



## *Action for Warm Homes*

### **National Energy Action (NEA) response to Ofgem Consultation on Standards of Conduct for Suppliers in the Retail Energy Market**

**13 March 2017**

NEA welcomes the opportunity to respond to Ofgem's consultation on Standards of Conduct for Suppliers in the Retail Energy Market. NEA is the national charity seeking to end fuel poverty and tackle exclusion in the energy market at a local and national level. We work across England, Wales and Northern Ireland, and with our sister charity Energy Action Scotland, to ensure that everyone can afford to live in a warm, dry home.

Our response to Ofgem's questions can be found below. From this response, we draw Ofgem's attention to the following key points:

- With adequate safeguards, NEA is supportive of principles-based regulation and welcomes the proposed vulnerability principle.
- NEA agrees the new approach presents opportunities for suppliers to consider vulnerability across all their activities and most importantly design, deliver and adapt products and services which take a wider range of consumer characteristics into account.
- NEA's support for the vulnerability principle does not imply agreement with removing vulnerability-related prescription from existing licence conditions. We urge Ofgem to take a cautious approach in this area.

We ask Ofgem to:

- Maintain prescription that exists within current licence conditions to safeguard vulnerable customers in high risk areas, including disconnections, final and back billing and prepayment metering. Consideration should also be given to enhancing protections where required.
- Maintain and enhance rules around disconnecting vulnerable customers to ensure suppliers never knowingly disconnect a vulnerable customer at any time of year, where for reasons of age, health, disability or severe financial insecurity, that customer is unable to safeguard their personal welfare or the personal welfare of other members of the household. NEA is of the view prescription is needed to: ensure suppliers obtain senior management authorisation prior to any disconnection being carried out; attempt to contact all customers following a disconnection with the aim to agree a repayment plan with the customer; monitor any repayment arrangements after they have been set up, in line with Ofgem's key principles for ability to pay; and aim to re-connect any customer

who has been found to be vulnerable after disconnection within 24 hours of identifying vulnerability in the household.

- Maintain existing service provision under the Priority Services Register, including the current prescribed set of minimum services.
- Maintain prescription in the area of smart metering, in particular relating to the In-Home Display and Smart Metering Installation Code of Practice.
- Maintain the definition of vulnerability as per the definition in Ofgem's Consumer Vulnerability Strategy to make it clear the role suppliers can play in causing or exacerbating detriment. Where a different definition is used Ofgem needs to set out how this aligns with their Consumer Vulnerability Strategy and consider if this document needs updating.
- Issue guidance on the vulnerability principle. Such guidance will assist suppliers interpret and apply the new principle to achieve better consumer outcomes and guard against confusion amongst energy customers and their advocates about what to expect (or ask) of suppliers. In the critical area of disconnection, Ofgem should consider how guidance can adopt and universalise enhanced safeguards that are currently promoted through the Energy UK Safety Net<sup>1</sup>. This guide cites core operational practices NEA believes should become mandatory, including:
  - Making every effort to identify a vulnerable customer based on Energy UK guidance and other relevant sources
  - Continuing to capture information, where available, about customers' circumstances from trained call centre and field agents
  - Attempting to contact customers on a number of occasions, throughout the debt path through, for example, letters and telephone calls, as well as where possible, face-to-face contact
  - Training of all field agents to recognise signs of vulnerability and empowering them to halt the disconnection, pending further investigation by the supplier
  - Encouraging personnel involved in smart meter installation to report any concerns to vulnerable customer teams that arise during home visits
  - Seeking debt management solutions that are appropriate for the customers' circumstances, such as repayment schemes, prepayment meters, Fuel Direct, referral to debt advice agencies, and social services via dedicated support teams
  - If a customer's wellbeing is assessed to be at risk, disconnection will be halted and, if appropriate, social services will be informed (taking into account guidance provided by the Information Commissioner's Office regarding disclosure of personal information).
- Provide examples of the Standards and fairness test applied in practice. This will generate confidence in the new rule book amongst consumers and their advocates and assist them to understand how to represent their interests in a principles-based market.
- Evaluate the impact of the Standards against Ofgem's stated objectives before removing existing prescription and safeguards. Evaluation should look beyond the generality of consumers and assess the distributional impact of the changes on a range of customer groups (including vulnerable groups such as those on low incomes, in fuel poverty etc.)
- When considering further changes to licence conditions ensure smaller charities which advocate on behalf of specific interest groups and have deep expertise on the needs of

