



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to Ofgem's proposed licence conditions on direct debits

October 2009

Ofgem's proposed licence conditions on direct debits

We welcome Ofgem's decision to introduce a licence condition covering direct debits since the evidence uncovered in the investigation, coupled with the complaints we have seen, suggests that competition has failed to deliver either a high level of customer service or effective direct debit processes.

We support the three proposed licence conditions, in particular we are pleased that the previous version of licence condition 2 (now condition 3) was heavily amended following the August consultation. We do, however, have some additional points to make.

Good practice guidance

Consumer Focus supports the premise that Ofgem should regulate the outcomes and not the means of delivery. That is why we supported option B in our original response. In order to support a licence condition that lacks any prescription in the means of delivery, Consumer Focus believes that more guidance is needed than Ofgem offers in the decision document. In general, the guidance remains too high-level and does not set out sufficient detail to explain to suppliers the specific practices currently viewed as best practice.

Instead, Ofgem explicitly rejects the idea of having extensive good practice guidance. In its decision document Ofgem states this is to avoid restricting supplier innovation. We do not believe that the provision of good practice guidance would, in fact, stifle innovation; rather it will create a level playing field that sets out a bare minimum in terms of customer service that suppliers can choose to differentiate above. It would ensure that consumers are given sufficient protections, by providing guidance on what constitutes 'reasonable steps' and 'reasonable grounds'.

Providing a more thorough and detailed good practice guidance, as we proposed in our original response, is not overly prescriptive, as Ofgem suggests. If suppliers have a sound reason for not delivering any part of the guidance, they are not compelled to; it is after all a guide, not a code of conduct. A more thorough guide would alert suppliers to existing best practice and provide a comprehensive check list of what needs to be delivered along with a method of achieving good practice. Nor does this guide need to be static; it can be amended to reflect supplier innovation or technological change.

By failing to provide a more extensive check list on good practice, Ofgem potentially offers suppliers a way out of delivering what we deem to be the bare minimum on customer service. It also creates ambiguity about what will be deemed a licence breach. We fear that Ofgem's, largely unsubstantiated, concerns over preventing innovation means it is failing to ensure the licence and associated good practice guidance compels suppliers to meet the desired standards of customer service.

In general therefore, we call for a much more extensive and detailed check list of good practice on the following issues:

Returning credits

The two elements of good practice Ofgem proposes are:

- suppliers should ensure that credits are not unreasonably withheld
- suppliers should set out clearly what their refund policies are

While we welcome these, we feel further guidance is required. Ofgem does not specify any point at which the supplier is forced to refund large scale credits on an account at the annual review. In the decision document (4.14), Ofgem writes:

'While some consumer groups wanted us to specify a level at which automatic refunds would be provided we believe this would be too prescriptive. The appropriate level of credit will vary depending on the time of year when the account is reviewed and on past consumption, for example.'

However, Consumer Focus was clear in the initial consultation response that any credit refund should take place at the annual review. Suppliers should set monthly payments aiming for the account to neither be in credit nor debt on this date. We specifically stated that we do not object to debits/credits being built up over the year as a result of fluctuating seasonal consumption patterns. Indeed, it is envisaged that this will be the case and such credits should not be refunded. For example, we would want to see credits refunded where there is a credit at the end of the winter period, which would suggest that payment levels are too high. Even then we suggested an automatic return only on large credits which the customer may well need in their daily lives, and generally only after the full 12 months of the annual plan when seasonal variations will have been taken into consideration.

We share Ofgem's hope that the provisions as a whole should prevent build-up of credit but we continue to push for an additional safeguard that those customers who fail to receive the required service standards would still have their money returned without undue effort on their part. There is a difference between suppliers largely complying with the licence and the position of those few customers who may slip through the net.

Additionally, some customers may be difficult to contact or engage with despite suppliers' efforts; therefore communicating with them may not always be possible. In such a scenario, we feel an industry-wide best practice requiring an automatic trigger on large credit balances at the annual review would be helpful. Consequently, we are disappointed with Ofgem's decision, and continue to call for an automatic return of large credit balances at the annual review to be included in the good practice guidance.

Review of direct debits within 90 days of a price change

Consumer Focus proposed in the original consultation that the good practice guidance should include reviewing the direct debit monthly payments within 90 days of a price change. Ofgem evidently feels this is too prescriptive for the good practice guidance and the phrase 'timely basis' is sufficient. Yet, it was the issue of price rises leading to large upward reassessments in direct debits that prompted a large number of the original complaints, which could easily occur again. Without swift amendments to monthly payments there remains the danger of large fluctuations when suppliers eventually reassess payments. Under the proposed guidance, suppliers could argue that 'timely basis' means once every six months, irrespective of price changes. This undermines the principle of uniform payment spread across a 12-month period and could lead to substantially different payment levels over the year. A little prescription in this one area, we feel, would be appropriate.

