



# Billing Practices for Fixed Telecommunications Services

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## Consultation Document

### Channel Islands Competition and Regulatory Authorities

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## 1. Introduction

Telecommunications customers in the Channel Islands have benefited from an increased range of telecommunications services, including higher speed fixed broadband, an increasing range of wireless services and a greater choice of mobile providers. However, customers continue to rely entirely on Cable & Wireless Guernsey Limited (**Sure**) in Guernsey, and JT (Jersey) Limited (**JT**) in Jersey, for their fixed exchange line service and these two providers also account for the largest shares in the provision of other fixed line services in the respective islands, such as voice calls.

Recently, in Guernsey, Sure customers have seen a series of changes in the way they are billed for their fixed line services. Customers have seen additional payment charges introduced depending on the method of payment they use, the time period to pay bills has shortened, while late payment penalties and reconnection fees have also increased. These changes have caused concern among some customers who question whether they are fair and reasonable. As Sure and JT Jersey enjoy powerful market positions in the provision of fixed line services in Guernsey and Jersey respectively, some customers may not feel they can challenge or re-negotiate the terms and conditions set by such businesses.

In both Guernsey and Jersey, operators' terms and conditions and the consumer codes by which they operate in providing fixed line services are subject to regulatory oversight exercised by the Guernsey Competition and Regulatory Authority (**GCRA**)<sup>1</sup> and the Jersey Competition Regulatory Authority (**JCRA**), which together constitute the Channel Islands Competition and Regulatory Authorities (**CICRA**). In light of the concerns raised, CICRA believes that customers' specific concerns regarding fixed line operators' billing and payment procedures may warrant further examination. CICRA is therefore issuing this consultation to help determine whether, and if necessary, how, it should intervene in this area. Lessons learnt from this consultation may also be used by CICRA to develop a common approach in both Jersey and Guernsey.

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<sup>1</sup> *The Guernsey Competition and Regulatory Authority succeeded the Office of Utility Regulation in June 2012 (see below)*

## 2. Purpose and Structure of the Consultation

Section 3 of this consultation document sets out the legal context in Guernsey and Jersey for CICRA's role. Section 4 provides some background to the concerns it wishes to examine. Section 5 lists the particular issues where CICRA believes it might focus and provides some preliminary views on those issues, inviting comments on specific questions. Section 6 sets out the next steps in taking the matters covered in this document forward.

Interested parties are invited to submit comments on the matters raised in this consultation paper in writing or by email to the following addresses:

**GCRA, Guernsey**

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All comments should be clearly marked "Billing Practices for Fixed Telecoms services - Consultation" and should arrive before 10am on 16<sup>th</sup> November 2012.

In line with CICRA's consultation policy, responses to the consultation will be made available on the CICRA website. Any material that is confidential should be put in a separate Annex and clearly marked as such so that it may be kept confidential.

### 3. Legislative and Licensing Background

The Competition Regulatory Authority (Jersey) Law 2001, and The Regulation of Utilities (Bailiwick of Guernsey) Law 2001 together with The Guernsey Competition and Regulatory Authority Ordinance 2012<sup>2</sup>, set out the legal framework for regulation. In addition, there is scope for the States of Guernsey and States of Jersey to give directions to the GCRA and the JCRA respectively.

In Guernsey, the specific legislative bases in the telecoms sector are provided by The Telecommunications (Bailiwick of Guernsey) Law 2001 together with the telecommunications licences issued to telecommunications operators. The legislation provides that telecommunications operators need a licence to operate a fixed telecommunications network, and the licence determines operators' obligations. In particular, in Sure's licence, Condition 17 concerns 'Consumer Protection': Condition 17.1 provides that Sure should publish standard terms and conditions and Condition 17.5 provides for a 'consumer code'. Condition 31.2 of Sure's licence allows the GCRA to determine the "maximum level of charges" that Sure can apply for Licensed Telecommunications Services where it is dominant.

