

ACS Response to Ofgem's Consultation on Strengthening Consumer Protection for Smart Meters

ACS (the Association of Convenience Stores- Annex 1) welcomes the opportunity to respond to this consultation on strengthening consumer protections in preparation for the roll out of smart meters. While the proposals contained in this consultation do not currently cover the non-domestic sector it does seek views from business representatives.

ACS represents over 33,500 convenience retailers, ranging from independent businesses to national companies. While all these businesses recognise the potential benefit in installing smart meters there are also significant operational concerns, particularly relating to remote disconnection and pre-payment. It is a mistake that Ofgem have only consulted on strengthening protection for the domestic sector and this decision must be reviewed urgently. Many retailers experience a problematic relationship with their energy suppliers and it is important that these problems are understood and addressed, otherwise the introduction of smart meters may jeopardise the stability and security of the energy supply in the sector. Ofgem must use their remit to ensure that small business are protected and must assist the Department for Energy and Climate Change (DECC) in exploring how these measures can be transposed so that businesses of all sizes are protected from the potentially damaging smart meter roll out.

Below are ACS' comments on the key issues covered in the consultation:

Remote Disconnection

While there are clear business benefits to smart metering¹, the ability of energy companies to remotely disconnect or to switch businesses to prepayment remains a significant concern. For a convenience store, which relies on energy to power chillers, ovens and till systems even a temporary cut off can threaten the viability of the store. For example, if a retailer cannot keep stock at the legally required temperature due to power failure, it will result in the wastage of their entire chilled stock offer, which could run into thousands of pounds.

Ofgem has argued that businesses do not need licensing conditions to protect them from remote disconnections and that suppliers instead will agree to voluntarily commitments that will ensure rapid reconnection and compensation arrangements in instances of wrongful disconnection. This is simply not good enough. Convenience stores operate on very tight margin and any delay, even if compensated at a later time, could threaten a business' viability. As highlighted in the attached case studies (Annex 2) businesses have already suffered as a result from not being afforded the same protections as domestic consumers and micro-businesses². It is a real possibility that a significant number of businesses could be damaged by wrongful remote disconnection and pre-payment and sufficient licence conditions must be in place to protect them.

Due to the current lack of proposed protections for businesses we do not agree that it is sufficient to retain the current seven day notification period prior to disconnection. The ability

¹ Research by the Carbon Trust shows that on average an SME with a smart meter will reduce energy usage between 5-11%. "Advanced metering for SMEs: Carbon and cost savings", Full Report, Carbon Trust, May 2007

² Ofgem introduced safeguards for micro-businesses in January 2010. However the narrow definition of the term micro-businesses used meant that the majority of businesses in ACS membership, even small independent businesses with one or two stores, were excluded.

to remotely disconnect will place new emphasis on this legislation, as currently suppliers still have to visit and gain access to a premises before carrying out a disconnecting giving retailers the opportunity to delay proceedings if necessary by refusing access. With the possibility of remote disconnection this safeguard will be removed there is a danger that it will lead to a significant increase in wrongful disconnections.

Without the need for a site visit there is also a danger that retailers could be facing disconnection without even being aware of the problem. It must be considered that in companies operating more than one shop it is not realistic that a letter will take under seven days to be processed and acted upon, especially if the communication is being sent to the individual store rather than head office. Smaller retailers could also face problems, for example if they miss the letter through holidays, especially if it is addressed to the manager and staff do not realise its importance. There is also the issue of 'phantom letters', where energy companies claim they have sent letters which the retailer has not received. There is clearly a threat that businesses may be unfairly disconnected under the current proposals which must be addressed.

ACS also has concern that the protections in the Act, which states supply cannot be disconnected when a dispute is in place, will be ineffective in practice. As detailed in the case studies attached, members have had experiences with protracted dealings with energy companies where they have been forced into paying crippling sums through inappropriate threats and pressure. Remote disconnection will make retailers even more powerless. The situation of how businesses can deal with a dispute needs to be examined urgently, perhaps by using Ofgem as mediator who logs any dispute which prevents suppliers from disconnecting the premises until the dispute has been resolved.

We recognise the problems with changing the legislation regarding the seven day period and it may therefore be more sensible to put in place other safeguards, for example mandatory site visits in advance of a disconnection or sending notification letters via recorded delivery, in place instead of amending the Act. As convenience stores have long opening hours, there will not be the issue of the premises not being open to receive letters or site visitors. ACS is keen to talk with Government and Ofgem urgently to discuss effective safeguards that could be introduced to help businesses.

Switching to Pre-Payment

Again we are disappointed that the consultation does not consider extending the protections relating to switching to pre-payment to businesses. We agree with the domestic provisions relating to load and credit limiting and also the provisions relating to identifying a vulnerable consumer and that all these proposed safeguards could and should be transferred to business customers. Convenience stores are often family run businesses, who have no greater resource or knowledge dealing with energy companies than domestic customers, and it is unfair that they are not offered the same protections.

Prepayment, even with innovations such as load lightening and new topping up methods, would be seen as an unnecessary risk for many businesses. The implications of prepayment for convenience stores are not the same as for domestic customers and even for other businesses as the monetary amounts concerned will be significantly higher due to the high level of energy consumption in convenience stores. Therefore issues such as business cash flow at key periods and bank lending facilities must be considered. Prepayment will clearly not be a suitable option for all businesses; therefore the decision to switch to prepayment

should only be allowed after discussions on both sides and agreement it is the right option for the business rather than unilateral, remote action by the energy supplier.

