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Consumer Vulnerability Strategy Team  
Ofgem  
9 Millbank  
London  
SW1P 3GE

9 November 2016

Dear Steve,

### **PRE-PAYMENT UNDER WARRANT: FINAL PROPOSALS**

Thank you for the opportunity to respond to the above consultation which seeks views on Ofgem's proposals to protect consumers in the process of installation of prepayment meters (PPMs) under warrant for non-payment of debt.

ScottishPower is supportive of the objectives of these proposals. We recognise the need to provide protection for vulnerable customers and to ensure that suppliers take proportionate action when seeking to recover and manage debt. We agree that it is desirable to achieve a balance between ensuring that suppliers manage debt processes appropriately (particularly for vulnerable customers) whilst retaining the incentives for customers to engage. However, we have identified some areas where we believe the proposed draft licence conditions may give rise to unintended consequences.

- We consider that in the circumstances where suppliers are prohibited from installing PPM under warrant (draft licence condition 28A.1) suppliers may be left with no option for collecting and managing debt, potentially resulting in a category of customers who will receive free energy subsidised by the remaining customers who do pay. We have proposed amendments to this clause which we believe facilitate the objective of protecting those customers who may be harmed by the process of installation of PPM under warrant, whilst retaining the ability for the supplier to work with the customer to manage their debt.
- We are concerned that the proposed drafting of licence condition 28A.2 may be too tightly drawn, risking removing the incentive for customers to engage to avoid warrant action, and increasing costs for other consumers. We recognise the need for suppliers to take appropriate and proportionate action, particularly when dealing with vulnerable customers, and have proposed alternative drafting which we believe achieves these objectives whilst minimising the potential downsides.
- The inclusion of Transfer Objections in the draft debt proportionality principle may provide an opportunity for some customers to switch supplier to avoid paying their debts, resulting in an increase in bad debt across the industry. Transfer Objections already fall within the scope of the Standards of Conduct

and it is unnecessary to provide additionally that they should be proportionate. Indeed the ambiguity in what this means in practice could cause confusion. Accordingly, we suggest that, in alignment with the move towards principles based regulation, Transfer Objections should not be included in these licence conditions.

We are supportive of the inclusion of a Sunset Clause and of Ofgem's power to extend this where appropriate, but in the interests of certainty this should not be capable of being used after the relevant requirements have been allowed by Ofgem to lapse. After that point, it would be for Ofgem to propose a licence change in the normal way.

Our responses to the specific consultation questions are set out in annex 1 to this letter. Our suggested drafting to modify the proposed licence conditions can be found in annex 2 to this letter.

Finally, we note that Ofgem's proposals cover both gas and electricity suppliers and suggest that Ofgem should confirm the legal basis for their implementation for electricity suppliers. In particular we understand that (in contrast to gas) the rights conferred on suppliers under statute in the Electricity Code are not made subject to the Licence provisions.

We would be pleased to discuss our response further with you, if that would be helpful. If you would like to do this or have any questions, please contact me or Rhona Peat ([rhona.peat@scottishpower.com](mailto:rhona.peat@scottishpower.com)).

Yours sincerely,

A handwritten signature in blue ink that reads "Rupert Steele". The signature is written in a cursive style with a horizontal line underneath the name.

**Rupert Steele**  
Director of Regulation

**PPM INSTALLATION UNDER WARRANT: FINAL PROPOSALS  
SCOTTISHPOWER RESPONSE**

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

We broadly agree with the three intended outcomes listed in paragraph 2.4, and we believe our existing processes are already designed to achieve these objectives through measures which we have previously outlined. We recognise the need to ensure that all suppliers' activities are aligned with these objectives through their incorporation in Supply Licence. We would offer the following detailed comments:

- We suggest amending the first outcome so that installations of PPM under warrant are used only "*where other reasonable options for debt management and recovery have been exhausted*".
- In the second outcome we suggest that suppliers should not impose *unduly* high costs.
- In the third outcome, we suggest the protection should be from costs and process which would *materially* exacerbate harm.

We also suggest the three listed outcomes should be balanced by a fourth outcome, that the costs that have to be socialised as a result of these policies are proportionate and do not unduly impact on other financially vulnerable consumers.

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

We agree with the proposal for a debt proportionality principle. Please see our response to question 5 for a detailed analysis.

We agree with the proposals for a cap on PPM under warrant charges but question the level proposed. We have set out our thinking in our response to question 3.

We have some concerns around the proposed drafting of the prohibition (of installation and charging). We have set out our thoughts under question 3 below around potential unintended consequences on levels of debt and on socialisation of costs across other (including vulnerable) customers. We have suggested amendments to the draft licence conditions in annex 2.

