

Consumer Focus Board

Paper 9

Title:	EHU – Cases from small businesses
Purpose:	For agreement
Date of meeting:	30 March 2011
Responsible officer:	Marieke Dwarshuis
Prepared by:	Monica Davidson
Attachments:	Appendix A - Analysis of business cases received in the EHU during November and December 2010

1 Overview

- 1.1 The December 2010 Board meeting was preceded by an energy seminar, where amongst other issues, problems facing business consumers were discussed. The Board reiterated its support for the Extra Help Unit (EHU) providing assistance to small businesses where appropriate, in relation to our referral criteria.
- 1.2 The purpose of this paper is to set out why, and under what circumstances, the EHU assists small business consumers, and to ask the Board to confirm their previous commitment to this.

2 Action for the Board

- 2.1 The Board is asked to:
 - **NOTE** the circumstances of business consumers requiring assistance from the EHU, the scope of assistance we provide and the outcomes we are able to achieve, and to confirm that the Board
 - **AGREE** with the criteria for assistance and support this part of the work of the Extra Help Unit.

3 Support available for business consumers

- 3.1 The EHU has a statutory duty to assist vulnerable consumers including those who are, or are about to be, disconnected. We also have powers to investigate where the consumer is vulnerable as a result of the complexity of the complaint.
- 3.2 Prior to October 2008, small to medium enterprises (SMEs) were assisted by energywatch to meet the government's goal of strengthening and streamlining advice. Before the transition to Consumer Focus a working group was created to establish the new redress arrangements. The responsibilities and roles of energy suppliers, regulators, Consumer Direct, EHU and ombudsmen were agreed by the Customer Journey working group. It was decided that Consumer Focus, Consumer Direct and the Energy Ombudsman would continue to provide assistance to SMEs. This decision was endorsed by the Consumer Focus Board at that time.

- 3.3 The EHU accepts referrals for vulnerable non-domestic consumers where the business:
- has less than 10 employees and a turnover of less than €2 million a year
or
 - uses less than 200,000 kWh of gas
or
 - uses less than 55,000 kWh of electricity per year
- 3.4 The majority of business cases referred to the EHU involve a business that is at risk if the supply is disconnected. When the business is at risk this often affects the employees and dependents of the business owner. Often we encounter business premises with domestic dwellings attached - i.e. if a pub is disconnected this affects the supply of a flat upstairs too.
- 3.5 Business cases are much more difficult to resolve with energy suppliers as they are complex and there is significantly less protection in place for non-domestic consumers. This is reflected in the time taken to investigate and resolve business complaints (on average 79 minutes) which is similar to the time taken to deal with an off supply *priority* (on average 81 minutes) complaint.

4 Trends within the EHU

- 4.1 During its first operational year (October 2008 – September 2009) the EHU saw a gradual increase in business cases. Business complaints constituted 11% of the total cases received during that year. Contacts from business consumers continued to increase steadily during the second operational year (October 09 -September 2010), where 18% of complaints received were from business consumers. The trend peaked in October 2010 where 23% of contacts were from non-domestic consumers.
- 4.2 The EHU has not carried out any promotional work to encourage referrals from business consumers. Business suppliers are not obliged to provide contact details for Consumer Direct on the back of bills and awareness of the support available is low. It would appear that the increase in contacts from business consumers is linked to problems in the economy.
- 4.3 Although business cases are undoubtedly more difficult to resolve, the EHU manages to achieve positive results through negotiation with suppliers for the majority of consumers we assist. We achieved positive outcomes for over 60% of business consumers we assist, compared with over 92% for all consumers referred to the EHU. (See Appendix for more information)
- 4.4 Analysis found that around 60% of businesses referred to the EHU are at risk of closure if the energy supply is, or remains, disconnected. The majority of these consumers have defaulted on a payment arrangement and are unable to negotiate reconnection or an affordable ongoing arrangement with their supplier.
- 4.5 Of the recent cases analysed, the EHU was also able to secure successful outcomes for a good deal of businesses facing closure. In over 67% of these cases we were able to reach an agreeable outcome with the consumer and supplier, preventing the business from closing.

