

Consumer Scotland's response to Ofgem forward work programme 2023-24

February 2023

Please contact: grace.remmington@consumer.scot for any clarification or follow up discussion.

1. Who we are

Consumer Scotland is the statutory body for consumers in Scotland. Established on 1 April 2022 under the Consumer Scotland Act 2020, we are independent of government and accountable to the Scottish Parliament.

Consumer Scotland uses data, research and analysis to inform our work on the key issues facing consumers in Scotland. As the statutory body for consumers we work with business, the public sector and consumer champions to put consumer rights, needs and interests at the heart of markets, services and policy.

Since our establishment in April 2022, Consumer Scotland has had the opportunity to engage with Ofgem through both the Consumer and Charities call and senior-level Consumer and Charities calls, roundtables and bilateral engagement.

We would welcome the opportunity to continue to build upon these relationships with Ofgem and we look forward to continued collaboration on a range of issues for the benefit of consumers in Scotland.

2. Introduction

Consumer Scotland welcomes Ofgem's draft forward workplan and proposed strategic priorities, projects and programmes.

Consumer Scotland supports Ofgem's plans for the Consumer Interest Framework and we have taken the opportunity to give constructive feedback on the framework as part of this response. We would welcome further engagement as this work develops to ensure that consumer interests are strongly represented across Ofgem's programme of work.

In terms of strategic priorities, we would like to take the opportunity to flag that there are multiple areas of close alignment with Consumer Scotland's aims and activities which provide opportunity for future collaboration. Therefore, our response focusses on areas of shared interest, with comments highlighting areas in which we are proposing activity under our own Draft Work Programme¹.

¹ Consumer Scotland (2023) [Consumer Scotland Draft work programme 2023-24](#)

Ofgem's Consumer Interest Framework

Consumer Scotland are delighted to see Ofgem's proposed Consumer Interest Framework, having highlighted a gap and need for this type of approach in the past few months at both industry-level stakeholder meetings and in [our publications](#).

We would welcome a Consumer Interest Framework for several reasons. Firstly, the energy crisis has exposed some of the failings in the market, which have resulted in poor outcomes for consumers – such as those on prepayment meters or consumers in vulnerable circumstances². A consumer framework would enable a proactive approach to ensuring consumer interests are considered in all decisions Ofgem makes. We would prefer a 'consumer outcomes' framework, rather than interests, for the reasons explained below. Secondly, a consumer outcomes or interest approach is already in practice or under development across multiple regulatory and policy settings, such as the Scottish water industry³, the Scottish public sector, and the Financial Conduct Authority⁴.

The Consumer Interest Framework represents a strong starting point but, in our view, needs further development, including engagement with consumers to ensure the outcomes represent genuine and evidenced consumer interests.

Consumer Scotland has an ongoing interest in the development of this framework and would welcome the opportunity to be involved in any forward discussions and engagement. Particularly, Consumer Scotland are well placed to contribute as the consumer body in Scotland but also as we will have responsibility for developing guidance and monitoring of a new statutory consumer duty for public bodies in Scotland⁵. Furthermore, the Scottish water sector also has an ethical-business model of regulation which is based on consumer outcomes. Consumer Scotland, and its predecessor consumer bodies, have been heavily engaged with this process within the water sector in Scotland. Given this wider background, we would like to flag a range of expertise and insight that we can bring to any development of the Consumer Interest Framework.

Whilst all the identified objectives set out in the Consumer Interest Framework are clearly relevant to consumers in Scotland, we would welcome much greater detail on how the framework will be operationalised. Consumer Scotland's evidence streams alongside evidence across the industry show that price increases have particularly impacted certain groups of consumers in the domestic market, such as:

- those on prepayment meters^{6,7}
- electric heating users⁸

² Consumer Scotland (2022) [Consumer Spotlight: energy affordability](#)

³ Water Industry Commission for Scotland (2020) [Corporate Plan 2021-27](#)

⁴ Financial Conduct Authority (2022) [A new consumer duty](#)

⁵ Consumer Scotland Act 2020: [Section 21](#)

⁶ Consumer Scotland (2022) [Consumer Spotlight: energy affordability](#)

⁷ Citizens Advice (2023) [Kept in the dark – urgent need for action on prepayment meters](#)

⁸ Consumer Scotland (2022) [Consumer Spotlight: energy affordability](#)

- younger people⁹
- women¹⁰
- those with disabilities¹¹

Whilst we appreciate the need for the framework to sit at a higher level than consideration of individual domestic consumers, our data highlights the need for explicit inclusion of trade-offs between different groups of consumers as a dimension of decision-making. This dimension goes beyond vulnerability which may not capture the heterogeneity between all consumer groups.

