

Response to Ofgem proposals on prepayment meters installed under warrant

9th November 2016

Introduction

Energy UK is the trade association for the energy industry. We represent over 90 members made up of generators and gas and electricity suppliers of all kinds and sizes as well as other businesses operating in the energy industry. Together our members generate more than 90 per cent of the UK's total electricity output, supplying more than 26 million homes and investing in 2012 more than £11 billion in the British economy.

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 proposals on prepayment meters (PPM) installed under warrant. 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 take their obligations to their customers, especially those in vulnerable circumstances, very seriously. Energy UK agree that the energy consumers in the most vulnerable circumstances should be protected from the installation of PPMs under warrant and related charges if these would exacerbate their vulnerability.

However, Energy UK has serious concerns that the unintended consequences of Ofgem's proposals would create a bigger source of harm to consumers in vulnerable circumstances than the problem they intend to address. For this reason Energy UK urges Ofgem to reconsider its proposals. Energy UK members are fully committed to meeting Ofgem's intended aims, but believe that there are better ways of doing this which don't risk unnecessary harm to consumers in vulnerable circumstances.

Energy UK's response to the questions set out in the consultation document are presented below.

1. Question 1: Do you agree with the outcomes intended as a result of our policy detailed in paragraph 2.4?

- 1.1. Yes, in principle. Suppliers take their obligations to customers very seriously and will always seek to minimise action that would exacerbate vulnerability wherever possible.
- 1.2. Installations of PPMs under warrant are already avoided wherever possible and our members would only go through this process following extended attempts to make contact with the customer in order to set up a repayment plan. The warrant process is often used where the customer has refused to engage with the supplier to resolve their debt issues.
- 1.3. It is important that Ofgem understand that different suppliers will have different methods for collecting debt and their ability to keep down costs will vary. This is often related to a supplier's

ability to take advantage of economies of scale or to absorb debt for longer periods as part of their business model.

- 1.4. Ofgem should be mindful that it is possible for a consumer to be experiencing some level of vulnerability yet still be in a position to pay their energy bills but choose not to. There is a difference between a customer facing detriment due to their vulnerability and a customer in a vulnerable situation who can pay but chooses not to engage. We therefore have concerns that the proposals' use of 'vulnerable' is too wide and undefined. Without further guidance suppliers can only assume Ofgem refer to their Consumer Vulnerability Strategy interpretation. Given that a customer's vulnerability may not be connected to their ability to pay or engage, it is unclear what detriment / unequal outcome using such a broad definition is seeking to address, let alone whether this is a proportionate approach.
- 1.5. Ofgem also needs to be careful not to equate the installation of a PPM for a consumer in vulnerable circumstances with immediately putting them into a position of detriment.
- 1.6. We also have concerns that the use of the word 'severe' to describe financial vulnerability is too wide and undefined. For example, it could be interpreted to mean that almost all customers going down the debt path who don't engage and allow a debt to build up are severely financially vulnerable once their supplier has reached the point in the debt path of applying for a warrant to install a PPM.
- 1.7. These concerns aside, Energy UK is fully committed to meeting Ofgem's intended outcomes as detailed in paragraph 2.4 of the consultation.

2. Question 2: Do you agree with our preferred option as detailed in paragraphs 2.8 to 2.11?

- 2.1. Energy UK does not support the preferred option. Energy UK believes that the unintended consequences of Ofgem's proposals would create a bigger source of harm to consumers in vulnerable circumstances than the problem they intend to address. These unintended consequences are explored in more detail in our answer to question three below.
- 2.2. Energy UK members are fully committed to meeting Ofgem's intended aims and believe that there are better ways of doing this without causing unnecessary harm to consumers, including those who are in vulnerable circumstances.
- 2.3. The absoluteness of the wording of some of the proposals is also problematic particularly in relation to the prohibition of installing PPMs under warrant for consumers in relevant vulnerable circumstances. Suppliers usually install a PPM under a warrant if the customer has never engaged during the debt collection process and will therefore often not know if a consumer is in a vulnerable circumstances. The drafting of the proposals does not reflect this.
- 2.4. Any cap should be more cost-reflective, more flexible and be set at different levels depending on the case. For example does the installation require a locksmith, a dog handler, and one or two engineers?
- 2.5. There must also be exceptions to the operation of a cap if it is clear that a customer can pay but chooses not to and undertakes action to evade suppliers and/or impede the installation process. There is no reason other customers, including customers in vulnerable circumstances, should have to pay more to protect those who wilfully exploit the system.
- 2.6. Similarly if a vulnerability is not linked to ability to pay and it is clear that a customer in vulnerable circumstances is choosing not to pay when they can, there should be an exception to the prohibition of charging for warrants costs.

