ELECTRICITY AND GAS THEFT

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Summary

This report draws attention to unfairness in the way people are dealt with when they steal from their gas or electricity supplier.

It is of concern that fuel theft by domestic consumer is strongly linked to fuel poverty. It is unsatisfactory that the wide discretion available to companies in dealing with fuel theft leads to a high degree of inconsistency in the way people are treated. Above all, it is unfair that people are dealt with for fuel theft without having the right to a hearing.

The report discusses policy options to address these failings, including anti-poverty measures, regulatory action to secure observance of procedural standards and options for securing a right to a hearing.
**Introduction**

1. Fuel poverty is a significant problem in the United Kingdom according to the government’s own information which estimates that at least 4.3 million households in England are in fuel poverty, defined as spending more than 10 per cent of their net income on fuel.\(^1\) The same source confirms that the numbers of disconnections for debt have reduced dramatically in the electricity industry between 1991 and 1998, down from some 48,000 to about 400. The numbers of customers disconnected for gas debt have, by contrast, risen in the same period, from about 18,600 to 29,500, although this still represents a significant drop on the pre 1991 number.\(^2\) To a large extent the reduction in levels of disconnection for debt have come about because of the increasing use of prepayment meters by the electricity and gas companies.\(^3\)

2. Although disconnection for debt in the electricity industry appears to have become less significant, disconnection for the *theft* of electricity is a significant problem as there is a disconnection rate of about 4,000 households a year for electricity theft, that is, some ten times the number who are disconnected for debt. Public Electricity Supply companies reckon that theft costs them between £5 million and £10 million per year. It is difficult to assess the extent of the problem in the gas industry as the regulator does not publish statistics on this issue, although BGT says that theft costs them about £20 million annually.

3. Why is this an issue which deserves Parliamentary consideration? First, because the inability of many consumers to afford the fuel they need underpins the activity of utility theft. Secondly, because companies have a wide discretion in how to deal with theft cases this means that there is a wide divergence of practice between the gas and electricity industries and between companies within each industry. This leads to unpredictable outcomes and the exposure of consumers to potentially harsh treatment by the companies. Finally, the existing legal structure does not give the consumer a right to present their case before an independent tribunal which is unjust and arguably in breach of the European Convention on Human Rights.

4. In laying out our argument, describe first the existing law and practice. We then discuss the relationship between fuel poverty and utility theft, which is followed by some examples of individual cases. We then elaborate on the argument about legal protection for consumers accused of utility theft, followed by an example of what happens in New York and end with some conclusions about desirable policy reforms.

**The law and practice**

5. The law relating to electricity theft is found in two places. Section 13 of the Theft Act 1968 creates a specific offence of dishonest abstraction of electricity while the Electricity Act 1989, Schedules 6 and 7,\(^4\) creates two criminal offences: that of damaging electrical plant, lines or meters and that of interfering with a meter. The damage or interference must be done intentionally or through “culpable negligence.”

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\(^2\) Ibid. Table 2.6.
\(^3\) This has given rise to a debate about self-disconnection which we do not address here.
\(^4\) For gas the relevant provision is Gas Act 1986 (as amended) Schedule 5, para 10 which creates a similar offence of interfering with a gas meter.
The Act also provides that “where an offence has been committed” the supplier may discontinue the supply of electricity to the person who has committed the crime until the matter has been remedied and remove the relevant meter.

6. Although this legislation creates criminal offences prosecutions are taken out relatively rarely. The latest available information is that there were no Electricity Act prosecutions for meter interference in the years 1996 and 1997; however, there were in those years 922 and 1046 prosecutions under the Theft Act for dishonest ‘abstraction of electricity’. As to gas, there were in the same years 63 and 34 prosecutions for ‘Schedule 5’ offences under the Gas Act, including equipment damage and meter interference. What this means is that in the vast majority of cases the companies deal with the matter themselves in the absence of a criminal conviction.

The standard practice is to disconnect the meter and agree to reconnect only after the alleged offender has agreed to pay a sum to cover the costs involved in the disconnection and reconnection and to reach an agreement on the repayment of the value of the fuel that has allegedly been stolen, in gas the consumer is allowed to remain on supply provided a financial settlement is made immediately, in electricity some consumers are allowed to remain on supply provided they agree to recovery of charges through a prepayment meter.

