

12 August 2011

Dear Sarah Harrison

Smart Metering Consumer Protections Package – Statutory Consultation

Consumer Focus welcomes the opportunity to respond to this Statutory Consultation on consumer protections. Our full views are outlined in our response to the Ofgem Smart Metering Spring Package¹, our response to the Smart Metering Summer Prospectus Consumer Protections Response², and the detailed minutes of the Ofgem workshop on remote functionality of 5 April 2011. The letter below therefore only highlights areas where we believe that the Package needs further strengthening, or where we have comments to make on new proposals.

Overview

We are generally supportive of the suggested changes, which should help safeguard customers, especially the most vulnerable, from suppliers' ability to remotely disconnect and switch them to prepayment. As you are aware we have long campaigned for these protections and are pleased that they are now close to implementation. While we continue to push for the strengthening of the licence condition on load limiting, the proposal to review the position on this in 12 months' time and to monitor developments closely in the interim is especially welcome. As is the commitment achieved from the big suppliers to discuss any plans with Consumer Focus and Ofgem before new offers are introduced. We hope the proposed review of load limiting is also extended to include credit limiting and other smart-related offers if these are not picked up as part of the Retail Market Review. We also urge Ofgem to seek a similar commitment from small suppliers as they have from the big six in terms of advance notice of use of this functionality. We seek reassurances, that if changes are not made now, as part of the current legislative amendments that they can still be made in a timely way in the future if needed.

Many micro-businesses, such as the corner shop, the local publican or High Street hairdresser face similar challenges to domestic customers when engaging with the energy market and companies. The impact of disconnection on their business and the detriment suffered by those living in connected properties can be devastating. We therefore particularly welcome Ofgem's commitment to further consider protections in the non-domestic sector. We look forward to working with the regulator in this regard.

We are strongly supportive of the new explicit statement in the Guidance that 'Ofgem will take compliance very seriously and is likely to consider enforcement action to be a proportionate response to a single case of breach'. But one key area where we urge Ofgem to consider further amendments is on the provision of information to customers and Guidance on post installation of Prepayment Meter. Our views on that are outlined below.

Interoperability

Consumer Focus fully supports Ofgem's commitment to ensure that consumers' right to switch continues to be upheld. We urge the regulator to consider not only the compatibility of

¹ <http://bit.ly/nGyPyi> (PDF 539KB)

² <http://bit.ly/pSigl3> (PDF 1.3MB)

the smart meters but interoperability in the broadest sense. If consumers have to change any part of their smart metering system – whether it is their meter, communications or in-home display (IHD) – when they switch supplier or move home, this could result in detriment. Issues include: increased customer inconvenience; higher costs³ to the consumer; loss of income if people have to take time off work for an installation visit⁴; increased environmental waste; as well as barriers to switching and competition.

We recognise the complexities involved in ensuring the interoperability of meters, displays and other appliances, especially those that are linked to the Home Area Network, particularly given the selected roll-out model and technological challenges. Consumer Focus fully supports the requirement that before customers have a smart meter installed, suppliers clearly explain that it does not affect their right to switch supplier and make clear any issues that the customer may face in attempting to switch. Suppliers should also be required to make clear to the customer, prior to selling them any kind of display or smart appliance, that the device may not work or have full functionality if the customer moves home or switches supplier. We urge Ofgem to embed this within the Supplier Installation Code of Practice to ensure compliance. This commitment should also apply equally to small businesses and to domestic customers. We strongly encourage Ofgem to carry out further work on interoperability issues in the non-domestic sector.

Disconnection/switching in error

Consumer Focus agrees that where a customer has been disconnected in error, suppliers should act swiftly to reconnect the customer and provide financial compensation. But we question whether the £50 minimum compensation will act as an adequate incentive for suppliers to get it right first time. This sum falls well short of what we would expect given the potential risks to householders and likely inconvenience caused. It seems disproportionate given the standard minimum £250 for switching fraud included in the EnergySure Code which arguably results in less detriment.