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<sup>1</sup> Energy UK, 2016. The Energy UK Safety Net: [https://www.energy-uk.org.uk/files/docs/Disconnection\\_policy/Sept15\\_EUK\\_Safety\\_Net.pdf](https://www.energy-uk.org.uk/files/docs/Disconnection_policy/Sept15_EUK_Safety_Net.pdf).

those groups are able to feed into the policy-making process. This includes detailing in advance a timeframe for any further licence modifications and seeking to involve such groups beyond formal consultation.

**Question 1:** Do you agree with our proposal to retain a *Fairness Test* for all the broad principles within the domestic Standards of Conduct? If you don't agree, please provide an explanation in support of your answer.

Agree.

NEA recognises a fairness test is helpful when considering whether an act or omission by a supplier has breached the customer objective and Standards of Conduct (SOC), particularly in cases where customer detriment arising from unfair supplier behaviour is less clear-cut. While such a test is not objective, applying it transparently and consistently – as Ofgem should endeavour to do – will provide clarity to suppliers, consumers and their advocates about what fair and unfair supplier behaviour in the energy market looks like. Here, NEA emphasises the importance of transparency. Ofgem should share examples where the fairness test has been applied – highlighting case studies across the broad principles (supplier behaviour, information, customer service and vulnerability) where a potential breach of the Standards occurred and setting out in plain English the steps Ofgem took to arrive at its decision (compliance or non-compliance). Worked examples shared widely will give confidence to consumers and their advocates that the rule book remains active, not aspirational, and the principles can be used effectively by the regulator, consumers and third parties to hold suppliers to account.

**Question 2:** Do you agree with our proposed wording for a revised *Fairness Test*: “the licensee or any Representative would not be regarded as treating a Domestic Customer/Micro Business Consumer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer/Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances”?

Agree.

NEA supports Ofgem's shift to focusing on consumer outcomes in the fairness test and agrees the key measure of unfairness in any action or omission is the degree of detriment suffered by the consumer, not whether the supplier has been significantly favoured by their own behaviour. We are also pleased Ofgem recognises SOC can be breached where customer detriment occurs but the breach results in a net loss to the supplier.

With regard to Ofgem's stated aim to make the test clearer to understand, NEA would welcome Ofgem clarifying their interpretation of 'unless the detriment would be reasonable in all the relevant circumstances'. The regulator mentions lawful and proportionate disconnection as one such example of reasonable customer detriment. NEA stresses there is a risk poorer performing suppliers may interpret this relevant circumstance broadly and aggressively disconnect in cases of debt, without taking vulnerability or ability to pay into proper consideration, as required under SLC 12.A.11. This is already happening, with case studies from consumer advocates such as the Citizens Advice Extra Help Unit demonstrating suppliers not always acting in accordance with licence conditions when recovering debt.

To guard against interpretation of reasonable detriment by suppliers which leads to breaches of narrower principles and prescriptive rules, NEA suggests it would be useful if Ofgem set out worked examples of what good and bad application of the fairness test may look like. This is particularly important in higher risk areas such as disconnection, back billing and prepayment meter installation. Examples of this sort will support suppliers develop a full and proper understanding of the relevant circumstances, including where detriment for customers in vulnerable situations is not considered reasonable. Clarifying the fairness test will also assist consumers to understand their rights and represent their interests (directly or through a third party) in areas such as debt collection where the balance of power is weighted in favour of the supplier.

