

COMPLAINT TO THE UTILITY REGULATOR BY [REDACTED] IN RELATION
TO A CONNECTION DISPUTE AT [REDACTED] WITH
PHOENIX NATURAL GAS LIMITED

Final Determination

9th January 2017

1 Introduction

- 1.1 The Northern Ireland Authority for Utility Regulation (NIAUR) (referred to hereafter as the **Utility Regulator**) has received a formal complaint from [REDACTED] (B32) regarding a connection dispute between her and Phoenix Natural Gas Limited (**PNGL**) (the **Complaint**).
- 1.2 The Complaint relates to the terms on which PNGL would be prepared to connect [REDACTED] to the gas network
- 1.3 The Complaint between [REDACTED] and PNGL (together, the **Parties**) falls to be determined by the Utility Regulator under Article 32 of the Gas Directive (Directive 2009/73/EC) (the Directive) and Article 27A of the Gas (Northern Ireland) Order 1996 (A1).
- 1.4 The Utility Regulator has considered this complaint in accordance with its Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants dated June 2013 (A5) (the **Procedure**).
- 1.5 Teresa Perchard and Alex Wiseman (Utility Regulator Board Members) have been appointed jointly to determine the Complaint (together, the **Decision-Makers**). We do so as delegates of the Utility Regulator and on its behalf.
- 1.6 The Utility Regulator issued a draft determination to the Parties on 12 December 2016 and invited them to make representations.
- 1.7 This document is our final determination in relation to the Complaint.

1.8 In making this final determination, we have considered and taken due account of the following materials presented to us as relevant to the factual and legal background of the Complaint –

- (a) A Statement of Case (the **Statement**) prepared for us by a small team of skilled staff of the Utility Regulator.
- (b) A bundle of documents which accompanied the Statement and contained the papers listed in an appendix to the Statement.
- (c) The Parties' responses to drafts of the Statement and the accompanying bundle of documents.
- (d) The Parties' responses to the draft determination.

1.9 Where we use cross-references (e.g. **A4**) these are to documents in the Bundle.

Northern Ireland Housing Executive

2.11 The Northern Ireland Housing Executive (**NIHE**) is the owner of the property.

3 Factual Background to the complaint and the respective views of the Parties

3.1 This is an abbreviated summary of the facts. Please refer to the Statement of Case (dated November 2016) for further detail.

██████████ complaint

3.2 A gas supply was installed and operational at the property when ██████████ first moved in on 2 August 2004. SSEA was the gas supplier.

3.3 On 19 August 2009 PNGL disconnected the supply at the property after allegations of multiple meter tampering.

3.4 On 1 March 2011 a Decree (B7) was obtained, by Phoenix Supply Limited (now SSEA), against ██████████ for the sum £3,120.43. (Please note this sum is not a matter for consideration within this complaint as it is outside the remit of the Authority)

3.5 On 3 March 2016 (B12) SSEA advised ██████████ that to have the property connected to the gas network she must:

- Pay all costs associated with the interference of the gas supply (£3120.43)
- Pay full reconnection fee (£155.52)
- Sign a declaration confirming there will be no further incidents of meter tampering at this property or any property she is the occupier.

3.6 On 9 March 2016 (B14) the NIHE responded to correspondence from CANI regarding the issues faced by ██████████. NIHE stated;

“It is evident that the restoration of the heating supply is contingent on an agreement being reached between ██████████ and her energy provider in relation to the alleged fraud. As that matter is outside of the Housing Executive’s remit as a landlord, I regret to advise you that we cannot therefore intervene in this matter.”

3.7 On 4 July 2016 (B30) the Consumer Council (CCNI informed the Utility Regulator that

SSE Airtricity Gas has advised that they no longer are seeking payment of the arrears on [REDACTED] account. The account is closed and therefore they have no contractual relationship with [REDACTED]

3.8 On 6 July 2016 NIHE wrote to CANI (B31). Within that letter they stated

(i) *As a goodwill gesture to the Applicant [REDACTED]the Housing Executive is prepared to pay, on behalf of the Applicant, the reconnection fee of £155.52.*

On 14 September 2016 [REDACTED] wrote to the Utility Regulator (B32) to complain about the disconnection of her gas supply. A summary of her case was attached to this letter which had been prepared by CANI. This indicated that Phoenix Gas were requiring that the debt which was the subject of the Decree obtained in 2011 (£3120.43) had to be paid in full before a reconnection request would be considered and they would not accept instalments.