We appreciate that £50 is a proposed minimum that allows a higher amount to be paid, ‘appropriate to the circumstances of the case in practice’. However, in our experience consumers (in particular vulnerable consumers) are not always confident and equipped to negotiate adequate compensation, and do not take the opportunity to, or realise that they can, challenge their supplier. This is particularly the case for voluntary codes. We welcome therefore your decision to monitor this and hope you will influence the Energy Retail Association (ERA) to review this compensation level in the future.

We urge Ofgem to also require suppliers to provide rapid reconnection and compensation for small businesses, when disconnected in error. Compensation levels should reflect any financial loss as well as inconvenience to the company. We would therefore expect in most instances a substantially higher sum than that proposed for domestic customers.

Consumer Focus supports the work being carried out to ensure that small energy suppliers adopt a similar approach to that of the ‘big six’ energy companies in this regard. We seek

³ This could be as result of the customer having to pay for new compatible equipment, the cost of stranded assets passed on via bills, or lack of competitive pressure on pricing for example

⁴ According the [UK Cost of Waiting Survey](#) (PDF 4.72MB), waiting in for the meter man results in loss of earnings, disproportionately impacting those on low incomes who are paid by the hour. This results in days taken off sick – a cost to the economy, and inconvenience and annoyance for customers

clarity on a timescale for changes which is no later than the implementation of the Spring Package. If suppliers fail to do this the regulator should include it within the standard licence conditions.

Consumer Focus believes that this requirement for compensation should also apply to customers switched to prepayment in error. There are occasionally cases of PPMs being incorrectly installed on the wrong account eg if the meters are in a communal hallway, crossed meters, etc. We are also aware that there are problems with poor quality metering data held on the central systems eg crossed meters, non-existent meters registered to addresses, details not updated after house or flat conversions and so on.

The smart meter rollout will need to ensure that the metering databases are thoroughly cleansed and updated. Otherwise there could be an increase in cases where the wrong customer account is switched to pre-pay. At present, the installation of a prepayment meter (PPM) acts as an additional check to ensure the meters are going on the right account.

Where the customer is switched to prepayment in error, suppliers must commit to switching the customer back as soon as the technology and any necessary safety checks allow. Customers should be offered a standard sum to compensate them for the inconvenience, which would also act as a financial incentive on suppliers to ensure they have robust controls in place. This is an important safeguard and we would welcome Ofgem's view on this. This could be provided as a credit on the customer's account after their account has been switched back to credit.

Minimum definition of vulnerability

We continue to push for a minimum definition for vulnerability. Throughout the Ofgem and Consumer Focus review of vulnerable consumer disconnection in 2009⁵ we raised a number of concerns about the ERA Safety Net, the self-regulatory framework currently in place to protect vulnerable consumers from disconnection. Most notable was the issue of disparity in the way that energy suppliers define 'child' in a vulnerable household. This currently ranges from one supplier defining a child as under five years old and in a financially insecure household as vulnerable, to another supplier defining a child as under 18 years old, with or without financial insecurity as a contributing factor. While we are aware of the difficulties that the energy industry faces in agreeing a minimum definition, this disparity erodes the protections that the protections framework seeks to guarantee, and could potentially lead to damaging or dangerous consequences.

Furthermore, only the big six suppliers are currently members of the voluntary ERA Safety Net. The 10 small suppliers currently operating in the domestic market therefore sit outside these limited self-regulatory protections. This is unacceptable.

Consumer Focus continues to advocate for all children to be protected, not least to meet the requirements of international legal standards regarding the welfare of children. Ofgem should consider including this in its licence condition given the failure for this to be addressed voluntarily. It is our view that, as an absolute minimum, all families on means-tested or disability benefits with children under 16 years old (plus all families with children under 12), must fall within the safety net definition.