3. Question 3: Do you have views on any further unintended outcomes which could be realised in addition to the risks outlined in paragraphs 2.47-2.50?

- 3.1. There is a long list of unintended consequences arising from the proposals. Many of these have a high likelihood of occurring and taken together will create a bigger source of harm to consumers

in vulnerable circumstances than the problem they intend to address. Unintended consequences include: An increase in bad debt that pushes prices up (perhaps very significantly) for all consumers including those Ofgem is trying to protect; reduced incentives for consumers to engage with their suppliers when they have financial difficulties; a raising of the threshold of proof for identifying vulnerability which could end up being very traumatic for some customers; an increase in debt for customers in vulnerable circumstances; a big rise in customers who can pay but choose not to exploiting the system; creating an incentive for suppliers to allow debt to rise before engaging with a customer to provide support and workout a repayment plan.

- 3.2. We are concerned that the cumulative impact of these unintended consequences will be to limit suppliers and customers' ability to manage debt increasing the costs associated with bad debt for all customers including those in vulnerable circumstances. This is deeply unfair on those consumers with vulnerabilities who do all they can to pay their bills only to have to pay extra to help those who do not make the same efforts as they do. We explore a number of these unintended consequences below.
- 3.3. The proposed cap level of £100 or £150 appears to be completely arbitrary. No explanation or justification has been given for how these figures were arrived at. There are a list of costs including court fees, hiring an engineer (possibly two for dual fuel customers), locksmiths and dog handlers. The cost of all this labour alone will be far higher than £100 or £150. Costs not covered by the cap will need to be redistributed and paid for by other customers. The cap does also not recognise where customers have multiple suppliers across fuels, resulting in double cap charges where warrants are required for both fuels.
- 3.4. In addition consumers who can pay but choose not to and wilfully exploit the system, would be covered by a cap to protect them from high charges, paid for by all consumers, including those in the most vulnerable circumstances.
- 3.5. It is also unclear how Ofgem has arrived at the £4.5m - £8.9m range for increased costs resulting from their proposals. In particular the costs only seem to relate to the impact of the cap, not the other measures included in Ofgem's consultation. The measures proposed risk vastly reducing the capacity of suppliers to recover debt including raising the likelihood that those who can pay but choose not to can exploit the system. Energy UK therefore believes that the increased costs resulting from Ofgem's proposals could be significantly higher than £8.9m a year.
- 3.6. Energy customers have a responsibility to pay their bills and to engage with their suppliers when they are facing difficulties. As noted previously Ofgem's uncomfortably broad definition of vulnerability and prohibition of warrant costs for customers risks removing incentives for customers in debt to engage with their suppliers. This also means that suppliers may lose out on opportunities to provide those customers with other protections (for example being added to the priority services register) and increases the risk of potential further financial detriment by removing the option for some vulnerable customers to be able to manage their energy through the use of a prepayment meter.
- 3.7. The use of the term 'severe financial vulnerability' is also particularly challenging. The term is undefined and subjective, it is therefore likely suppliers will seek to adopt the broadest possible definition undermining suppliers ability to legitimately collect debt from those who can but choose not to engage, increasing the cost of bad debt for all other customers, including those in vulnerable circumstances. For example, it could be interpreted to mean that almost all customers going down the debt path who don't engage and allow a debt to build up could be classed as severely financially vulnerable once their supplier has reached the point in the debt path of applying for a warrant to install a PPM.
- 3.8. As suggested in 2.3. above, the absoluteness of the wording of some of the proposals does not reflect that installing a PPM under warrant is often pursued when a customer never engages. Without such an understanding being reflected in the design and wording of the proposals, suppliers would be carrying a significant compliance risk if vulnerability was identified post warrant. This could lead suppliers to adopting a highly risk adverse approach to warrant activity limiting their ability to manage debt and increasing the cost of bad debt for all consumers.