PNGL's Response

3.9 PNGL have responded to all the Utility Regulator's requests for information relating to this complaint.

3.10 PNGL state that as the relevant network operator the property may not be reconnected without certain procedures being adhered to. These are set out in the Revenue Protection Policy and Procedure document section 5.7.8 (A3 & A6)

3.11 PNGL states that it has never received a request from a Gas Supplier or property owner to reconnect this property.

Information provided by SSEA

3.12 SSEA have responded to all the Utility Regulator's requests for information throughout this complaint process.

- 3.13 In November 2010 SSEA commenced legal proceedings to recover the outstanding debt. A Decree (B7) was awarded in their favour by the County Court on 1 March 2011.
- 3.14 On 8 November 2013 SSEA received a letter from [REDACTED] regarding the reconnection of the gas supply at her property. SSEA responded on 12 November 2013 (B8) outlining that [REDACTED] needed to pay all outstanding costs and the reconnection charge in order to facilitate reconnection.
- 3.15 On 29 February 2016 SSEA received a telephone call from CANI on behalf of [REDACTED] enquiring as to what [REDACTED] needed to do to get the gas supply at her property reconnected. SSEA are understood to have advised that according to PNGL's Revenue Protection policy the property was permanently isolated due to multiple tampers and the full costs and reconnection charges would need to be paid up front before PNGL would consider reconnection.
- 3.16 SSEA stated that [REDACTED] was no longer its customer, it was not pursuing her for any debt and that it no longer had any relationship with her. SSEA also indicated that if [REDACTED] wants to be reconnected to the gas network she must satisfy the criteria laid out in PNGL's Revenue Protection policy.
- 3.17 There is no information in the Statement or Bundle to indicate what efforts SSEA has made since 1 March 2011 to recover the debt owed by [REDACTED] of £3120.43. However, SSEA confirmed in an email to the Utility Regulator (B69) on 25th November 2016, that this debt has been written off.

PNGL's Response to the draft Statement of Case issued 1 November 2016

- 3.18 PNGL responded to the draft Statement of Case (B56), issued by the Utility Regulator, on 8 November 2016 (B57).
- 3.19 As part of its response PNGL sought to provide clarity by differentiating between a *connection* to the natural gas network and a *reconnection* to the natural gas network.
- 3.20 PNGL also stated that:

As the tenant, [REDACTED] is not entitled to request a connection to the natural gas network as she is not the owner of the property. However, as the tenant and

potential gas user, [REDACTED] may request, through a gas supplier, that the property is reconnected subject to the conditions imposed as the result of more than one incident of meter tampering.

3.21 PNGL further highlighted that

The criteria outlined in the RP Procedure are the minimum requirement to reconnect and were introduced to prevent further incidents of meter tampering. There have been no known reoccurrences of meter tampering at reconnected properties where the criteria have been met.

3.22 PNGL believes it has applied its RP Policies and Procedures equitably and fairly in all instances of more than one meter tampering.

3.23 PNGL again highlights the safety issue regarding meter tampering and defends its own position as the responsible gas distribution network operator.

Responses to the Draft Determination dated 12 December 2016

3.24 Responses to the Draft Determination were due on the 28th December.

3.25 The Citizens Advice Bureau on behalf of the complainant did not make any submissions or representations with regard to the draft determination.

3.26 PNGL made submissions on the draft determination on 21 December 2016. Their response is summarised below following the headings used by PNGL in their response.

Application of PNGL's Revenue Protection Policy and Procedure

3.27 PNGL emphasised the importance of their Revenue Protection Policy and Procedure as a document which addresses meter tampering incidents. They stated that it was imperative that the policy was applied consistently. To fail to do so would lead to allegations of discrimination.

3.28 PNGL did not consider that it had refused to connect the property on the basis of an unpaid debt. They stated that safety was the main priority when there are incidents of meter tampering. Also, that the criteria for reconnection set out in PNGL's Revenue Protection Policy and Procedure mitigate risk with regards to safety. The criteria had proven to be effective in reducing meter tampering.

3.29 PNGL disagreed with clause 6.17 of the Draft Determination which said

“PNGL have stated that they would not be prepared to reconnect the property without certain conditions being adhered to as set out in the Revenue Protection Policy”

PNGL say that the terms of its industry accepted Revenue Protection Procedure mean it is **unable** to reconnect the property as the criteria for reconnection have not been met.

