

# Review of the Priority Services Register – Update and Next Steps

## Energy UK response

22 May 2015

### 1. Introduction

- 1.1. Energy UK is the trade association for the energy industry. Energy UK has over 80 companies as members that together cover the broad range of energy providers and supplies and include companies of all sizes working in all forms of gas and electricity supply and energy networks. Energy UK members generate more than 90% of UK electricity, provide light and heat to some 26 million homes and last year invested £10billion in the British economy.
- 1.2. We strongly believe in the value of a competitive energy market underpinned by a stable and independent regulatory regime. Together these can foster innovation, support market development, bring benefits to consumers and help provide the certainty that is needed to encourage investment and enhance the competitiveness of the energy sector, a key part of the British economy.
- 1.3. Energy UK welcomes the opportunity to respond to Ofgem's open letter on its review of the Priority Services Register (PSR). We are 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.

### 2. Executive summary

- 2.1. We support Ofgem's work to review the Priority Services Register (PSR) and to give greater clarity to the difference in roles, and information needs, of suppliers and network operators. Energy UK members already work hard to identify individual customers' needs and offer products and services to support them.
- 2.2. We, however, remain concerned that Ofgem's PSR proposals around eligibility and services, particularly those targeted at suppliers, have not yet been precisely defined. Greater clarity, for example, is required around Ofgem's understanding of *'proactive'* with regards to identifying vulnerable customers. We agree that energy companies should take reasonable and proportionate steps to identify vulnerable customers where they have reason to believe they may be in a vulnerable situation. However, the open letter would suggest a broader, more uncertain requirement on suppliers.
- 2.3. The proposed *'needs'* test for access and communication PSR services - *'more likely than a typical customer'* – also remains too widely drawn and subjective. As a consequence it may be hard to prioritise customers with the greatest need. If suppliers are required to regard a significant proportion of the population as a priority (as a result of a broad obligation), then the most at-risk customers may not receive the focus they need.

- 2.4. Many of these concerns could be addressed by careful consideration of the drafting of any new obligations, which allows for Ofgem's aims to be captured, while also ensuring requirements for energy suppliers are reasonable and proportionate.
- 2.5. At this stage it is difficult to comment conclusively on Ofgem's proposals as outlined in the open letter without some indication of the content of any proposed changes to suppliers' licence conditions and in the absence of a full Impact Assessment. We would expect Ofgem to start collecting the required data for its Impact Assessment (with an accompanying Cost Benefit Analysis) as soon as possible. We welcome Ofgem's plans for a workshop in the summer and to consult on the development of licence conditions.
- 2.6. Energy UK's detailed response to Ofgem's open letter is set out below. We would welcome the opportunity to work with Ofgem as it seeks to take its review of the PSR forward.

### 3. Eligibility

#### Proactively identifying vulnerable customers

- 3.1. The open letter notes that Ofgem proposes '*to require energy companies to proactively identify vulnerable customers*'. We believe Ofgem's desired policy intent should be to ensure that energy companies are active in responding to signals from customers that display some characteristic which may make them vulnerable. This distinction is crucial, as the approach suggested in the open letter would be highly subjective and an uncomfortably broad, uncertain requirement for suppliers to implement.
- 3.2. A subjective and broad, requirement on energy companies to '*proactively*' identify vulnerable customers is likely to result in suppliers placing an increasingly large number of customers on the PSR. This is counter to ensuring that the PSR identifies and targets support at those with genuine needs/vulnerabilities. This would add to suppliers' and distributors' costs which would ultimately be borne by all customers.
- 3.3. Energy UK has long stated that vulnerability should be assessed on a case-by-case basis. Each customer has their own needs and to offer the most appropriate support, each customer's individual circumstances must be taken into account. This must be done in a manner that allows a balance to be taken around the costs of services. In addition, Ofgem must be mindful that energy suppliers do not, and will not be in a position to have full knowledge about all aspects of their customers' circumstances (often because customers will not consider themselves vulnerable).
- 3.4. The interactions between a requirement to identify vulnerable customers, the Data Protection Act 1998 (DPA) and energy companies' front line customer service activity also need to be carefully considered. Energy suppliers must take the appropriate care to respect customers' privacy and operate sensitively with regards to identifying vulnerability. There are serious data protection issues that must be considered in relation to capturing, maintaining and sharing customer data, particularly with regards to vulnerability. Much of this information will be classified as 'sensitive' under the DPA. The DPA places an extremely high burden on suppliers to collect and maintain such data appropriately, including the need for informed customer consent to capture and share 'sensitive' data. In treating customers fairly, it is important to ensure that customers are not made to feel uncomfortable by their perception of suppliers' scrutiny of their circumstances. At busy times, a broad or uncertain requirement could also have an adverse impact on other customers if calls need to be unnecessarily extended to explain the PSR and obtain informed consent
- 3.5. Greater clarity is required around Ofgem's understanding and expectations of '*proactive*'. Energy companies can take *reasonable*, *appropriate* and *proportionate* steps to identify and record vulnerable customers, where they are made aware or have reason to believe a customer is in a vulnerable situation. As noted by Chris Fitch of the Royal College of Psychiatrists, who has worked extensively advising originations like the Money Advice Liaison Group (MALG) and Money Advice Trust (MAT) on best practice in identifying vulnerable customers:

*“Vulnerability is often never fully disclosed. Instead, we catch fleeting glimpses. These provide an opportunity to take the initiative.”<sup>1</sup>*

#### A ‘needs’ based approach to PSR eligibility

- 3.6. In principle, Energy UK supports Ofgem’s intention to move towards a ‘needs’ based approach to eligibility for prescribed services, with “core” eligible groups being retained for specified safety services. As Ofgem is aware, many suppliers already offer existing PSR services to a wider group of consumers based on their needs.
- 3.7. In seeking to take forward their policy intent, including in drafting/amending any licence conditions, Ofgem must ensure they only require suppliers to provide the prescribed services to those in genuine need. As noted in Ofgem’s open letter, one of the benefits of Ofgem’s proposed approach is that suppliers should be able to maximise their efforts and ensure cost efficiencies by ensuring the right services are provided only to the right people.
- 3.8. Yet, Ofgem’s proposed ‘needs’ test for access and communication PSR services – *requires the service more than the typical consumer* – remains too widely drawn and subjective.
- 3.9. If ‘*typical*’ equates to average, approx. 49% of all consumers could be eligible for a service, on a literal interpretation of ‘*typical*’. Such language needs to be carefully reconsidered in any final proposals to ensure support is targeted at those with *significant* need comparable to those in the proposed “core” group. We note that Ofgem’s Consumer Vulnerability Strategy (CVS) defines vulnerability in relation to customers who are “*Significantly less able*” or “*Significantly more likely*” than a typical consumer.”<sup>2</sup>
- 3.10. A ‘needs’ based approach to eligibility requires suppliers to be flexible in determining the extent of a customer’s need and whether to provide services. Suppliers, for example, should not be expected to offer and pay for expensive services such as a free meter reads or relocations (at a cost to their wider customer base), as a result of a customer’s decision to remodel their home and now ‘*need*’ the meter to be read/moved. Rather, services should be made available to those with significant need as a result of a relevant vulnerability identified within the household. This is in line with the requirements to make reasonable adjustments to procedures under the Equality Act 2010.
- 3.11. Adopting a too widely drawn ‘needs’ test, which prevents a supplier from making such determinations, risks unintentionally making it harder to prioritise customers with the greatest need. In turn this would drive up costs of delivering the PSR for all consumers, including those in vulnerable situations.
- 3.12. If suppliers wish to choose to provide a service to a wider group of customers outside of their need/vulnerability, as in fact many already do, this should remain a commercial decision and an area for competition rather than regulation.
- 3.13. An alternative way to address this challenge and deliver a ‘needs’ based PSR, would be to encourage energy companies to create and put in place PSR strategies to identify and support customers with significant safety, access and communication needs. We note that the FCA advocated a similar approach to tackling consumer vulnerability in its February 2015 Occasional Paper on consumer vulnerability.<sup>3</sup> As per the proposals in Ofgem’s open letter, a common set of minimum services and core eligibility criteria could be retained in licence to ensure a consistent level of essential support across suppliers.
- 3.14. Such an approach clearly communicates a regulator’s policy intent and its expectations of industry. It also ensures companies are able to effectively manage their PSR compliance, despite the inherent subjectivity of assessments of vulnerability. Suppliers would be responsible for

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<sup>1</sup> Fitch, C. (2014) ‘*Treating vulnerable customers fairly: three practical tools (and one definition)*’, Presentation at Finance and Leasing Association Roundtable, London.

<sup>2</sup> Ofgem, ‘*Consumer Vulnerability Strategy*’, 04 July 2013

<sup>3</sup> FCA (2015) ‘*Consumer Vulnerability*’, Occasional Paper No.8

providing a baseline against which their performance could be measured and assessed by Ofgem and stakeholders. This would also appear to fit well with Ofgem’s revised approach to compliance and monitoring.

- 3.15. Policies and processes could also be regularly published by energy suppliers to promote best practice, encouraging competition and incentivising suppliers to raise standards and improve consumer awareness.