In Jersey, the JCRA's duties in the telecommunications sector are defined in Article 7 of the Telecommunications (Jersey) Law 2002 and provide:

*"In so far as it is consistent with (...), the Minister and the Authority shall each perform his, her or its functions under this Law in such manner as each considers is best calculated to protect and further the short-term and long-term interests of users within Jersey of telecommunication services and apparatus (...)"*

In addition, JT holds a Class III licence in Jersey, which the JCRA issues to a telecommunications operator with Significant Market Power (SMP). This licence contains provisions similar to those described above in Sure's licence.

Any decision resulting from this consultation will be based on relevant laws and duties of the GCRA and the JCRA respectively.

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<sup>2</sup> This Ordinance provided for the GCRA to be established as a successor to the Office of Utility Regulation, which was set up in 2001. The GCRA has taken over the OUR's duties and has added responsibilities in the implementation of the new Guernsey Competition Ordinance.

## 4. Background

The issues raised in this consultation have stemmed from concerns around changes to the way telecoms customers are billed and payments are collected. In particular, where these concerns involve the two dominant providers of fixed line services, in their respective geographic markets, the choices available to customers are limited and the regulator is in a position to represent the interests of consumers through the statutory powers available to it. CICRA is of the view that the notion of ‘charges’ includes all the payments that customers make to operators, including those that are added to basic bills as payment charges, late payment charges and reconnection charges. CICRA, in line with its regulatory duties, is therefore concerned that these ancillary charges should satisfy operators’ licence obligations.

In CICRA’s view there is a degree of existing competition in the provision of fixed line call services in the Channel Islands, including:

- carrier pre-selection or equivalent on each incumbent’s network;
- Airtel Vodafone’s service called ‘Home Phone’, which provides a service that can replace the incumbent’s exchange line services using spectrum;
- Newtel’s new Y:tel service, which provides calls to and from a user’s fixed phone via a Wi-Max service, using spectrum;
- mobile services generally, which are an increasingly important part of how people use telecoms services; and
- broadband services, though these are generally also dependent on the provision of a fixed exchange line from Sure in Guernsey or JT in Jersey.

However, it remains the case that JT and Sure are the dominant providers of fixed telecommunications services in Jersey and Guernsey, respectively, while customers face no choice of provider for their fixed exchange line service. The way in which customers are billed and payment is collected is therefore a legitimate concern for CICRA.

### **Billing practices**

Prior to CICRA launching this review, it engaged in discussions with Sure. At that time Sure’s Consumer Code of Practice stated that:

*“The date by which we must have received payment is shown on the bill. This date is normally a minimum of 21 days after the bill has been issued.”*

Each monthly bill shows a ‘bill date’, which is the start date for the 21 day period customers are then given to pay their bills. The ‘bill date’ will be the date on which Sure sends its bills for printing, typically a day in the first week of a month. Once the bills are returned from Sure’s printers, the operator relies on Guernsey Post Limited

to deliver these to households, and this whole process takes time. A case in point was the month of July 2012 where the date on customer bills was 5 July 2012 and the bills were delivered to Guernsey homes on 17 July 2012. But the deadline for payment, being 21 days after 5 July, was less than two weeks after customers had received their bills.

CICRA received a number of complaints over recent months relating to Sure's shortened payment deadline and the uncertainty associated with it. After it raised the matter with Sure, Sure modified its Consumer Code of Practice, which now reads:

*"The date by which we must have received payment is shown on the bill. This date is normally the end of the month in which the bill was issued."*

While this change may still leave customers with no more than two weeks to settle their accounts with Sure, it makes it clear when a customer is expected to settle, whatever the vagaries of bill delivery.

In the event a customer fails to pay his or her bill by the payment deadline – which is now the end of the month in which a bill is issued – they are normally sent a reminder by Sure. Below is an excerpt from the revised Sure Consumer Code of Practice, which states that:

*"When a bill is sent to you and payment is not received by the stated date we will apply the following procedure:*

- *We reserve the right to charge interest on any balances which remain unpaid from the due date to the date of payment and/or late payment fee at rates notified from time to time at [www.surecw.com](http://www.surecw.com)*
- *We will send you a reminder stating that payment must be made within 7 days of the date of the reminder.*
- **NEW** *Where the bill is not paid and there is no history of previous non-payment, we will contact you by phone (if unsuccessful we will send a letter) advising the date we must receive payment by, otherwise your service will be restricted to incoming calls (calls to emergency services will still be possible).*
- **NEW** *After your service has been restricted in this way, we will write to you and inform you that your contract will be terminated if payment is still not received by a final date.*
- *If payment is not received, we will disconnect your telephone service and it will not be reconnected until we have received full payment of the outstanding amount.*
- *We will also make a charge for restoring your service."*