Public Service Obligations relating to Network Safety and Non Payment of debt

3.30 Commenting on clause 6.13 of the Draft Determination, PNGL referred to the Gas Safety Management (NI) Regulations. These Regulations require PNGL to ensure public safety where it believes the integrity of the network has been compromised, as is the case in multiple instances of meter tampering. PNGL believe that its Revenue Protection Policy and Procedure helps fulfil its statutory safety obligations and to fulfil its obligations under the Energy (NI) Order 2003 with regard to protecting the public from dangers arising from gas misuse.

3.31 Responding to Clause 6.18 of the Draft Determination (which said that PNGL would need to give reasons why reconnecting the property would prejudice its Public Service Obligations) PNGL made a number of points as follows:

- (i) PNGL commented that in order to uphold its safety and security responsibilities it had to identify appropriate criteria for reconnection in order to reduce the risks arising from meter tampering and theft of gas. PNGL see the criteria included in its Revenue Protection Policy as the only option available. They noted that no alternative criteria were identified by the industry. In the absence of a requirement to pay for any gas used or costs of disconnection and reconnection in tampering cases there would be no requirement to make any restitution, nor any incentive not to repeat the theft. PNGL consider that the criteria have been effective in practice and it would now be unhelpful to dis-apply them.
- (ii) PNGL owe a duty of care to other persons, including those occupying premises connected to the network, persons in neighbouring premises and

users of the network. PNGL highlighted the risk of a claim for negligence should the theft or misuses of gas give rise to an incident of death, injury or damage to property.

- (iii) They argue that it is not unreasonable to take steps to mitigate this risk by having in place criteria to reduce the likelihood of meter tampering and theft of gas. They argue that the absence of any sanction would be prejudicial to PNGL in the event of any damage, injury to persons or property
- (iv) PNGL referred to the Utility Regulator's developing Code of Practice for energy theft which indicated that those liable for energy theft must be held accountable for the costs. PNGL made reference to extracts from the Utility Regulator's consultation on the Energy Theft Code of Practice and considered that it was accepted by the Utility Regulator that consumer and network safety and the need for restitution from those liable are inextricably linked.

Transposing of EU law into NI Domestic Law

3.32 Commenting on Clauses 6.8, 6.9 and 6.22 of the Draft Determination PNGL believed that its Revenue Protection Policy and Procedure is compliant with existing applicable NI domestic requirements, including the PNGL licence.

3.33 They stated that if the Utility Regulator elects to make further provision through new domestic law, then, appropriate consideration is required to enable Distribution Network Operators to continue to comply with their public service obligations.

3.34 They indicated that any amendment to its Revenue Protection Policy and Procedure would require liaison with the relevant parties, and consideration should be given to implications for the wider gas industry.

Connection Requests by Eligible Customers

3.35 PNGL highlighted that any request from a consumer to be provided with a gas connection can only be facilitated where a gas supplier has been identified and is willing to supply. This ensures that there are no unregistered supply meter points on the network, which should not be permitted.

- 3.36 Also, that the concept of requiring a gas supplier to be assigned at all times is contained within several industry codes, including PNGL's Connection policy. PNGL's Gas Connection Agreement terms and conditions state that in the event of no gas supplier assigned, PNGL would disconnect the property from the network.

Eligible Customers and Property Ownership

- 3.37 PNGL considered that requests for connection to the system should only be actioned if the request is made by the property owner. This is referenced in PNGL's Connection Policy and Gas Connection Agreement. PNGL consider this to be legally necessary to ensure that the persons who would have liabilities subsequent to any connection are in agreement. PNGL considered that the person signing the legal agreement must have the authority to permit the various construction associated with connection to the gas network. Therefore it was appropriate that tenants are not able to request connections. Landlords have the right to select the fuel source for the premises they own. PNGL question how, if a tenant could be regarded as the eligible customer, they could force a landlord to accept legal liabilities, for example for safety of gas at the property or maintenance of any pipes/pipe boxes. PNGL asked that the Utility Regulator give further consideration to the interpretation of 'eligible customer' for the purposes of requesting a connection to the gas network.
- 3.38 PNGL also considered they have met all current NI legislative requirements and the conditions of its policies. Referring to clause 7 of the Draft Determination, namely the question of whether to make a costs order. They stated that as PNGL had not failed in any of its obligations and they did not believe it was appropriate for the Utility Regulator to make a costs order against PNGL in this instance.
- 3.39 Our consideration of PNGL's representations is set out in section 6.