- 3.9. We consider it highly plausible that Ofgem's proposals could lead to a situation in energy like that seen in the water sector. In 2015 the cost of bad debt (debt that cannot be pursued) added £21 to every customer's bill.¹ This cost may be even higher now as water companies have received no new powers to pursue bad debt. Ofgem's plans to limit the ability of suppliers to recover debt seriously run the risk of bad debt becoming as big a problem in energy as it is in the water sector. The relative size of energy bills compared to water means the risk is that the increase in bills could be far higher than £21 a year. These increased bills would affect all customers including those in vulnerable circumstances.
- 3.10. The introduction of these proposals would increase the power of a small but significant number of consumers who can pay but choose not to pay and look for ways in which they can exploit the system. Currently suppliers take declarations of consumer vulnerability at face value. Once those who seek to exploit the system understand the new protections in place for vulnerability, they will be able to assert that they have certain vulnerabilities. To avoid widespread exploitation it is possible that suppliers will have to increase the threshold for proving vulnerability. This could have the unintended consequence of being a very traumatic for those consumers who do need support.
- 3.11. There is also a real danger that the proposals as designed could see some suppliers let a customer's debt grow before engaging with them. This could lead to a customer's debt growing higher than it would otherwise, exacerbating their financial difficulty and causing detriment.
- 3.12. The impact of increased customer debt could also adversely impact smaller independent suppliers due to the smaller customer base that any bad debt provision would be spread across. Leading to an undesired impact on the growth of independents within the industry.
- 4. Question 4: Do you agree that the cap should be applied when the warrant process is not completed and that no further detail is necessary? (See paragraph 2.55)**
- 4.1. We disagree that the cap should be applied when the warrant process is not completed. The cap should only be applied on a case by case basis.
- 4.2. For example, a customer may prevent the installation from going ahead using force or damaging the meter. Suppliers will still have incurred the costs of applying for and carrying out a warrant even if they choose not to complete the warrant and these costs should be allowed to be recovered. We believe cases of energy theft or wilful damage should be exempt from Ofgem's proposals. Ofgem summarised the reasons why effectively in its decision on 'tackling energy theft':
- 4.3. Theft of electricity increases prices for customers and reduces safety. It leads to misallocation of costs among suppliers, which can distort competition and hamper the efficient functioning of the market. It also has links to organised crime, in particular cannabis cultivation.²
- 5. Question 5: Do you agree with the proposal for a new debt path proportionality principle (as detailed in paragraphs 2.59 to 2.66), in that this would not be limited to warrant activities and would require costs and actions relating to ALL debt recovery activities (including transfer objections) to be proportionate? Do you have any views on unintended consequences of this broad scope?**
- 5.1. There is an argument that the principle, without the cap and prohibition proposals as currently drafted, could go quite a long way to meeting Ofgem's intended aims. This is something that Energy UK would be prepared to discuss with Ofgem as an alternative to the current proposals being taken further. It is important to note, however, that not all Energy UK members necessarily agree with the idea of a proportionality principle as they do not think it is proportionate to the harm that Ofgem argues needs to be addressed.