Proposed PSR ‘Core’ group

- 3.16. Our responses to the specific questions posed by Ofgem in the open letter in relation to changes to “core group” eligibility for specific safety services are set out in the box below.

**Energy UK’s response to the specific questions posed in Ofgem’s open letter**

**Q1: Do stakeholders agree that ‘families with children under 5’ should be added as a specified “core” group to receive additional help during interrupted supply and for the provision of free gas appliance safety checks?**

**A:** This is a question of what distributors can and will realistically deliver. If they can use the knowledge of a *‘family with children under 5’* then we agree suppliers should take proportionate steps to identify such families (recognising that these can vary by circumstance – see paragraph 3.4 above).

**Q2: Do stakeholders agree that the specified eligibility covering elderly people for the services related to safety should be changed from ‘pensionable age’ to ‘75 and over’?**

**A:** Yes, in principle.

We would, however, highlight that this proposal would mean the safety obligations placed on distributors would not align with those obligations placed on suppliers outside the scope of the PSR, i.e. the Winter Moratorium. If Ofgem chooses to proceed with this proposal, we would invite Ofgem to consider whether it is also appropriate to raise the qualifying age for the Winter Moratorium to 75 in light of the new evidence it has received from Age UK.

**Q3: Do stakeholders consider that pregnant women should be added as a specified eligible “core” group receiving free gas safety checks?**

**A:** In principle, Energy UK agrees that extending free gas safety checks to pregnant women is a useful customer protection and would not lead to undue cost. Some care is needed with the drafting of eligibility criteria to be clear as to whether it applies to the account holder or their partner or any household member.

It is also important to note that a supplier’s ability to identify pregnant women will be highly limited, unless information is proactively volunteered by a customer. Even then, it represents a highly intrusive line of questioning for suppliers’ agents to pursue, particularly when engaging with a customer over the phone. As per paragraph 3.4, information as to whether a customer is pregnant is ‘sensitive’ data under the DPA.

**4. Services**

- 4.1. We expect Energy UK members to respond individually with relevant information to assist Ofgem in evaluating the costs and benefits of the proposed services model.
- 4.2. Energy UK believes greater clarity is required regarding what is intended by Ofgem’s proposals to *‘expect energy companies to offer other services to customers where need is identified and where practical to do so’*. There is a difference between a) ‘providing services to enable vulnerable customers to have equal access to services’ and b) ‘proving additional services for vulnerable customers’. In line with Ofgem’s original aim to ensure equal outcomes for consumers and that

vulnerable consumers are not unduly disadvantaged because of their situation<sup>4</sup>, we believe Ofgem should be seeking to achieve the former.

- 4.3. The policy case and rationale for the later has not been made by Ofgem. Providing additional services and support to customers is not free. It comes at a cost to the supplier and/or distributor, which will ultimately have to be borne by customers, including those in vulnerable circumstances.
- 4.4. We would encourage Ofgem to carefully consider whether its policy intent is already provided for by the Equality Act 2010 (requirement to make reasonable adjustments) and Ofgem's own CVS<sup>5</sup>. In addition to guiding Ofgem's approach to understanding vulnerability, the CVS already sets out Ofgem's expectations of industry to embed considerations of consumer vulnerability in designing and delivering their products and services.
- 4.5. By focusing existing monitoring activity on suppliers' policies and practices for assisting vulnerable customers, Ofgem should already be able to hold suppliers to account and ensure they are taking necessary steps to better meet the needs of consumers. It could also help Ofgem to promote good/best practice on a regular basis, encouraging innovation in products and customer service. We note that Ofgem is already planning to use a future Standards of Conduct (SOC) panel session to consider vulnerability.
- 4.6. Such an approach, building on the Equality Act 2010 and Ofgem's CVS, could also be well supported by the alternative approach to establishing a 'needs' based PSR outlined in paragraphs 3.13 – 3.15 above.

