

Consumer Focus submission

65 day notice period for unilateral contract variations (Supply Licence Condition 23)

March 2009

Recommendations

Consumer Focus recommends that:

- Ofgem, as a minimum requirement, reintroduces the previous Condition 44. Notification of terms licence condition.
- Ofgem undertakes a cost benefit analysis to evaluate the pros and cons of introducing an advance notification licence condition.
- Ofgem undertakes work as part of the information remedies to improve consumers' interaction with the energy market, specifically in managing their budget and usage.

Background

1. Some respondents¹ to the Ofgem Probe, including Consumer Focus, raised concerns about the current practice whereby energy suppliers are only required to inform consumers retrospectively of an adverse unilateral contract variation within 65 working days. The concerns raised by assorted parties centred around four main issues:
 - Consumers are denied the opportunity to budget for the extra costs or to decide to decrease their usage in light of increased prices.
 - If a consumer is already in debt to a supplier, switching to an alternative provider to avoid the increase is unlikely to be an option. Delayed notification of the price increase is therefore even more detrimental as they have no choice but to accept the change. Without advance notice they are unable to consider decreasing their usage and/or managing their budget to compensate for the higher prices, and as a consequence their debt is likely to increase.
 - A delay in notification of a price increase or change in tariff structure denies consumers the opportunity to take and provide meter readings around the date when the rise becomes effective and thus satisfy themselves that any change has been correctly applied by the supplier.
 - The primary rationale that energy suppliers' gave to the general public for price increases in 2008 was that there had been a large rise in wholesale energy prices. However, many customers received their price change notification when wholesale energy prices were falling steeply (see case study below). This situation, which has been well publicised in the national press, has caused confusion among the public and has had the unfortunate effect of damaging consumer confidence in the energy market and specifically in the prices consumers pay².

¹ Consumer Focus, Which? and Bristol Trading Standards Services.

² For example BERR's Consumer Conditions Survey (2008) found that consumers rated the gas and electricity markets the worst out of the 45 markets polled in terms of prices, marketing activities, choice etc.

Case study

A consumer brought to our attention a grievance he had with his energy supplier regarding the second price increase of 2008. In the letter the customer received from the supplier stated that the reason they needed to increase their retail prices was because of the large increase in the price of wholesale energy.

The customer queried this rationale as he had read in the press that the price of wholesale energy was falling. This is just one example of the confusion that customers are facing as a result of not being properly informed about the way in which energy companies purchase gas and electricity months in advance.

The customer also said that “it smacks of arrogance to send your [the energy supplier] letter about [price] increases AFTER you have finally implemented them”. This illustrates consumers’ dislike of the current licence condition.

2. Consumer Focus believes that the current arrangements exacerbate the above problems for consumers and that 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.
3. We would note that Ofgem have failed to provide an adequate cost/benefit analysis of the merits of the possible options which could rectify the problems listed above. This makes it more difficult to make a considered judgement as to what is the most appropriate solution, which is further compounded by the extremely short time period that Ofgem has provided for interested parties to respond.

Reasons behind the modification to SLC 44 (6) and (7)

4. The predecessor to Supply Licence Condition 23 stated that an energy supplier was required to notify consumers retrospectively of an adverse unilateral contract variation within 10 days. In the Supply Licence Review of 2006 some energy suppliers argued that the previous Licence Condition needed to be revised to allow it to be operated in an easier and less costly manner. Information from the suppliers suggested the cost to the energy industry of carrying out this obligation was in the region of £15m a year, assuming two sets of price changes. However, the basis of the figure is not clear and the Ofgem documentation does not state whether it was subject to independent verification and fails to set out the benefits to consumers.
5. Consumer Focus recognises that it is important that unnecessary regulation is not placed on energy suppliers as these costs will inevitably be borne by consumers. However, even if we assume that the £15m cost is correct, many of the costs placed on the energy suppliers will have been reduced by allowing alternative i.e. paperless methods of notification, a situation we fully support where consumers request such methods. We would note that paperless notification methods will not be suitable for many vulnerable consumers, especially the less affluent and elderly, who will have less access to electronic means of communication; so we would urge energy suppliers

not to remove the option of paper billing/notifications. To conclude we would expect the benefits for consumers to outweigh the costs to the industry.

6. We would further note the point made by Ofgem in their consultation letter that they believe there are instances where suppliers would send out separate notifications from bills to consumers. We are disappointed that Ofgem has not gathered information from the suppliers on this issue in advance of the consultation document, as this would have further informed interested parties' views. Assuming this practice is widespread, this would further undermine the argument that a return to the former supply licence will lead to a significant increase in costs to suppliers.
7. It has also been mentioned that the current licence condition is consistent with the EU gas and electricity directive. This, however, does not mean that a return to the old licence condition would be inconsistent with the directive. The provisions in Annex A of the directives constitute only the minimum requirements member states need to comply with. We think that due to the unique characteristics of the GB market there is a strong case that the licence condition must go further if it is to adequately protect consumers.