Key points of feedback

Broadly, we consider the objectives and sub-objectives are the right ones, unless otherwise specified. Please accept comments below as constructive engagement and feedback.

Consumer Scotland would like to highlight comments and flag areas which could be developed:

a) Vulnerability should have greater prominence within the Consumer Interest Framework

Identified as a sub-objective currently, vulnerability intersects with all aspects of these consumer outcomes. We would suggest adding this as an intersecting horizontal row which is overarching to all objectives and sub-objectives – or as a minimum as a pillar – to ensure that those most at risk of experiencing detriment in the energy market are considered in all decision-making to avoid exacerbating harm to specific groups of consumers. Consideration should also be given to intersectionality among consumers in determining how these trade-offs are distributed with recognition that multiple vulnerabilities that may be present.

Our recent tracker survey¹² has shown that:

- Disabled people are more likely to say they were struggling with their energy bills – 73% of people with a disability found it difficult to keep up with their energy bills last year compared with 64% of those without.
- Forty-seven percent of disabled people and 41% of those with a health condition reported cutting back on food compared with 32% of those without a disability.
- Fifty-two percent of disabled people reported that they could not heat their home to a comfortable level compared with 36% without a disability.
- Sixty-two percent of those who are limited a lot by disability report that their physical health is being impacted by high bills and 35% of those limited a little. By contrast, 18% of those without a disability reported the cost of energy was impacting their physical health.

⁹ Consumer Scotland (2022) [Consumer Spotlight: energy affordability](#)

¹⁰ Consumer Scotland (2022) [Consumer Spotlight: energy affordability](#)

¹¹ Resolution Foundation (2023) [Costly Differences: living standards for working age people with a disability](#)

¹² Consumer Scotland (2023) Tracker data (publication forthcoming)

- Seventy-one percent of those who are limited a lot by disability reported an impact on their mental health, with 44% of those limited a little reporting an impact. This compares with 31% of those without a disability.

Amongst other areas of Priority Services Register categories, it is also notable that people with children under five were more likely to report struggling with energy bills, cutting back on food, being unable to heat their home to a comfortable level, and rationing energy use. This data is supported by qualitative feedback from the Scottish Energy Insights Coordination (SEIC) group which Consumer Scotland convenes, the membership of which represents advice and policy organisations engaged in the energy landscape in Scotland.

b) Define what is meant by consumer interests and how these are identified

Whilst this may simply be down to language choice, the use of the term ‘interests’ suggests that these are identified by consumers. However, it is not clear whether consumers have been engaged in developing it, or that these interests represent what consumers themselves value and prioritise.

There would be merit in engaging consumers to understand their aspirations for the sector and how they wish to be engaged and treated as customers. Building consumer perspectives into regulatory thinking can only improve the prospects of providing an enduring structure for the net zero future.

Consumer Scotland would welcome further insight into the role of consumers in shaping this framework. We would also offer our insight, evidence and expertise into any further development of the framework. If Ofgem intends to undertake direct consumer engagement in the further development of the process, then we would be happy to support this work.

Focusing on consumer outcomes, rather than interests, might be an approach which would focus the framework to ensure that trade-offs are balanced in a way that ensure a good outcome for consumers. Outcomes is also more concrete, and less subjective, than interests. Consumer engagement and impact assessment could be tools to ensure that consumers themselves can determine what would represent a good outcome for them. The Financial Conduct Authority’s (FCA) consumer duty comes into force in July and could provide helpful insight from another sector. The FCA approach consists of a detailed regulatory framework including four consumer outcomes¹³.

Regardless of whether the wording of interests or outcomes is taken forward, any outcomes framework and supporting analytics or key performance indicators need to be formed based on consumer feedback and engagement.

¹³ Financial Conduct Authority (2021) [A new consumer duty: feedback to CP21/13 and further consultation](#)

c) How will trade-off, impacts and outcomes be captured, quantified and used in decision-making? How transparent will the analysis of components on this framework be in decision-making and stakeholder engagement?

More clarity is needed on how the Consumer Interest Framework will be implemented – how will each of these factors be incorporated into decision-making? What is the evidence that will be used to determine trade-offs? How will both quantitative and qualitative data be used? Consumer Scotland would also welcome bilateral discussion on this detail, as well as engagement in wider stakeholder forums.

d) What are the implementation tools that will support the Consumer Interest Framework?