**Question 3:** Do you agree that the changes to the *Fairness Test* should be made to the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

No comment.

**Question 4:** Do you agree with our proposal to remove the *all reasonable steps* threshold from the domestic Standards of Conduct? If you don't agree, please provide an explanation in support of your answer.

Agree.

NEA welcomes this move. It will help remove doubt amongst consumers and their advocates when seeking to interpret SOC and place the onus on suppliers to meet customers' needs, rather than focusing on a tick-box approach to compliance that demonstrates reasonable steps were taken, regardless of the consumer outcome.

**Question 5:** Do you agree that *all reasonable steps* should be removed from the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

No comment.

**Question 6:** Do you support our proposal to introduce a broad "informed choices" principle into the domestic Standards of Conduct?

Support.

NEA supports a broad informed choices principle which applies beyond choice of tariff. We believe this principle could lead to better outcomes for vulnerable consumers if interpreted thoughtfully by licensees. In particular, NEA would like to see this principle lead to suppliers proactively providing customers they identify in vulnerable situations with relevant information in areas such as prepayment meter charges, Priority Services Register (PSR) services, the Warm Home Discount scheme, energy efficiency (including with regard to ECO and smart metering) and other extra help services a supplier may offer such as benefit entitlement checks.

As Ofgem state, the informed choices obligation 'goes beyond requiring that information is not misleading' and should provide consumers with 'enough information to ensure they can make informed decisions about their energy services'.<sup>2</sup> What is 'enough information' will

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<sup>2</sup> Ofgem, 2017. Standards of Conduct for suppliers in the retail energy market, p. 22:  
<https://www.ofgem.gov.uk/system/files/docs/2017/02/standards-conduct-suppliers-retail-energy-market.pdf>.

depend on the customer's situation. As such, NEA view successful application of this principle to be closely linked to effective identification of consumer vulnerability. NEA stress a customer choice will be informed if the supplier is informed about that customer; enabling them to provide information (and thereafter services) that are tailored to the customer's characteristics and preferences. In particular, NEA is of the view this principle should be used to prohibit, and where appropriate, penalise smaller suppliers that are not obligated to deliver the Warm Home Discount scheme from carrying out sales and marketing activity that does not make Warm Home Discount-eligible customers aware they will lose or not be able to claim the rebate.

**Question 7:** Do you agree with the proposed drafting of the broad "informed choices" principle we have set out?

Agree with reservations.

NEA seeks clarity from Ofgem if 'information sufficient to enable the customer to make an informed choice about their supply of gas and/or electricity' applies only at the point of customer acquisition and sales. If suppliers interpret the principle in this way it could lead to missed opportunities to inform customers about policies, products and services impacting on their supply in non-sales interactions and with existing (and often disengaged) customers.

**Question 8:** What, if any, additional guidance on the domestic and non-domestic Standards of Conduct do you consider would be helpful in light of the changes we are proposing?

NEA's answer to this question applies to the domestic SOC only.

As mentioned in answer to Q1 and Q2 we would welcome worked examples of how Ofgem applies the fairness test in cases of potential non-compliance, particularly with regard to higher risk areas such as disconnection, back billing and prepayment meter installation.

More broadly, we consider there to be a clear case and benefit to Ofgem issuing guidance on the new vulnerability principle. Ombudsman Services have previously told Ofgem that guidance should be used in areas with a higher risk profile.<sup>3</sup> We consider vulnerability to fit into this higher risk category. In the absence of guidance we are concerned some suppliers may not have a full and proper understanding of what it means to consider vulnerability when applying SOC. For example, that existing licence conditions providing minimum protections for certain categories of vulnerable customers must be taken into account, that treating a vulnerable customer fairly may require treating them differently and that products, services and marketing techniques attractive to a supplier's typical customer base (e.g. online sales and tariffs) should also be considered from the point of view of customers who face barriers to engaging in the market. NEA believes guidance would be particularly beneficial for smaller suppliers and newer market entrants who often have less experience in serving vulnerable customers and designing products to meet their needs.