The consultation also seeks views on mandating the ability for consumers to pay for pre-payment meters in cash. It is in the consumer interest to insist that suppliers allow a wide range of options for top-up, so that customers can use a range of methods such as cash or card in-store through e-payment systems. Customers may find this easier than having to call up or go online and this payment option should remain.

Commercial interoperability

We agree that suppliers should have to install smart meters which abide by detailed specifications, to ensure commercial interoperability. Interoperability is an important issue for businesses as it is crucial that both non-domestic and domestic customers can easily switch between energy suppliers. Therefore we do not understand why the licensing conditions relating to interoperability are not extended to all energy customers. Ofgem have previously stated that such measures are not necessary in the non-domestic market, as it is generally more competitive than the domestic market, with companies more willing to switch³. We would suggest this benefit does not always appear at SME level, as these businesses are hard pressed for time and do not necessarily have the in-store expertise. Ofgem has also recently concluded that more needs to be done to promote competition in the non-domestic sector⁴. Therefore it is important that the ability to switch suppliers is retained for business and that while this switching is taking place the meter can still be topped up and used.

ACS is willing to work with Ofgem and DECC to ensure that businesses are protected from the changes in supplies creating by the rollout of smart meters. For further information please contact Jenny Amphlett on 01252 515001 or jenny.amphlett@acs.org.uk

³ Ofgem consultation on the Smart Metering Implementation Programme in the Non-Domestic Sector, October 2010

⁴ See <http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Pages/rmr.aspx>



ANNEX 1- The Association of Convenience Stores

ACS is the trade body representing the interests of over 33,500 convenience stores operating in city centres as well as rural and suburban areas. Members include familiar names such as Martin McColl, Spar and Costcutter, as well as independent stores operating under their own fascia. Our members operate small grocers, off-licence or petrol forecourt shops with between 500 and 3,000 square feet of selling space.

If you need any more information on this submission please contact Jenny Brown on either jenny.brown@acs.org.uk or 01252 515001.

Annex 2- Retailer Case Studies

CASE STUDY A

Despite Retailer A having a record of a manager at Scottish Power accepting his email termination notice to them (shortly after initiating a two year contract - the notice was to terminate on completion i.e. Sept 2009) the company have since effectively refused to accept the validity of the termination. Consequently, he is stuck in a limbo where I am paying a punitive rate of ca 15p kwh for electricity when he could be paying ca 10p kwh if formally released. For his shop the retailer received an invoice for £3,000 which should be more like £750. He has exhausted the complaints process and spoken to the Ofgem at all levels. He is currently taking legal action against Scottish Power in the hope of setting a precedent.

CASE STUDY B

In June 07 Retailer B moved his forecourt site from E.On to Southern Electric. In September he received a call from E.on informing him that they had undercharged him for the previous 4 years and were sending an invoice for approx £20,000. The invoice finally arrived asking for £35,000. He refused to pay and received a number of threatening phone calls warning him of impending Court judgements and that the suppliers were about to "wind up" his business. He has received court papers from Northampton County Court for the £35,000 and £2,500 worth of interest. The retailer feels that someone with less knowledge of the law or English as a second language could well have been intimidated into paying.

CASE STUDY C

Retailer C took over their shop in 2000 and paid energy bills by direct debit to Powergen. In 2005 the received an invoice for £15,000 from NPower, dating back to 2000. NPower produced a contract signed in 1999 by the previous shop owner's father with the supplier Independent Electricity, who had been taken over by NPower. Powergen continued to claim that they were the supplier until after around 12 months pressure they carried out an investigation and found that the meter they were supposedly supplying (although live) was not connected to anything in the shop. Powergen then agreed to refund £8460.00 without interest to the shop owner. Whilst awaiting the promised cheque from Powergen papers were issued by Npower to take a court action for the right to enter the shop-owners premises and disconnect the electricity supply. Retailer C spoke to Npower representatives and arranged that for a payment of £2000.00 as a gesture of 'good will' there would be no application to the court. Despite Npower agreeing to this and cashing the cheque they went ahead with the action on the 22nd March 2007, having stated quite categorically that they would 'hold back' until the Powergen problem had been resolved.

In April 2007 Retailer C, who had not paid because the amount was still in dispute and calculate to be much too high, received a letter stating that NPower had obtained a warrant, and that unless he paid £15,000 he would be disconnected.

On 11 April the shop owner sent a cheque for £10,000 to Npower by registered post. This was received and signed for by Npower at 08:12 a.m on April 12th. At approximately 9.30 a.m on Friday 12th April a team from NPower turned up at the store threatening to cut off the power. Despite acknowledging the receipt of the cheque they stated that a cheque was not acceptable because it would take 10 days to clear. Instead he was forced, under advice from his solicitor, to pay £13,000 on the spot by credit card to ensure that he would not lose his power supply. In addition to this NPower, through Power Debt, are claimed another £19,000,

plus interest and costs amounting to a total of £25, 000. Retailer C's solicitor advised that the risk to his company of allowing the case to go to court and so he settled the case by paying £18'000 to Npower and £5000 to his solicitor from his companies reserves.

The mistake was between Powergen and NPower and yet it is the shop owner who has had to spend significant time and stress, not to mention the financial cost, of dealing with the problem. At one point they had a man with a large badge on his lapel which read Bailiff, parading around their premises among their customers. On another occasion a letter containing a threat to bankrupt Retailer C and close down their business was handed to a supervisor at the premises. The letter was not in an envelope nor was it folded in a manner to hide its content. The supervisor in question left shortly afterward looking for a 'safer' position

The result of this ongoing story is that Retailer C was unable to carry out plans for a refit to their stores at that time and had to put on hold plans to expand their business.