The question arises as to whether Sure's approach is in line with good practice, and so CICRA has considered the approaches adopted by other operators. It appears that Airtel allows at least ten working days from the date on which the bill is issued for its

post-pay mobile customers to pay their bills. JT issues its bills dated the 28<sup>th</sup> of the month and states that customers should receive their bill within fourteen days of that date. JT allows twenty-one days from the date of postage for payment of bills.

A related concern raised by customers is that Sure has recently increased the 'late payment fee' mentioned above from £5 to £7.50 for household customers. The 'charge for restoring your service', mentioned above ('reconnection fee' in Sure's literature) was recently raised to £30 from £25. CICRA notes customer concerns about these charges and they are discussed further in the next section.

Once they have received their bills, as with JT, customers have a choice of payment method with Sure. They can pay by direct debit, by debit card, by credit card or by cheque, over the telephone or at locations such as Guernsey Post Offices or the Sure retail shop in the St Peter Port High Street.

Sure has told CICRA that the different payment methods customers choose to use cause it to incur different costs, with direct debit having the lowest cost. For this reason, Sure is charging customers who use direct debit less than those who, for instance, pay by credit card over the phone or pay at a Post Office counter. However, the question as to whether these charges are reasonable and what constitutes accepted practice in competitive markets is relevant and CICRA proposes to consider this area in light of customer concerns.

## 5. Issues CICRA wishes to consider

The complaints received by the GCRA on various billing and payment collection changes made by Sure cover similar topics to various complaints made to the JCRA concerning JT's practices, though the relatively short time period in which Sure has brought in its changes would appear to be a contributing factor to the degree of concern registered by Guernsey customers. CICRA's view is that unless there is good reason not to do so, it should develop and implement similar practices in Jersey and Guernsey. This section describes the issues that CICRA proposes to address and on which it seeks views from customers and other stakeholders. These issues are:

- Notice period before payment has to be made
- Late payment and reconnection fees
- Method of payment charges
- Transparency of terms, conditions and charges
- Charges for Suremail.gg accounts

### Payment notice

As noted above, helpful changes recently made by Sure to its Consumer Code of Practice following CICRA raising these issues clarify the date by which Sure must receive payment. However, customers may still have no more than two weeks after they have received their bills in which to arrange payment. In Jersey, under JT's Consumer Code of Practice, customers may receive as little as five days' notice before a direct debit payment is taken, although the actual period of notice may be longer.

Exposure by customers to late payment fees, therefore, may depend crucially on how long they are given, by Sure or JT, to pay their bills from the time they are received. Telecommunications operators may argue that, as their monthly billing dates are very predictable, customers should expect a bill and make preparation to pay it in good time.

However, it is also a consideration that Sure and JT both bill for line rental services in advance, before the end of the period to which the bill relates, and the same is true for broadband services.

*Question 1: Are respondents of the view that the payment deadlines in Sure's and JT's Consumer Codes of Practice give customers enough time to pay their fixed line bills?*

## Late payment & reconnection fees

CICRA takes the view that customers have a duty to pay for the services they receive from Sure, JT or other telecommunications operators. It also acknowledges that customers who pay late increase the overall cost of service provision. It would appear appropriate that this additional cost should be borne by late-paying customers; otherwise, it would have to be borne by customers as a whole. CICRA therefore has no objections in principle to operators levying late payment penalties or reconnection fees.

CICRA does however wish to ensure that charges are proportionate and that dominant operators such as Sure and JT are bound at all times by the need for reasonableness, proportionality and fairness.

A concern conveyed to CICRA is that there is a pattern in Sure's behaviour, in that Sure has been steadily increasing its demands on customers in the area of billing. Having moved from quarterly billing to monthly billing cycles, Sure now delivers bills with reduced time for customers to pay (see above) while at the same time raising late payment fees and reconnection charges.