We would like to see more detail about what this means in practice. Are there analytical tools to measure or test whether a decision has met all required consumer interests? The success of the framework depends on the appropriateness and accurateness of underpinning data, monitoring and analytics underpinning it. As above, the alignment with consumer interests also depends on active and genuine engagement with consumers.

Some of these factors could in practice be quite subjective – for example language used around fair pricing. Further engagement with stakeholders would be needed to determine whether they are the best measure. There is likely also a strong case for including impact assessments as part of this process of assessing consumer outcomes and distribution of impacts and outcomes between consumers.

e) Clarity on recognising both competing interests of different consumers and recognition that consumers are not a homogenous group

In line with the above comments, whilst the overall approach is warmly welcomed, there is potentially a missing sub-objective or further analytical layer regarding an assessment of trade-offs between different groups of consumers and different interests or outcomes for different groups of consumers. Whilst some of this is captured within the ‘vulnerability’ component of the framework, the heterogeneity of consumers extends beyond vulnerability alone. Some decisions will have benefits and costs for certain groups of consumers and, therefore, a further sub-objective regarding a recognition and plan for building these assessments into decision-making processes is needed. These trade-offs will be particularly important to consider in future discussions of affordability and social tariffs in the future energy market.

f) Consumer Scotland recognise the potential of this approach and would welcome expansion/ increasing ambition for this in a regulatory context.

This framework can be used as a basis for developing a regulatory approach that could incentivise good behaviour in the energy market, and reward suppliers for implementing good practice.

g) Areas that could be incorporated include:

- a. Access to and provision of accessible information: this dimension may be incorporated into 'transparent and enables choice' but, as access to and provision of information is key in meeting consumer interests, it could be strengthened by being explicitly mentioned.
- b. Low carbon transition: Whilst consideration of ensuring the low carbon transition meets consumer interests, there is a balancing act between least cost and the costs and benefits of social value, downstream benefits to consumers or industry, innovation and consumer choice. Therefore, we would like to suggest that the outcomes framework refer to this more explicitly by allowing room for broader considerations than solely the cost impact on bills.
This would include consumer interests or outcomes including ensuring the efficient provision of low and zero emission energy and associated infrastructure is timely and delivers maximum benefit for consumers at minimum cost. All market participants, including consumers, are supported to make sustainable choices and are fairly rewarded for their contributions to the energy system
- c. Redress: access to effective redress is essential to ensure consumer trust is met in the market. Regardless of whether the checks and balances in place are appropriate and effective, it would be in the consumer interest to be able to access redress when things go wrong.
- d. Affordability: whilst there is inclusion of 'fair prices', consumer interests are likely to extend to whether prices are affordable as well as fair.
- e. Customer service: as flagged, it is likely that good customer service would be at the forefront of consumer interests. Consumer engagement could test the particular aspects of customer service that matter most to consumers. Our data demonstrates the importance of good customer service to ensuring good consumer outcomes. Our recent tracker survey¹⁴ highlighted that:
 - Less than half of consumers (43%) thought their energy supplier treated them fairly
 - Only one-third (34%) of consumers would recommend their energy supplier to others
 - Twenty-seven percent of consumers did not think their supplier made it easy to contact them
 - Fifty-six percent of consumers agreed that the language on their bills is easy to understand
 - And just over half (52%) of consumers think their energy bills provide guidance on what to do if they are struggling to pay their bills.

¹⁴ Consumer Scotland (2022) [Consumer perceptions of their energy suppliers](#)

h) Including reference to existing consumer principles: The Consumer Principles were adopted by Consumer Council for Northern Ireland¹⁵ and by our predecessor consumer bodies in Scotland¹⁶. These include:

- Access: Can people get the goods or services they need or want?
- Choice: Is there any?
- Safety: Are the goods or services dangerous to health or welfare?
- Information: Is it available, accurate and useful?
- Fairness: Are some or all consumers unfairly discriminated against?
- Representation: Do consumers have a say in who goods or services are provided?
- Redress: If things go wrong, is there a system for making them right?

These may offer a guiding structure for development of consumer interests and identifying what a good outcome would be. We would be happy to offer our insight into this area.

3. Ofgem's strategic priorities

Consumer Scotland broadly agree with the identified strategic priorities. We have focussed our input on the projects and programmes which cascade from them. We note that there is close alignment of areas of Ofgem's forward workplan and Consumer Scotland's aims and activities – particularly on the cost of living, consumers in vulnerable circumstances, experiences of energy market consumers and a consumer-oriented approach to net zero¹⁷.