We believe that swift reassessments to prevent the creation of large credits or debts, and the associated fluctuation in payments as a result, is the most crucial element in restoring consumer confidence in the direct debit process. Again, we are unconvinced that asserting this basic principle would have any impact on innovation.

Transparency and communication

The guidance as it stands sets out in detail how a supplier should interact with a customer when discussing direct debits, which we fully support. What the guidance fails to do is establish a minimum amount of contact between supplier and customer. In our original response we proposed establishing an annual prompt to ensure suppliers engage with customers on direct debit payments. In our view, this could be linked with the Annual Statement that Ofgem has proposed in the Probe retail remedies.

We are surprised that there is no mention in the guidance of an annual prompt or any obligation to contact the customer at all beyond the initial setting up of the direct debit. The addition of an annual prompt as good practice would set a minimum threshold on communication; if the supplier could show how they have other means to contact customers equally as frequently as once a year, there would be no need to follow this part of the good practice guidance.

Enforcing the good practice

In our original consultation response we proposed that the guidance include reference to any increase in payment being sensitive to the consumer's 'ability to pay'. We also called for the abolition of suppliers forcing all debts to be repaid within 12 months. Ofgem has replied in its decision document that the ability to pay is covered in SLC 27. In addition, in the guidance for 'appropriate payments' Ofgem calls for 'supplier flexibility'.

With the above information in mind we wish to inform Ofgem of certain suppliers' current policies that have failed to show such flexibility, which acts against both the spirit of SLC27 and the proposed guidance on flexibility in the new licence condition.

Consumer Focus has seen a number of complaints, directly from consumers and from Consumer Direct, of suppliers sharply increasing direct debit payment levels, beyond what is necessary to smooth payments over the year, in order to immediately remove any debts on accounts.

The cases we have seen show an apparent lack of regard for customers' circumstances and offer no flexibility. Ironically, the introduction of a licence condition, which aims to improve customer services and evenly spreading monthly payments, has prompted some suppliers to sharply increase payments on those accounts in debt. This has been done with no sensitivity to the customer and their financial circumstances. Annex 1 sets out some case studies to demonstrate this.

There is also the wider principle involved. Ofgem must ensure that the spirit of the licence, about personalised and sensitive customer services, is enforced. We hope the Option B approach will mean that Ofgem focuses on the outputs consumers receive. With evidence to date showing continued poor and inflexible customer service, we remain unconvinced that all suppliers have taken to heart the essence of this new licence condition and have simply chosen the easiest route to comply. They have done this by forcing all those whose monthly payments are currently set too low to drastically increase payments, not in order to spread payments evenly over the year but to make up as quickly as possible previous under payments. With this in mind we call for pro-active monitoring to ensure compliance, including using consumer surveys, to understand first-hand their experiences.

Annex 1 – case studies on direct debit problems leading up to the licence condition

Consumer Direct case study about British Gas

An upset customer of British Gas said a sales agent had contacted her and said proposals by Ofgem (the proposed licence condition) meant that all debt had to be paid off the account by the end of the month.

To achieve this, the consumer was advised that she either had to pay £60 immediately and the direct debit would stay at £36 per month, or her direct debit would be increased to £60 per month permanently. She offered an increase to £50 per month but this was refused and the initial two options were all that was apparently available.

The customer made clear she knew usage meant that monthly payments should be £50 a month but the agent would not budge from the two options.

Customer complaint about EDF via email

'We are on a payment plan and were sent a bill on 23 July, which arrived on 27 July after we had left for our hols (sic) for two weeks. When we returned we found that EDF had debited our account on 6 Aug. with an impromptu £152, which had forced it slightly overdrawn. I phoned up to complain that they had debited our account giving less than two weeks notice; even the bank are obliged to give us a month these days.

They said they told us back in March that if in July our payment plan was more than £150 in excess they would take the balance, via a standard wording in that March bill. My argument is how would I know until this bill arrived whether I was in excess of £150; their supposed notice is no notice at all. They argue it is standard practice. I argue it is not good practice. Fortunately I have an overdraft facility and so it only cost me 50p, but other families will not and at this time of the year a lot of folks will be away on holiday.

The only reason we had built up the £152 was because they altered the payment plan to £33 a month, down from £44 a month. They are now saying it should go up to £75 a month. I have stressed if they had left it at the sensible £44 a month I would not have run up the excess.'