⁵ <http://bit.ly/dP5Za2>

Proposals – Standard Licence Condition (SLC) amendments

As noted, we are generally supportive of the proposed licence condition amendments but make the following further recommendations and comments.

Information about Prepayment Meters – SLC 28.1

We seek clarity that the advantages and disadvantages of a PPM are still explained *prior to* the installation, not just when it's being installed as the current wording appears to allow. It's important that the customer is still able to make an informed choice as to whether or not they want to use that payment method prior to the switch.

Consumer Focus's PPM research revealed that customers felt there was a marked lack of formal instruction or information from energy suppliers about how to manage or operate PPMs⁶. Most participants, including those who had themselves requested that a meter be installed claimed not to have seen written instructions telling them how to use and operate their meter. We suggest therefore that the following amendment be made to address these issues:

- after 'provide', insert, 'prior to, upon, and **post installation of that meter when requested**'
- After paragraph (a) insert: '(aa) information, **via at least two different media**, relating to the operation of the prepayment meter, including, information about the process for, and methods by which, the Domestic Customer can pay in advance through the Prepayment Meter'

Both written and hard copy communications are important to ensure that the information has been received and is understood. Our recent billing research also found that PPM consumers were the most disengaged from their bills and annual statements and the least likely customer group to want more information in this format⁷.

We urge Ofgem to also consider Guidance on communications. Our research suggested that in addition to the mandated information provided, the following would be of use:

- Details of the change in payment method, in particular the date and time that the meter will be switched to pre-pay. This is especially important with remote functionality
- Confirmation of the reason for the switch to pre-pay eg customer request, debt repayment. Consideration should be given to whether the customer should be required to provide written consent. This confirmation is to avoid confusion and enable redress where the customer feels they were told they had to switch
- Where applicable, the customer's right to change their mind and switch to other payment methods without penalty. If the decision to switch follows contact with the supplier, written materials enable the customer and other household members to reflect on the decision. This is particularly useful in the case of unsolicited approaches. Anecdotal reports suggest that at least one supplier will be seeking to encourage high-debt risk customers onto pre-pay during the smart meter installation visit so this would provide a safeguard
- The name and details of the tariff that the consumer will be on, and any changes in terms or cost. Consumer Focus's qualitative research found that most consumers

⁶ *Cutting back, cutting down, cutting off – Self disconnection among prepayment meter users*
<http://consumerfocus.org.uk/g/4lx> (PDF 877KB)

⁷ *Missing the mark – Consumers, energy bills, annual statements and behaviour change*
<http://bit.ly/nkypti>

did not realise their supplier offered different tariffs and assumed they would be on the cheapest tariff for their payment method

- A contact telephone number for independent advice on energy efficiency and how to cut their energy bills. These telephone numbers should be free for all consumers, from both landlines and mobile phones
- How to operate the meter and where applicable the IHD so that the customer can effectively use prepayment. This should include:
 - How to safely re-enable supply
 - Information about the process for, and methods by which, they can top-up, including closest top-up points
 - Where available the amount and availability of emergency and friendly credit and how this works
 - A supplier telephone number for further information and advice

In the case of customers in financial difficulty this should also include:

- Agreement of any arrangements to manage the outstanding bill including the amount of debt outstanding, the rate of repayment and details of when the debt is deducted. There should also be information about how arrears are collected. Our in-depth interviews found that awareness of the outstanding amount and date by when the debt would be cleared was very low. Not one of the qualitative research participants recalled receiving correspondence to tell them how much of their debt they had repaid or when they were scheduled to clear it
- Information about the debt assignment protocol

Given the existing information gap identified in our research, it is important that suppliers use the smart meter installation visits to explain to customers how to use their IHD and smart meter to maximise the customer's prepayment experience. We urge Ofgem to ensure that this is picked up as part of the smart meter supplier installation code of practice.

