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Emailed to: RetailStakeholderTeam@ofgem.gov.uk

23 August 2023

Dear Jemma,

RE: Consumer Standards Statutory Consultation

I am writing to you in response to Ofgem's "Consumer Standards Statutory Consultation".

Introduction

Energy UK remains supportive of industry efforts to improve consumer standards. We recognise that the challenges of recent years, alongside changes in customers' needs present a sensible rationale for reviewing the approach to consumer standards. We are concerned about the impact of high energy prices and the broader cost-of-living crisis on customers and are particularly worried about the impacts that will have this winter. Neither the energy industry nor the regulator can solve the fundamental issue of energy affordability – this is a critical role for Government support. However, we recognise the prerogative to do what we can to ensure customers are as well supported as they can be – especially those in the most vulnerable situations.

It is a collective challenge for the energy industry as a whole, to ensure it is improving trust, engagement and satisfaction of its customers. This will be critical in supporting customers through a new normal of higher prices, a cost of living crisis, and ultimately the transition towards net zero. We therefore urge Ofgem to recognise its own role in helping to create these conditions. It is critical that, when making decisions on these proposals, Ofgem communicates a single, clear set of expectations, that it has full confidence are deliverable by all suppliers, and that match the spirit and letter of regulatory changes. Failure to do so would risk raising public expectations that are not deliverable against – which would be a poor outcome for all.

While the challenge of this winter is acute, we must bear in mind that proposed changes to licence conditions and guidance are permanent. This makes it critical that the full long-term costs and benefits are considered. In this context, we are broadly supportive of Ofgem's proposals for customers with payment difficulty, which we believe will bring additional support to those who need it this winter. We also strongly support Ofgem's commitment to using reputational standards to drive competition in customer service. However, we have become increasingly concerned throughout this consultation process that many of the proposals on ease of contact are at odds with this vision and strongly suggest further consultation.

The following sections outline the rationale for and details of this position.

Regulatory risk and the use of guidance

Ofgem's proposals are captured by a combination of licence condition changes and legally binding guidance. Ofgem is attempting to use guidance for a number of things: defining terms in licence; describing its expectation of how suppliers may comply; and articulating examples of best practice. Suppliers are expected to have "due regard" to this guidance.

Ofgem officials have been keen to stress that the expectations and thresholds (for example 7 hours of open contact channels over the weekend) set out in guidance do not constitute minimum standards, because suppliers are able to pursue other ways of achieving compliance. We do not consider this to be a realistic proposition. Principle-based regulation rightly places the onus on suppliers to be able to demonstrate their compliance. However, by specifying the conditions that will lead Ofgem to suspect non-compliance, we believe Ofgem is effectively writing minimum standards into its guidance.

The level of regulatory risk associated with not conforming to the expectations set out in Ofgem's guidance is simply too high. This is especially true as, over time, the context in which guidance was written is lost and institutional knowledge is diluted.

We do not consider this a reasonable approach. If a minimum standard is intended then it should be set in licence, and be accompanied by proper scrutiny, impact assessment and change controls. If a minimum standard is not intended, then specific thresholds should be removed from the guidance. The current approach introduces considerable risks that either suppliers all interpret the thresholds in the guidance as a minimum standard in order to avoid excessive regulatory risk; or that, if suppliers deviate from the thresholds set in guidance, Ofgem will be expected to enforce against them, bringing reputational risks to the whole sector. This is likely, in no small part because Ofgem's guidance will set expectations that it will be pressured to enforce.

Regulatory risk is increased still further by the fact that Ofgem has the power to change the guidance without full two-step consultation; the inclusion of "best practice" examples; references and commentary of contemporaneous workstreams; and apparent contradictions that have evolved from workshops that may still need to be translated into the guidance. For example, defining those who are in need of "immediate assistance" has been outlined as those at risk of going off supply, but Ofgem has also suggested this could mean a vulnerable consumer who needs to discuss their energy bill. If Ofgem is struggling to define the term consistently, then it is clearly not an adequate basis for regulation.