5 Policy issues identified

- 5.1 Through dealing with business complaints the EHU is able to identify key policy failures affecting non-domestic consumers. The EHU works closely with the Energy Team and Ofgem in taking these issues forward.
- 5.2 In July 2009 we established that suppliers had very different requirements relating to acceptable tenancy agreements, particularly with short term and sub lease documents. The Energy Team followed this up with industry by sending out an information request for clarity and incorporating this problem into the Debt and Disconnection review.
- 5.3 In April 2009 the EHU identified problems with suppliers' definitions of deemed contracts. British Gas Business was adamant that they were able to charge standing charges where no energy had been consumed, which was at odds with existing guidance from the regulator. The Energy Team sought legal advice on the issue which was inconclusive. After referring to Ofgem, guidance on deemed contracts was updated and an open letter was issued by the regulator to suppliers and consumers. Ofgem confirmed that where no energy had been consumed a deemed contract does not exist, and that where there is no deemed contract standing charges cannot be applied.
- 5.4 In October 2009 we noted that suppliers were charging particularly high rates for out of contract or deemed contract consumers. The EHU challenged suppliers on the basis that these charges could be unduly onerous but suppliers maintained they were acting in accordance with the Deemed Contract Scheme. The issue was referred to the Energy Team, who in turn referred these concerns to Ofgem. In January 2011 Ofgem provided an update advising that they issued an information request to suppliers charging the highest Deemed Rates and are considering whether to issue guidance or a change to the Licence Condition.
- 5.5 During May 2010 a new trend was established relating to 'Phoenix' Companies where new companies are created by the same personnel at the same property, generally carrying out the same business function. The EHU received referrals from consumers in this position that had been disconnected or refused reconnection by the supplier for debts accrued at the property by the previous company. We sought advice from the Energy Team, who wrote to both Ofgem and DECC. The Energy Team produced a factsheet for EHU casework advising that while we can facilitate negotiation between consumer and supplier, we have no enforcement powers in this area and believe that individuals or companies that accrue debt should be liable to pay this.
- 5.6 Through EHU casework and contact from the Scottish Federation of Small Businesses we became aware in July 2010 that Scottish Power had started demanding security deposits from existing consumers at the point of contract renewal. Scottish Power was also threatening to disconnect business consumers for non-payment of the deposit, even where there were no arrears on the account. The EHU and a colleague from the Energy Team met with Scottish Power to raise our concerns and through negotiation secured a change in this policy. Scottish Power now uses payment history, rather than Experian reports, to make decisions about requests for deposits. Threats of disconnection have also been withdrawn in relation to security deposits.

6 Next steps

- 6.1 The EHU will continue to provide support to business consumers on the basis of the referral criteria previously agreed by the Board and outlined in 3.3 above. Although these cases are relatively resource intensive we are able to achieve positive outcomes for the majority of consumers. In addition, the EHU is supported by the Energy Team in progressing policy issues identified and effective cross-organisational work has brought about change in a number of areas for non-domestic consumers.
- 6.2 Consumer Focus remains concerned by high levels of non-domestic disconnections that are taking place in the energy industry. This issue is one of the strands of work being pursued in the Helping Consumers at a Disadvantage project, consisting of members of the Energy Team and EHU.
- 6.3 The Energy Team is writing to all business suppliers outlining concerns about levels of disconnection and debt and disconnection policies.
- 6.4 Analysis of EHU cases also identified discrepancies in results achieved for consumers supplied by smaller suppliers. Significantly better outcomes are secured for business consumers supplied by the Big 6 Energy suppliers. This suggests that the EHU should work on building relationships with smaller business suppliers. The Energy Team will also highlight concerns about outcomes in their letters to smaller suppliers.
- 6.5 Problems with energy brokers and third party intermediaries were identified through the Energy Team's analysis of Consumer Direct data. The EHU has also provided case evidence of mis-selling to business consumers by brokers working on behalf of Business Energy Solutions. The Energy team continues to investigate this problem.
- 6.6 Finally, we have started discussions with Citizens Advice Scotland and CitA about the work of the EHU, at this stage in particular to ensure that the manner in which CitA and CAS take on Consumer Direct takes account of the referral arrangements to the Extra Help Unit, and also with a view to ensuring that a future move of the Extra Help Unit over to CAS/CitA can be accommodated in their new structure. These discussions are at a very early stage.
- 6.7 In these initial discussions with CitA and CAS we have been explicit about the support the EHU provides to small businesses, the criteria for doing so and the resource it requires. Initial indications are that CAS/CitA (who in the rest of their advice work also support micro- businesses) are not averse to continuing to support small businesses.