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31 May 2023

Dear Jemma,

**RE: Consumer Standards Consultation**

I am writing to you in response to Ofgem's "Consultation on a framework for consumer standards and policy options to address priority customer service issues".

**Introduction**

Energy UK and our members are supportive of a more consistent and transparent framework for consumer standards. We recognise the trade-offs inherent in this, and the need to ensure a balance is struck between prescriptive rules ensuring vital protections and principle-based standards which drive positive outcomes through competition between suppliers. We also acknowledge Ofgem's concerns over the qualitative evidence of decreased satisfaction with customer service from their energy supplier in recent years. However, we do not think the proposals in this consultation are underpinned by a clear rationale, coherent objectives or robust evidence required to justify their implementation and associated costs, especially considering the unique set of circumstances industry and customers have faced recently.

The context provided for the challenges faced by suppliers over the past few years is incomplete. The Pandemic, energy crisis, Suppliers of Last Resort (SoLRs), bill support schemes, several major storms, and Price Cap related communications campaigns (including meter read day) have put unprecedented demands on supplier call centres and wider staff during a narrow timeframe – a challenge suppliers have been unable to influence. Further, Ofgem should be cognisant of the financial challenges facing suppliers since the introduction of the Price Cap, which has driven suppliers to attempt to match the cost to serve of a "notionally efficient supplier". The fact that the sector has been, on average loss-making, in trying to operate under these conditions has been a major impediment to investing in innovative or expanded customer services.

Many of these challenges are unique and are unlikely to be repeated. Some are explicitly under review. It is critical that Ofgem considers this whole context alongside the market it is looking to shape in future - not just looking backwards at the last five years, but thinking about opportunities ahead such as new technologies, complex tariffs as well as affordability.

Ofgem's approach should align with the Government's new vision for regulation<sup>1</sup>. In particular, ensuring regulation is proportionate and promotes competition and efficient business models. The government, regulator, suppliers and consumer groups all have vital roles in creating an environment to drive the best customer outcomes, facilitating innovation, differentiation and customer choice, balanced against a landscape where supplier operating models are sustainable. Energy UK is concerned that the proposed prescriptive requirements here do not fit with Government's wider approach.

Given the complexity, cost and importance of these considerations, we welcome the opportunity to respond to this consultation, but we ask that in future the timescales for stakeholders to respond to such important topics are adequate. This is a short consultation period that falls over many bank holidays and a period when Ofgem had three other major consultations due and opened two more. This results in limited time to properly consider and scrutinise proposals. We are concerned that this will lead to suboptimal decision-making and fail to drive positive outcomes for customers. We understand that Ofgem is attempting to target some changes for this winter and that is driving the timetable, but that carries significant risk, including that implementation will be equally rushed.

As an industry, we are acutely aware of the importance of measuring customer outcomes and promoting customer trust. Trust drives positive customer engagement, which is an essential building block in transitioning to net zero. Competition and diversity are also crucial in delivering innovative products needed for customers to reduce and shift their usage in future. Therefore the negative competition impacts these proposals imply are very concerning and we perceive them to be significantly detrimental to the incentives and drivers in the energy market and customer outcomes, without a clear rationale or strategy.

Rather than placing rushed, expensive and prescriptive input requirements on suppliers, we think Ofgem should be working towards improved ease-of-contact for this winter, through understanding the evolving challenges and co-ordinating between itself, Government, Consumer Groups and Suppliers to identify areas of co-ordination that could significantly improve ease-of-contact while minimizing additional costs. This should be an opportunity for Ofgem to work more closely with industry holistically, to ensure those that need help get it and may also offer insight into how to develop a longer-term framework that properly enabled competition and innovation.

## **Evidence**

To bring about improved customer outcomes we encourage Ofgem to use up-to-date, quantitative evidence to outline a clear case for change. It would have been beneficial for Ofgem to work with suppliers on the consumer research they are currently commissioning. Additionally, it would be beneficial to engage with suppliers to ensure a detailed cost-benefit analysis is undertaken relating to the consumers that Ofgem is seeking to target with this work. After consistent questioning in advance of this consultation and a careful review of the consultation itself, this evidence base remains unclear.