Consumer Scotland welcome Ofgem's focus on ensuring prices are fair. We recognise that fairness relates to preventing any consumer from experiencing disproportionate costs and burden within the retail market, but also that all consumers are protected from harm, and certain groups of consumers (such as those in vulnerable circumstances) do not face unfair detriment. There is also a need to consider affordability as a dimension of, or addition to, fair prices. Consumer Scotland has proposed to take a cross-sectoral approach to affordability in our 2023-24 Draft Work Programme, including examining the relationship between affordability and tariff structures and ensure support is targeted where it's needed.

We also welcome the focus on creating resilience across the energy sector, and for the need to continue work to create a more resilient retail market. However, we would like to see explicit reference to Ofgem's ongoing work to ensure the wider energy system and supporting infrastructure continues to be resilient in the face of a changing climate and rapidly evolving system operation.

Consumer Scotland also strongly supports the prioritisation of monitoring and enforcement, given the impacts of poor performance standards on energy consumers. However, we

¹⁵ Consumer Council of Northern Ireland (2021) [Corporate Plan 2021-24](#), p. 19.

¹⁶ Citizens Advice Scotland (2018) [Leading by example: a principled journey through regulation](#)

¹⁷ Consumer Scotland (2022) [Interim Strategic Plan](#)

would like to see immediate short-term measures which protect consumers from harm in the energy market and actively supports and rewards suppliers for adopting best practice.

We also agree with the long-term priorities that Ofgem has set out in its draft Forward Work Programme. However, unlike “Facilitating infrastructure investment” and all of the short-term priorities identified, as currently worded the final two (“Developing and delivering market reforms” and “reforming governance arrangements”) do not set out Ofgem’s plans or expectations. This priority may benefit from refinement.

4. Delivery project and programmes

Short term

Ensuring prices are fair

Consumer Scotland welcomes the programme of work on ensuring prices are fair. As flagged above, we would suggest that it would be in the consumer interest to consider affordability as a dimension of, or addition to, ensuring prices are fair.

There are opportunities for collaboration across many of areas of work, as they align with our planned workstreams on both energy affordability and the future retail market. Consumer Scotland supports Ofgem’s ongoing monitoring of the rollout of the Government bill support. We would also like to flag potential engagement on consumers in vulnerable circumstances – and Consumer Scotland is currently building our own approach to ensuring we have a focus on consumers in vulnerable circumstances embedded in all of our work. We would be happy to share our learning with Ofgem as we continue to develop this work.

Focus on fair prices is clearly relevant to consumers in Scotland, and we would welcome being included in discussions as this work develops. Price increases have particularly impacted some consumers in Scotland – those on traditional electric heating, PPM consumers and people with disabilities¹⁸. Therefore, we would ask that further analysis and inclusion of differential impacts of pricing, and implications for fairness, is considered as the individual project develops and ideally across the workplan.

Under the short-term priority of ensuring prices are fair, Ofgem commits to working with BEIS to develop and begin to implement a new approach for protecting vulnerable consumers, potentially including regulatory intervention¹⁹. A potential barrier here is the lack of a mechanism through which suppliers can flag financial vulnerability amongst their customer base and ensure that the relevant price protection is applied. Individual suppliers may have their own processes which could enable this, but there is no uniform practice across industry. The Priority Services Register is designed for keeping track of consumers who are more likely to have a requirement for services relating to access, safety and communication needs, but this is strictly non-financial²⁰. As such, in 2021 the Energy

¹⁸ Consumer Scotland (2022) [Energy Affordability Tracker](#)

¹⁹ Ofgem (2023) [Consultation on Ofgem's draft Forward Work Programme for 2023/24 | Ofgem](#)

²⁰ Ofgem (2013) [Research into the Priority Services Register and non-financial support for vulnerable energy consumers](#)

Consumers Commission in Scotland called for Ofgem to lead on the development and implementation of a financial vulnerability flag, through the Retail Energy Code and other relevant channels, to help identify and assist consumers facing energy affordability challenges²¹. Since its vesting, Consumer Scotland have been advocating for the inclusion of financial vulnerability as part of vulnerability checks.

Retail market reform

Consumer Scotland plans to continue work on energy affordability, fair and sustainable future markets and consumers in vulnerable circumstances in 2023-24. We look forward to engaging with Ofgem on these matters. We also welcome the continued focus on compliance and the ongoing use of Market Compliance Review (MCR) as a tool for monitoring poor consumer outcomes, as well as highlighting where suppliers are succeeding in ensuring good consumer outcomes.