4 Applicable Law

4.1 This is an abbreviated summary of the legal framework applicable in determining the Complaint. Please refer to the Statement of Case (dated November 2016) for further detail.

The Directive (A4)¹

4.2 Article 32 of the Directive imposes an obligation on Member States to ensure third party access to transmission and distribution systems are based on published tariffs which are applicable to all eligible customers.

4.3 Article 35 of the Directive provides the rationale for gas undertakings to refuse access to the network. Reasons for refusal include: lack of capacity, or where the access to the system would prevent them from carrying out various public service obligations, or on the basis of serious economic and financial difficulties with take or pay contracts.

The Gas Order (A1)²

4.4 Article 27A of the Gas Order outlines the Authority's dispute resolution functions with regards to gas disputes.

4.5 This Article allows any person to make a complaint if the subject matter constitutes a complaint between a complainant and a holder of a conveyance or storage licence, or a holder of a licence to operate an LNG facility and that it is wholly or mainly a complaint regarding obligations imposed pursuant to the Directive.

4.6 Therefore, under Article 27A, the applicant may bring a dispute against PNGL as the holder of a conveyance licence to the Utility Regulator for determination.

¹

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0094:0136:en:PDF>

² <http://www.legislation.gov.uk/nisi/1996/275/contents>

The Licence (A2)³

- 4.7 On 5 September 1996 in exercise of the powers conferred by Article 8(1) of the Gas Order the Department for Finance granted PNGL a licence to convey gas.
- 4.8 Condition 2.4 of PNGL's licence refers to connections. The obligation to permit a connection is found at Condition 2.4.18. This requires PNGL to connect pipe-line systems of other gas conveyance companies to the network but does not require PNGL to connect a premises to the network.
- 4.9 Condition 2.4 requires PNGL to prepare a connection policy which is approved by the Authority.

Relevant Codes and Policies

*Connection Policy (A7)*⁴

- 4.10 PNGL's connection policy is prepared in accordance with condition 2.4 of PNGL's licence. It is approved by the UR and PNGL must comply with it. It sets out PNGL's connection policy and schedules of current charges, allowances, indicative costs, and technical requirements for property owners or Licensed Gas Suppliers.
- 4.11 Section 2.1 of the Connection Policy details that a connection can be requested by a Licensed Gas Supplier, a Licensed Gas Conveyor or a property owner. The definition of a property owner includes any private landlord, housing association or local housing authority.
- 4.12 In addition to this whoever requests a connection must:
- be willing to pay the connection charges (if applicable);
 - agree to the terms and conditions for connection and have signed a Gas Connection Application; and

³ [http://www.uregni.gov.uk/uploads/images/2016-09-01_PNGL_\(Gas_Conveyance\)_Final.pdf](http://www.uregni.gov.uk/uploads/images/2016-09-01_PNGL_(Gas_Conveyance)_Final.pdf)

⁴ <http://www.phoenixnaturalgas.com/fs/doc/PNGL%20Connection%20Policy%20Issue%2013.pdf>

- be requesting a connection to a property to which gas is either available or is scheduled to become available within 28 days.

4.13 Section 5 of the Connection Policy details maintaining, repairing, altering, renewing and removing connections, including as a consequence of theft of gas.

Terms and Conditions for the Connection of a Gas Service to a Domestic Property (A8)⁵

4.14 The Terms and Conditions for the Connection of a Gas Service to a Domestic Property are readily available on PNGL's website and include terms and conditions on the misuse of gas or abuse of gas apparatus.

4.15 In accepting a Gas Connection Application the applicant is bound by the Terms and Conditions for the connection of the Property to the System.

Revenue Protection Policy (A3) and Procedures (A6)

4.16 PNGL also has a Revenue Protection Policy which sets out its policy on conditions for *reconnection* following disconnection and this policy is therefore of relevance to this complaint.

4.17 As part of its submission PNGL provided a copy of both its Revenue Protection Policy (A3) and Revenue Protection Procedures (A6). PNGL has requested that these two documents remain confidential on the basis that they detail internal processes for a safety related area of their business.