More work is also needed by suppliers on customer engagement strategies. It is important that energy companies consider how they can improve their communications with this consumer group in particular. This should include exploration of messages on top-up receipts, keys or equivalent, and postcards.

Safety and reasonable practicability of Prepayment Meters – SLC 28.1A

As previously noted, we strongly support this amendment and it is something we have long pushed for. However, we seek clarity as to where the cost will fall of making prepayment safe and practicable eg the cost of hardwiring a display, adding a separate key pad or moving the meter to an accessible location.

In the case of those struggling to pay their energy bills it would be particularly unacceptable for this cost to be borne by the individual customer as it could potentially push them into debt and add to their hardship. Any charge, particularly an up-front fee, may also discourage people from allowing the supplier to address the problem, potentially putting their health in danger if they are reliant on a supply of energy to stay well. This needs to be reflected somewhere in the protections.

Load limiting – SLC 27.9A

We welcome the proposed licence condition 27.9 A and its aim to ensure that load limiting doesn't result in disconnection by the back door. However, establishing what is 'significantly

constrained' is fraught with difficulties as what is considered an essential supply of energy will vary depending on: household size; property type; heating type eg whether or not they use electricity for heating; appliance use and efficiency eg gas or electric heating; the climate in the area where they live; the health of household members; and the energy efficiency of their home.

Guidance is needed to provide clarity on what constitutes an energy supply to a domestic premises being 'significantly constrained'. A working definition is needed in order to enforce this proposed licence condition amendment and protect customers. We struggle to see how this licence condition can be effective without some way of agreeing and measuring compliance. We recommend that Ofgem work with industry and consumer groups to address this and agree a matrix of definitions taking various factors into account.

As noted we very much welcome that the six big suppliers have provided a commitment that they will discuss their plans with Ofgem and Consumer Focus ahead of using load limiting. We hope that the small energy suppliers will make a similar pledge. We also strongly support Ofgem's decision to review their position concerning load limiting, in conjunction with consumer groups in 12 months' time. These are useful safeguards. However, we seek assurances that if changes are not made now, that any necessary amendments can still be made in a timely way if issues arise. At least one supplier has indicated that they are considering load limiting and credit limiting as debt management tools, and we are concerned about the implications of this for consumers. In particular, it is essential to ensure that load limiting does not result in the weakening of the winter moratorium as it effectively allows for vulnerable customers to have their electricity flow constrained during the coldest months of the year.

Customers must have the choice of whether they want a load limiting tariff – they should not be forced onto this, even for non-payment of debt. They should be able to move away from this type of tariff without facing penalties. We therefore continue to urge Ofgem to adopt an additional amendment, even at this initial stage: After 27.9A For the purposes of conditions 27.9, 27.10, 27.11 and 27.11A, Disconnection includes:

Load limiting where:

- (i) The supply to the Domestic Premises is significantly constrained; or
- (ii) *The supply to the Domestic Premises is **constrained as the Domestic Customer has not paid Charges for the Supply of Electricity and the household contains someone of Pensionable Age living alone, disabled, chronically sick or has children under 18**; and*
- (iii) *The Domestic Customer does not pay Charges for the Supply of Electricity by using a Prepayment Meter or, where the Domestic Customer pays using a Prepayment Meter, that meter remains for the time being in credit*

As a next step we also urge the Regulator to consider the following:

- How will consumers will be clearly informed about the implications of signing up to this kind of deal – the advantages and disadvantages? Eg how do we ensure they understand that in the busy morning rush to get ready for work and school, not all appliances would be able to be on all the time. This will needed to be communicated to customers in a meaningful way, not kWh but in terms of number of appliances that might work, and verbally not just hidden in the contract. It should

be noted that Consumer Focus research (March 2010) found that only 26 per cent of people have read in full their energy terms and conditions⁸