Consumer Focus recommendation

8. For the reasons articulated above we believe that a change to the current licence condition is necessary to mitigate the adverse effects which consumers have experienced as a result of the current licence condition.
9. We therefore support, as a minimum requirement, the reintroduction of the previous Licence Condition 44 - Notification of terms. However, we believe that there may be a case for implementing a licence condition that gives consumers advance notice of any adverse changes to their contract terms³. This would give consumers the information they need to be able to keep their energy costs to a minimum as this would provide them with sufficient time to switch and/or adjust energy usage to reduce their household bill. Consumer Focus is aware that a precedent for such practices already exists in the mortgage market. Ofgem should carry out a full cost/benefit analysis to determine if the benefits to consumers of introducing an advance notification licence condition will outweigh the costs to industry.
10. From our initial deliberations we do not believe such a practice will place a significant burden on the energy suppliers. As we have seen in the past months energy companies have announced price reductions in advance of when they would come into effect. For example, SSE announced price reductions on 5 February 2009 which would not come into effect until 30 March 2009⁴. The energy market, due to the fact

³ This would include an adverse change to any aspect of a customer's contract including price and terms and conditions.

⁴ http://www.scottish-southern.co.uk/SSEInternet/index.aspx?id=17126&TierSlicer_I_TSMenuTargetID=1366&TierSlicer_I_TSMenuTargetType=1&TierSlicer_I_TSMenuID=6

that there is a lag between wholesale and retail prices caused by suppliers entering into forward energy contracts, is not characterised as one of frequent retail price changes. Therefore we would not expect energy companies to make more than three price changes each year. Furthermore, not all of these price changes will be price increases i.e. adverse contract variations (we further illustrate this point in Annex A, where we have listed the number of price changes made by the Big Six between 2003-08). The fact that price changes are infrequent and that energy companies operate hedging strategies means that there is sufficient time to issue advance notifications of price changes and that energy companies should be well placed to plan when they will need to change their retail prices.

11. A strengthened licence condition will tackle the problems faced by consumers by:

Managing usage and household budgets

12. A strengthened licence condition would rectify the situation where at present there is no opportunity for consumers to adequately manage their energy usage and/or manage their household budget more effectively to limit the impact of an adverse contract variation. A strengthened licence condition would give the consumer adequate time to search the market for a better deal and then exercise their right to switch, or if there was no positive reasons to switch would allow the consumer to adjust their usage and or manage the household budget to mitigate the effects of a price/tariff change.
13. We would add that while it is essential that consumers have the opportunity to manage their consumption, consumers need to be aware of these techniques so they can gain the benefit from being empowered consumers. We would therefore call on Ofgem, with input from relevant stakeholders, to put in place as part of the consumer information remedies from the Probe a programme that encourages and educates consumers about how to effectively manage their energy usage. Such a programme could also help with the many environmental obligations the UK will be subject to in the coming years.
14. Furthermore, it is crucial that the notifications provided by energy suppliers contain clear information on consumers' right to switch and the timescales in which they can exercise this right so they can take steps to avoid the introduction of unwanted changes to their contracts. The number of consumers who took advantage of the right to switch was very small. This suggests that the licence condition did not work effectively in practice. Ofgem should tackle this issue in conjunction with the consumer information remedies they are undertaking at present.

Managing debt

15. This point relates to the managing usage/budget issue. For those customers either in debt or in danger of being in debt we believe that a strengthened licence condition will allow these consumers to manage their usage and therefore allow them, as best as possible, to avoid going into debt or at least minimise the level of their debt. This is especially important for consumers who are already in debt before an adverse

contract variation as these consumers will not have the right to switch energy supplier if they do not pay through a PPM or are over £100 in debt, as laid out in the existing Debt Assignment Protocol (DAP)⁵.

16. We would add further that it is imperative that the switching process is properly administered so that those who would go into debt with their energy supplier because of a price increase are not illegally blocked from switching to an alternative supplier under SLC 23.5.

Monitoring meter readings

17. The problem whereby customers cannot accurately say what their energy consumption was before and after a change to their contract terms will be reduced by a strengthened licence condition. It would be reasonable to assume that consumers are more likely to proactively telephone their supplier with a meter reading after receiving advance/earlier notification of a price increase. A consumer may feel that they have already 'lost out' by not submitting a meter reading at the time of the price change and this could reduce their overall confidence in energy suppliers, especially if it is not clear on their next bill how their usage – before and after the price increase – was proportioned. Further work should be undertaken in conjunction with the information remedies to educate consumers of the benefits of actively studying their energy bill so as to reduce the likelihood of energy suppliers repeating such practices.

⁵ We have responded to Ofgem's consultation on the DAP in a separate document.

Annex A - Big Six price changes 2003-08

Year	Three price changes	Two price changes	One price change	No price changes
2003		SSE	BG, Scottish Power, Powergen, EDF, npower	
2004	SSE, Powergen	BG, Scottish Power, npower, EDF		
2005		EDF	Scottish Power, SSE, BG, Powergen	Npower
2006	npower	BG, Scottish Power, SSE, Powergen, EDF		
2007		BG, SSE	Scottish Power, Powergen, EDF, npower	
2008		BG, SSE, npower, E.ON, EDF, Scottish Power		

(Source: Internal Consumer Focus price database)

Please note that these are both price increases and decreases and therefore the price decreases will not be subject to Supply Licence Condition 23 as they would not be considered an adverse contract variation.