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<http://www.phoenixnaturalgas.com/fs/doc/Terms%20and%20Conditions%20for%20the%20Connection%20of%20a%20Gas%20Service%20to%20a%20Domestic%20Property%20Word%20Version%20July%202015.pdf>

5 Issues to be Determined

5.1 The Statement of Case set out five issues for determination by the Utility Regulator as follows:

- a) Is [REDACTED] the responsible person for the gas connection (as defined under the *SSE Airtricity Gas Supply (NI) Limited Terms and Conditions (B25)*) at the property and for ensuring that the misuse of gas or abuse of gas apparatus does not take place;
- b) Was the disconnection decision by PNGL in accordance with their Revenue Protection Policy and Procedures (A3+A6);
- c) Was the decision by PNGL regarding reconnection in accordance with their Revenue and Protection Policy and Procedures (A3+A6);
- d) Is PNGL under an obligation to reconnect the property at [REDACTED] [REDACTED] on request;
- e) Does PNGL's application of its Revenue Protection Policy and Procedures create any undue discrimination against [REDACTED] in seeking reconnection to the network?

5.2 We, the Decision-Makers have considered all the evidence before us. Upon consideration of the evidence we sought further information from both PNGL and SSEA (B64 & B65).

5.3 We asked SSEA to confirm that they had written off the outstanding debt (B65). They confirmed by way of email (B69) that they had written off the debt.

5.4 We asked PNGL to explain how the fact that the debt was written off by the gas supplier would affect their Revenue Protection Procedure in this case, in particular we noted that their policy is that full payment of outstanding debt (which in this case includes costs of disconnection in 2009) is required before reconnection can be made (B64). PNGL advised (B68) that full payment of the debt to the gas supplier

was still required by PNGL, and all the other requirements of their Revenue Protection Procedure must be met prior to reconnection.

5.5 We sought further clarity (B71) from PNGL as to whom the debt should be paid. They advised (B73) that the debt should be paid to the supplier in order to fulfil the requirements of the PNGL Revenue Protection Policy.

5.6 We have concluded that the issues set out in paragraphs 5.1 a), b) c) and e), above are not matters that require determination by us and we give our reasons for this below.

5.7 In respect of issue 5.1 (a) [REDACTED] has had an agreement for the supply of gas from SSEA in the past. The terms of that agreement meant that she **was** the responsible person for the gas connection. It was on this basis that SSEA pursued a claim for the debt through the courts and the court has held [REDACTED] liable for the debt, however, most importantly with respect to the issue we are asked to determine, [REDACTED] does not **currently** have a gas connection so we do not see how we could determine that she is currently the person responsible for gas at a premises which does not have a gas connection.

5.8 In respect of issue 5.1 (b) PNGL's actions in disconnecting [REDACTED] premises are not in our view a relevant matter in this complaint. The complaint concerns whether the premises should be re-connected and on what terms. Accordingly the decision-makers decline to make a determination in respect of issue 5.1 (b).

5.9 It is also not clear to the decision-makers that any party has actually formally requested a re-connection of the premises which would then trigger a decision by PNGL. Accordingly as it does not appear that PNGL has made a decision about reconnection the decision-makers decline to make a determination in respect of issue 5.1(c).

5.10 In respect of issue 5.1(e) we have considered whether or not there has been undue discrimination towards [REDACTED]. We have not found any evidence of undue discrimination. However, we decline to make a determination in respect of issue 5.1(e) as this is not within our remit.

5.11 Therefore we propose to make a determination in respect of the issue set out at 5.1(d) above only as this question seems to us to be the issue which the complaint is about.

6 Determination in relation to the issue

Issue for determination

6.1 For the reasons set out in section 5 the issue for determination is:

- Is PNGL under an obligation to reconnect the property at [REDACTED] on request?

6.2 We consider that the complaint is essentially based on the following:

- The complainant is seeking a connection between PNGL's gas distribution network and the premises she occupies.
- The premises were disconnected in 2009 due to meter tampering resulting in theft of gas.
- In 2011 the gas supplier obtained a decree against the complainant for £3120.43.
- PNGL are stating that in order to reconnect the premises to the network the complainant must, among other things, make full payment of the debt in addition to meeting the cost of connection (£155.52). PNGL also state that as a tenant the complainant is not eligible to request a connection and that only property owners and gas suppliers may do so.
- The gas supplier has not recovered the debt in relation to the theft of gas and costs of disconnection and has confirmed to the Utility Regulator that they have written the debt off.