## **5. Data sharing**

### Sharing between energy companies

- 5.1. We welcome Ofgem's decision at this stage to focus on achieving better data sharing between energy suppliers and distributors. We agree that energy suppliers, Distribution Network Operators and Gas Distribution Networks should record and share relevant and appropriate data where they are aware of a customer in a vulnerable situation.
- 5.2. We agree that the Energy Networks Association's (ENA) Customer Safeguarding Working Group (CSWG) is in the first instance best placed to lead work to develop consistent industry-wide "needs" codes and industry mechanisms to ensure two way data sharing between energy suppliers and distributors. Much of this work, as noted in the open letter, is already being considered via the CSWG.
- 5.3. The CSWG is, however, currently being asked by Ofgem to take forward its work in advance of Ofgem's final PSR proposals. Early clarity and certainty on final proposals, including draft licence conditions, from Ofgem will be crucial to the success of the work of the CSWG.
- 5.4. Implementing changes to facilitate improved data sharing will require changes to multiple industry systems. Ofgem must remain mindful of industry change processes/timetables and changes already in development which could impact on progress (i.e. Nexus), particularly as industry code parties can only manage a certain number of changes at a time. It is important Ofgem works with industry to agree realistic and manageable delivery timetables.
- 5.5. The drafting of the trigger/requirement for companies to share customer data also needs to be carefully considered. The industry is already required to operate a number of different definitions of vulnerability to provide services (for example, the Winter Moratorium, Warm Home Discount Broader Group, ECO Affordable Warmth, and the Energy UK Safety Net). Suppliers, therefore, capture a wide range of data on customer vulnerability for a wide variety of reasons, from a diverse range sources, and record it a number of different ways (i.e. account markers, flags, notes, proxies). The levels and types of customer consent (see paragraph 3.5 above) obtained for data sharing will, therefore, also vary. In some circumstances it may not be appropriate or possible for

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<sup>4</sup> Ofgem, 'Review of the Priority Services Register', Consultation document, 30 June 2014

<sup>5</sup> Ofgem, 'Consumer Vulnerability Strategy', 04 July 2013

energy companies to share data with one another. For example, the relevant Warm Home Discount (WHD) regulations prevent suppliers from sharing data received from DWP around WHD Core Group eligibility with other parties (including distributors) except in the specific circumstances set out in the regulations.

#### Signposting and data sharing with other utilities

- 5.6. We note Ofgem's longer term aim to explore wider data sharing with other utilities. We encourage Ofgem to work with other sectorial regulators to fully understand both the practical and legal considerations, including how the principle of reciprocity in data sharing can be guaranteed. We would expect any subsequent proposals to be subject to a detailed public consultation, including a comprehensive impact assessment.
- 5.7. Some of Great Britain's largest suppliers already cross-promote and signpost to water companies Special Assistance Registers on their websites and via relevant customer facing PSR communication materials. We anticipate that Energy UK members would be happy to share examples of these communications with Ofgem.

### **6. Improving take up of services**

- 6.1. Energy UK notes that Ofgem's open letter suggests that Energy UK may want to co-ordinate supplier-led activity to explore what type of branding and information would help promote consumer awareness of the PSR.
- 6.2. There are now over 26 active domestic suppliers in the GB market. Although Energy UK continues to grow and represent a wider number and range of energy suppliers, we do not represent all active domestic suppliers. Nor do we represent the views of electricity or gas distributors.
- 6.3. In the first instance we believe it will be more effective for Ofgem, supported by Energy UK, the ENA and Citizens Advice, to kick off initial discussions around any co-ordinated activity to promote awareness of the PSR to help to ensure all relevant parties are suitably engaged.

### **7. Compliance and monitoring**

- 7.1. Energy UK is encouraged to see that Ofgem has moved away from a supplier-funded audit-based approach to measuring PSR compliance.
- 7.2. We support Ofgem's proposal to adopt an approach to compliance which is similar to current SOC monitoring activity such as via the use of tools like SOC style panel reporting, mystery shopping and revised Social Obligations Reporting (SOR). We agree this is a preferable route for seeking assurances that suppliers are taking the necessary steps to best meet the needs of consumers and to promote best/good practice.
- 7.3. However, if Ofgem is to adopt a similar approach to monitoring for the PSR to that used for SOC, then it should be done separately (e.g. distinct panels) so as not to confuse the obligations.
- 7.4. It is important Ofgem consult early on any changes to SOR. Given the inherent subjectivity of a 'needs' based approach to PSR eligibility it is important to ensure that any information/data collected via SOR is comparable. It is also important that any new reporting requirements are clearly understood to ensure consistency in the data provided by suppliers.
- 7.5. Given that Ofgem has a long term ambition to remove the more prescriptive elements of the supply licence and adopt a principles-based approach to regulation, and that Ofgem's thinking is at its early stages, we would caution Ofgem against using the term 'principles-based' to refer to its PSR proposals. As currently presented, we do not believe Ofgem's PSR proposals are 'principles-based' as Principles-Based Regulation (PBR) is commonly understood.

**If you have any questions or would like to discuss any of the point made further please contact Daniel Alchin (Policy and External Relations Manager, Energy UK) on 020 7747 2965 or at [daniel.alchin@energy-uk.org.uk](mailto:daniel.alchin@energy-uk.org.uk).**