7. The consequences of being disconnected for theft are serious. According to Offer guidance the charges required to “remedy the matter” include repair or replacement costs associated with equipment or meter damage, the costs of any disconnection and reconnection and payment for electricity used but not metered. However, the companies may include other charges: in the Gwenter case, the company included amounts of £91 and £198 for “administration” and retrieving consumption records. London Electricity’s proforma for billing offenders has six heads: meter damage, standing charge, unrecorded units charge, warrant charge, charge for visits and re-seal charge.

Company practice

8. Unlike other areas of company/customer relations this issue is not covered by a Code of Practice approved by the regulator. The Codes of Practice explicitly exclude circumstances in which customers are said by the company to owe money following theft, and have been disconnected by the company for that reason. London Electricity’s November 1998 Code of Practice contains the prominent warning:

“It is very dangerous to tamper with meters and steal electricity. These are also serious criminal offences. If you commit these offences or give false information to us, you are not protected by this Code of Practice.”

Instead Offer has produced a policy statement on the issue which offers an interpretation of the law and sets out the principles that Offer will bear in mind when deciding on complaints about electricity theft. We are unaware of any similar policy

7. Gwenter v Eastern Electricity, unreported, 7 February 1995
statement for gas: the gas regulator’s Transco (Allowances for gas taken Illegally) Scheme 1997 confines itself to the objective of removing disincentives suppliers may have to comply with their licence obligations in reporting and pursuing theft.

9. The day to day activities are carried out within electricity companies by what they call Revenue Protection Units (RPUs) who specialise in detecting and dealing with cases of electricity theft. In a competitive electricity market these units act as agents for the various suppliers in an area. The policy that will be applied by the RPU in any case will be the policy of the supplier of the customer in question. It is possible, therefore, that neighbours with different suppliers, but otherwise in the same circumstances, could be treated differently simply because they have different suppliers.

10. That companies have very different policies on electricity theft becomes apparent from an examination of the Offer statistics (see Appendices 1, 1A and 2). Some companies, such as Midlands Electricity, have never disconnected in recent years for theft of electricity. Other companies, notably Scottish Power, have a high rate of disconnections for theft. There are also a variety of trends over the years in disconnection rates. Thus, companies in England and Wales have shown a downward trend in disconnection, although there are some exceptions, such as Northern. By contrast, disconnections for electricity theft in Scotland have risen over the last five years. At this stage we can dismiss one explanation for the difference in the statistics, namely that they reflect different incidences of theft. Although it is undoubtedly true that different areas will have different incidences of theft, it is inconceivable that there is no electricity theft being carried out in London and the Midlands - indeed, London Electricity told their Consumers Committee that they investigate around 2,000 instances a year. This leaves open the question of other explanations for the differences, which could revolve around differences in recording practices or indeed differences in the policies adopted by the companies. We note here that disconnections for theft are likely to be only the tip of the iceberg of electricity theft; there will be a number of cases of electricity theft which do not result in disconnection and, a number of cases which are never detected.8

Is the crime a response to fuel poverty?

11. This is a key question because the answer to it informs our response to the policy issue. Although it is unfashionable to link poverty in a causal sense to crime, if this turns out to be the case, then our policy response should be different. Of course, we must also make allowance for a mixed finding, that some percentage of this crime is motivated by poverty, some percentage motivated by other reasons.

12. There are two reasons for thinking that this is a crime motivated by poverty. First, Offer statistics indicate that the vast majority of disconnection for electricity theft is for theft from prepayment meters. Although prepayment meter users are not identical with the fuel poor or disadvantaged consumers, there is a reasonable fit here. Secondly, an unpublished study of electricity theft in one electricity company area revealed a high concentration of investigations in areas of poverty. All cases fell

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8 In the Guildford case Seeboard produced statistics which suggested that disconnections were about 40 to 50 per cent of the number of cases of interference with meters or electricity supply.
within half the 180 postal districts, while two thirds were in twenty four and one third in nine.

13. According to Offer statistics, people with prepayment meters are seventeen times more likely to have their electricity supply disconnected for theft than people with credit meters.\(^9\) It is also telling that BG Trading has issued a document *Notes for the Assistance of Caring Agencies* to explain to welfare agencies the routines involved in dealing with gas theft. The implication is that people who commit the offence are likely to turn to an advice centre or similar agency that deals with the daily travails of coping with poverty. The guidance anticipates financial difficulty by listing the acceptable arrangements like weekly payment, fuel direct out of income support and prepayment meter, for financial restitution to the company “in cases of hardship”. Similarly, the London Electricity proforma for charging offenders includes a line for entry of a weekly rate of recovery via a prepayment meter.

