



Action for Warm Homes

National Energy Action (NEA) response to Ofgem's consultation on the Future of Retail Market Regulation

Introduction

NEA is an independent charity working to protect low income and vulnerable households from fuel poverty and exclusion in the energy market. NEA works to influence and increase strategic action against fuel poverty at a national level through its policy, research and campaigning functions. The charity also works with partners from industry, government and the third sector to deliver practical solutions to UK households – improving access to energy advice, energy efficiency products and other related services for vulnerable consumers.

Summary

NEA welcomes the opportunity to respond to Ofgem's consultation on the Future of Retail Market Regulation. Like the Competition Market Authority (CMA)'s Energy Market Investigation, this is an important exercise in seeking to re-establish consumer trust in the energy sector and the way in which it is regulated.

NEA's particular focus is on vulnerable energy consumers and in particular those on the lowest incomes who struggle to pay for this essential service. The investigation by the CMA to date has revealed evidence that the competitive markets are currently failing many low income energy consumers. Ofgem must therefore ensure any moves towards introducing Principle Based Regulation (PBR) enhances current protections, particular for vulnerable consumers and maintains a prescribed minimum level of safeguards afforded under current licence conditions.

If the moves to PBR move forward unrevised, NEA stresses the need for this approach to avoid an unworkable diversity of interpretations of any future principles. As well as potentially diminishing adequate oversight and governance within the energy industry directly, unless addressed this could also create significant challenges across advice agencies and frontline workers that must be able to provide consistent advice regarding what protections exist across the energy sector. This challenge is amplified in a world of an increasing number of new entrants and large variances in the different services being delivered across different energy suppliers depending on their size.

Above all, NEA underlines the opportunity to develop a hybrid to future energy regulation which helps preserve the required level of prescription inherent within many current licence conditions, alongside the development of some broad overarching principles which would be equally enforceable. We also provide detailed comments in relation to the consultation questions below.

Chapter 2: Reforming the rulebook

Question 1: *In what circumstances do you think that prescriptive rules are likely to be most appropriate? Which specific SLCs/policy areas should remain prescriptive in nature?*

We urge Ofgem to retain the minimum level of safeguards afforded under current licence conditions within the standard conditions of the existing electricity supply licence. Specifically, we call on Ofgem to preserve all existing safeguards which relate to customers in payment difficulty, a domestic customer's ability to pay, which govern pre-payment meter use, payment types, customer billing and arrears collection, the use of security deposits and disconnection practices and all current licence condition which specify the need to provide direct support or give customers information on matters concerning energy efficiency, debt management and energy discounts.

Any obligations which specify the basic duties and timeframes to provide these services to domestic customers must also be retained and not modified without public consultation. NEA also underlines the opportunity to maintain a minimum level of safeguards afforded under current licence conditions, alongside the development of relevant overarching principles which would be equally enforceable. We provide further details on how this may be achieved in the comments in relation to the consultation questions below or more generally specify where prescriptive rules are warranted.

Question 2: *Should we supplement the principle of "treating customers fairly" with any other broad principles? If yes, please outline what these should be and why.*

Ofgem has rightly repeatedly highlighted that "energy is an essential service". If the move to PBR moves forward, this overarching principle could be adopted and relevant SLC protections grouped around this statement. For example, current licence protections governing disconnection would be assigned to this broad principle ("Energy is an essential service"). Failure to comply with either the existing SLCs in this area or the principle itself would result in suitable enforcements. NEA also believes there is an opportunity for this approach to be taken forward alongside extending efforts to ensure coverage of wider protections in this area. In this context, NEA specifically refers to the "Energy UK Safety Net" initiative.

Currently some of Energy UK members have pledged to never knowingly disconnect a vulnerable customer at any time of year, where for reasons of age, health, disability or severe financial insecurity, that customer is unable to safeguard their personal welfare or the personal welfare of other members of the household. In addition, the Safety Net provides enhanced measures that are integrated into all suppliers' debt management processes, an agreed universal definition of a potentially vulnerable customer, improved communication with support agencies, a range of debt management and repayment options and follow-up procedures to support vulnerable customersⁱ.

Whilst this good practice is welcome, the value of this model is increasing being challenged by a number of new entrants who may not be aware of the initiative or do not feel it is relevant for their customers. This is resulting in large variances in the different services being delivered across different energy suppliers depending on their size and capacity. The move towards PBR could help address this through adopting the Energy UK Safety Net initiative protections and assigning these requirements to sit under the principle of "Energy is an essential service".

Question 3: Where might narrow principles be more appropriate than broad principles or prescription?