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<sup>1</sup> Department for Business and Trade, [Smarter regulation to grow the economy](#), May 2023

Firstly, the overall assertion that customer service has declined asserts reasons beyond the external factors of Covid and the Energy Crisis, but the argument appears to overlook the constant change the sector has experienced over the last five years and in particular the huge shift in supplier numbers and nature. A more sophisticated attempt to benchmark the sector is necessary.

Secondly, the evidence underpinning the specific proposals for this winter is extremely limited both in terms of an articulation of the problem that the proposals are attempting to solve, and the justification that these proposals are the best way of achieving this. The clearest example of this is on proposals for ease of contact, which appear to jump from an observation that this has been challenging to the proposal of a specific requirement around call centre opening times. We do not see how all suppliers being mandated to operate call centres in the early hours of the morning, at the expense of the customers and without a clear rationale, can be justified during a cost of living and debt crisis. The proposed regulatory standards would not only drive up costs but potentially distract suppliers from innovating to serve their customers whilst complying with Ofgem's imposed changes. Thus a strong evidence-based approach is vital before introducing new standards.

There are significant costs associated with proposals such as ending minimum repayment plan terms which may be beneficial. However, the cost implications here should be considered closely with Ofgem's Call for Input on the allowance for debt-related costs<sup>2</sup>, to ensure a consistent approach that will allow for progressively allocated cost options. This consultation, as explained at Ofgem's workshops, will generate assumptions that suppliers need to consider relating to their operational costs being reviewed separately. This is not, however, referred to in the consultation.

While we appreciate there is a need (as outlined in the recent Strategic Policy Statement consulted on by DESNZ<sup>3</sup>) for Ofgem to ask itself whether prescriptive regulation may be a more impactful route than competition when driving up standards, it is also clear that Ofgem should be transparent and thorough in its assessment of this, with a default position that competition is in consumer interests. We have been concerned over Ofgem's recent characterisation of the energy market neglecting the importance of competition in non-price factors. This holds risks as Ofgem's proposals do not move progressively towards a competitive market that is able to provide the levels of innovation required to reduce costs, improve outcomes and deliver net zero.

## **Market conditions**

Since the beginning of the pandemic, the energy industry has been operating in unprecedented market conditions that have presented real challenges to suppliers and consumers. This has been one of the root causes of pressure on consumer standards. Nonetheless, industry has successfully delivered multiple Government schemes at a fast pace, such as the Energy Bill Support Scheme (EBSS) and the Energy Bill Relief Scheme (EBRS). Energy suppliers have also invested hundreds of millions of pounds to support people since the beginning of the pandemic in the form of financial relief, diversifying communication channels, training new employees and partnering with third-party organisations and charities.

At the same time, we have seen 30 supplier failures, resulting in existing suppliers taking on large books of customers via SoLR acquisitions. Ofgem must not overlook the fact that, on average, the

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<sup>2</sup> Ofgem's [Call for Input on the allowance for debt-related costs](#) – Price Cap, April 2023.

<sup>3</sup> Department for Energy Security and Net Zero [open consultation on Strategic and Policy Statement for energy policy in Great Britain](#), May 2023

retail market has been operating at a loss for a number of years, hence supplier failures, with the most recent margins being -2.55% on average<sup>4</sup>. Rising energy prices and the ongoing effects of the cost-of-living crisis have meant more people than ever are contacting their energy suppliers for help and advice, with more complex queries that require in-depth assessments and resolutions and adding further pressure. The direct correlation between continued high energy prices and customer satisfaction should not be overlooked.

Pressures of the recent crises impact all aspects of the industry including Ofgem, consumer bodies such as Citizens Advice/EHU and the Energy Ombudsman. With challenge after challenge over the past two years, resources are being stretched. Therefore, Ofgem must consider the overall regulatory burden that organisations in the industry are facing and we suggest that implementing high cost and permanent regulations with short consultation periods and no substantive impact assessment is not the right approach.

## **Scope**

The themes covered in Ofgem's Framework will impact non-domestic and domestic customers differently, therefore there is a risk of disproportionate obligations being put on non-domestic suppliers if Ofgem does not account for the differences in behaviours and characteristics.