Late payment penalties were introduced by Sure in February 2010 and set at £5 per bill for residential customers, £10 per bill for small businesses and £50 per bill for corporate customers. This level was justified by Sure in conversation with the Office of Utility Regulation at the time by the scale of persistent outstanding bills. From 1 June 2012, Sure increased the late payment fee for residential customers to £7.50 per bill, for businesses from £10 to £15 per bill and for corporate customers from £50 to £75 per bill, a 50 per cent increase across the board.

Another issue that has arisen is whether the way late payment fees are set could be fairer. Low call usage customers may be faced with late payment fees that are large in comparison to their bills. Sure customers who use an exchange line service only, with minimal call usage, could face a late payment penalty that is around 75 percent of the outstanding amount. On the other hand, Sure may have to incur the same charge to chase customers who pay late regardless of the size of their bills. The question also arises as to whether the current approach to addressing persistent late payers is fair to all customers and whether a targeted approach would be more reasonable.

Similar arguments are relevant to the area of reconnection fees, with Sure's reconnection fee rising from £25 to £30 on the 1 June 2012 in Guernsey. The fee applies to customers who are disconnected for non-payment of bills. Whether this fee is set at a reasonable level is a consideration for CICRA and an area it wishes to assess in this consultation process.

*Question 2: Respondents' views are sought on how late payment penalties and reconnection fees might be set by Sure and JT. For example, should these be proportionate to the size of the outstanding amount, or a fixed penalty?*

*Question 3: What alternatives are open to Sure and JT to address persistent late payers?*

CICRA is also seeking answers to questions it wishes to raise specifically with Sure in Guernsey and JT in Jersey, namely:

- a) Whether outstanding bills have increased over the past three years to August 2012, in terms of the number of bills paid late and the total outstanding amount owed by late payers? and*
- b) What reasons explain these changes, if any?*

### **Method of payment charges**

Sure and JT customers have a range of methods available to them to pay their bills. Until recently, Sure customers who paid by direct debit benefited from a monthly 50 pence discount compared to customers using other payment methods. Sure has now removed the direct debit discount and added charges for customers paying by other methods, thereby maintaining a differential in favour of the direct debit method but adding to the charges of all customers.

In principle, CICRA agrees that, if different payment methods cause Sure and JT to incur different costs, the operators are entitled to recover these costs. In particular, to the extent that alternative payment methods to direct debit incur greater costs, CICRA agrees that these should be reflected in bills. If a group of customers choose a less costly form of payment, there is no apparent reason – bar reasons of practicality – why they should subsidise the customers who, for a variety of reasons, choose a more costly alternative form of payment.

However, CICRA's view is that such differentials should go no further than justified by differences in cost, and does not agree that Sure and JT may increase the differential between direct debit and other forms of payment so that charges for methods other than direct debit have a punitive or deterrent effect. It is CICRA's position that Sure and JT must offer a choice of payment methods to their customers because they are dominant in the provision of fixed line services.

Sure's and JT's customers may quite reasonably not regard direct debit as an acceptable alternative to other forms of payment. Among the many reasons for such a view, is that direct debit reduces an account holder's control over how much is

debited from his or her account. While it may be the case that many customers would not consider this a material risk and, if an unexpectedly large or erroneous sum should be taken from their account, would be able to absorb this while the problem is resolved (indeed, the majority of customers are on direct debit), it is the case that many households with small incomes might regard such an event as sufficiently problematic to make the option of direct debit an unacceptable risk. In CICRA's view, it is therefore reasonable that customers should be able to choose not to move to direct debit payment as it may not be a realistic alternative for them in their circumstances.

CICRA therefore wishes to reassure itself that Sure and JT are not compelling customers to move to direct debit by charging more than it costs for payment methods when alternatives other than direct debit are chosen. Since 1 June 2012, Sure customers who pay over the phone using debit or credit cards face charges of £1.50 per monthly bill, and those paying at a post office face charges of £1.20 per monthly bill. In both cases, respectively, Sure claims it used to absorb the payment charges levied by banks and the fees raised by Guernsey Post but, as they have increased, they now need to be passed on to customers.