At a minimum, Energy UK asks that Ofgem ensure suppliers have the opportunity to challenge any future changes made to the guidance document, as we understand it can be changed without proper consultation. Without a formal process, there is a real risk that changes could result in an updated version of the guidance document that suppliers have not had an opportunity to consider or contribute to. It is important that retail energy companies understand the intention and have the opportunity to both discuss and respond to any future iterations or changes to this guidance.

Enabling an innovative and competitive retail market

Ofgem's regulatory approach should be aligned with the Government's recently published plans to strengthen the retail energy market¹. This should entail facilitating competition to drive product innovation, a heterogeneous market, and good customer outcomes, including supporting the

¹ Department for Energy Security and Net Zero, Delivering a better energy retail market, July 2023

transition to net zero. Energy UK agrees that there is a role for minimum standards to coexist alongside competition that is driven by principles. Nonetheless, minimum standards need to be centred around customer needs rather than preferences.

We are concerned that Ofgem's proposed regulatory approach risks micromanaging suppliers, stifling innovation that is needed to reach net zero, and competition that is crucial in driving good customer outcomes. While we have been assured that this is not Ofgem's intention, we nevertheless consider it the likely outcome of the proposals on ease of contact.

Competition should be the main driver of customer service improvement and innovation. This is clearly demonstrated by the wide variety of offerings across the market. Suppliers introduce and innovate services to differentiate themselves from competitors, serve particular customer niches, and offer genuine choices to switchers.

This is not to say that Energy UK or its members are opposed to minimum standards. Indeed, we are supportive of minimum standards that represent a floor, above which suppliers can compete. However, as discussed above we consider the combination of regulatory risk implied by the legally binding guidance, and the financial risk implied by the operation of the price cap, will in practise mean these proposals result in a significant reduction in scope for non-price competition.

This is especially true of suppliers at the smaller end of the market. Where the costs of meeting proposals may be prohibitive due to a lack of economies of scale. We believe these proposals will also create a significant barrier to entry and expansion in the energy market.

Ofgem must exercise caution when setting minimum standards based on the current range of offerings in the market. While we understand the intention is to ensure consistency and quality, there is a risk of inadvertently discouraging innovation, or stand-out products or services. The prospects of standards being ratcheted up each time a supplier innovates are becoming increasingly concerning.

Customer expectations

It is clear that as an industry providing an essential service that will be pivotal to supporting customers in the transition to net zero, we need to build and maintain customer trust at higher levels than they are today. It is therefore important that Ofgem relay the same information to suppliers, consumer bodies, consumers and the press to ensure that gaps in expectations are not created.

Ofgem's proposals may lead to a disparity between what customers expect, such as the proposal of having a 24/7 enquiry service. If pursued, it is crucial that we are clear such a service would be for risk-to-life emergencies only and the potential of not being able to have a site visit until the next morning. Therefore, the management of expectations is important here to minimise customer confusion at a time when the industry's reputation is already fragile and during winter that is likely to be a struggle for many customers.

There are also considerable unintended outcomes that may arise from these proposals. Customers may not use the systems or policies in place as they are intended to, meaning they are more challenging and costly to deliver than anticipated. Ofgem must consider these impacts and consult with industry as a whole in order to mitigate these to the best of our abilities to ensure that proposals such as prioritising consumers in vulnerable situations benefit those that most need it.

These concerns are exacerbated by a lack of robust evidence on customer preferences underpinning Ofgem's proposals. We do not believe there is a general willingness to pay for greatly extended service opening hours, and it is to customers' detriment to pretend that such services can be obtained without a cost.

Evidence on costs of proposals

Energy UK has concerns over the lack of evidence on the costings of proposals and the lack of an impact assessment in the statutory consultation.

The regulator has a duty to understand the incremental costs that suppliers are facing and therefore if there are additional costs to consumers, which these proposals are likely to do. Additional staff will be needed, often on unsociable hours contracts, which also require out-of-hours management, IT and HR support. We also consider Ofgem's proposals to imply that phone lines will need to be free as we see no workable solution for targeting free phone lines to only customers in vulnerable situations in the way the proposals are currently drafted.

Ofgem has recently stated that they wish to see innovative suppliers, that receive a reasonable profit as they drive up consumer standards sustainably². However, in this statutory consultation, Ofgem outlines that there is no Impact Assessment because these proposals are not new or material, because they were covered by the existing "meeting customer needs" conditions. If that were the case then, we would argue that Ofgem already has the powers needed to achieve the outcomes and therefore does not require new powers.