Greater recognition of the wide range of non-domestic consumers is needed across this consultation. This includes small and medium-sized enterprises (SMEs), microbusinesses and Industrial and Commercial (I&C) consumers, all of whom have different requirements. While there could be some benefits in extending the Consumer Standards Framework to non-domestic suppliers, such as more proportionate monitoring of suppliers by Ofgem, it would need to be developed with industry and we urge Ofgem not to move too quickly to a Statutory Consultation stage without sufficient consultation.

Non-domestic supplier operations are exposed to much bigger credit risks. These consumers have different needs with regard to protection and with bad-practise highlighted in the broker market, Energy UK supports direct regulation and stronger enforcement from Ofgem in the broker market.

## **Implementation**

The proposed implementation involving significant operational change before this winter is unrealistic, and proposals outlined for winter 2023/24 could have considerable operational, regulatory and financial burdens on suppliers attempting to implement them. Ofgem working with suppliers on addressing such issues in customer service is therefore extremely important in ensuring efficient cost-benefit analysis is completed and that realistic proposals can be reached. Energy UK welcomes Ofgem's Opex review to gain a more detailed understanding of the operational costs suppliers face. For example, the challenges around recruitment and training of additional advisors to cover potential wider operating hours. Furthermore, a decision that is expected in September following a statutory consultation, gives industry a maximum of four months to implement new/revised standards which is a short time period to be sure standards are delivered as Ofgem intends.

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<sup>4</sup> [Pre-tax domestic supply margins of large legacy suppliers](#), combined gas and electricity, Ofgem Retail Market Indicators.

Any proposals taken forwards should be cost-neutral given their likely implementation during an ongoing affordability crisis. If they are not, a rigorous impact assessment should be undertaken, including distributional analysis of impacts and customer willingness to pay.

### **Looking forwards**

To deliver net zero and reduce the UK's gas reliance, it is clear that we need an investable energy sector. This requires a competitive market that can offer a variety of products, which suppliers are restricted in doing under a prescriptively regulated market. Reforms are urgently needed to create an effective market, such as addressing cost recovery, which is incomplete at present. If reforms are executed well by all parties that have a role in this industry, customer engagement, trust and competition among suppliers in turn will deliver the best outcomes for customers. Energy UK and its members will continue to work with industry in order to make proportionate improvements to consumer standards where necessary.

Energy UK welcomed the opportunity to engage with the workshops on these proposals and there was a clear appetite from Ofgem for input from suppliers. Our members are committed to looking at ways to ensure consumers are well served and would welcome a more thorough debate about the balance of achieving this through market-based competition and prescriptive regulation. It is likely that there is a role for both, which Ofgem acknowledges in its longer-term framework considerations. However, we feel the shorter-term proposals here do not strike that balance.

We would happily speak to Ofgem about any of the points we raise in our response and we provide further detail in response to Ofgem's questions below. You can reach me at [madeline.costello@energy-uk.org.uk](mailto:madeline.costello@energy-uk.org.uk)

Kind regards,

Madeline Costello

Senior Policy Executive, Energy UK

### **Questions relating to Ofgem's approach to addressing priority customer service issues**

*Question 1: Do you agree with our assessment on what good looks like for the issues consumers are facing relating to the priority issues of contact ease and identification and support/advice for consumers struggling with their bills. Are there any issues missing?*

Energy UK encourages Ofgem and the industry to strive for improvements in consumer standards, including ease of contact and identification and support/advice for consumers struggling with their bills. However, regulations need to be suitable and clearly address Ofgem's objectives.

We do not think the consultation sets out a clear and evidenced articulation of what good looks like. In order to better judge the balance between cost and service that customers want, Ofgem must consider the level of service and satisfaction consumers are experiencing in comparison to other industries, in a way that controls for the impact of prices on perceptions.

We encourage Ofgem to take learnings from other industries that are regulated similarly in order to have a realistic benchmark of what good looks like to ensure any measures taken forwards are fit for purpose. We also encourage Ofgem to think about customer outcomes more than supplier inputs so as not to undermine the role of innovation and differentiation in meeting customer needs.