Ofgem wants suppliers to innovate in their approaches to consumer vulnerability however unless expectations are made clearer an approach reliant on existing prescriptive rules may become the baseline and default. Guidance can clarify the intent behind a vulnerability principle, reinforce existing safeguards, advise on a desired direction of travel and provide

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<sup>3</sup> Ombudsman Services, 2016. Response to Ofgem consultation on the Future of Retail Market Regulation: [https://www.ofgem.gov.uk/system/files/docs/2016/06/ombudsman\\_services\\_energy\\_response.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/06/ombudsman_services_energy_response.pdf) .

worked examples without impeding innovation. NEA believes guidance which relates directly to the SOC vulnerability principle and is aimed at suppliers will be more widely and actively engaged with than Ofgem's existing Consumer Vulnerability Strategy. This document is nearly four years old and is focused on Ofgem's work programme. To support suppliers interpret and apply the vulnerability principle NEA believes bespoke and up-to-date guidance would be more beneficial. Guidance would not only help suppliers but be useful for front-line staff advising consumers on energy issues. Dozens of suppliers, including newer market entrants, interpreting the vulnerability principle differently could foster innovation and improve consumer outcomes in some instances but it could also lead to confusion amongst consumers and their advocates. Non-prescriptive guidance would help to mitigate this risk.

**Question 9:** Do you consider that the "Treating Customers Fairly" statement has a valuable role to play and should be retained as an obligation in the domestic and non-domestic Standards of Conduct? Please provide an explanation for your answer.

Yes.

It is vital consumers understand what specific actions they can expect from a supplier in relation to SOC, including with regard to identifying and addressing vulnerability. If the Statement is currently not an effective tool to achieve this objective then consumer research should be carried out with a representative and mixed sample of consumer types to understand why the Statement is not useful and what tool would be better received. Removing it without a replacement in place sends the wrong signal to suppliers about tailoring their (and Ofgem's) approach to meet consumer preferences.

**Question 10:** Do you agree with our proposal to include a broad vulnerability principle in the domestic Standards of Conduct? If not, please explain why with supporting evidence.

Agree.

NEA strongly supports the inclusion of a broad vulnerability principle in SOC. We welcome the requirement for licensees to consider vulnerability across all their activities and hope this will encourage suppliers to design, deliver and adapt their products and services taking a wider range of consumer characteristics into account. NEA foresees the principle being particularly useful in the following areas:

- **Improving identification of vulnerable customers:** the requirement under SOC to identify customers in vulnerable situations should align with work carried out under the PSR review to identify customers beyond the traditional core groups (pensioners, disabled and chronically sick). Ofgem and suppliers should consider whether the needs codes developed by industry as part of the new PSR arrangements are fit for purpose with regard to identifying vulnerable customers in accordance with SOC. Or, given SOC applies beyond non-financial services relating to safety, access and communication, if additional needs codes should be developed or other recording processes are required. For example, identifying customer vulnerability relating to income, tenure, health or communication when a supplier has to condemn a gas appliance during a smart meter installation. Ofgem should encourage suppliers to think widely about identifying vulnerability, including during smart meter visits. This applies in particular to new market entrants focused on online-based sales and customer engagement. Beyond tick boxes on a web form suppliers using online

business models should be encouraged to find more innovative and low cost methods to identify their customers who require additional assistance.

