



Consumer Focus response to Ofgem consultation: Supply License Condition 23 – Period for notifying unilateral contract variations and related matters

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.

Our response

Consumer Focus welcomes the opportunity to respond to this consultation. Our response is non-confidential and we are happy for it to be published on the Ofgem website.

Consumer Focus was disappointed that, as part of its proposed retail market remedies, Ofgem chose to retain the 65 day rule, despite a strong message from us and fellow consumer organisations¹ that this would result in detriment to consumers. We have raised concerns about the 65 day notice period in three separate submissions², and it is therefore welcome that Ofgem is finally reconsidering this requirement.

Ofgem confirmed in its consultation document that energy suppliers have been consistently notifying consumers of price increases and other variations in contract terms towards the end of the 65 day period, rather than using it as a backstop. This is causing financial detriment to consumers, and damaging consumer trust in energy suppliers. A change to the licence condition will bring real positive benefits to the way consumers interact with the energy market, as well as improving consumer confidence.

The urgent need to change the way consumers are notified about price increases and other changes to contract terms was also acknowledged by Parliament in its recent amendments to the Energy Bill. Under the Energy Act 2010, the Secretary of State will have new powers to modify supply licences in relation to giving notice of unilateral changes to domestic supply contracts, including for price changes.

Below we set out Consumer Focus's response to the specific questions in the consultation, and present our recommendations on how information about price changes and other unilateral changes to contract terms should be communicated to consumers.

¹ Consumer Focus, Which? and Bristol Trading Standards raised concerns about adverse unilateral variation of contract terms in their response to the Ofgem Probe

² Consumer Focus submissions: *Ofgem energy supply market probe – initial findings report consultation*, December 2008; *65 day notice period for unilateral contract variations (Supply License Condition 23)*, March 2009; *Response to Energy Supply Probe – Proposed Retail Market Remedies*, September 2009

Current proposal for changing the 65 working day requirement

4.15 In the circumstances set out above;

- We are currently minded to propose that the 65 working day period for notifying customers of a price increase be amended to require suppliers to provide advance notice of a price increase

Consumer Focus agrees suppliers should be required to provide advance notice of price increases, as it is the most beneficial option for consumers. As noted in our previous submission on the 65 day rule³, we do not think that that advance notification of price increases will place a significant burden on the energy suppliers. We believe that, due to larger energy suppliers' hedging/buying strategies, they will be in a reasonable position to foresee price rises in advance due to the lag between wholesale and retail prices.

It is worth noting that suppliers already announce price decreases ahead of them coming into effect. The time difference between suppliers publically announcing a decrease, and the reduced price being effective can be as much as 53 days⁴ (see Annex 1). Between 22 January and 16 March 2009, the 'Big Six' energy suppliers all reduced their energy prices (for either electricity or gas), giving an average of 37 days advance notification. In contrast, suppliers are much less proactive when informing consumers about price increases. In recent years suppliers have given a maximum of three days' advance notice of price increases, and often no advance notice is given at all (see Annex 1). It is not clear what barriers prevent suppliers announcing price increases well in advance, in the same manner that they do price decreases.

However, suppliers have expressed concerns about the cost of providing advance notification of price increases. It is important that the costs suppliers incur should not be disproportionately passed on to consumers. We therefore call on Ofgem to carry out a full investigation into the cost implications of providing advance notification, as a large increase in costs to suppliers would inevitably be passed on to consumers.

There are a number of clear benefits for the consumer of advance notification of price increases, already stated in our previous response⁵:

- **Consumers can provide accurate meter readings**

If consumers have advance notification of a price increase or change in tariff structure, they are able to take and provide meter readings around the date when the rise becomes effective. This is important for all consumers, not just those who wish to switch, as it allows them to be sure that their next bill accurately reflects the price increase, rather than being just an estimate.

This is particularly important where there has been a run of estimated readings on the account. It ensures consumers pay for energy at the price relevant to when it was consumed, rather than when it is billed.

³ Consumer Focus, *65 day notice period for unilateral contract variations (Supply License Condition 23)*, March 2009

⁴ On 5 February 2009, Scottish and Southern Electric announced a reduction of four per cent in their gas prices, and nine per cent in their electricity prices. The decreases did not come into effect until 30 March 2009 (53 days later)

⁵ Consumer Focus, *65 day notice period for unilateral contract variations (Supply License Condition 23)*, March 2009

While we assume that the roll-out of smart meters will alleviate this type of difficulty for consumers, it is important that in the interim period consumers receive bills that are as accurate as possible.

