



Making a positive difference  
for energy consumers

Consumer Green Paper Team  
Department for Business, Energy & Industrial Strategy  
1st Floor, Orchard 3  
1 Victoria St  
London g  
SW1H 0ET

4 July 2018

Dear Sir/Madam,

***Response to government's consumer green paper: Modernising Consumer Markets***

Ofgem is the GB energy regulator and a non-ministerial government department. Our principal aim is to protect the interests of current and future energy consumers.

We welcome the Government's green paper on modernising consumer markets. Many sectors, including energy, are undergoing – or on the brink of – rapid change, driven by new data, new technology and new markets. We believe that the green paper provides a timely opportunity to consider whether regulatory, competition and enforcement regimes are suitable – to enable innovation that will deliver benefits for consumers, while protecting them from new forms of harm that could emerge.

From an energy market perspective, we recognise the opportunities and challenges identified in the green paper. In particular, we see the potential consumer benefits from data-driven innovation, as well as the need for consumers to be empowered and protected as the market develops.

Ofgem already has a programme of work underway to address a number of the issues raised in the green paper - as outlined in our forward work programme.<sup>1</sup> We will consider the need for further measures individually and together with other regulators, as appropriate. This includes exploring the case for fundamental reform of the retail energy supply market arrangements put in place over 20 years ago. We will work closely with government on this.

**Better outcomes in regulated markets**

We agree that all consumers should expect reasonable outcomes in terms of service and price, including those who – for whatever reason – do not engage in the market. This is particularly important for essential services like energy. Our ambition is a retail market that works for all consumers. This is a market where competition constrains prices, drives efficiency and delivers the range of services and products that customers need. It is a market where disengaged customers are also able to share these competition benefits.

As a temporary measure, earlier this year we introduced price protection for many vulnerable consumers. On the back of new legislation, we are aiming to introduce price protection for all consumers on default tariffs by the end of the year. In the longer term,

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<sup>1</sup> [Ofgem Forward Work Programme 2018-19](#)

looking beyond price regulation, we are exploring what consumer protections will be needed for disengaged and vulnerable consumers.

#### *Incentivising companies to do better*

We see the value in publishing information on the performance of companies in regulated markets in order to help drive up standards. We already publish a wide range of statistics on our data portal.<sup>2</sup> This provides access to a range of data in a single location, alongside indicators we consider key to monitoring the performance of energy suppliers. We will consider what further can usefully be done and will work alongside fellow regulators through the UK Regulators Network (UKRN) to enable greater comparability, where appropriate. We will also consider how best this information can help enable consumers to make well-informed choices between suppliers. We worked closely with Citizens Advice on the development of their star ratings, which can be used by consumers when comparing domestic energy suppliers' customer service levels.

In the energy sector, suppliers are required under the Guaranteed Standards of Performance Regulations to provide automatic compensation to consumers for poor performance. These took effect in January 2016 and prescribe standards in making and keeping appointments, fixing faulty credit meters, fixing faulty prepayment meters and reconnection after disconnection for unpaid charges. Every time a supplier fails to meet a guaranteed standard it must pay £30 in compensation to the affected customer within ten working days. We have recently published our proposals to extend the scope of the existing Guaranteed Standards of Performance to ensure suppliers compensate consumers when switches go wrong.<sup>3,4</sup> We believe this will increase the incentives for suppliers to improve their switching performance – and the quality of the data that underpins it – and so help improve the switching experience for consumers.

#### *Ensuring vulnerable consumers are treated fairly*

We believe that it is crucially important to ensure that vulnerable consumers are treated fairly, particularly in markets for essential services like energy. Last year, we modified the domestic standards of conduct to include a specific principle on vulnerability.<sup>5</sup> This requires suppliers to do more to identify consumers in vulnerable situations and to respond appropriately to their needs. We have already been working closely with Ofwat on making better use of data sharing to encourage more help for vulnerable consumers in both the energy and water sectors.<sup>6</sup>

We recognise that technological change and innovation present opportunities and risks and we intend to update our consumer vulnerability strategy to reflect these developments. We are determined to improve outcomes of those in vulnerable situations and note that many suppliers are not consistently treating these consumers fairly. We have recently published our 2018 vulnerability report.<sup>7</sup> This demonstrates the extent to which vulnerable consumers are experiencing positive outcomes in the energy market and highlights where some suppliers could do more to treat vulnerable customers fairly. We're particularly concerned that too many customers who owe money do not get the support they need from suppliers to help pay debt back and in relation to prepayment meters installed under warrant. This year, we banned forcible installations for the most vulnerable and capped charges at £150. We expect the number of such installations among all suppliers to come down next year.