We do not find this to be a robust position because:

- a) The addition of multiple new licence conditions demonstrates newness.
- b) The guidance sets clear new minimum thresholds/requirements.
- c) The argument that these requirements already existed to "meet consumer needs" is not properly evidenced through Ofgem surveying 33 participants in their consumer research.
- d) This deviates from what was considered under the standards of conduct consultation³ and impact assessments which introduced the concept of ease of contact and what Ofgem is now proposing.
- e) In line with Ofgem's Impact Assessment guidance⁴, the proposals will have significant impacts on British markets by raising barriers to new entrants and having disproportionate costs falling across the diverse set of suppliers currently in the energy market.

We understand that Ofgem has requested information on costs previously. However, the costs requested at policy consultation stage were for a fundamentally different set of proposals. Suppliers have struggled to understand what scenarios to develop cost estimates for and Ofgem should recognise that this is by no means a trivial exercise.

Energy UK has provided a template as an attempt to conduct a thorough exercise in data collection that would enable a common understanding and comparison of the costs of different options, and Ofgem has responded positively to this. We hope that it provides useful insight but are wary that it is

² Ofgem's Decision on Strengthening Financial Resilience- Minimum Capital Requirement and Ringfencing CCBs by Direction, July 2022

³ Standards of Conduct for suppliers in the retail energy market, June 2017

⁴ Ofgem's Impact Assessment Guidance, May 2020

a) too late in Ofgem's timetable to influence decisions and b) suppliers have had very little time to complete it. It should be noted here that the lack of firm evidence is not helped by the timing of this statutory consultation, which is extremely short and not in keeping with Ofgem's Consultations Policy updates⁵.

Challenges to implementation

The current timelines for winter 2022/23 implementation are unrealistic for certain elements of the proposals. With a decision expected in early October, this would leave 8 weeks for suppliers to implement proposals. Short implementation periods bring about further challenges for suppliers to implement thoroughly.

As stated previously, Energy UK strongly urges Ofgem to implement proposals in a phased approach due to the costs, time restrictions and uncertainty around elements of the proposals still.

Where Ofgem is minded to introduce requirements for new or significantly extended services, it must give longer than 8 weeks to implement these. It is clear that Ofgem is not approaching this with an operational mindset – any consideration to the lead times required for recruitment, onboarding, training, contract changes and the like would render such a timeline implausible.

To illustrate, for suppliers who do not already offer it, to deliver weekend opening hours which serve the additional 7 hours would require union negotiation, contract changes, staff recruitment and systems changes to be set up thoroughly. The same is true of a 24/7 enquiry service. Both also pose considerable challenges to staff retention. Call centre staff have been faced with incredibly challenging jobs recently, and suddenly asking them to work through the night and give up weekends is likely to see many leave the sector when in reality, consumers need to have well-supported and empathetic staff present to help with their queries.

We welcome the opportunity Ofgem has given to seek feedback on proposed implementation timescales given that this has been a concern throughout the consultation. However, we hold the same concerns around the viability of doing this accurately in the time available and the significant uncertainty as to how to interpret some of Ofgem's proposals. This has been clearly presented by all stakeholders in workshops towards the latter end of this consultation. Energy UK urges Ofgem to consult further on the longer-term, more costly proposals and to focus on the proposals needed for this winter, where there is more consensus.

Specific concerns with proposals on ease of contact

Whilst Energy UK is supportive of a more consistent and transparent framework for consumer standards, and notwithstanding the general feedback above, we wish to highlight elements of proposals on ease of contact where we recommend specific changes of approach:

- a) *Be open 24/7 for customers who have lost power or gas due to supplier issues.* Workshops have demonstrated that there remains considerable confusion, different interpretations, and a lack of root cause analysis that justifies the additional cost faced by suppliers due to this proposal. We believe this proposal brings considerable cost for minimal benefit as it is both inefficient and unlikely to solve the core problem Ofgem is looking to address. Energy UK is working closely with

⁵ Ofgem's consultation policy, January 2022

Ofgem, DNOs and GDNs and will continue to do so as we see opportunities to explore more efficient solutions that will be fit for the future on an enduring basis. For a matter that is so important, we urge Ofgem to consult on this element further and complete further root cause analysis with DNOs and suppliers to ensure value for customers.