- How will customers be warned that they are close to their load limit – via their display or the meter? Will this be an audible signal or a visual one? Will this functionality be included in the minimum specifications for the IHD – if not will these customers require a specially designed IHD. If the customer does not get the signal, who is responsible – the display manufacturer or the supplier where the display was not provided by the energy company? Where does the customer go to complain if they purchased the IHD from a High Street shop – the Office of Fair Trading, Ofgem, Ofcom? Roles and responsibilities need to be clear before these tariffs are introduced
- The social monitoring statistics should also report on use of load limiting, if it is allowed to be used as a debt management tool
- What happens if the customer tries to use more appliances than they have electricity flow to support them? As we understand it, the supply will effectively trip. The customer will then have to re-enable supply. If this re-enablement needs to be done at the meter, then safe and reasonably practicable conditions, regarding the location and accessibility of the meter, will need to apply and the SLCs and guidance will need to be updated accordingly

Appendix 2: Draft guidance – Prepayment only where safe and reasonably practicable

- Guidance should explicitly state that it applies to all cases where a smart meter is installed – not just customers struggling to pay or where the supplier becomes aware the meter is no longer safe and reasonably practicable for the customer to use
- We strongly support that technical innovations addressing what is safe and reasonably practicable should only be adopted ‘where the suppliers are confident that the solution will enable them to provide a supply to the customer at all times’. This is critical. However we feel the example of the IHD unit where it may be considered safe and reasonably practicable to switch a customer, is inappropriate and should be removed from the guidance. Wireless displays cannot yet be relied upon as a mechanism to top-up or re-enable supply at all times, so this may cause confusion. Customers will still need full access to their smart meter to enable them to top-up at the meter
- Any cost incurred with making the meter ‘safe and practicable’ should not be borne by the individual consumer where ‘the supplier is aware or has reason to believe that the customer is having or will have difficulty paying all or part of the charges for their energy supply’. Protections should be updated so this includes not only moving the meter, but the installation of a key pad or hardwiring the display
- Ofgem’s ‘Key Principles of Ability to Pay’ – should feature somewhere in the guidance⁹. The findings of the 2010 Ofgem and Consumer Focus review of

⁸ This stretches from 20 per cent for 18–24s to 35 per cent of 55–64s. Those in social groups DE said they were most likely to read the terms and conditions; 30 per cent versus C1 23 per cent and AB 25 per cent

⁹ Ofgem published a number of key principles that suppliers need to take into account in considering a customer’s ability to pay when setting debt repayment amounts. The principles are published in Appendix 1 of Ofgem’s *Review of Supplier’s approaches to debt management and prevention*, available at the following link: <http://bit.ly/dVWk2z>

suppliers' approaches to debt management and prevention¹⁰ highlighted concerns about incentives on staff (both field and telephone). These incentives may encourage staff to place undue emphasis on securing agreement to amounts aimed at meeting debt recovery targets rather than achieving an appropriate outcome for the customer.

- In addition the guidance on identification circumstances should also include:
 - That suppliers should have regard to best practice on vulnerability checklists
 - Suppliers should also proactively seek to ensure that prepayment is still safe and practicable for the customer eg during any home visit, whether to install or check a meter, or to install energy efficiency measures
 - Guidance should specify that a home visit in itself should not be deemed sufficient to comply with this licence condition. This is particularly important as on page 1 of this consultation it states 'Our guidance makes it clear that we would expect suppliers to have made every attempt to make personal contact with the customer, **or** have conducted a site visit, before they remotely switch that customer to prepayment mode or disconnect them.'
- In terms of post installation guidance:
 - We strongly believe this section needs strengthening. In the confidential reports that Consumer Focus provided to each of the big six suppliers following the review of their vulnerable disconnection processes, we set out our concerns about the existing post-disconnection process, which vary greatly across suppliers. It is unacceptable that so many vulnerable consumers were seeking assistance from Consumer Focus following disconnection. Establishing a household's vulnerability and reconnecting vulnerable households to their energy supply must not be dependent upon the intervention of a third party. During the course of the review Consumer Focus learnt that all suppliers leave contact details in the property following disconnection, and five suppliers then follow this up by attempting to make contact, while one supplier relies solely on the customer making contact to discuss reconnection. We recommend that the guidance include the following post disconnection action:
 - Suppliers are required to attempt to make contact with customers, not least to ensure that a vulnerable customer has not been disconnected in error
 - It is also important that staff in the teams that are responsible for reconnections are trained to identify vulnerability (and escalate the reconnection appropriately) and also empowered to consider waiving certain fees and charges. Consumer Focus recommended that all suppliers build flexibility into how they apply reconnection charges and how these are collected
 - Once a consumer has been disconnected it is vital that all suppliers are required to leave an information pack at the property setting out clearly