6.3 The complainant's landlord, NIHE, have offered to pay the connection cost of £155.52.

6.4 The question therefore arises, whether PNGL can refuse to connect the premises to its network on the basis that the complainant has not paid a debt that is or may be owed by her to SSEA. In considering the issue for determination we have considered, among other things, Section 3 of the Statement of Case, the applicable law. We agree with the legal principles highlighted, however, we have also

considered Article 35 of the Directive⁶ which we feel is useful in relation to the connection obligations imposed by EU law. We make further comment below on Article 35.

Domestic Law

6.5 An obligation to permit a connection is found in Condition 2.4.18 of PNGL's licence which imposes an obligation to connect a pipe line system of other gas conveyance company to the network, where PNGL have ceased to be exclusively entitled to convey gas in respect of all premises (and PNGL have ceased to be entitled to such exclusivity).

6.6 There is, therefore, no explicit obligation in PNGL's licence to connect premises to the network. However, the connection policy approved by the UR does regulate the connection of premises to the network via published tariffs.

EU Law

6.7 An obligation to connect is found in EU law, particularly Article 32(1) and 35(1) of the Directive. Article 32(1) refers to third party access to the transmission and distribution system "...applicable to all eligible customers..." This would essentially require PNGL to make a connection to its network on request of any person, including any eligible customer.⁷

6.8 In their response to the draft determination PNGL argued that any request from a consumer to be provided with a gas connection can only be facilitated where a gas supplier has been identified by the consumer and the gas supplier confirms its willingness to supply. If this was not recognised then the implementation of "eligible customer" could give rise to unregistered supply meter points on the network. We agree with PNGL that unregistered meter supply points are not desirable. We expect that in developing the necessary policy and approach to implementing the Directive the Utility Regulator will seek to ensure that this concern does not arise.

⁶ 2009/73/EC

⁷ Defined at Article 2(28) Directive 2009/73/EC "A customer who is free to purchase gas from a supplier of his choice within the meaning of Article 37"

6.9 Within PNGL's licensed area all consumers are eligible customers; that is, there is full competition in the gas supply market in its area. Accordingly we considered that the complainant is an eligible customer.

6.10 As noted in section 5 above in its response to the draft determination, PNGL raised concerns that this interpretation of eligible customers could give rise to legal problems if, for example, non property owners (such as tenants) are eligible to make a connection request regarding a rented property. We remain satisfied that the Directive defines "eligible customers" as meaning all customers, placing no distinction between gas customers according to tenure. Therefore all "eligible customers" should be able to request a gas connection.

6.11 We acknowledge that the installation of gas equipment at a property places significant legal obligations on the landlord in relation to safety matters. In addition a tenant's tenancy agreement may not allow the tenant to organise or undertake work affecting the fabric of or services to a property without landlord consent. Though this is a matter between the landlord and the tenant it is clearly not desirable that PNGL might make a connection to a tenanted property if the landlord had not given consent. PNGL's Gas Connection Agreement is the key mechanism to ensure that connections are made in a way that ensures liabilities can be appropriately assigned to parties affected. It would therefore be reasonable for customers requesting connections to demonstrate that they have the authority to permit the construction of the service pipe and have secured any permissions necessary. We would not wish to dilute these arrangements.

6.12 Consequently, while the tenant may request a connection, the property owner also needs to be involved before the connection is made. Outside of the complaint determination process we expect the Utility Regulator will now need to consider how to implement the definition of "eligible customer" in a manner that ensures that, whilst not necessarily requesting the connection themselves, any landlords/property owners affected by a connection have given appropriate consent, and accept any liabilities in relation to safety that may fall to them as a result. We note in this particular case that the landlord and property owner had installed a gas system for heating the property before [REDACTED] moved in and has offered to meet the costs of reconnecting the property to the gas system.

6.13 Article 35(1) details the rationale for a gas network provider being able to refuse a connection to its network. A connection can only be refused if there is a lack of capacity on the system; or if the making of the connection would prevent it from carrying out any public service obligations; or if there are any serious economic difficulties with take or pay contracts. Duly substantiated reasons must be given for any refusal of access.

6.14 We note that the obligation to connect set out in the Directive is not currently fully implemented in the PNGL Licence. However, the Authority is required to act in accordance with the provisions of EU Law.