We would also welcome further work on the prepayment market, and proactive consideration of this group of consumers in future market reform. In addition, we would welcome the potential review of the Consumer Vulnerability Strategy and we would be keen to engage closely with Ofgem as part of any such review.

However, to be effective, proposed reforms to the energy retail market²² will require better identification of those who are facing persistent affordability challenges, either through a financial vulnerability flag, or similar. Ofgem recognises that prepayment meters are one of several wider circumstances that can make consumers with vulnerable characteristics more likely to suffer detriment²³. Consumer Scotland welcomes Ofgem's ongoing engagement with stakeholders around what actions can be taken to minimise this detriment, and reduce instances of self-disconnection, in light of the cost-of living and energy affordability crises.

Consumer Price Protections

Consumer Scotland support Ofgem's plans to deliver effective price protection in an evolving market. We agree on the ongoing work on the price cap and will engage Ofgem separately on their recently published price cap Programme of Work. An area of this work is including analysis and consideration of the heterogeneity of consumers and affordability across the market and that certain consumers are more likely to experience poor consumer outcomes. Consumer Scotland would like to see a greater emphasis on options for future price protection that serve the interests of all consumers while also providing meaningful, accessible and effective protections for those who need them.

²¹ CAS (2021) [Priority Services Registers in Scotland](#)

²² [Energy-bill-support-interim-report-December-2022-1.pdf \(smf.co.uk\)](#)

²³ [Consumer Vulnerability Strategy 2025 | Ofgem](#)

Creating resilience across the energy sector

Consumer Scotland welcome a continued focus on improvements to financial resilience and controls, learning from recent market behaviour to raise standards and improve consumer protection. Particularly, in light of rapid policy development since the RII0-2 price control was set and the recently published Holistic Network Design (HND), we welcome the ongoing work on Accelerating Strategic Transmission Investment. Given the volume of work required in Scotland to deliver the HND, Consumer Scotland will be keen to ensure that this investment is delivered in a way that realises real and enduring benefits for impacted communities and we look forward to ongoing engagement in this area.

Setting, monitoring and enforcing quality standards

We would like to highlight the changing demands on regulation and enforcement, given the current and changing nature of the market, including the declining role of switching, and implications for both incentivising good practice and penalising companies who are not complying with license conditions. Consumer Scotland have proposed a project in our Draft Work Programme on 'A fair and sustainable future energy market' which overlaps with Ofgem's intention to take a proactive and robust compliance and enforcement approach.

Consumer Scotland also recognises the potential for heat networks to bring many benefits to consumers as a cost-effective, low carbon method of heating. We welcome Ofgem's two regulatory objectives outlined in the forward workplan. This work will help to ensure that both current and future heat network consumers have the same protections as customers of gas and electricity in the regulated energy sector. Research indicates that the key issues affecting consumers on heat networks include: the reliability of the network; fairness of price; the level of information provided about their system; experience of under or over-heating; and issues with the handling of complaints^{24, 25}. Heat Network regulation will help to ensure that many of these issues are addressed as the number of heat networks expand across Scotland. We welcome further engagement with Ofgem as work to regulate the sector develops. We are keen to ensure the wider regulation of heat networks reflects the Scottish context which will help to ensure that the specific issues affecting consumers in Scotland are addressed. Consumer Scotland can help to support Ofgem to understand the issues affecting heat network consumers in Scotland.

Long term priorities

Consumer Scotland broadly supports Ofgem's longer-term priorities. Our proposed forward work programme includes ongoing work in regulated energy networks and market design. This would embed the benefit to all consumers in the investment required to support a rapid and just transition to net zero, without placing an unfair burden on any community of place or community of interest. Given the scale, we believe the consumer perspective must continue to play a central role in programme planning to ensure consumer interests are met

²⁴ BEIS (2017) [Heat networks consumer survey](#)

²⁵ CMA (2018) [Heat networks market study: final report](#)

throughout investment decisions and subsequent potential impacts on consumer bills. Similarly, regulatory framework reforms need to appropriately value consumer interests; an effective consumer outcomes framework will be helpful in this regard.

Continuing core regulatory activities

Consumer Scotland support Ofgem's proposed workplans for their continuing core regulatory activities. We very much value the Charities and Consumer call and senior-level Charities and Consumer call and look forward to our onward engagement, as well as building our bilateral engagement.