*Individual cases*

*The following case illustrates the hardship that is associated with fuel theft and the further hardship that can arise if the company reacts punitively. It also shows the very wide discretion available to energy company staff over so vital a matter as fuel supply.*

In a Liverpool case reported by COMTECHSA in which a mother of five children, one of whom was disabled, was disconnected from electricity after a friend had bridged the meter, a minimum payment of £283 was required prior to reconnection. The offence had been preceded by the dramatic rescue of the family from a house fire precipitated by the use of candles during a habitual period of ‘self disconnection’ from supply when the mother, having an income of only £149.40 a week could not afford to charge her prepayment meter. Despite having been made aware of the circumstances, the company insisted on the up-front payment. The family’s train of misfortune continued with burglary and vandalising of their home following their decamping to a single room in a relative’s house after the mother had been unsuccessful in her application for a Social Fund loan to raise the payment and get her supply re-connected. The pleas of several welfare agencies, including Social Services, were of no avail and the family’s continued absence from home led to their landlord’s issuing a Notice Seeking Possession for that reason. COMTECHSA were eventually able to uses contacts to persuade the company’s Revenue Protection Unit to reconnect without prior payment on the basis that payment would be by Fuel Direct (attachment of Income Support); COMTECHSA also helped the family with replacement furniture and advice about a claim for Disability Living Allowance for the disabled child.

*This case illustrates the way fuel theft can arise as a response to hardship and the great difficulty of a family caught between an intransigent fuel supplier and an unproductive response from welfare agencies. Like the preceding case it also illustrates the association between fuel theft and receiving supply by prepayment,*

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\(^9\) Offer *Customer Accounting Information*, December 1998, Statements 11 and 11a (Appendices 1 and 1A).
prepayment being the ‘end of the line’ of legitimate means of obtaining energy supply for people with low incomes.

In a second case from COMTECHSA disconnection following meter-bridging was preceded by circumstances that included high energy costs and exceptionally low income. The immediate prelude to the offence was the mother’s being unable to afford to charge her prepayment meter. Following harassment after she had befriended a victim of racial harassment, a mother of five moved to an dwelling with ‘on-peak’ electricity supply; the premises had been converted from a shop and were in a state of disrepair. This mother did not have her full income support allowance available for household expenditure because she had to pay rent out of her allowance as the housing benefit scheme would not meet the full rent charged by her private landlord; she was also repaying a Social Fund loan for essential household equipment. Protracted attempts to raise the minimum payment of £283 by way of a further Social Fund loan were met with disappointment because of Social Fund regulations that restrict payment to disconnection and re-connection charges, and also because the mother had an outstanding loan already. Representations from several agencies being unsuccessful, including those of Social Services, a family friend reconnected the supply again, and again it was disconnected - this time on the last working day before Christmas - and a further £283 insisted upon, plus, this time, a call-out fee of £99. Having already been cautioned for electricity theft, this time the mother was prosecuted. Following three days of intense lobbying, COMTECHSA were able to persuade the company to reconnect with an agreement that outstanding charges be recovered through a prepayment meter.

The lack of legal protection
As has been pointed out above, electricity and gas theft is normally dealt with by company action, rather than prosecution in the criminal courts. The first question to clarify is when can the company take action to disconnect the customer? The Electricity Act states that the action can be taken “where an offence has been committed”. Does this mean that there must have been a successful prosecution or that the company must show, beyond any reasonable doubt, that the offence has been committed? The answer to both these questions is no. The issue has most recently been discussed in R v Minister of Energy ex parte Guildford\(^\text{10}\) where the applicant contended that the supply company had acted beyond their powers in disconnecting him for alleged theft of electricity when the Crown Prosecution Service had declined to prosecute him. The judge followed previous case-law and rejected the submission that the conviction of an offender was necessary before the companies could exercise their powers.\(^\text{11}\) Secondly, the judge followed the reasoning in these two cases that the electricity company only had to prove their case on the civil standard of proof, that is, the balance of probabilities. He said:

“Tampering with an electricity meter falls to be treated as a breach of private law, as well as a criminal offence. Cutting off an electricity supply in consequence of such conduct is not properly to be treated as a

\(^{10}\) Unreported, 18 February 1998.
\(^{11}\) R v Director General of Gas Supply ex parte Smith unreported 31 July 1989 and Re Sherlock and Morris unreported 29 November 1996 (Queens Bench Northern Ireland).
criminal sanction, nor does the use of the procedure constitute a criminal conviction. The consequences of disconnection are purely civil, namely, an obligation to pay for the unrecorded electricity consumed.”

