



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to Ofgem consultation on tackling theft of gas: draft impact assessment

October 2011

About Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers, and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to consumers' lives.

Question 1: Do you agree with our proposals to introduce new gas supply licence obligations in relation to theft?

Consumer Focus supports Ofgem's proposals to introduce an overarching objective via a new licence condition ('the Objective') which will require suppliers to detect, prevent and investigate theft of gas. We welcome the inclusion of damage to meters as well as theft, however it is important that consumers who have any unrecorded supply or safety concerns caused by accidental damage are treated fairly on a case by case basis as this is a different situation to wilful tampering and intent to steal gas.

In relation to *detecting* the theft of gas, the rollout of smart meters presents a unique opportunity to check/see every meter in Great Britain as they are changed for smart meters. The proposals for a co-ordinated approach to identifying and managing gas theft include options for a central database and it is essential that Ofgem and DECC co-ordinate this to ensure that data is not duplicated between the Data Communications Company (DCC) and any potential gas theft database. Furthermore, Consumer Focus considers it crucial that in the future smart meter data is not used in isolation to try and identify theft based solely on an increased level of consumption. A change in consumption can be triggered by any number of things (new appliances, extra people in the house or a change in circumstances which result in the use of more energy eg redundancy, pregnancy etc). Where a supplier is concerned about an abnormal increase in consumption it is vital that there are expectations about the way in which that supplier communicates with the consumer to establish the cause of the increased consumption.

Consumer Focus supports Ofgem's intention to place an obligation on gas suppliers to co-operate in the delivery of the new arrangements to increase theft detection. In our view, an increase in theft detection will be beneficial to consumers and to the market as a whole, but we agree that it may not be commercially desirable for any one individual supplier, as illustrated by the lack of progress historically. It is important that suppliers work together to identify improvements to prevention, detection and investigation. Consumer Focus is strongly of the opinion that the industry and individual suppliers should not be seeking to make excessive profits from any activity taken to detect, prevent or investigate the theft of gas. While we understand that there will be incentives and some profit will be made, it is imperative that any costs or charges placed on consumers are proportionate and reflective of the costs that suppliers and the industry are faced with.

Consumer Focus agrees with Ofgem's consideration that a duty to 'prevent' has two connotations, that the supplier should stop the theft from continuing to occur once it has been identified and secondly that the supplier should seek to prevent the customer from undertaking the theft. It is also important that in this context that a minimum baseline for the 'reasonable steps to prevention' is agreed by suppliers in order to ensure that that it is possible to measure/monitor suppliers achievement of this Objective. Further to this, it is almost inevitable that new smart meter technology will also lead to new mechanisms for theft – via the HAN or the WAN. It is important that any regulatory framework is capable of responding to the changing and dynamic nature of gas theft.

Question 2: Do you agree that our drafting proposals set out in Appendix 3 meet the policy intent described in this chapter?

Consumer Focus agrees that the drafting for the licence condition is appropriate and meets the policy intent as set out in the consultation document.

Consumer Focus welcomes the synergies that the consultation identifies between detecting/preventing/investigating theft and the current protections for consumers, in particular vulnerable consumers. It is important that any accompanying guidance makes links to, and is consistent with, existing regulatory guidance in relation to debt and disconnection – specifically the key principles on ability to pay and any smart meter guidance on remote switching from credit to prepay/remote disconnection. It is also vital that suppliers apply other self regulatory mechanisms, in particular the Energy Retail Association (ERA) safety net in relation to vulnerable consumers.

Question 3: Do you consider that our proposal for gas suppliers to make reasonable efforts not to disconnect vulnerable customers should apply throughout the year or be restricted to the winter months?

Consumer Focus supports the approach taken in the consultation document which aims to ensure consistency with Ofgem's recent proposals on disconnections in relation to smart meters and with existing licence conditions to prevent the disconnection of vulnerable consumers in the winter months. We also strongly support the proposals to require suppliers to take all reasonable steps to identify whether there is any vulnerability in the household before considering whether to disconnect a customer on the grounds of theft.

Experience from the Consumer Focus Extra Help Unit (EHU) has led to a majority of suppliers implementing a policy whereby vulnerable consumers who have been disconnected for a first offence of meter tampering are reconnected. We encourage all suppliers to consider adopting such a policy which aims to give vulnerable consumers impacted by (and in many cases not responsible for) meter tampering the possibility of energy supply for heating and cooking.

Case study from the Consumer Focus Extra Help Unit

In January 2009, the EHU identified a worrying increase in the number of vulnerable consumers disconnected by one particular supplier for meter tampering (theft of gas/electricity). We do not condone or encourage the theft of energy, although we recognise that consumers can be driven to it out of sheer desperation. Meter tampering is a serious offence, with safety implications and potentially dangerous consequences.

This supplier was charging vulnerable consumers over £640 for reconnection, plus any charges for damage and/or unpaid energy use. These charges had been applied regardless of whether the consumers were responsible for the tampering (eg new tenants moving into property that had been tampered with by previous tenants, people with young children who hadn't realised their meter had been tampered, landlords who have had tenants who tampered).

Consumer Focus raised the issue with the supplier at the time, and spoke to the UK Revenue Protection Agency. We also made an information request to all suppliers asking for details of their revenue protection policies including the level of charges – the results demonstrated that the suppliers' policies and charges appeared to be out of step with its competitors. A referral was then made to Ofgem and we took steps to encourage the company to amend its policy, which it did in May 2009, agreeing that it will no longer disconnect vulnerable consumers for meter tampering if it is a first time offence

Question 4: Do you consider that gas suppliers should be required to offer vulnerable customers and customers that would have genuine difficulty paying, a wide range of methods for the repayment of charges associated with gas theft as an alternative to disconnection?