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<sup>2</sup> [Ofgem data portal](#)

<sup>3</sup> [Supplier Guaranteed Standards of Performance: Consultation on Switching Compensation](#), June 2018

<sup>4</sup> [Open letter: Creating incentives for suppliers to improve switching performance: automatic compensation for consumers and publishing suppliers' switching performance](#), December 2017

<sup>5</sup> [Final decision on standards of conduct for suppliers in the retail energy market](#), August 2017

<sup>6</sup> [Making better use of data: identifying customers in vulnerable situations](#), October 2017

<sup>7</sup> [Ofgem Vulnerability Report 2018](#)

## **Digital markets that work for consumers**

We see significant potential for new technologies to help consumers to engage effectively in the energy market. Many of these developments will depend on data, so it is critical that customers are empowered to access and share their data with service providers. This will enable innovation in products and services that can deliver better outcomes for consumers.

As set out in our forward work programme, we intend to reform the way that customer data can be accessed across the energy sector, in particular to make it easy for consumers to share their data securely with third parties. We will ensure that this is implemented in a way that works for consumers – providing access to the information they need and trust that their data is secure – and that costs to companies are proportionate.

We recognise that there are risks that must be managed alongside these opportunities. In particular, we think it will be important to consider the implications for different types of consumers. Data portability itself is only part of the end-to-end consumer journey and should be considered in tandem with wider solutions to help disengaged and vulnerable consumers. As outlined above, we have a number of initiatives underway designed to help consumers engage with the retail market and secure better outcomes.

In opening up access to data, we should aim for a consistent approach across regulated sectors and beyond. This could include principles, standards and common approaches to openness of data both from government and in the marketplace. To this end, we welcome government's proposed 'Smart Data' review and look forward to contributing to it.

## **Improving enforcement of consumer rights**

### *Supporting consumers to pursue their complaints*

Under the Consumer, Estate Agents and Redress Act 2007 (CEARA), energy suppliers and distribution network companies must be members of a redress scheme. We see mandatory redress in the energy market as important, given that energy is an essential service. Ofgem is responsible for approving schemes under both CEARA and the Alternative Dispute Resolution (ADR) Directive 2015. Ofgem considers that it is in the best interests of consumers to have only one CEARA-approved Ombudsman operating as this provides simplicity and reduces consumer confusion.<sup>8</sup> Ombudsman Services: Energy is the approved Ombudsman under CEARA and has also been approved under the ADR Directive.

We have found that a substantial proportion of energy consumers who complain and reach deadlock do not go to the Ombudsman. Previous surveys we have conducted indicate that some consumers who are eligible to go to the Ombudsman do not do so and some eligible consumers do not consider they have reached deadlock with the company. To address this, we want suppliers to improve the quality of their complaint services, provide better signposting and continue their enhanced interaction with the Ombudsman.

Under current arrangements, there is an eight-week deadline for referrals to the Ombudsman. Given that many complaints are now dealt with more rapidly through e-correspondence, we consider that there is merit in exploring shorter deadlock periods. We understand that at least one larger supplier refers customers at six weeks.

More could also be done to help vulnerable consumers access the ombudsman scheme, as highlighted in our review of the Energy Ombudsman in 2015.<sup>9</sup> The Ombudsman has undertaken some work to identify areas where there is significant mis-match between high levels of vulnerability and low take-up of the ombudsman service, and undertaken targeted actions to increase take-up.