Consumer complaint about Npower direct debit practices via email

Npower and direct debits

Background

I inherited Npower as an energy supplier on moving to the above address in 2007 and initially moved to a dual fuel direct debit deal and then in 2008 to their Online 14 tariff.

30 September 2009

Received a six-monthly statement based on actual or customer own reads from March 2009 and over-estimated meter readings as at 7 September 2009. The statement showed a £25.02 credit on the account overall and advised that Npower were going to raise my direct debit from £68 per month to £100 following an estimated reassessment of my current and future usage. Based on actual COR, I believe my account to be £110.57 in credit.

	Bill starting meter read Gas: 16/3/09 Elect: 24/3/09	Estimated at 7/9/09	COR at 1/10/09	Estimated Units used to 7/9/09	Actual units used to 1/10/09	Actual units averaged to 7/9/09	Cost incl. of VAT as per bill (actual as per COR)
Gas	8993 (actual)	9514	9371	521 = 5787 kWh	378 = 4198kWh	316 =3515kWh	£179.79 (£100.52)
Elect	18972 (COR)	19977	19921	1005 kWh	949kWh	788kWh	£70.52 (£50.24)

1 October 2009

Called Npower at around 10am, went through options and automated response was a 15-minute waiting queue. Deterred by that prospect, I rang off.

Called later same morning and told 10-minute wait but decided to hold. No option offered for Npower to call me back. Held no more than 30 seconds and was connected to operator. I spoke to Denise Smith, gave her updated meter readings and she agreed to withdraw current statement and that Npower would send me a revised one in 7-10 days. I was given a freephone number to call the next day for a revised direct debit amount that would be based upon next six months 'usage'. I challenged this and said that I wanted it calculated on 12 months as otherwise it would be skewed as it covered only the winter high usage period. She advised that they had to do it that way and only if I was unhappy with that then I could ask for my direct debits to be considered over 12 months.

2 October 2009

Called npower at 9.54 am and message said was a 10-minute wait but held and was connected to Andrew Graham within 15 seconds. He offered to keep the direct debit at its existing level as over the year it was right. I queried why if Npower's electricity prices had gone down 8 per cent and there had been no change to their gas prices, why they were seeking to raise my direct debit by 47 per cent. His response was that **Npower were trying to prevent debits on customers' accounts.**

I said that it was unfair to adjust a direct debit based on an estimate of winter six-monthly consumption as it failed to take into account the seasonality or the £100 dual fuel discount payment made on the account anniversary. I referred to the Npower leaflet on direct debits that had accompanied my statement and said that the whole point of direct debits was to create a smooth payment plan that accepted that credits and debits would occur during the annual cycle, plus the dual fuel discount payment. The way that Npower were operating their reviews would result in either a large credit on the customer's account or wildly fluctuating direct debits twice a year. In my own case and if Npower had been allowed to change my direct debit, then it would have meant paying £100 per month during the autumn/winter and £36 during the spring/summer.

He then offered to reduce my direct debit to £62 per month but I declined saying that I was happy to keep it as it was. I tried to press why a six-monthly mid-review was being conducted that would be in no one's interests but our conversation started to go round in circles about company policy and so I left it at that.

Issues

- There is an initial issue about estimated waiting times when you call Npower to make a query. The first message I received was enough to put me off. Subsequent calls where I ignored the message resulted in almost instant connection to an operative. How does Npower estimate hold times and how frequently are they updated?
- The inaccuracy of the estimated meter readings affects the state of the account but there are issues of principle that go beyond that.
- The primary issue is conducting mid-reviews over periods of less than a year that are bound to be skewed by issues of seasonality.
- It is clear that Npower are openly operating a policy to prevent debits occurring upon consumers' accounts which is contrary to their document on direct debits, which shows that usage will at times exceed the level of direct debit payment and vice versa.
- In their direct debit document, Npower state: 'our aim is to ensure that you reach a zero balance at your annual review statement'. This will never be the case unless they alter the direct debits wildly in the warmer seasons and also factor in the dual fuel discount payment that is payable at the end of each 12-month anniversary period.
- Npower's estimation of usage upon which presumably it calculates future usage and cost is not accurate as it is based upon the simple division of estimated units by the number of days covered by the current statement. It suggests that my current gas usage is 33.07kWh per day, compared to last year's estimated usage of 19.86kWh per day, an increase of 66.51 per cent. It is actually 20.08kWh per day, a negligible 1.1 per cent rise. Electricity was estimated at 6.02 kWh per day, compared to last year's actual figure of 4.89, a rise of 23 per cent. Currently it is actually 4.71kWh per day, a decrease of 3.68 per cent.

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