Ofgem's proposals would require suppliers to offer to recover any charges associated with the gas theft via a prepayment meter, unless it is not safe or reasonably practicable in all of the circumstances to do so. Consumer Focus also recommends that the regulator places a requirement on gas suppliers to offer customers a wide range of options for the repayment of debt/charges accrued as a result of theft. This approach will be consistent with SLC 27.8 which requires suppliers to take account of a customers' ability to pay when agreeing a repayment rate. Agreeing an affordable repayment rate can help to ensure that suppliers are able to recoup their costs as the consumer is able to afford to meet the regular repayment amount. Setting repayment rates and agreeing that charges can be paid back at an affordable rate for consumers is also crucial as it can avoid self disconnection and the potential harm that can cause.

Consumer Focus agrees that in some circumstances, for example where a vulnerable customer repeatedly tampers with their gas supply and puts themselves or others in danger, then disconnection may be an appropriate response. However it is vital that if a supplier is aware of any vulnerability in a household that has been disconnected that supplier notifies the relevant authorities (eg social security or any local charity partners). We support the suggestion made by Ofgem that the suppliers work together to set out common rules in the code of practice for tackling these situations. Consumer Focus will work with the suppliers to develop such a code.

Question 5: Do you consider that Ofgem should include a licence requirement on all suppliers to establish a code of practice on, among other things, theft investigations and the detailed arrangements for compliance with our proposed consumer protection measures?

Consumer Focus recommends that Ofgem places a licence requirement on all suppliers to establish a code of practice on a minimum common approach for the conduct of investigations and the measures that suppliers would undertake to meet the proposed new licence obligations on customer treatment. It is our view that such a code should apply to both domestic and non domestic consumers. The implementation of a code can establish a baseline and encourage suppliers to go 'above and beyond' it to achieve higher standards where appropriate.

The three options set out in the impact assessment all support the introduction of a code, and Consumer Focus has provided comments on the proposed code of practice that is currently being developed under the Supply Point Administration Agreement (SPAA) arrangements. We recognise that because of this Ofgem is not proposing to introduce a licence condition on suppliers to establish a code and will revisit the option if a code is not forthcoming via the SPAA group. While Consumer Focus understands Ofgem's reluctance to be prescriptive, we consider it essential that the implementation of any such code receives relevant scrutiny which a licence condition can provide in a way that self regulation cannot.

We support Ofgem's view that the issues around theft are likely to be similar across both gas and electricity markets and the intention to align any enhancements to customer protections on gas and electricity where necessary, once the broader proposals for reform in the electricity market are clearer.

Question 6: Do you agree that our proposed new gas supply licence should be introduced as soon as reasonably practical?

Consumer Focus agrees that the new gas supply licence should be introduced as soon as reasonably practical. It is essential however that any developments, particularly in relation to using consumption data to detect theft, are continuously monitored and updated in relation to smart meter data.

Consumer Focus warmly welcomes the proposed new licence condition to ensure that customers are informed about: who is undertaking the investigation and why; on what basis a supplier considers that an offence has been undertaken; the basis of any assessment of charges made by the supplier; what the customer could do to reinstate their supply following any disconnection; and how to challenge the supplier's decision. We recommend that Ofgem also requires suppliers to give consumers information about any sources of independent advice and support, including the first tier energy consumer support which is at present delivered by Consumer Direct.

We welcome the acknowledgment in the consultation that there can be significant consequences for a customer if their supplier incorrectly considers that theft has occurred. It is imperative that the licence obligations and guidance place a responsibility on suppliers to ensure that they have sufficient evidence to establish that theft has occurred before disconnecting the customer or seeking to recover any charges associated with the offence. Furthermore, that evidence and the rationale must be clearly communicated and understood by the consumer.

Question 7: Have we correctly assessed the main impacts in the accompanying IA? Are there additional, material impacts that we should also consider?

The Impact assessment is comprehensive.

Consumer Focus is conscious that the qualitative analysis carried out by Ofgem indicates that under the National Revenue Protection Service (NRPS) proposal, there may be an incentive to under-record theft if the costs of finding theft outweigh the costs of investigating but not finding theft. The analysis also considers that Supplier Energy Theft Scheme (SETS) and Enhanced SETS have considerable commercial drivers and these may lead to overzealous investigations and potential misreporting of theft. The assumption is that these issues will be addressed via the code of practice that will set out standards for theft investigation and establish audit and penalty provisions. We reiterate the point made in our response to question 4 of this consultation, and ask Ofgem to ensure that there are robust mechanisms in place to scrutinise and monitor the code.

The impact assessment notes that both the NRPS and Enhanced SETS proposals would seek to publicise a 24-hour telephone tip-off service. Consumer Focus supports this initiative but is keen to highlight the potential to add to the existing plethora of telephone numbers that consumers can call in relation to energy supply, as highlighted in our recent report '[making the connection](#)'. We recommend that if there is to be any promotion of a hotline it is closely linked to the provider(s) of first tier consumer advice to avoid confusion.

Question 8: Do you agree with the assumptions that we have made and the outcome of our analysis in Appendix 2 of the accompanying IA?

n/a

Question 9: Which, if any, of the three proposals to increase theft detection should be implemented and why?

While Consumer Focus does not have a preference for any of the three proposals, it is imperative that the model that is implemented does not seek to make any excess profit from the activities it undertakes to detect and investigate theft. Charges placed on the consumer must be proportionate to the costs that suppliers face. Furthermore it is vital that there are protections in place to enable consumers to repay debts/charges at an affordable rate, and that vulnerability is considered before leaving consumers off supply.

Question 10: Do you consider that there are any alternative proposals, or variations on existing proposals to improve theft detection that should be considered?

n/a



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