*Question 2: Do you have any views on potential options to address priority issues and do you agree with the extra requirements we are proposing?*

Firstly, Energy UK encourages Ofgem to address the priority issue of involuntary PPM installations through the existing Code of Practice that will be formally consulted on and built into licence conditions. Further changing this process potentially undermines the efforts put in place so far, likewise, it may cause customer confusion.

Secondly, whilst we agree with the priority issues Ofgem is trying to address, we are concerned that the proposed interventions could be counterproductive. For example, the issue with the ease of contacting a supplier is that customers are facing longer wait times and struggling to speak with agents during usual opening hours, not that they are unable to speak with their suppliers out-of-hours. We also encourage Ofgem to consider the disproportionate impacts that options will have on suppliers due to different customer bases.

Lastly, there are requirements already in place to address the priority issues outlined, such as Guaranteed Standards of Performance (GSOP), so we urge the regulator to enforce these existing requirements effectively to deal with underperforming suppliers. Again, this would reduce additional burdens placed upon the industry as a whole. Suppliers could prioritise 'priority customers' without extending opening hours. Further industry processes in place to do this, including out-of-hours, include non-disconnection periods for PPM customers. Additionally, there are limitations to what suppliers can do to help customers out of hours, for instance, emergency appointments having to be attended in the morning. This again could bring about unintentional negative customer outcomes.

*Question 3: Do you have any evidence that suggests that we should be considering additional and/or different rules beyond what we have proposed?*

Many suppliers have processes in place that deliver similar and in some cases, the same outcome as Ofgem is intending on reaching. For example, 90% of the domestic market is signed up to Energy UK's Vulnerability Commitment, a set of principles to support customers in vulnerable circumstances in addition to existing regulations. Such commitments involve suppliers having to offer a freephone number, to advertise as they wish.

Additionally, many suppliers have systems that allow customers to self-serve where appropriate. Not only can these be used outside of working hours, but they can also free up phone lines for emergencies or customers in vulnerable circumstances. Therefore we urge Ofgem to consider the necessity of proposals made to improve the ease for contact for consumers.

There is also a lack of evidence suggesting that proposals in Table 3, such as a 24/7 phonenumber, would deliver desirable outcomes to consumers. Moreover, there are concerns that a 24/7 phonenumber would encourage consumers that are not in vulnerable situations to contact suppliers about issues that would be limited in being resolved during such hours, thus bringing about unintended negative outcomes.

Energy UK encourages Ofgem to consider how its proposals will be funded and how this may impact debt challenges suppliers are already. Ofgem estimates the retail sector debt level was around £2.5 billion as of 2022, and with Government support schemes such as the EBSS ending in April 2023, this is likely to have increased.

There have been clear crunch points over the past two years that have led to increased levels of customer contact with suppliers that could be managed better, to ensure those customers that need to speak to suppliers most are prioritised. If the regulator, government and suppliers had more aligned and constructive communications around times such as price cap announcements, this could better manage contact volumes. It would be beneficial to take learnings from events such as meter read day to bring about better consumer outcomes and prevent confusion.

Additionally, processes between suppliers and consumer bodies and charities should not be overlooked. If processes here can be coordinated and improved in a manageable way, better customer outcomes could be delivered. The support that consumer bodies and charities provide is vital and goes beyond support for energy bills. This needs to be incorporated holistically when considering proposals.

*Question 4: Do you agree with our proposed approach of introducing reputational incentives in our priority areas?*

Energy UK is broadly supportive of Ofgem's proposed reputational incentives because it creates healthy competition and visible, positive outcomes for consumers. However, Ofgem must consider the cost benefits of making ratings available on supplier/ Ofgem websites, since they are already publicly available. Additionally, such ratings only provide a fraction of supplier offerings and it would be counter-productive to discourage consumers from opting for innovative offerings that may be more beneficial for them. We agree with Ofgem's expectations on good practice sharing and have seen beneficial examples of this through work with the regulator and consumer groups. Energy UK has produced several guides used by the industry to positively influence practices around smart Pre-Payment Meters (PPMs), the Vulnerability Commitment and customer service during times of high pressure. Good practice sharing is an effective way of identifying issues and creating improved outcomes for consumers.