NEA believes that relevant SLC which offer protections for vulnerable consumers should provide detailed requirements which guard against the ambiguity which could arise from interpretations of any potentially vaguer principles. For example, we welcome Ofgem's observation in the consultation that narrower principles are appropriate to take into account customers' "ability to pay" when setting repayment instalments (SLC 27.8).

We agree that this must play a key role in the future framework and it is entirely appropriate to have narrow principles which focus on providing information, billing practices, or other areas of the licence where we want to enable a range of delivery approaches and still secure a more specific consumer outcomes. In addition, we stress the point raised above for these relevant SLC protections to be grouped around a broad principle (for example; "Energy is an essential service"). Again, NEA would highlight that this approach could also lead to extending coverage of existing industry-led protocols in these areas such as the "Energy UK Safety Net" initiative.

It should also be noted that without being explicit about what outcomes are required, often with an accompanying timeframe, the introduction of broad principles could diminish adequate oversight and governance within the energy industry. This ambiguity could also create significant challenges across advice agencies and frontline workers that must be able to communicate consistent advice regarding what protections exist across the sector as a whole. Again, NEA underline that this already increasingly challenging in a world of an increasing

number of new entrants and large variances in the services and protocols across different energy suppliers, depending on their size and capacity.

Question 4: *What are your views on the potential merits or drawbacks of incorporating consumer protection law into licences?*

No response

Question 5: *How should we use principles and prescription to most effectively protect consumers in vulnerable situations?*

As noted above elsewhere in this response (particularly in response to question 2), NEA favours the adoption of a hybrid approach to PBR where overarching principles are adopted alongside relevant SLC protections. Repeated failure to comply with either the existing SLCs specified in question 1 or the broad overarching principle itself would result in suitable enforcement. This reform should also be taken forward alongside extending efforts to ensure wider coverage of existing industry led protections.

Question 6: *Do you agree with our proposed approach to guidance?*

NEA notes that any approach which is reliant on replacing binding licence requirements with detailed guidance is unlikely to lead to better consumer outcomes. NEA would highlight that a reliance on supplementary guidance could in itself contradict the need for simplicity as the guidance would need to be constantly updated, with little oversight about what practices were driving any revisions and how material these may well be for different types of consumers. Again, NEA would note that this would also create challenges to the advice community. NEA would therefore underline the opportunity to establish a hybrid of the current licence condition led approach, alongside the development of some broad overarching principles which would be equally enforceable.

Chapter 3: Operating the rulebook: engagement and monitoring activities

Question 7: *How can we best engage with suppliers in the context of principles?*

NEA stresses its concern that engagement with suppliers on this area to date has largely focused on seeking their views about which licence conditions are deemed (by them or to a lesser extent, Ofgem) to be a potential regulatory burden. Whilst NEA acknowledges that there is an opportunity to ensure existing SLC protections are proportionate, a negative interpretation of this type of engagement has the potential to undermine the value of any reforms to governance in this key area. In addition, NEA notes that if the moves to PBR to move forward, any ongoing liaison between energy suppliers and the regulator must not rely on a '1-1 account management' between an individual supplier and an Ofgem 'account manager'.

This approach could reduce consistency in the way any principles were being transposed across companies and lead to a diversity of interpretations of any future principles by different suppliers.

Question 8: *What specific support may be needed for new and prospective entrants?*

It is important to note that, as with incumbents, new and prospective energy market entrants must take responsibility for informing themselves about regulatory requirements, especially protections for vulnerable consumers.

Question 9: *Do you have any views on how best to approach monitoring in the context of principles? Specifically, which indicators and approaches should we use to catch potential problems early?*

Where overarching principles were adopted alongside relevant SLC protections, intelligence on which companies that are fail to comply with SLCs or the broad principle would echo current monitoring on existing enforcement. In addition, NEA suggests that Ofgem could consider greater use of proactive steps such as 'secret shopping' and working more closely with advice agencies and frontline workers. These types of agencies are often the first organisations to identify where suppliers are not adhering to licence conditions requirements which already exist or, in the future, any broader principles.

Question 10: *Do you have any views or comments on the following proposals?*

- ***We will expand our engagement with suppliers to enhance our understanding of their businesses and help them better understand our rules so they can get things right first time.***
- ***We will collaborate closely with the Citizens Advice Service and the Ombudsman Services: Energy to ensure we maximise the effectiveness and impact of the monitoring activities across our organisations.***

As noted in response to question 8, it is important to note that incumbents or market entrants must take responsibility for informing themselves about regulatory requirements, especially protections for vulnerable consumers.