¹ http://www.ofwat.gov.uk/wp-content/uploads/2015/12/prs_web20151201affordability.pdf

² <https://www.ofgem.gov.uk/ofgem-publications/86504/electricitytheft-decisionfinalv1.pdf>

- 5.2. There are, however, a number of problems with the drafting of the currently proposed licence condition. The current wording refers to an 'original amount' of a debt in reference to the proportionality of the charges for debt recovery. It is unclear if this means the original amount of the debt at the point that debt recovery action begins or whether it is the level of debt as it develops. Charges that are initially proportionate to an original debt of £100 will not be proportionate if a customer does not engage and ongoing usage has taken the level of debt to £500 or even £1000 or more.
- 5.3. Furthermore, it is not clear from the draft impact assessment if the £4.5m - £8.9m range for increased costs resulting from these proposals includes the effect of the proportionality principle. Charges for debt collection are cost-reflective. In seeking to limit these, Ofgem is effectively saying that the wider customer base should absorb costs not charged to those customers in debt.
- 5.4. Sending a letter or paying a visit to a customer in debt costs a supplier the same amount regardless of what the customer owes. The proposals suggest that Ofgem's aim is to delay the sending of letters or visits until the size of debt exceeds the cost of debt recovery activity. This goes against best practice in debt collection practice and is not in the best interest of customers. Customers should be engaging with suppliers when their debt is smaller and more manageable. Limiting the capacity of suppliers to engage with customers until their debt is larger could increase the detriment of indebted customers and make it harder for them to manage their debt.
- 5.5. Taking the Energy UK Safety Net indicative debt path for reference, the process of recovering debt includes a number of steps that require suppliers to make:
- 6 attempts to contact through correspondence
 - 1 attempt to contact by telephone
 - 1 attempt to contact by personal visit to property where no previous contact has been made, including visually checking the property for signs of vulnerability
- 5.6. A significant number of consumers purposely have little or no engagement with energy suppliers and the debt recovery process is often an important means of discovering information about customers including about any vulnerability. Many suppliers will have different debt recovery processes for customers in vulnerable circumstances but these still require costs to implement.
- 5.7. It is important that Ofgem recognise that installing a PPM under warrant is not a last resort for suppliers. It is technically the second to last resort and is used to avoid disconnection. Severely limiting the ability of suppliers to recover debt from those who can pay but choose not to could lead to an increase in disconnections which have capacity to do more detriment than charging cost-reflective prices for installing PPMs under warrant.
- 5.8. We note that suppliers were given the power to recover costs for installing PPMs under warrant in law for a reason. There are already a series of protections in place including the Consumer Rights Act and CMA guidance on unfair contract terms in relation to the transparency of costs and the fairness of terms. Suppliers must ensure that a PPM is safe and reasonably practicable for a customer. In addition SLC 25C provides protections in relation to transparency and treating customers fairly. Ofgem has given no compelling rationale as to why these protections aren't currently working.
- 6. Question 6: Do you agree with our definition of "under warrant" to mean a warrant that would authorise the installation of a PPM. Do you have any views on unintended consequences of this narrow scope?**

6.1. Yes.

7. Concluding remarks

- 7.1. Energy UK attended a stakeholder workshop to discuss these proposals on 20th October 2016. Every supplier present made it clear that while they supported Ofgem's intended aims to protect consumers in vulnerable circumstances, they believed that the unintended consequences of

Ofgem's proposals would create a bigger source of harm to consumers in vulnerable circumstances than the problem they intend to address.

- 7.2. For this reason Energy UK urges Ofgem to reconsider its plans and revisit these proposals. Energy UK members are fully committed to meeting Ofgem's intended aims and believe that there are better ways of doing this without causing unnecessary harm to consumers in vulnerable circumstances.
- 7.3. Finally Energy UK raised a question in our response to the original consultation in December 2015 about the legal basis for Ofgem's proposals. We noted that the Gas Act 1986 (as amended) and the Electricity Act 1989 (as amended) explicitly state that a supplier may recover any expenses incurred in the installation of a prepayment meter. Our understanding, based on legal advice that we have received, is that Ofgem may not in fact have the relevant powers under the Electricity Act 1989 to introduce the proposed Licence Conditions. It is therefore vital Ofgem clearly set out the basis on which it believes it has the power to introduce the proposed licence conditions. We would gratefully welcome clarification about this.

For further information or to discuss our response in more detail please contact Natan Doron on 020 7747 2932 or at natan.doron@energyuk.org.uk