

Response to Ofgem's open letter and statutory consultation on SLC 32A

18th November 2016

Introduction

Energy UK is the main trade association for the energy industry, with over 90 members; representing energy generators and suppliers of all sizes. Our members supply gas and electricity and provide network services to both the domestic and non-domestic market. Energy UK members own over 90% of energy generation capacity in the UK market and supply 26 million homes and 5 million businesses, contributing over £25 billion to the UK economy each year. The industry employs 619,000 people across the length and breadth of the UK, not just in the South East, contributing £83bn to the economy and paying over £6bn annually in tax.

Energy UK's retail members are: Bristol Energy, British Gas, Co-Operative Energy, DONG Energy, Ecotricity, EDF Energy, Engie, E.ON, Flow Energy, First Utility, GB Energy Supply, Good Energy, Haven Power, npower, Opus Energy, ScottishPower, Smartest Energy, Spark Energy, SSE, Utilita and Utility Warehouse.

Energy UK strongly believes in promoting competitive energy markets that produce good outcomes for consumers. In this context, we are committed to working with Government, regulators, consumer groups and our members to develop reforms which enhance consumer trust and effective engagement. At the same time, Energy UK believes in a stable and predictable regulatory regime that fosters innovation, market entry and growth, bringing benefits to consumers and helping provide the certainty that is needed to encourage investment and enhance the competitiveness of the UK economy.

These high-level principles underpin Energy UK's response to Ofgem's open letter and statutory consultation on SLC 32A. This is a high-level industry view; Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

Executive Summary

Energy UK members are supportive of any measures that can be taken to improve customer engagement. It is clearly right that any such measures should be taken on the basis of a robust evidence base and we recognise that Randomised Control Trials (RCTs) are part of building this evidence base.

Our preference is that Ofgem would seek to work in partnership with suppliers on a voluntary basis to carry out RCTs through a process of constructive dialogue and that the powers set out in the proposed Standard Licence Condition (SLC) 32A would never be needed.

While we support the use of RCTs in building an evidence base to improve consumer engagement, we have some concerns about the requirement for and proposed drafting of SLC 32A. These are explored below.

Energy UK concerns about the introduction of SLC 32A

Breadth of proposed powers

Energy UK members believe that the proposed licence conditions are broader than those drafted by the CMA in its final report. The draft licence condition appended to the CMA's report required compliance with a direction in respect of "Relevant Matters", in connection with Ofgem's consideration of measures or behaviours which may impact on consumer engagement. The requirement in SLC32.8d of the CMA's

draft was to provide Ofgem with results limited to the testing of measures concerning the information provided to customers. Ofgem has amended this to refer more broadly to the results from testing consumer engagement measures which it views as consistent with the drafting and scope of the SLC. Ofgem also sees this as future-proofing the SLC and whilst the immediate focus will be information prompts, future trials may be conducted on broader supplier activities or behaviour. Energy UK members believe that both 32A.8 a) and d) should refer solely to measures to provide domestic customers with different or additional information with the aim of promoting engagement, as recommended by the CMA.

Energy UK also notes that Ofgem has not set out how they will measure engagement. Simply measuring switching levels is a very narrow view. It doesn't account for customers who want a range of products which includes energy or those who want a particular type of tariff that is not offered by all suppliers (e.g. a green tariff /bundled products).

Timescales of directed trials

Energy UK members are very concerned that the one month timeline for preparing for an Ofgem-led trial to take place is, depending on the nature of the trial, too short a time period. If preparation time is insufficient, not only is this unworkable for suppliers, but it introduces the risk of error, poor customer experience and sub-optimal trial results. The length of preparation time will depend partly on the type of product or service being designed and subsequent trial being conducted; however, Ofgem has not provided guidance on the type of trials they expect suppliers to conduct. A helpful example of such guidance was provided by BEIS in April this year, which supports suppliers carrying out trials of alternative energy engagement tools to the IHD. This sort of detail allows suppliers to assess the preparation time and resource required and work through a sensible product development process.

There are clearly forms of trial such as the use of a consumer panels that can take less than a month to put into effect but importantly trials involving system changes, are likely to take significantly longer. Additionally, there is no reasonableness test in the proposed drafting of the power of direction. Energy UK members would feel more comfortable with wording introduced into SLC32A.2 that considers the type of trial being carried out e.g. stage one, stage two etc. and that any notice period set by Ofgem is 'reasonable' for the trial being considered. The current drafting creates a disproportionate level of regulatory risk.

Supplier capacity to carry out trials

Energy UK members have concerns that supplier capacity to carry out trials of varying scales will differ greatly, especially if system changes are required. This presents a risk that suppliers without sufficient capacity will be required to carry out complex trials in a short time period. There is a related risk that suppliers with a perceived greater capacity will shoulder too much of the burden. We hope Ofgem recognise this danger and approach each selection of suppliers and trial in a considered, transparent and proportionate manner.

An important consideration in relation to supplier capacity is that corporate support functions (IT systems, data insight teams, and other support teams) are already overwhelmed with regulatory industry changes. Suppliers envisage a challenge in prioritising regulatory trials over regulatory system and process changes; indeed there would be separate challenges in scaling up resource to accommodate an undefined work load at short notice.

Suppliers are also concerned with the potential for regulatory trials to take priority over supplier's own trials, which could have the negative impact of stifling innovation and distorting competition by absorbing resource within one or two specific suppliers at a time.

Proportionality of trials

Energy UK members are concerned that trials have the potential to cause consumer detriment, sub-optimal experience, and ultimately lead to complaints. This is particularly damaging given customers will typically not be aware they are on a trial (as per RCT specifications). Again, this could unfairly disrupt a supplier's competitive position. It would be unwelcome for consumers to suffer confusion as a result of a poorly designed trial. It would also be unfair for suppliers to see a spike in their complaint numbers as a result of an Ofgem-directed trial.

Suppliers require more guidance on the size, scope, duration, and frequency of trials that will be asked of them and how Ofgem will avoid detrimental impacts on innovation, competition, and consumers,

particularly when considering how quickly consumer behaviour, preferences, and technology can change. It is important that suppliers have the agility to evolve products and services to meet customer needs as technology evolves. Suppliers would also like to see protections built in to the process so that a supplier can abandon and/or opt-out of a trial that could harm their commercial interests.

Ofgem explain that one of the requirements of an RCT is that the costs of the trial are proportionate to the benefits; Ofgem also advises that in the interests of proportionality they will look to control the impact on systems and costs. The consultation document, however, does not provide any assurance of how this will be achieved or when in the process it will take place. With this in mind, before being required to take part in any trial, Ofgem should as a minimum allow licensees to make representations to Ofgem and Ofgem should be required to have regard to those representations.

Confidentiality

We would hope that trials are designed and conducted in a manner that is subject to the usual safeguards. These include data protection measures and Ofgem not disclosing information that may prejudice a supplier's commercial interests. Ofgem must be careful to strike a balance between sharing best practice and undermining competition.

For further information or to discuss our response in more detail please contact Daniel Alchin on 020 7747 2965 or at daniel.alchin@energy-uk.org.uk / Natan Doron on 020 7747 2932 or at natan.doron@energyuk.org.uk