The following case illustrates the injustice of provisions which permit someone to be accused of theft and on that basis denied a fuel supply without having the opportunity to put their case to a hearing; the details were reported to the House of Commons by Mr Ken Purchase in an adjournment debate on 1.2.98.

In the course of routine work which necessitated access to the home of one Mr Bailey of Wolverhampton to bleed the gas supply system of air, information was passed by the now separate pipeline company Transco to British Gas Trading (BGT). This led to the allegation that Mr. Bailey was stealing gas by putting in and taking out a second meter to coincide with meter reading. This was denied by Mr. Bailey and a police warrant search undertaken with gas company staff failed to locate the alleged second meter. Nevertheless the supply was disconnected and the meter removed. Mr. Bailey was arrested and charged with stealing gas; however, the CPS declined to prosecute because of insufficient evidence. Notwithstanding there being no prosecution, BGT decided an offence had been committed, and informed Mr. Bailey that to be reconnected he would need to pay £189 for gas stolen, plus a reconnection fee of £39.

The vigorous representations made on Mr. Bailey’s behalf by his MP were to no avail despite the disconnection having continued for 12 months - Mr Purchase summarised the company attitude as: “We have the powers, we will protect our revenue”. Mr Purchase invited the Minister to consider whether, in these cases, a duty should be placed on gas companies to consult with the regulator.

If the company can disconnect without a successful prosecution, is there any way for the customer to challenge this decision? The obvious answer is to complain to the regulator but this is less than straightforward. In electricity for a number of customer matters if there is a dispute between the customer and the company the regulator is empowered to make a determination. Alleged theft of electricity does not fall within these provisions but is dealt with as a complaint about an enforcement matter, that is, a breach of the duty to supply placed upon electricity companies. In procedural terms this means that the matter is dealt with more informally by Offer.

Why should this matter? Article 6 of the European Convention of Human Rights, which will become enforceable in domestic law under the Human Rights Act, provides:

“In the determination of his civil rights and obligations … everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly …”

12. Electricity Act 1989 ss. 16-23. See also Gas Act 1986 s. 27A.
If disconnection is a determination of civil rights, the question becomes where can a customer obtain a fair and public hearing by an independent tribunal? Offer’s procedures are clearly not public and, without more detail, it is not clear whether they would meet the requirements of fairness. For example, are they a re-hearing or simply an investigation into the reasonableness of the company’s actions? Furthermore, at least one commentator is of the opinion that a regulator cannot be a tribunal for the purposes of Article 6. This is not the end of the matter, because a procedure can still comply with Article 6 if there is access to an appropriate tribunal at the end of it.

However, it is doubtful whether there are any other effective procedures for a consumer to challenge a company’s decision. Although judicial review was used in one case against the company’s decision, this was premised in part on the its monopoly position, which is no longer the case in a competitive energy market. In addition, judicial review is not an effective procedure for dealing with disputed issues of fact, which will be at the heart of cases of electricity theft. An alternative procedure was utilised in Gwenter v Eastern Electricity where the applicant, who had been disconnected for theft, issued a summons in the County Court claiming a mandatory injunction to have supply restored plus a declaration and damages. The case came before the Court of Appeal on an interlocutory point and no objections appear to have been raised to the procedure adopted by the applicant. Although this worked in the individual case, we think the more likely response of the courts is that there is an alternative remedy by using the regulator.

Our conclusion is that the procedure as a whole, in the absence of a criminal prosecution, does not comply with the requirements of Article 6 and that this would be unlawful when the Human Rights Act comes into force in 2000. There is therefore a pressing need to reform the procedures.

**Practice in New York State**

Gas and electricity theft are dealt with in New York State in ways that closely resemble practice in the UK; however a significant difference is the presence in N.Y. State’s procedures of a requirement for administrative hearings of disputes between consumers and their supply company by the Public Service Commission.