CICRA notes that, until 1 June 2012, Guernsey customers paying by card over the phone or at a post office paid 50 pence more than direct debit customers each time they paid their bills, due to the discount offered for payment by direct debit. It therefore requests evidence from Sure that costs have in fact risen in absolute terms, compared to direct debit payments, by £1 for card payments and by 70 pence for counter payments at Guernsey Post.

CICRA would also like Sure and JT to consider the alternative payment methods they offer their customers to ensure that an adequate choice remains available to customers who do not use direct debit, even if payment alternatives have a cost to customers. In particular, as banks are making the use of cheques increasingly difficult or, in some cases, are withdrawing them from certain accounts, CICRA believes that it is a reasonable customer expectation that Sure and JT should accept payment by electronic bank transfer, a method used, for instance, by many utilities and credit card companies.

*Question 4: Do respondents take the view that Sure and JT should continue to provide payment methods other than direct debit?*

*Question 5: Do respondents agree that customers who choose a method of payment different from direct debit should pay the additional cost incurred by Sure or JT in providing this particular payment method?*

*Question 6: Do respondents agree that Sure and JT should accept electronic transfers from customers who prefer this payment method to the use of direct debit?*

### **Transparency of terms, conditions and charges**

When researching this consultation document, CICRA evaluated the information that was available on the websites of the two dominant fixed line operators: Sure and JT. It found that clear information around charging and related topics was missing from the websites. In particular, the following information was not available or could not be obtained by following a logical route from, say, a 'billing' or 'charging' section of the operator's website, or by using the website's search facility:

- a. charges that customers are to pay if they do not use direct debit;
- b. reconnection fees after service has been suspended or restricted;
- c. charges raised if a direct debit is refused by a customer's bank (it is listed as £15 on JT's website but not available on Sure's).

CICRA believes that all information relevant to payment collection activities are part of the information that Sure and JT should make available by virtue of their licence conditions and it must be available in an area of their website that is readily identified.

*Question 7: Respondents' views are sought on the quality and accessibility of information regarding what customers pay according to the payment method they choose and the costs of falling behind with their payments*

### **Charges for Suremail.gg accounts**

This section deals with an issue specific to Guernsey. CICRA has received communications from customers concerned about a further change in Sure's charges. The 'Suremail.gg' email accounts and addresses are available free of charge to Sure customers who take either a broadband or a Pay-Monthly mobile contract. However, since May 2012, Sure has been charging 50p per month per email address to customers who choose to retain these email addresses but no longer subscribe to Sure's broadband or Pay Monthly mobile products. This charge applies to 'Suremail.gg' accounts only, not the more numerous 'cwgsy.net' accounts.

CICRA does not regulate email services, as these are widely available, and Sure has no monopoly or dominant position in the provision of e-mail addresses. Moreover, CICRA is not aware of any requirement on Sure's customers to take cwgsy.net or Suremail.gg addresses when they subscribe to a broadband or other service with

Sure. In the circumstances, while CICRA understands this change in approach by Sure has led to complaints, it would not appear there is a case for regulatory intervention in this area.

An issue that has been raised is whether this pricing practice raise barriers to switching in the mobile or broadband markets in Guernsey. The argument is that customers may be reluctant to move away from Sure for broadband or mobile services because they do not wish to change their e-mail address, or to pay an additional £6 annual cost.

In CICRA's view, there may be an argument that customers should fully understand that when they choose to use an e-mail address specific to Sure services they may only be able to retain this address at a cost should they move away from Sure's other services. But as a preliminary view CICRA does not believe there is sufficient evidence to pursue concerns around anti-competitive behaviour arising from the introduction of these charges.

## 6. Next Steps

CICRA wishes to understand stakeholder views and opinions concerning the billing practices discussed above and to this end is inviting responses to the specific questions it has set out and welcomes any other comments.

After the consultation is closed, CICRA will review responses, determine or amend its practices in light of these responses, and where necessary, issue a draft decision in Guernsey and an Initial Notice in Jersey should it consider there is a need for changes in this area. A wider public survey is also contemplated to assess views on the topics covered by this consultation.