- **Improving vulnerable customer engagement in the energy market:** Ofgem notes customers in vulnerable situations are more likely to be disengaged from the retail energy market and less likely to have switched to a more competitive tariff.<sup>4</sup> This includes those on low incomes, without qualifications, older age, with a disability and registered on the PSR. In the existing market, new products such as online, low-cost tariffs are often not designed with vulnerable customers in mind or targeted toward them. NEA would like to see application of the vulnerability principle realise greater benefit for vulnerable customers from competition by placing the onus on suppliers to design and deliver products and services that are competitive but also inclusive and marketed to traditionally disengaged groups. Empowering, as well as protecting, vulnerable customers is essential in a well-functioning market.
- **Driving innovation in service delivery to address vulnerability:** Ofgem states SOC places greater accountability on suppliers to deliver better service for customers in vulnerable situations. NEA agrees and emphasises the principle can complement PSR where Ofgem is encouraging a shift to suppliers delivering non-financial services in a flexible manner and expanding on the existing prescribed and narrow list of PSR services. However, whilst NEA urges Ofgem and suppliers to think carefully about how SOC and PSR can work together to enhance outcomes for vulnerable customers, in the short-term we believe Ofgem must maintain a prescribed set of minimum services that are universally accessible to PSR customers.

### Next steps and removing prescription

While NEA is supportive of the vulnerability principle, Ofgem have flagged the proposed changes will 'provide greater scope for us to continue removing prescription from the supply licence'.<sup>5</sup> NEA stress Ofgem must take a cautious approach to stripping out rules relating to vulnerability and hard-won protections for low income customers. Therefore, our endorsement of the vulnerability principle does not in any way imply agreement with removing existing vulnerability-related prescription. For example, we would have concerns if identification of vulnerability and tailored service provision under SOC led to relaxing rules around the PSR. As such, we are pleased to see Ofgem have confirmed rules including PSR, Debt Assignment Protocol and Ability to Pay will continue to apply.

Moving forward, we remind Ofgem stakeholders have told the regulator there continues to be a role for prescription.<sup>6</sup> We note that de minimis prescription enables a customer (and their advocates) to hold all suppliers to account in a universal manner. In the absence of prescription, the balance of power may be shifted in favour of the supplier who can interpret fairness as they see fit until and if Ofgem decide to intervene. This intervention point may be too late for some customers.

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<sup>4</sup> Ofgem, 2017. Standards of Conduct for suppliers in the retail energy market: <https://www.ofgem.gov.uk/system/files/docs/2017/02/standards-conduct-suppliers-retail-energy-market.pdf>.

<sup>5</sup> Ibid., p. 5.

<sup>6</sup> Ofgem, 2016. Summary of responses to the future of retail market regulation consultation: [https://www.ofgem.gov.uk/system/files/docs/2016/06/summary\\_of\\_consultation\\_responses\\_1.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/06/summary_of_consultation_responses_1.pdf).



NEA believes existing rules should not be removed unless there is demand from a wide range of voices and evidence can demonstrate prescription is no longer relevant or that it is impeding effective consumer engagement and outcomes.

At the moment, and according to Ofgem's own Challenge Panel findings<sup>7</sup>, few suppliers have demonstrated SOC is leading to cultural change within organisations that is turning principles-based regulation into innovative and improved consumer outcomes, including for those in vulnerable situations. The Challenge Panel found:

- Few suppliers have considered adequately how to support consumers in vulnerable circumstances to make informed choices or offered products and services appropriate to their characteristics and preferences.
- Very few suppliers seemed to be taking special steps to ensure that customers in vulnerable circumstances choose a tariff and payment type appropriate to their characteristics and preferences.
- A number of suppliers either use or rely exclusively on online sales and marketing. These suppliers were unable to provide evidence of testing this engagement channel with customers who are in vulnerable circumstances.

While NEA supports SOC and wants it to drive cultural change in the long-term; in the short and medium-term we firmly believe suppliers will continue to need guidance in the form of prescriptive rules in order to safeguard the interests of vulnerable customers.

### **Evaluating the impact of SOC**

In considering whether additional principles are required we stress that the proposed changes under SOC must be subject to robust evaluation before further change is implemented. This is not just about monitoring supplier compliance with SOC but Ofgem determining whether SOC has done what it intended with regard to increasing consumer trust and engagement in the market, improving consumer outcomes, including through innovation, and maintaining effective consumer protections. Evaluation should look beyond the generality of consumers and assess the distributional impact of the changes on a range of consumer groups. For example low income consumers, fuel poor consumers, electricity-only consumers etc. If SOC does not perform as expected Ofgem should not be ideological in its approach to imposing further principles at the expense of prescription.