Chapter 4: Operating the rulebook: compliance and enforcement

Question 11: *Do you have any views on how best to approach compliance in the context of principles?*

As noted above in response to question 2 and question 5, NEA favours the adoption of a hybrid approach to PBR where overarching principles are adopted alongside relevant SLC protections. Failure to comply with either the existing (or expanded) SLCs in this area or the principle itself would result in suitable enforcement.

This reform should also be taken forward alongside extending efforts to ensure coverage of wider industry led protections in this area were not reserved for suppliers who have ongoing contact with representative bodies such as Energy UK but also include all smaller suppliers who should also be encouraged or required to follow any existing industry-led protocols in these areas.

Question 12: Do you have any views or comments on the following proposals?

- ***We will retain our current flexible and discretionary approach to escalating issues to enforcement. We will prioritise compliance activities where possible and appropriate.***
- ***We will increase the links to the level and impact of harm when deciding whether to open a case.***
- ***Engaging early with Ofgem may reduce the likelihood of later enforcement. Information from engagement and monitoring activities may be shared with enforcement where appropriate.***
- ***We will continue to apply our full range of enforcement tools to principles-based rules.***
- ***We will make it easier for all suppliers to learn lessons from enforcement outcomes.***
- ***Enforcement action will continue as usual throughout the transition to principles.***

NEA has two specific comments on the need for regulatory decisions and enforcement action to continue as usual throughout the transition to any broader principles. Firstly, NEA is concerned that the moves to PBR may already be having an impact on the willingness of Ofgem to consider introducing SLCs in areas which have been the subject of extensive consultation. For example, NEA recently welcomed Ofgem's request to energy suppliers to end charges for the non-warranted installation of a prepayment meter and removal when a customer wishes to move to a credit meter. NEA also acknowledges and commends the good practice and changes to business practices that now mean around 96% of prepayment customers would not have to pay to have a meter installed and removed. However, NEA would call on Ofgem to act to ensure that the changes are made permanent in order to secure the benefits and protections afforded by them in the long-term.

In addition, NEA is concerned that the CMA's recent proposal for a price cap for prepayment meter customers may also be subject to delay. NEA believes the CMA was right to highlight that energy is an essential service and many customers on repayment can't afford to pay over £200 more a year than other customers. We therefore welcome the key recommendation for a transitional price control for prepayment customers and we urge the Government and Ofgem to move quickly to implement these plans.

Finally, NEA notes a risk that until any transition to principles is complete, suppliers may choose not to follow existing requirements which are currently being examined to see if they are a potential regulatory burden and are likely to be adapted or repealed in the future. Whilst there may be good cause for these current requirements to be reviewed where it can be demonstrated they are hindering innovation at the same time as offering no meaningful consumer protection, until they are repealed or any move to PBR is confirmed and finalised, these licence requirements are still active and should be enforced where relevant.

Chapter 5: Managing the transition effectively

Question 13: How would you like to engage with us on our proposals and the broader work programme?

Engagement by the FER team has been transparent to date and has consisted of 1-1 meetings alongside wider workshops etc. However, NEA would note that where significant concerns are flagged, these must be acted upon. It should also be recognised that consumer led advocacy on this detailed area is challenging for groups like NEA given competing demands. In addition, it is critical to appreciate that the extent of representations that will be received on the need to protect customers and enhance current protections (particular for vulnerable consumers) is likely to be in a minority when compared to the stakeholder feedback that can be mobilised by industry. This is because many organisations that would naturally support the need to protect customers enhance current protections or support maintaining a prescribed minimum level of safeguards afforded under current licence conditions are not able to make national representations easily or have sufficient time or insight to respond to detailed consultations.

Question 14: Do you agree with our proposal to take a phased, priority-driven approach to reforming the supply licences.

No. As noted above, NEA has concerns that engagement with suppliers on this area to date has largely focused on seeking their views about which licence conditions are deemed to be a potential regulatory burden. This view was validated when Ofgem welcomed the government's Cutting Red Tape review and pre-empted support for the proposals in this consultation to regulate the energy market more through general principles than prescriptions. Whilst NEA acknowledges that there is an opportunity to ensure existing SLC protections are proportionate, NEA believes this engagement should take place after the details of how PBR will work in theory and not be a dual process. This would strengthen the ability of NEA (and other groups) to consider any implications to remove specific requirements in a more detailed way and as such strengthen decision making on key areas.

Question 15: Which areas of the licence should we prioritise? In particular, please provide examples where existing prescriptive rules may be causing problems or where market developments are leading to new risks to consumers.

Please see comment in response to question 13 and 16.

