” position of requiring domestic suppliers to give customers Notice of a unilateral variation at least 30 calendar days in advance of the date on which the variation takes effect? Please provide any data/information to substantiate your views where appropriate.

Notification of all changes that disadvantage consumers

We welcome Ofgem’s proposal to address the current situation. As Which? has stated⁵, energy suppliers have been gifted a privileged position unseen in other

¹ ‘Consultation on proposals for amending Standard Licence Condition 23 - Period for notifying unilateral contract variations and other consequential issues’ Ofgem, 1st October 2010

² Which? response to Ofgem consultation on Supply License Condition 23, May 2010, 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 Retail Market Remedies, Decision Document*, Ofgem, August 2007

⁴ <http://www.decc.gov.uk/en/content/cms/news/ofgemconresp/ofgemconresp.aspx>

⁵ See footnote 2

sectors, that is unfair on consumers and which the Probe remedies⁶ failed to appropriately address. The data gathered by Consumer Focus clearly demonstrated that suppliers take advantage of the current arrangements- following one set of rules when increasing prices and another when lower prices⁷. In addition and as cited in this consultation, Which? research shows 98% of people want their supplier to notify them ahead of price changes⁸.

Which? supports the view to require suppliers to give notice of unilateral changes. However as we previously stated we strongly believe that suppliers must be required to give notification of all unilateral contract variations that disadvantage consumers, not just those deemed to be ‘significant’.

By aligning notification periods for all unilateral contract variations that disadvantage consumers, Ofgem would set out a clear framework for consumers and suppliers and remove 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. Moreover, removing the word ‘significant’ from the license condition will also remove the need to produce supplementary guidance on the definition of ‘significant’ reducing confusion for consumers and suppliers and saving Ofgem time and resource.

With regard to variations in price, this should be applicable to all changes will impact the price that a customer pays, including but not limited to p/kwh rate, block levels, standing charges, and discount and fees applicable to the customers account.

Period of notification

As we has previously stated⁹ we believe that suppliers should provide consumers with advance notice of 65 working days. This 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. It will also allow suppliers to fit the notification within their regular billing cycle, minimising costs, which was previously cited for the rational for the current situation¹⁰.

⁶ See footnote 3

⁷ Annex 1, Consumer Focus response to Ofgem consultation: Supply License Condition 23 - Period for notifying unilateral contract variations and related matters

⁸ 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.

⁹ Which? response to Ofgem consultation on Supply License Condition 23, May 2010

¹⁰ 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.

Form of notification

There needs to be clarification of what form the ‘notification’ will take, in order to ensure that consumers are fully informed and to address the low levels of trust in the energy sector. We recommend that the notification is in the form of a written notice. This would be consistent with the ‘personal notification’ required in the financial services market.

Supplier guarantee

Which? believes that in order to ensure that protections aligned across existing and new customers, that all tariff offerings must be guaranteed for a set period of time, and that that period be 12 weeks¹¹. 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 switching¹² and the recognition that there can be delays in the switching process due to poor practices and errors on the part of the suppliers¹³, this is the logical additional protection to take. It is also supported by Which? consumer research showing eight in ten consumers (gas - 83%, electricity - 82%) agree that new tariffs should be fixed for a certain period.

Q2, What are your specific views on the proposed consequential amendment to retain paragraph 23.6(a) of the SLC 23 such that customers have a 20 working day period from the date of a price increase (or other variation) takes effect to notify their supplier that they would like to switch in order to avoid the application of a price increase (or other variation)? Please provide any data/information to substantiate your views where appropriate.

We support the proposal¹⁴ that the customer would have 20 working days from the date of a price increase or other variation takes effect to notify their supplier that they would like to end the contract. 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.

¹¹ 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.

¹² Paragraph 3.3, *Energy Supply Probe: Proposed Retails Market Remedies, Consultation*, Ofgem, April 2009

¹³ Section 5, *Supply License Condition 23- period for notifying unilateral contract variations and related matters, Consultation Document*, Ofgem, March 2010

¹⁴ Paragraph 2.8 (a), *Consultation on proposals for amending Standard Licence Condition 23 - Period for notifying unilateral contract variations and other consequential issues*, Ofgem, 1st October 2010

Q3, What are your specific views on the proposed consequential amendment to sub-paragraph 23.6(c) of SLC 23 (and sub-paragraph 14.9(c) of SLC 14) such that customers in debt will have a 30 working day period to pay off outstanding charges from the date the customer receives Notice that the supplier intends to prevent them from changing supplier? Please provide any data/information to substantiate your views where appropriate.

As we have previously stated, Which? is concerned that the 30 working days that consumers have to pay any outstanding debt¹⁵ is not adequate in all circumstances. We previously, recommended that Ofgem undertake a review the range of outstanding debt that consumers face, and how the 30 working day repayment period compare to other sectors.

However it remains unclear why energy suppliers are given this privileged position over consumers. It is not an acceptable practice to block switching in other sectors, such as personal finance and fixed landlines, which offers a closer comparable. Which? does not believe that energy suppliers should be able to block customers from switching away at any point, whether they have debt with that supplier or not.

Q4, What are your specific views on the proposed clarificatory amendments to SLC 23 and SLC 24? Please provide any data/information to substantiate your views where appropriate.

There is clearly a degree of confusion around the requirements that the customer must meet in order to avoid the unilateral contract variation. Which? supports proposals to clarify the rules. However, it is vital that this clarification is not simply for the benefit of suppliers but that these grounds are clearly communicated to the customer in the notification that their supplier provides- i.e. ‘to avoid this price increase you must move to another energy supplier’. Anything less than that could be deemed a misleading omission on the part of the supplier.

Termination fees and fixed tariffs

The inclusion of a termination fee within a tariff largely reflects the ‘trade-off’ made between the supplier and consumer, i.e. the supplier guarantees a price for a set period or a level of discount in exchange for offering this the customers recognizes that they will need to pay a fee to exit the contract early.

¹⁵ Standard Gas and Electricity License Condition 23, Paragraph 2.8 (b), *Consultation on proposals for amending Standard Licence Condition 23 - Period for notifying unilateral contract variations and other consequential issues*, Ofgem, 1st October 2010

In making any clarification it is imperative that significant changes to the original contract are not 'forced' upon consumers. Even if consumers have knowingly entered into a contract containing a termination fee, such fee should not be payable where a unilateral contract variation has been made that makes a material change to the initial bargain e.g. the price and/or the amount of any termination fee. In such circumstances, the consumer should be free to leave the contract without penalty. Any other outcome would, we believe, be unfair. If unilateral changes are, on any objective basis, unlikely to be material then a termination fee could still be payable providing it was clearly disclosed to the consumer prior to entering the contract.

Q5, What are your specific views on the proposed one-month time frame for implementing these proposals? Please provide any data/information to substantiate your views where appropriate.

Which? support all moves to address these indefensible arrangements as soon as possible.

Q6, What are your specific views on the minded to decision not to propose any amendments to 15 Working Day Period for the supplier to receive Notice under the Master Registration Agreement /Network Code? Please provide any data/information to substantiate your views where appropriate.

It is not clear to Which? why consumers should 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? is disappointed that Ofgem have gone against their proposal to address this unfair practice¹⁶ and are now proposing not to take steps to stop this unfair practice¹⁷. How this proposal sits with Ofgem's duty to protect consumers is not clear.

Which?

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

¹⁷ Paragraph 210, Consultation on proposals for amending Standard Licence Condition 23 - Period for notifying unilateral contract variations and other consequential issues, Ofgem, 1st October 2010

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