¹⁰ <http://bit.ly/g51kal>

the reason for disconnection and how the consumer can get back on supply. Through the review of vulnerable disconnections, we found that the best supplier's system holds all disconnected accounts in a dedicated disconnected accounts router, ensuring they are given priority and are easily identified. This is controlled by a dedicated team and is an example of industry best practice. Furthermore, some suppliers endeavour to contact the customer within 24 hours of disconnecting them. This we strongly support and should be included within the guidance

- We strongly support that where the customer is not topping-up regularly or top-ups are very low that the supplier should make multiple attempts to contact the customer by various means and at various times of day to understand this. However the Spring Package states in paragraph 2.40 that 'we will be encouraging suppliers to continue monitoring persistent cases of self disconnection. We will call upon them to offer tailored help to these customers including emergency and friendly credit and considering whether these customers may qualify for extra help with their fuel bills, such as social tariff or rebate'. We would urge Ofgem to reflect this approach in the guidance. Where a customer is identified as in financial difficulties, in addition to offering alternative payment options, such as Fuel Direct, Consumer Focus propose that suppliers also consider their eligibility for their own company's social and environmental programmes where available eg the supplier obligation, social tariffs etc and independent advice on other support available
- In Tasmania, for example, suppliers are required to contact customers who self-disconnect three or more times for at least 240 minutes on each occasion, in a three month period. They have to offer these customers advice on alternative payment options, provide advice on government assistance schemes, and (where the customer has consented) make referrals to the scheme¹¹. We support this kind of approach
- Ofgem should consider what additional information should be collected as part of the social monitoring statistics to facilitate this

Appendix 3: Draft Guidance – Identifying the status of customers prior to disconnection

The Guidance should also specify that:

- suppliers should have regard to best practice on vulnerability checklists from the statutory energy watchdog or Ofgem. This has been removed completely from the original Guidance and we recommend that it is reinserted
- suppliers should proactively seek to ensure that prepayment is still safe and practicable for the customer at every opportunity. Especially for example, during any home visit, whether to install or check a meter or to install energy efficiency measures
- a home visit in itself should not be deemed sufficient to comply with this licence condition. This is particularly important as on page 1 of this consultation it states

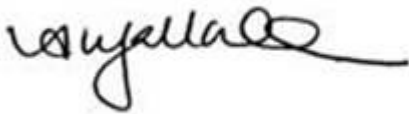
¹¹ www.economicregulator.tas.gov.uk. Cited in Smart Pre-pay in Great Britain. March 2010. P.21 Sustainability First. Gill Owen and Judith Ward. This research was part-funded by Consumer Focus. <http://bit.ly/dzwEeM>

'Our guidance makes it clear that we would expect suppliers to have made every attempt to make personal contact with the customer, **or** have conducted a site visit, before they remotely switch that customer to prepayment mode or disconnect them.'

- disconnections should be carried out by staff who have been trained to identify and support vulnerable customers

We look forward to discussing these issues with you further, and continuing our joint work in this area.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Audrey Gallacher', with a long horizontal flourish extending to the right.

Audrey Gallacher
Director of Energy, Consumer Focus