

Consultation response

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TO: Meghna Tewari
RESPONSE BY: Matthew England

Re: Draft impact assessment of proposed modifications of Standard Licence Condition 23 of the gas and electricity domestic supply licences: period for notifying unilateral contract variations and other consequential issues

Which? consultation response.
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Introduction

Which? is an independent, not-for-profit consumer organisation with around 1 million subscribers 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 modification 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 consultations on SLC 23 and Government support⁴ for changing this unfair situation.

We are concerned that the regulator's current proposals fail to adequately address concerns regarding the prominence and transparency of information contained in notifications as raised in the Energy Supply Probe⁵ and referred to in this Modification Proposals and Draft Impact Assessment⁶. We would like these license conditions to clarify precisely how the suppliers must notify their customers when they intend to change prices or make unilateral variations.

The modified standard condition 23 should ensure that notifications of all price increases or unilateral variations must:

- > take the form of a stand alone personal notification by post or email where appropriate
- > be timed to be sent out so that the final customer who receives notification still has 30 calendar day (CD) to react

¹ *Proposed modifications of Standard Licence Condition 23 (SLC 23) of the gas and electricity domestic supply licences: period for notifying unilateral contract variations and other consequential issues*, Ofgem, December 2010

² *Which? response to Ofgem consultation on Supply License Condition 23, October 2010*, *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 *Energy Supply Probe - Initial Findings Report*, Ofgem, October 2008

⁶ see footnote 1, paragraph 1.2



- > clearly inform customers with outstanding debt that they must first pay this off before they may leave their original supplier, what the arrangements for debt repayment are and if they have outstanding debt how they can mitigate the price increase
- > contain clear notice that the customer can only avoid price increases by changing their supplier, not just their tariff, before the changes take effect (as per proposal 5)

Proposals

Proposal 1: Amendment of current SLC 23 such that suppliers provide at least 30 CD advance notice to customers of a price increase or unilateral variation which is to the significant disadvantage of the customer.

Given the precedent set by the financial sector for informing customers of changes to current account overdrafts and by the telecoms sector, we are satisfied that 30 CD 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.

Extent of ‘unilateral variation’ definition

As we have previously stated⁷, 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’⁸.

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 would 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 would also take away the need to produce supplementary guidance on the definition of ‘significant’ reducing confusion for consumers and suppliers and saving Ofgem time and resources.

With regard to variations in price, this should be applicable to all changes that will impact the price that a customer pays, including but not limited to p/kwh rate,

⁷ See footnote 2

⁸ Proposed modifications of Standard Licence Condition 23 (SLC 23) of the gas and electricity domestic supply licences: period for notifying unilateral contract variations and other consequential issues, Appendix 3 Paragraph 23.3 (b) Ofgem, December 2010



block levels, standing charges, and discount and fees applicable to the customers account.

Form of notification

As we have noted in our previous consultation responses⁹, we are concerned about the form that notification will take. Which? recommends that this be in the form of a stand alone, personal communication by post (or email if it is an online tariff customer) so that unilateral variations are always made clear to customers. This would be consistent with the sort of ‘personal notice’ that is required under the financial sector’s ‘Lending Code’¹⁰.

We are aware that this may require suppliers to contact a large number of customers and that there may be a delay between when notifications are first dispatched and the point when all customers concerned have been made aware of price increases or unilateral variations. With this in mind we recommend that the 30 CD minimum advance notification period is timed in relation to when the final customer to be notified receives their personal notice and not before.

Proposal 2: Consequential amendment of sub-paragraph 23.6(a) of the SLC 23 such that customers have 20 Working Days (WD) after the effective date of price increase or unilateral variation to notify suppliers of their intention to switch.

We are disappointed that the regulator has chosen to remove the 20 WD period after the date of a price increase (or other variation) for consumers to notify their suppliers of their intention to switch as this will limit the overall period which consumers have to react to these changes. It is also disappointing that the suppliers who objected to the previous proposal for a 20 WD period on the grounds of cost were unable to provide cost estimates or other relevant data. However, as noted above, we support the 30 CD period that customers will in effect have to switch is sufficient and would welcome clarification as to what steps the regulator will take to monitor the provision of advance notification by suppliers.

Which? supports the regulator’s proposal to work with suppliers, Consumer Focus and switching sites to ensure prices are updated¹¹ and would welcome clarification of what these measures consist of.

⁹ see footnote 2

¹⁰ “if terms and conditions are changed to customers detriment they should be given at least 30 days personal notice (for example, by letter, e-mail, etc) before the change takes effect”

Proposed modifications of Standard Licence Condition 23 (SLC 23) of the gas and electricity domestic supply licences: period for notifying unilateral contract variations and other consequential issues footnote 4, Ofgem, December 2010

¹¹ *Proposed modifications of Standard Licence Condition 23 (SLC 23) of the gas and electricity domestic supply licences: period for notifying unilateral contract variations and other consequential issues* Paragraph 2.23



Supplier guarantee

Consumers should be able to have a genuine choice when switching in response to unilateral changes in their contracts. As such Which? believes that in order to ensure that protection is aligned across existing and new customers, all tariff offerings must be guaranteed for a set period of time and this period be 12 weeks¹². 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 switching¹³ and the recognition that there can be delays in the switching process due to poor practices and errors on the part of the suppliers¹⁴, this is the logical additional protection to give consumers. It is also supported by Which? research showing eight in ten consumers (gas - 83%, electricity - 82%) agree that new tariffs should be fixed for a certain period.

Proposal 3: 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 WD period to pay off outstanding charges from the date the customer receives blocking notice that their current supplier intends to prevent them from changing supplier on grounds of debt.

It is important that customers with outstanding charges to pay are made fully aware in their personal notifications that they may only switch supplier by first paying off these debts and that they are personally identified as being in this situation. Furthermore, it must be made clear that both these processes must happen before the date of the price increase or unilateral variations in order to avoid any resulting costs.

Proposal 5: Clarificatory amendments (including correcting of a reference error) to SLC 23.4 (b), 23.6(a) and SLC 24.3 (c) which relate to clarity about ending the contract and the circumstances when the prohibition on termination fees applies.

Which? supports the clarificatory amendments to ensure that customers are informed of their right to avoid contract variations by switching energy supplier. It is vital that this is communicated to the customer in a clear way within their personal notification.

¹² 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.

¹³ Paragraph 3.3, Energy Supply Probe: Proposed Retails Market Remedies, Consultation, Ofgem, April 2009

¹⁴ Section 5, Supply License Condition 23- period for notifying unilateral contract variations and related matters, Consultation Document, Ofgem, March 2010



Proposed time frame: In addition to proposals 1 to 5 above we also proposed a time frame of one month to implement any final changes to SLC 23 (and other consequential amendments) following final decision on proposed amendments.

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

Which?
January 2011