Energy UK's Vulnerability Commitment encourages suppliers to go above and beyond licence conditions. Its signatories have shown innovative improvements to their services since its launch in 2021 and this is reflected in ratings such as the Citizens Advice star rating. This stimulates suppliers to make improvements to their services. They are also held accountable to commitments through expert panel hearings which has led to the production of good practice sharing.

## **Questions relating to Assessment and Monitoring of Options**

*Question 5: Do you agree with what we have set out in the assessment chapter? Please provide supporting evidence with your views. For evidence regarding additional costs, please provide quantitative data.*

The increased financial and regulatory burdens raised in this chapter are concerning. These proposals could reduce the attractiveness of the market at a time when the UK energy sector is facing investment challenges. Suppliers have been working hard at recruiting staff to keep up with the increased demands on phone lines, promoting smart meters where appropriate to create better customer service experiences already. Energy UK encourages Ofgem to consider good practices suppliers do show, and how these can be built on, alongside the roles of other industry leaders when outlining its view of improvements it expects from interventions.

Whilst Energy UK, as a trade body, does not hold evidence to provide to Ofgem, it is important to consider the level of quantitative data that can be extracted from suppliers in the given timescales. Ofgem should consider a suitable RFI to gain consistent data, rather than suppliers being left to apply their own methodology and interpret the requirements differently.

*Question 6: Using the list of prospective data items we present in the monitoring chapter as a guide, what other additional data items could we aim to collect and from what data sources? Do you consider there are any challenges you may face when collecting/providing these? If so, please provide any supporting evidence you have.*

Energy UK urges Ofgem to consider the regulatory burden of additional data requests. A review of the requests that are already in place would encourage assessments and monitoring not to be done in silos. We advise Ofgem to avoid duplication at a time when suppliers' resources are already strained in responding to a multitude of RFI's and MCRs etc. The industry requires an agile regulator that is able to manipulate data that is already being supplied.

Furthermore, some specifics on the additional data requests need further clarity as there is a risk of varying interpretations.

## **Consumers Standards Framework**

*Question 7: Do you have any comments on the factors that should be considered in determining whether to use principle-based or rule-based approach to setting standards?*

Energy UK has serious concerns that Ofgem's proposals will have negative impacts on competition in the market, should a rule-based approach be implemented to set consumer standards. Rule-based approaches risk deterring new entrants to the market and creating homogenous services and products which does not fulfil the policy intent of improving consumer outcomes, let alone encourage the type and scale of innovation required to support consumers through the net zero transition.

Supplier incentives should come from providing good services and result in retaining or gaining consumers rather than financial bonuses or deterrents. Financial incentives could again deter new entrants from the market.

Additionally, if consumer standards are set as a maximum during exceptional operating circumstances, it will become increasingly difficult for Ofgem to maintain its own monitoring.

*Question 8: Do you agree with our early view of reputational-based incentive options for winter 2023 and the potential incentive options for development over the longer term? Please provide explanations to support your responses.*

Energy UK is broadly supportive of Ofgem's view of reputational-based incentives as we have seen this genuinely drive improvements in consumer standards and create healthy competition. Firstly, ratings such as the Citizens Advice energy supplier star rating have been a long-trusted tool that encourages consumer engagement, and informed decisions and provides accessible data about suppliers' performances.



Secondly, we do advise Ofgem to consider the metrics that chosen ratings use to allow a holistic view of the drivers behind customer service. We would strongly urge Ofgem to engage with the likes of Citizens Advice, especially considering the current review of the metrics used for their star rating methodology<sup>5</sup>.

Thirdly, Ofgem must also bear in mind the ratings they do require suppliers to display and how they display them, to ensure non-biased and fair information is used and to prevent any customer confusion. A single league table that measures the right metrics could facilitate this incentive. We would also encourage Ofgem to apply this consistently across all suppliers.

Lastly, reputational incentives should not solely use customer-centric values, they should consider views such as shareholders and peers too to reflect that customer metrics are not the only metrics to compete on, otherwise, some views may be lost and overlooked.

With regard to the longer-term financial incentives, Ofgem already has existing powers in place that do not differ much from the new proposals, such as the GSoPs. We suggest an informed debate over how these new proposals differ from existing powers.

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<sup>5</sup> Citizens Advice consultation on metric updates for the Energy Supplier Rating, March 2023.