**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?**

We are concerned that the proposed draft licence conditions may have an impact across a wider set of customers (including vulnerable customers who are paying for their energy) than those they are intended to protect. Looking at each element of the proposals individually:

### Cap on warrant costs

We recognise that a cap on warrant charges, if set at the right level, could have the desired effects of incentivising suppliers to minimise warrant costs whilst retaining the incentive for customers to voluntarily engage with suppliers. We are concerned that the proposed level (£100/150) is too low and may result in an increase in customers who flow down the PPM under warrant route for debt recovery through reducing the incentive to engage. We would suggest that the cap should be set relative to the median costs across suppliers, which would ensure that excessive charges are avoided whilst driving suppliers to maximise efficiencies in their warrant processes.

We note that the cap proposal is to be applied to each Domestic Customer. Customers who take both fuels from a single supplier (dual fuel customers) are therefore at an advantage relative to those who have different electricity and gas suppliers. We also note that domestic customers with multiple premises will qualify for a single cap in any twelve month period. We would propose that the cap proposals should apply separately for respective supplies of gas and electricity and that the cap should be applied separately for each premises for which the customer is responsible. We have suggested a form of words to achieve this in annex 2.

### Prohibition to protect consumers in relevant vulnerable situations

There are two elements to this proposal: prohibition on charging certain customers for installation of PPM under warrant, and prohibition on installation of PPM for certain vulnerable customers.

#### *Prohibition on charging certain vulnerable customers*

This prohibition applies to customers in severe financial vulnerability or whose vulnerability has impacted their ability to engage.

We are concerned that suppliers will have significant challenges in identifying customers with the relevant vulnerabilities that would trigger this prohibition. In particular, identifying customers with a “vulnerability which has significantly impaired their ability to engage” and those with “a severe financial vulnerability” will be difficult. We have suggested in our previous responses that receipt of Warm Home Discount payments could be used as an indicator of severe financial vulnerability.

Most customers who progress through the debt path to installation of a PPM under warrant have failed to engage with the supplier which makes it particularly challenging for suppliers to identify the reason for non-engagement. In such circumstances, we suggest that it would be appropriate for suppliers to add the warrant execution costs to the customer’s account but have the option to waive or refund these if the customer is subsequently found to meet the condition 28A.2 criteria.

We are also concerned that this proposal may provide a disincentive for customers to engage with suppliers if they become aware that they can take actions that will result in them not being charged for PPM installation under warrant, particularly under proposed condition 28A.2 part 1.2. Under our existing processes, we set a debt recovery rate that is appropriate for the customer’s circumstances and adjust the debt recovery period accordingly. We consider this to be a proportionate and appropriate response to working with vulnerable customers and believe it should be permitted within these proposals.

We recognise the need for customers to be fully informed when making decisions on how to manage their debt and feel that this is a significant part of the engagement process that Ofgem could influence. We have proposed an alternative licence condition in annex 2 that

requires suppliers to take all reasonable steps to ensure that they identify customers in vulnerable circumstances. Assuming the customer has been made aware of the consequences of a warrant visit and has been given the option of having a PPM installed voluntarily, we would argue that is entirely reasonable for them to bear the cost of the warrant visit should they refuse voluntary installation, and would be unfair for other consumers to bear that cost on their behalf.

#### *Prohibition on installation of PPM for certain vulnerable customers*

We understand that Ofgem intends draft condition 28A.1 to be applied infrequently and on a case-by-case basis for customers who may be severely harmed by the PPM installation under warrant process. We are concerned that the proposed drafting may be open to abuse by customers who may identify (or be advised of) an opportunity to exaggerate their vulnerability to seek to avoid PPM installation.

For those customers for which PPM installation under warrant is prohibited, it is not clear what course of action the supplier can take for a customer who continues to not pay for their energy. Disconnection will be prohibited for those suppliers who have signed up to the Energy UK safety net for vulnerable customers and pursuing the debt through the civil courts may be no less traumatic to the customer than the PPM installation and may not be cost effective for the supplier. This leaves the option of writing the debt off, effectively giving the customer free energy with the costs of this being socialised to other (paying) customers. We see this as a significant unintended consequence of these proposals.

It will be challenging for suppliers to identify customers with relevant vulnerabilities who “qualify” for this prohibition. In particular, “severely traumatic” and “significantly worse” are subjective tests which it will be difficult for suppliers to apply, and which could create a loophole that some undeserving customers could exploit to avoid paying for energy.

We also note that the proposed prohibition does not allow the supplier to take appropriate action if they first become aware of the potential for the PPM installation to have a deleterious effect on a customer’s vulnerability during the warrant execution.

We therefore believe the licence condition should be drafted in a way that requires suppliers to use appropriate judgment to suspend warrant visits where the customer is in genuine severe distress, with a view to finding alternative solutions to help the customer manage that debt. Such solutions may include the supplier arranging an alternative time for a visit where the customer has appropriate support in place (such as a trusted friend or social worker) or arranging an alternative, suitable payment arrangement, for example Fuel Direct.

We also note that under the present arrangements suppliers apply the “safe and reasonable practicable” test to determine circumstances where a PPM would not be appropriate. We see a degree of overlap with these obligations.

We further note that in order to determine those customers whose vulnerability qualifies them for prohibition of PPM installation, suppliers may need to gather information which could be intrusive to vulnerable customers.