- **Consumers with an existing debt will not be penalised**

For consumers with an existing debt to a supplier, it is likely to be difficult to switch to another supplier. Delayed notification of the price increase is therefore even more detrimental for this group. Without advance notice, consumers repaying debt are unable to consider decreasing their usage and/or managing their budget to compensate for the higher prices. As a result their debt is likely to increase.

- **Consumers can reduce their usage, or budget for the extra costs**

Customers should be able to end their contract before the price increase comes into effect

We agree that consumers should continue to be able to switch before a price rise is implemented, as per the existing Standard Licence Condition 23.

We are unsure how this would apply to consumers who have a tracker tariff, which is linked to the energy supplier's standard tariff. These consumers benefit from having a tariff that is always lower than the supplier's standard tariff, and pay a penalty if they switch supplier earlier than agreed in their contract. Examples of these tariffs include:

1. Tariff - Npower sign online v18⁶

- Customers are guaranteed a two per cent lower bill than npower's standard cash/cheque bills until 30 June 2011
- £40 cancellation fee (DF) if customers switch before 30 June 2011
- **A price increase may occur if npower increase their standard prices**

2. Tariff - EDF Online saver v6⁷

- Customers receive a minimum two per cent discount on the standard tariff until 30 June 2011
- £50 cancellation fee (DF) if customers switch before 30 June 2011
- **A price increase may occur if EDF increase their standard prices**

3. Tariff – British Gas Websaver 7⁸

- Customers receive a minimum six per cent discount vs. BG standard prices until 1 July 2011
- £60 cancellation fee (DF) if switch before 1 July 2011
- **A price increase may occur if British Gas increase their standard prices**

We are concerned that, as an unintended consequence of this, consumers on tracker tariffs such as those above would not need to pay the penalty if they switch supplier earlier than set out in their contract. We look forward to receiving clarification from Ofgem on this.

⁶ See: http://www.npower.com/web/At_home/electricity_and_gas/Products/signonline/index.htm

⁷ See: http://www2.savetodaysavetomorrow.com/Online_Saver_v6.html

⁸ See: <http://www.britishgas.co.uk/products-and-services/energy/our-products/websaver.html>

We seek views on what period of advance notice a price increase should be given by suppliers to their customers in the event that we were to proceed with our current proposal

Consumer Focus takes a pragmatic approach to this question. As stated above, the period of advance notice given should be as long as is reasonably possible, without incurring excessive costs for the supplier or the consumer.

If, following an independent cost investigation, the genuine costs of advance price notification that would be passed on to consumers are found to be unreasonably high, the latest possible notice that we could accept for delayed notification would be 10 days (returning to the notification period given in SLC 44).

5.3 (SLC 23 - supplier notice to transfer within 15 working days)

Ofgem proposes amending this requirement;

- We welcome views on how the licence requirement could be amended to protect customers from the consequences of the chosen suppliers' failure to act and request a transfer within 15 working days.

Consumer Focus supports the concerns highlighted by Ofgem's Consumer First Panel⁹ about this issue. Participants of the Panel were concerned that if, for whatever reason, the old supplier did not pass on their details to the new supplier within 15 working days, consumers would have to pay the increased price, through no fault of their own.

To our mind, there are two potential solutions to protect consumers from this possibility. It is clear that the solution adopted will depend on the feasibility for energy suppliers.

The first possibility is for Ofgem to request that, during switching, the new supplier requests a transfer from the old supplier within 15 days, in the spirit of the ERA's 'Peace of Mind' guarantee¹⁰. It should be the responsibility of the new supplier to prove the date at which the consumer requested to switch. If the new supplier is already signed up to the ERA Peace of Mind guarantee, they should inform the old supplier in advance as a matter of course.

The second possibility is the introduction of a licence condition, which appears to us the easiest and most effective way of ensuring that all notifications of transfer are put through within 15 days.

In any case, under the European 3rd Energy package, due to be transposed into GB legislation by March 2011, all transfers have to be completed within three weeks. While the exact timings around this are still to be determined, it seems reasonable to assume that it should be possible for suppliers to notify a transfer well within a 15 day period.