Question 16: Can you provide any initial views on potential costs and benefits (eg avoided costs) of regulation via principles versus prescription to your organisation? Please explain which parts of our proposals (eg rulebook, operations) these costs relate to.

Once again, NEA notes a risk that this question could imply that licence conditions are being deemed by industry and Ofgem to be a regulatory burden. For this concern to be adequately addressed or verified in this context requires Ofgem to consider the counterfactual costs (to energy consumers) of licence requirements not continuing to be enforced. For example, when considering setting repayment instalments (SLC 27.8), if suppliers cite how much this requirement costs their business, equally consideration should be given to the costs to the consumer of this not occurring.

Another example is the requirements for the smart meter journey. In this regard, NEA applauds the Government and Ofgem for setting in place conditions (e.g. Smart Energy GB, the Smart Meter Installation Code of Practice (SMICoP)) that prioritise the customer experience. We continue to have concerns however that within the current regulatory landscape opportunities may be missed to use the roll-out (and the face-to-face in-home contact with a customer to install a smart meter) to deliver a tailored experience that addresses the customer's specific smart metering and energy needs. These concerns particularly relate to vulnerable customers who will require more targeted and intensive support to overcome their evidenced disengagement in the energy market and address issues around age, health, disability, visual and hearing impairment, low literacy and numeracy and English language skills. These points are supported by DECC's findings from their early learning research on smart metering which concluded that certain categories of consumers (including low income, prepayment and those vulnerable due to age, literacy etc.) would benefit from tailored, follow-up (including face-to-face) support to ensure they are able to fully realise the benefits of smart metersⁱⁱ. However, without consider the counterfactual costs (to energy consumers) if these licence requirements did not continue, it is unlikely that suppliers may cite these requirements as an 'undue burden' even if it means all customers should be able to understand and unlock the benefit from their smart meter and in-home displayⁱⁱⁱ currently required by licence conditions.

Overall, NEA stresses that not including an assessment of any counterfactual costs will prohibit Ofgem from accurately assessing whether any costs incurred as a result of licence requirements are proportionate.

Chapter 6: Exploring priority areas for reform

Questions for this chapter

Question 17: Are the existing provisions of SLCs 25.1 and 25.2 the right ones for regulating sales and marketing activities (or are any additional principles needed)?

Please see response to question 14. NEA believes that engagement on modifying any specific licence requirements should take place after the details of how PBR will work in theory are released and this should not be a dual process.

Question 18: What, if any, prescriptive rules are needed in addition to the principles in SLC 25 to deliver good consumer outcomes?

Please see response to question 17.

Question 19: What engagement and monitoring process might be required to best operate SLC 25?

Please see response to question 17.

ⁱ Under the “Energy UK Safety Net” Energy UK have stated that energy suppliers will apply the agreed definition of vulnerability within a framework of best practice guidance, wherever possible, attempt to capture information about their customers and identify potential vulnerability, ensure that vulnerable customers’ internal records are updated to indicate that special attention is required, Work, where appropriate, with advice agencies, support services and charities to offer, vulnerable customers the most suitable support to help with their energy debt, Have specialist teams to assist vulnerable customers and to support the implementation and ongoing administration of vulnerable customer policies, Offer a range of debt repayment options in order to find the most appropriate solution for vulnerable customers to manage any debt, Make attempts to contact all customers following a disconnection with the aim to agree a repayment plan with the customer, Obtain senior management authorisation prior to any disconnection being carried out, Re-connect any customer who has been found to be vulnerable after disconnection as a priority, and usually within 24 hours of confirming that the customer is vulnerable, Monitor any repayment arrangements after they have been set up, in line with Ofgem’s Key Principles for ability to pay. For more information visit: https://www.energy-uk.org.uk/files/docs/Disconnection_policy/energy-uk-safety_net-17-april-2014.pdf.

ⁱⁱ Department of Energy and Climate Change (2015). DECC’s Policy Conclusions: Early Learning Project and Small-Scale Behaviour Trials. Available: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407539/1_Early_Learning_Project_and_Behaviour_Change_Trials_Policy_Conclusions_FINAL.pdf.

ⁱⁱⁱ NEA stresses that in the context of the smart meter roll-out being used to help remedy customer disengagement in a competitive market that the licence requirement for suppliers to offer customers an in-home display (IHD) at point-of-install is critical and must remain in place. It is the IHD, not the smart meter, through which customers engage with their energy use and cost information. Furthermore, the provision of IHDs has been found by DECC’s early learning research to be a key factor in helping customers increase awareness of, and control over, energy use in the home. Available: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407539/1_Early_Learning_Project_and_Behaviour_Change_Trials_Policy_Conclusions_FINAL.pdf.