Stealing gas and electricity (typically “meter tampering”, or “intentional diversion” by small landlords or small commercial enterprises) is a crime under the N.Y. Penal Law. Prosecution is rare and this is believed to be due to the universal service provisions of the N.Y. Home Energy Fair Practices Act under which continuous residential electric and gas service is declared to be a public policy. The policy of continuous service is supported by a variety of schemes including, for example, a requirement that consumers in arrears who cannot afford the stipulated $10 a month under a “deferred payment agreement” be sent by the utility a notice drawing their attention to programmes administered by the department of social service - programmes that provide upwards of $100 million a year to utility consumers in New York. As in the UK, protection that is generally available is denied to consumers

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15. Above, note 7.
guilty of “culpable conduct” - thus, for example, the prohibition on billing for service taken more than a year previously is not extended to people who tamper with their meters.

Despite policies directed towards the ideal of ‘universal service’, familiar problem areas are said to remain, including: basic unaffordability of energy for low income households, the continued (and often inappropriate) use of disconnection as a collection tactic, contraction of public benefit programmes thus reducing eligibility for energy assistance, the closure of neighbourhood utility branch offices and reliance on call centre contact, and the Public Service Commission’s controversial decision to relax Home Energy Fair Practices Act rules so far as competitive providers are concerned, on the basis that the consumer can fall back to the HEFPA compliant provider of last resort.

The thoroughgoing procedures for administrative hearing provide for determination by the Public Service Commission of any company’s decision involving a disputed denial of an application for service, termination of service, or bill dispute.

Conclusions
There are three problem areas: the justice of the procedures, their consistency and the poverty issue. We deal with them and make proposals in turn. Insofar as legal changes are required, the forthcoming utilities legislation will provide an opportunity to secured the desired changes.

The first problem is the absence of a right to state your case before a hearing if your fuel company treats you as having committed the crime of fuel theft. A consumer may wish to dispute the allegation of theft and hence the company’s right to disconnect their supply, and/or the amount and terms of his or her financial restitution to the company and the current procedures are in breach of Article 6 of the European Convention on Human Rights. There are four options that could be proposed here. The first is that preferred by the Gas Consumers’ Council, namely to reserve all matters connected with fuel theft to the criminal justice system and only allow disconnection after a conviction. A second alternative would be to create an administrative tribunal along the lines of the New York Public Services Commission, to which consumers can appeal if they consider they are being wrongly dealt with in connection with an alleged theft. An administrative tribunal would be ideal for consumers who have a grievance about company action consequent upon an undisputed theft - this would cover matters like disconnection, outstanding company charges, and rate of recovery of charges. However, an administrative tribunal would be no substitute for the criminal justice system for deciding disputes about the theft allegation itself. A third alternative would be to give Ofgem the power to make determinations in these cases, in other words, to put it in the position of the administrative tribunal. A final alternative, which could be linked with the second and third suggestions, would be strengthen the burden of proof and make it clear that the utility company must have proof beyond reasonable doubt before it can disconnect or something stronger than the usual civil burden of proof on the balance of probabilities.
The second issue is the extremely wide discretion available to companies in dealing with fuel theft. There is a wide divergence of practice between the gas and electricity industry, between companies within the industries, and from case to case within companies in the way fuel theft is dealt with - leading to unpredictability of outcome and the exposure of consumers to punitive treatment by companies. The way forward must be regulatory action by Ofgem to establish universal standards for the treatment of fuel theft, and the enforcement, evaluation and periodic review of the standards. This needs to be done through amendment of the supply company licences, as writing the standards into licenses secures their enforceability.

The third issue is the inability of many consumers to afford the fuel that they need which puts pressure upon them to obtain access to fuel supplies by illicit means. One way forward is through anti-poverty measures and ensuring that disadvantaged consumers obtain the full benefits of competition. There are a wide range of measures currently under consideration to deal with poverty and the issue of obtaining the benefits of competition is under consideration in the Social Action Plan. We would add another alternative, namely removing the utility companies’ power to disconnect for debt, as has recently been done in relation to the water industry by the Water Industry Act 1999. A disconnection ban, such as has recently been installed for water, would, in removing the requirement for prepayment, reduce the impetus to fuel theft insofar as the theft is an impulsive reaction to short-term loss of (prepaid) supply.