⁹ Ofgem Consumer First Panel – 2009/2010, Finding from sixty five day working section of second workshops (January 2010)

¹⁰ See: <http://www.energy-retail.org.uk/switchingsupplier.html>

6.2 (unilateral contract variations ‘to the significant disadvantage of the customer’)

We are therefore currently minded to align the requirement on suppliers to notify customers of a unilateral variation of their contract which is to the significant disadvantage of the customer with any changes to the 65 working day period for notifying customers of a price increase. We would welcome views on this proposal

We support the same notification period for any unilateral contract variation that may be to the significant disadvantage of the consumer as for an increase in prices. However, we would ask that Ofgem provides guidance as to what constitutes ‘significant disadvantage’ as there is an obvious danger that suppliers interpret this differently to the detriment of consumers.

More transparent information needed for consumers

We were not sure if Ofgem intends to issue guidance on how this information should be communicated. Consumer Focus emphasises that, whatever period of notification is determined in the licence change, it is essential that information about price increases and other contract variations is presented in a clear and transparent manner, in a prominent position. Participants in Ofgem’s Consumer First Panel biggest concern was a perceived lack of transparency about price increases. Based on their recommendations, Consumer Focus strongly suggests that all future notifications should include very clear information relating to:

- The date of the price increase
- Information about the price rise, and the impact of this, ie how much their bill has increased because of the price rises
- Having 20 working days to decide if they want to switch suppliers to avoid paying the price rise

They should also be presented in a way that makes it as clear as possible:

- At the front of the bill in a separate section, or as a separate sheet before the bill
- In large, bold print
- Potentially also a notification on the envelope that it contains information about price rises

If the information about the price increase is provided separately to the bill, it should be accompanied by clear information that the consumer has the right to switch, and that they can contact Consumer Direct for free, impartial advice on switching. Consumers should also be advised that, if they wish to switch online, they should use a switching website accredited by the Consumer Focus Confidence Code, with a weblink provided to:

<http://www.consumerfocus.org.uk/energy-help-and-advice/confidence-code>

Annex 1- Supplier price change announcements

Price increases

Supplier	Date price increase announced	Gas	Elec	Date price increase effective	Days from announcement to effective
Npower	4 January 2008	17%	13%	5 January 2008	1
EDF	15 January 2008	13%	8%	18 January 2008	3
British Gas	18 January 2008	15%	15%	18 January 2008	0
Scottish Power	1 February 2008	15%	14%	2 February 2008	1
E.ON	7 February 2008	15%	10%	8 February 2008	1
Scottish & Southern Energy	1 April 2008	16%	14%	1 April 2008	0
EDF	25 July 2008	22%	17%	25 July 2008	0
British Gas	30 July 2008	35%	9%	30 July 2008	0
E.ON	21 August 2008	26%	16%	22 August 2008	1
Scottish & Southern Energy	25 August 2008	29%	19%	25 August 2008	0
Npower	29 August 2008	26%	14%	29 August 2008	0
Scottish Power	29 August 2008	34%	9%	1 September 2008	3

Price decreases

Supplier	Date price decrease was announced	Gas	Elec	Date price decrease was effective	Days from announcement to effective
British Gas	22 January 2009	-10%		19 February 2009	28
Scottish & Southern Energy	5 February 2009	-4%	-9%	30 March 2009	53
E.ON	12 February 2009		-9%	31 March 2009	47
EDF*	13 February 2009		-9%	31 March 2009	46
Scottish Power	27 February 2009	-8%	-3%	31 March 2009	32
Npower	16 March 2009		-8%	31 March 2009	15
British Gas	7 May 2009		10%	7 May 2009	0
E.ON	3 July 2009	-3%		4 July 2009	1
EDF	no announcement	-5%		2 October 2009	
British Gas	4 February 2010	-7%		4 February 2010	0
Npower	9 March 2010	-7%		26 March 2010	17
EDF	10 March 2010	-4%		26 March 2010	16
Scottish & Southern Energy	4 March 2010	-4%		29 March 2010	25
E.ON	8 March 2010	-6%		31 March 2010	23
Scottish Power	11 March 2010	-8%		31 March 2010	20

*EDF's price decrease on this occasion was in the following regions only: London; South East; South West; North Scotland; South Wales; North Wales; South Scotland

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For further information on this consultation response, contact Holly Reilly, Policy Advocate on 020 7799 7971 or via email at holly.reilly@consumerfocus.org.uk

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Published: May 2010

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From a textphone, call 18001 020 7799 7900

From a telephone, call 18002 020 7799 7900

Consumer Focus

4th Floor
Artillery House
Artillery Row
London SW1P 1RT

Tel: 020 7799 7900

Fax: 020 7799 7901

Media Team: 020 7799 8004 / 8005 / 8006