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<sup>8</sup> [Open letter: Utilities ADR's application for certification as an alternative dispute resolution provider in the energy sector](#), January 2018

<sup>9</sup> [Review of Ombudsman Services: Energy](#), September 2015

### *Strengthening accountability for consumer protection*

We welcome the proposal to increase regulators' powers to enforce consumer protection law and, hence, to increase the deterrent effect on poor firm behaviour. In our view, the green paper proposal is a particularly important step in strengthening our ability to tackle misconduct by unregulated businesses, such as third party intermediaries,<sup>10</sup> who have dealings with domestic consumers. These firms play an increasingly prominent role in the energy market and the way in which their engagement with consumers is changing can pose risks that need to be managed. Intermediaries already play a significant role in the non-domestic energy market, and our evidence suggests that some businesses that engage with intermediaries may be misled or left unsatisfied with their treatment. Strengthening our powers to enforce consumer protection law that applies to the non-domestic market, particularly for smaller businesses, would improve our ability to tackle misconduct by intermediaries. We would like to explore this with government.

In connection with our earlier observations on ADR, we note that mandatory ADR availability covers regulated energy services only. This may mean there is limited ADR provision for consumers accessing energy services through unregulated businesses, under the protections of general consumer law.

We also note that our established administrative processes for enforcing licence obligations would (in most cases) provide a more efficient route to addressing consumer harm caused by licensees than seeking recourse in tandem through the courts. Therefore, providing sectoral regulators with the ability to use an administrative route for enforcing breaches by licensees could further increase the deterrent effect existing consumer protection law has on these firms.

With regard to Ofgem's suite of powers for protecting energy consumers, we have previously identified areas where we consider stronger enforcement powers would be beneficial. We consider that increasing the short statutory timeframe for applying a financial penalty after imposing a provisional or final order would enable Ofgem to make better use of these tools to secure compliance and deter future misconduct. In addition, we would welcome the power to compel independent audits, request information to identify unlicensed supply activity, and apply meaningful fines above 10% for companies with very low turnover. We think that these powers would strengthen our existing framework of protections in areas where we see gaps emerging.

### **A regulatory and competition framework for the future**

We agree that there is a need to strengthen interactions between regulators and with government. In last few years, Ofgem has been working closely with other regulators through the UKRN's Vulnerability Network to improve outcomes for consumers in vulnerable circumstances. Examples include a cross-sectoral report on affordability, signposting of consistent advice and, more recently, a pilot project on data sharing between the water and energy sectors. We will actively seek to build on the progress made so far.

Ofgem is also working with the newly-established UKRN Data Network to promote the many opportunities we see for coordinating data-related work between regulated sectors and their regulators. Our interests span: aligning data aspects of regulatory policies to promote the sharing of best practice and to standardise across sectors expectations we place on participants for open data; aligning approaches to requesting data from market participants and the sharing of insight; and combining cross-market data to deliver deeper insight about consumers' overall needs and experiences to enable innovation in products and services.

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<sup>10</sup> Third Party Intermediaries (TPIs) can include switching websites, energy brokers and energy efficiency advice providers who interact with energy consumers. TPIs can offer products and services to assist with a range of functions including energy procurement, efficiency and management.

We appreciate government's support for cross-sectoral efforts through the Consumer Forum and we welcome the opportunity to participate in this. We agree with the priority areas proposed and look forward to participating. For future forums, it is important that we get the areas of focus right and take into consideration the individual characteristics of different sectors.

*The competition regime*

In 2016, Ofgem made the first market investigation reference to the Competition and Markets Authority (CMA) by a concurrent regulator under the reformed competition framework. We are now in the process of implementing the remedies recommended by the CMA. We anticipate that the remedies, once fully implemented, will provide material benefits to energy consumers and should offset the significant detriment to consumers identified by the CMA. As such, we consider the operation of the reformed competition law regime should give rise to material benefits for energy consumers.

We view Ofgem's concurrent competition powers as a key part of our regulatory toolkit. Having conducted a number of cases under the new framework, we consider the powers available under the Competition Act are generally sufficient. We note that there may be specific areas where the scope or operation of the powers could usefully be clarified to ensure greater legal certainty and regulatory efficiency.

Yours faithfully,

**Neil Barnes**  
**Deputy Director**  
**Consumers and Markets**