We have proposed amendments to draft clause 28A in annex 2 to address our concerns.

#### Debt proportionality principle

We support the proposals for a debt proportionality principle. See our response to question 5 for further analysis.

**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)**

We agree with this proposal.

**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?**

We agree with the proposed debt path proportionality principle with the exception of the inclusion of Transfer Objections. We believe suppliers should have the right to pursue unpaid energy bills from customers and objecting to transfers even in the cases of relatively small debts protects this ability and provides an incentive for the customer to settle their account in order to fully participate in the competitive energy market. Customers who transfer to a PPM are able to switch supplier following the Debt Assignment Protocol and the objection provides a gateway to activate that process. We believe these arrangements provide a suitable balance of protection for customers whilst protecting suppliers (and paying customers) from bad debt.

We note that the proposed drafting includes the term “original amount”. We feel that this may be ambiguous considering the circumstance where a customer with moderate debt is being pursued and goes on to accrue a larger debt as a result of further consumption of energy during the debt recovery process. We have proposed alternative drafting to clarify this.

Finally, we note that suppliers are already obliged under the Standards of Conduct to treat customers fairly, including in their decisions on Transfer Objections. We would argue that the inclusion of the Transfer Objection in this draft debt proportionality principle duplicates an obligation that is already present, and therefore is not required (and could indeed cause confusion because of the overlap).

**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?**

We agree with this definition of “under warrant”. We have no further comments on this aspect of the proposals.

**Draft Licence Conditions**

**Condition 28A. Warrants relating to Pre-payment Meters [and other supplier actions to recover debts]**

**A. Draft prohibition**

28A.1 The licensee must ~~take all reasonable steps to ensure that not exercise~~ a Relevant Warrant in respect of a Domestic Customer's premises ~~is not exercised in a manner~~ where such action would be severely traumatic to that Domestic Customer due to a vulnerability which would be made significantly worse by the experience.

~~28A.1a If the licensee, during the course of exercising a Relevant Warrant, becomes aware that paragraph 28A.1 applies, the licensee must immediately suspend exercising the Relevant Warrant for as long as that paragraph applies.~~

28A.2 The licensee must ~~take all reasonable steps to avoid charging not charge a~~ Domestic Customer in respect of any costs associated with a Relevant Warrant where:

1.1. that Domestic Customer has a vulnerability which has significantly impaired their ability to engage with the licensee or a Representative in relation to the recovery of a Relevant Payment; or

1.2. that Domestic Customer has a severe financial vulnerability which would be made ~~materially~~ worse by ~~the way in which the licensee charges~~ing them any costs associated with a Relevant Warrant.

~~28A.2a If the licensee has applied charges associated with a Relevant Warrant and subsequently becomes aware that paragraph 28A.2 applies, the licensee must cancel or refund such charges as soon as reasonably practicable.~~

**B. Draft price cap**

28A.3 Where the Licensee or any Affiliated Licensee obtains and/or exercises one or more Relevant Warrants (including in relation to premises of Domestic Customers subject to Tariffs which use the brand name of a person that does not hold a Gas Supply Licence and/or Electricity Supply Licence), the total amount of charges they recover (or seek to recover) from the same Domestic Customer in relation to any costs associated with those Relevant Warrants ~~at particular premises and for a particular fuel~~ must not exceed the Specified Amount in any twelve month period.

**C. Draft proportionality principle**

28A.4 In relation to the recovery of Outstanding Charges, Other Outstanding Charges or any other debt ('the charges') from a Domestic Customer, the licensee must ensure that:

(a) any action it or a Representative takes (including, but not limited to, the exercise of statutory powers ~~and the use of a Transfer Objection~~); and

(b) the costs which they seek to recover from that Domestic Customer as a result, are proportionate in the context of the ~~original amount of the~~ charges.

#### **D. Sunset provision**

28A.5 Paragraphs 28A.1 to 28A.3 will cease to have effect on 31 December 2020 unless the Authority specifies a later date by publishing a statement in Writing.

28A.6 The power to specify a later date in paragraph 28A.5 may be exercised by the Authority on more than one occasion (before, ~~or on, or after~~ the expiry of any later date specified by the Authority).

#### **E. Definitions for condition**

28A.7 For the purposes of this condition:

**“Relevant Warrant”** means, a warrant pursuant to paragraph 23(2)(c) of Schedule 2B to the Gas Act 1986 and paragraph 7(4) of Schedule 6 to the Electricity Act 1989.

**“Specified Amount”** means ~~£100 or~~ £150 or such higher amount as may be designated by the Authority from time to time by publishing a statement in Writing.

~~**“Transfer Objection”** means to prevent a Proposed Supplier Transfer on grounds permitted by standard condition 14.~~

**“Relevant Payment”** has the meaning given in paragraph 7(1A) of Schedule 2B to the Gas Act 1986 and paragraph 2(1A) of Schedule 6 to the Electricity Act 1989.

**ScottishPower**  
**November 2016**