- b) *Prioritise customers in vulnerable situations that require immediate support, or representatives acting on their behalf;* There is ambiguity over the scope of this proposal and whether this regards only metering issues that render a customer off-supply, or is a broader category including those in financial distress, for example. While we think an explicit requirement to prioritise those off-supply is achievable, we do not consider the broader interpretation to be. We, therefore, recommend either making the definition tighter or not pursuing the proposal at this time.
- c) *Be provided by the supplier for free for customers in vulnerable situations who are at risk of detriment from a service that is not free.* We see no practical way to deliver this as currently drafted without making free phone lines available to all customers at all times. The lack of impact assessment is seriously concerning with regard to this element of the proposals, considering that many suppliers are charged on a per-call basis. We recommend Ofgem reconsider drafting to ensure that this requirement is more in line with the Vulnerability Commitment. Here, the focus is on providing a free phone number to customers in financial hardship.

Proposals on identification and support/advice for those struggling with bills and reputational incentives

As stated above Energy UK broadly agrees with the proposals on identifying and supporting those struggling with their bills and the reputational incentives set out by Ofgem. There are still queries and elements we wish to seek clarification on, of which we go into detail in response to the questions further below. Overall, the proposals for these minimum standards have the ability to promote healthy competition across the energy market whilst ensuring customers receive improved services in time for this winter.

We would happily discuss any of the points made in this response further with Ofgem. We provide some further clarity on our thoughts in the questions below. You can reach me at madeline.costello@energy-uk.org.uk.

Kind regards,

Madeline Costello
Policy Manager
Energy UK

Consultation Questions

Improving ease of contact

Question 1: Do you have any comments or questions on our proposed licence changes to improve supplier contact ease?

We agree with the aspiration of ensuring consumers can contact suppliers with ease, and particularly to give help and advice to those with emergency issues that could pose a risk to safety. However, the details of proposals within this priority area are of most concern to Energy UK and our members.

Many of these proposals pose significant costs, particularly to smaller suppliers who do not benefit from economies of scale, which consequently poses a barrier to entering the market, which we do not feel Ofgem intends to do. It has also become abundantly clear through workshops and engagement that there is considerable confusion, and varying interpretations as to the intent of proposals and there remains a lack of data to justify these proposals.

24/7 enquiry services

There are different understandings of the scope of the 24/7 enquiry service, and whether this is proposed for meter fault issues, rather than, for example, consumers not topping up their PPM meters. To prevent any gaps in what is expected of suppliers, but more importantly, customer expectations, we urge Ofgem to provide more clarity over the issues this enquiry is intended for. Additionally, this particular objective risks having adverse effects on consumers and suppliers because the use of a 24/7 enquiry service will likely not be restricted to Ofgem's intent and will be used more widely than customers who have lost power or gas due to supplier issues. There is also a lack of consideration given to the maintenance and operational limitations of a 24/7 service that Ofgem must investigate. Suppliers are restricted on what services they can provide consumers during out-of-hours services, which raises concerns over certain proposals on improving the ease of contact as not being an efficient use of money or resources.

We think that Ofgem risks introducing a costly minimum requirement here which will prove a considerable barrier to entry and increase the cost to serve, without achieving commensurate benefits. Energy UK and its members think that 24/7 emergency services require an efficient solution across the energy industry, rather than a proliferation of contact points that will raise expectations and confuse customers. We recommend Ofgem instead works with suppliers and DNOs on a holistic approach. One possible alternative could be that suppliers need to ensure that DNOs can live hand-off emergency metering problems to suppliers out of hours; or that there is a mechanism to ensure customers can secure a metering visit the next morning (which meets Guaranteed Standards) if they have a meter fault out-of-hours.

Prioritising vulnerable customers

We welcome Ofgem's clarification that prioritising customers in vulnerable situations refers to customers in need of "immediate assistance". We believe in principle this is more achievable than a very broad definition of "vulnerable situations". However, we are concerned that workshops have highlighted that this still results in a wide variety of interpretations and that Ofgem officials have struggled to be consistent in their interpretation. We, therefore, think the requirement needs to be further clarified to ensure genuine prioritisation of those customers that need it.