6.15 The public services obligations referred to in Article 3(2) of the Gas Directive are obligations which: *"may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency, energy from renewable sources and climate protection."*

6.16 Security in this case relates to both security of supply of natural gas and to technical safety. PNGL has certain public service obligations of the type referred to in Article 3(2) of the Directive assigned to it, for example to ensure that the PNGL network code contains provisions that establish the technical safety criteria applicable to the operation of the network (condition 2.5.2(b)(iii) of the PNGL licence) and the preparation of a safety case under the Gas Safety (Management) Regulations (Northern Ireland) 1997. In their response to the draft determination, PNGL also made reference to their safety obligations under the above Regulations and argued that the Revenue Protection Policy and Procedure assists PNGL in fulfilling its statutory safety obligations.

6.17 We have duly noted PNGL's response to our draft determination in this case. It nevertheless remains our view that the effect of the EU law therefore is that PNGL is required to make a connection to its network on request of any person, including any eligible customer and should only refuse to make such a connection if:

- there is a lack of capacity on the system;

- the making of the connection would prevent it from carrying out any public service obligations referred to in Article 3(2) of the Gas Directive which are assigned to it; or
- there are serious economic difficulties with take-or-pay contracts.

Public Service Obligations – technical safety

6.18 The Statement of Case states that PNGL 'confirms that it has never received a request from a Gas Supplier to reconnect this property'. Therefore it appears that PNGL may not have received a formal request for the connection to be made. A number of persons are eligible to make such a request, including: a supplier; NIHE; and the complainant herself as an eligible customer. In response to queries from CCNI/CAB it is clear that PNGL has safety concerns which they will consider and they have cited gas safety associated with incidents of meter tampering.

6.19 PNGL contends that the Revenue Protection Procedure is a mechanism for deterring meter tampering and subsequently gas theft thus enhancing gas safety.

6.20 In their response to the draft determination PNGL have stated that under the terms of their Revenue Protection Policy and Procedure they are unable to reconnect the property without certain conditions being adhered to as set out in the Revenue Protection Policy. In ██████████ case the most problematic of these for her to fulfil is the requirement to make full payment of a debt.

6.21 In refusing a connection PNGL must give reasons why it is prevented from carrying out any public service obligations, i.e. relating to safety. The EU Directive does not enable PNGL to refuse a connection solely on the grounds of non-payment of a debt – it must demonstrate that non-payment of the debt means that PNGL cannot carry out its public service obligations, for example relating to safety pursuant to the Directive. We note that PNGL's response to the draft determination provides a number of factors it would consider relevant, relating to its public service obligations which might result in refusing to make a connection in this case, if a connection was requested.

6.22 However, as it has been established that PNGL has not actually received a request for a connection we have not treated their response to the draft determination as a decision as to whether or not they would be prepared to connect the property occupied by [REDACTED]. That will be a matter for PNGL if and when a formal request to connect is made.

6.23 If PNGL refuses access on the basis that providing it would prevent them from carrying out a public service obligation, PNGL must substantiate their reasons for refusal.

6.24 Accordingly, we invite PNGL to consider if they would connect [REDACTED] consequent to a formal request to connect, and if access is refused to give duly substantiated reasons for doing so in light of the requirements of Article 35 of the Directive.

Final determination

6.25 We have considered all representations made to us during the course of this complaint process. We uphold our draft determination.

6.26 However due to the gaps we have identified in the domestic legal framework we determine that the Utility Regulator should modify Condition 2.4.18 of PNGL's Licence to ensure that the obligation to connect includes an obligation to connect premises on the application of any *eligible customer* within the meaning of the Directive. As a consequence the PNGL connection policy will also need to be amended to ensure that all eligible customers may apply for connection. This will ensure that PNGL's licence and connection policy fully reflect the requirements of EU law. We would expect any subsequent licence modifications will be subject to the Utility Regulator's normal consultation process for such matters, involving full consultation and engagement with PNGL, other relevant industry participants and consumer organisations and other affected parties.

7 Section Seven – Final Order

7.1 It is ordered that the issues for determination are determined in accordance with section 6.

Costs

7.2 The Procedure refers to the possibility of a costs order and therefore the Parties have been on notice to this effect.

7.3 Having had regard to the matters referred to in Article 27A(8) of the Gas Order, in this particular case, we exercise our discretion not to make a costs order in this matter.

7.4 The Utility Regulator expressly reserves the right to order the payment of costs in any other complaint and will consider each case on its own merits and circumstances.

Teresa Perchard
Alex Wiseman

Authorised on behalf of the Utility Regulator