Free phone services

We see no practical way to deliver this as currently drafted without making free phone services available to all customers at all times. The lack of impact assessment is seriously concerning with regard to this element of the proposals, considering that many suppliers are charged on a per-call basis. We recommend Ofgem reconsider drafting to ensure that this requirement is more in line with the Vulnerability Commitment. Here, the focus is on providing a free phone number to customers in financial hardship. If Ofgem is to pursue the current drafting, we think it is even more important an impact assessment should be conducted for this proposal.

Work to prepare for this winter needs to be underway now but pursuing much broader, controversial objectives now will inevitably lead to supplier uncertainty and distraction. This ultimately means time, effort and resources that could have been spent on specific improvements are instead spent continuing to debate, scope and interpret certain proposals that, in any case, appear implausible to deliver by this winter.

It is legitimate for Ofgem to be asking bigger questions of its regulatory framework here, but we would much prefer to see a clear delineation made now, between what is under consideration for immediate implementation (support for customers at risk of going off supply/ imminent risk to their lives) and what is being considered for longer-term reforms (broad reprioritisation and standards for customer access).

It is for these reasons that we urge Ofgem to consult further on certain elements of their proposed licence changes to improve supplier contact ease. Energy UK is and will continue to work closely with Ofgem and DNOs because there is an opportunity to find a more efficient, longer-term solution to suppliers operating a 24/7 enquiry service that will be beneficial to consumers, less costly and less complicated for all parties involved.

Question 2: Do you have any comments or views on our proposed contact ease guidance document? We would welcome evidence of ways in which suppliers are already delivering best practices.

The contact ease guidance document is not in a suitable format given it is enforceable guidance. It is crucial that the document is written in a comprehensible structure, that is also designed with future adaptability in mind. Enhancements to the guidance will accomplish its overarching objective of providing guidance to suppliers, enabling them to meet Ofgem's expectations.

It also includes elements that will become outdated very quickly, making it a less useful document for the future. For example, it references the REC R0053 modification that does not yet have an outcome and will be referred to as something different once a decision is made by Ofgem, thus impacting the longevity of this guidance document. Moreover, Energy UK has reservations over the scope of this particular modification, and we intend on addressing this alongside this consultation on consumer standards.

There are several elements in the guidance that outline minimum standards and we therefore urge Ofgem to include these in the licence conditions. It is important that the guidance is clear but not too prescriptive. This also builds confidence from suppliers that the regulator will consult formerly on any alterations to the licence conditions.

Ofgem has the capacity to substantially change the guidance simply by developing the guidance itself. Energy UK asks that Ofgem ensure suppliers have the opportunity to challenge any future alterations, seeing as over time, the updated version of guidance may be completely different from what has been initially discussed and agreed upon through this consultation.

We also encourage Ofgem to ensure the guidance is interoperable to allow existing suppliers and future new entrants to the market to fulfil obligations regarding ease of contact still, as they expand their products and services for the benefit of consumers.

Finally, the guidance does not yet consider wait times being skewed by one-off events, such as meter read day. Events such as these are out of the control of suppliers but may impact their ability to meet obligations in unprecedented circumstances. We ask that Ofgem provide recognition of such events and their impacts.

Identification and support/advice for those struggling with their bills:

Question 3: Do you have any comments or questions on our proposed licence changes to better support customers struggling with their bills?

Considering the levels of debt over recent years, Energy UK agrees that these proposals are broadly a sensible approach to improve customer outcomes in this priority area. It is worth noting that many suppliers do have robust systems in place to support and give advice to those struggling with their bills already.

There is a potential caveat to the changes in the licence conditions 27.5B and 27.8A. This is because these will mandate a site visit early in the non-payment journey because it instructs that suppliers must make proactive contact with customers who may in fact not want to be contacted. This will again, increase the cost to serve faced by suppliers. We suggest that Ofgem introduces an “all reasonable steps” element to the licence drafting of 27.5B to allow suppliers to respectfully engage with their consumers, which may well be in vulnerable circumstances and to ensure that this obligation is possible to fulfil.

Also, there are risks of consumers going into further or prolonged debt if repayment plans are paused indefinitely, or on multiple occasions, so we encourage Ofgem to be clear that regular reviews will be necessary to prevent this. The impact on customers’ credit rating through having repayment plans paused indefinitely or in place frequently and causing their debt to increase must be considered, to ensure customers benefit from this from a wider aspect. It is important that customers in this position are considered on a case-by-case basis: suppliers are well placed to do this, having insight into previous payment history and customer circumstances.

On a broader note, Ofgem’s Consumer Standards cannot be the only mechanism to improve consumer satisfaction; Covid-19 followed by the gas crisis has driven up wholesale costs and therefore customer prices, which has impacted customer trust and engagement. This is a wider issue that needs to be addressed with other mechanisms such as enhanced or targeted bill support for this winter.

Additionally, the suggestions of certain costly proposals contradict the aims of lowering bills for consumers this winter, therefore it is crucial that we move forward with proportionate options and

consult, with an Impact Assessment, on those proposals that are currently more ambiguous. With the additional involuntary PPM installations, there is potential for substantial impacts on bad debt costs which will need to be considered within the default tariff cap allowances.

Reputational Incentives:

Question 4: Do you have any comments or questions on our proposed SLC changes to require suppliers to publish information on their customer service performance, as measured by Citizens Advice?

Energy UK is generally supportive of Ofgem's reputational incentives, and these seem manageable to implement this winter. We welcome the specifics of the use of Citizens Advice's star rating in a prominent location, which has the ability to create a more consistent expectation of how to meet this obligation.

However, some of our members do still query the need for an Ofgem-led measure of customer experience in the longer term and have reservations over the appropriateness of the Regulator being better placed rather than a long-trusted consumer body and whether consumers will utilise this as much. Citizens Advice is a trusted consumer body, whereas Ofgem is not as consumer-facing, so the use of an Ofgem-led measure of customer experience may not bring about the same benefits to consumers. We welcome Ofgem's engagement with the energy industry over the next year and encourage this to begin as early as possible.

We would also appreciate further clarity on whether suppliers should be publishing the entire table or simply their own results, again this element could be interpreted differently, creating confusing outcomes for consumers. Ofgem must consider the varying formats that suppliers publish their customer service performance in, and the potential confusion this can bring, damaging a trusted source of advice. Additionally, it would be beneficial to have a standard regulated blog or communications template for suppliers to use that describes what this table is, the methodology that has been used, why it is being reported on their websites and why some smaller suppliers may not be included in the table, possible due to the number of masterpoints they supply rather than not being provided with data. Clarity on how Ofgem will monitor and enforce such a factor is still needed.

Lastly, should Ofgem expect suppliers to publish information about their customer service performance, additional costs must be considered. We suggest that Ofgem consider the impacts on consumers of adding further information to a bill, since this may become confusing and congested. We would welcome this element to be incorporated into Ofgem's further engagement with reputational incentives over the next year.

Other key areas to support Ofgem's assessment:

Question 5: Could you provide any further, detailed evidence on the potential costs and benefits of our revised proposals?

Energy UK has provided Ofgem and our members with a template to be used that is aimed to enable suppliers to provide a more aligned set of data that Ofgem can use in order to assess the incremental

cost of these proposals. Ofgem must still expect varying assumptions to be made across suppliers given the alteration of proposals throughout the consultation process and the time pressures they are under to try and complete this.

Question 6: Could you provide detailed evidence or information on the proposed timescales for the implementation of our revised proposals?

As mentioned before, Energy UK urges Ofgem to implement the proposed changes in a phased manner. This is because certain elements of the proposals, particularly those relating to improving the ease of contact, will take longer to implement than the 8 weeks suppliers would have should they be implemented for this December, following a decision in October.

Considering the significance of these changes in ensuring improved consumer standards, it is crucial that Ofgem allows sufficient time for further consultation on these factors, and for decisions to be successfully implemented.

We expect Ofgem to demonstrate that it has made sufficient attempts to consider the implementation requirements and reasonable lead times of proposals. It is important that Ofgem considers this for the market as a whole, not on an average basis. To ensure that all suppliers have a reasonable window to ensure compliance before regulations come into effect means considering the implementation challenges for whom the most change is required.