### **Engaging with consumers and their advocates**

As SOC is implemented, NEA calls for a spotlight to be placed on vulnerable consumers. In particular, analysing how the principles are translating to a market in which customers in vulnerable situations understand what services are available to support them and can easily access those services. If confusion exists (for example due to diversity of interpretations of SOC by suppliers) then Ofgem should consider the case for consistency or minimum prescribed services.

In making any further changes to the licence Ofgem should also actively engage not only consumer groups which represent the generality of consumers but also smaller charities which advocate on behalf of specific groups and have deep expertise on the needs of those

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<sup>7</sup> Ofgem, 2017. Enabling consumers to make informed choices:  
[https://www.ofgem.gov.uk/system/files/docs/2017/02/challenge\\_panel\\_report.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/02/challenge_panel_report.pdf).



groups. For example charities representing blind consumers, fuel poor consumers, rural consumers etc. Freeing up time and resources to engage big regulators is difficult for smaller consumer and special interest groups.<sup>8</sup> The onus should be on the regulator to ensure a diverse range of consumer perspectives feed into the regulatory and policy-making process from an early stage. This will be particularly important as Ofgem consult on removing prescription from the licence. For example, a situation may arise where what looks like a relatively small change may have a disproportionate impact on a particular consumer type. Ofgem should provide time and guidance for expert voices to advise on licence changes that can appear technical and complex to non-industry groups in the first instance. As such, it is important that future work plan documents clearly set out a detailed timeframe for any further licence modifications and the regulator considers how to involve citizen interest groups beyond consultations; which are widely recognised to have limitations when including less powerful voices in the decision-making process.

### **Areas where prescription is needed**

NEA takes this opportunity to highlight areas where we believe there is a particularly strong case for prescription continuing to act alongside the vulnerability principle to ensure sufficient safeguarding of vulnerable consumers:

- **SLC26 PSR:** As previously stated, NEA welcomes the inclusion of provisions for vulnerable customers in SOC but would not want this to proceed to rolling-back the hard work done to improve and reform the PSR.
- **SLC27 Payments, Security Deposits, Disconnections and final Bills:** We call on Ofgem to preserve all existing safeguards which relate to customers in payment difficulty, a domestic customer's ability to pay, payment types, customer billing and arrears collection, the use of security deposits and disconnection practices. With regard to disconnections, Ofgem highlights a long-term decline in the number of customers disconnected for debt, which NEA believes is at least in part due to the prescriptive rules in place against disconnecting vulnerable customers. Rather than looking to remove prescription in this area Ofgem should be open to considering enhancing existing specifications. In particular, an opportunity exists to transpose the Energy UK Safety Net into regulation. Enhancing prescription in this area should seek to ensure suppliers never knowingly disconnect a vulnerable customer at any time of year, where for reasons of age, health, disability or severe financial insecurity, that customer is unable to safeguard their personal welfare or the personal welfare of other members of the household. NEA is of the view prescription is needed to: ensure suppliers obtain senior management authorisation prior to any disconnection being carried out; attempt to contact all customers following a disconnection with the aim to agree a repayment plan with the customer; monitor any repayment arrangements after they have been set up, in line with Ofgem's key principles for ability to pay; and aim to re-connect any customer who has been found to be vulnerable after disconnection within 24 hours of identifying vulnerability in the household.
- **SLC28 Prepayment Meters (PPMs):** Strong protections around PPMs are critical. Suppliers have a poor record in this area: Ofgem's own statistics show a long-term

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<sup>8</sup> ESAN, 2017. How can the consumer voice be heard in the regulation of essential services?  
<http://www.esan.org.uk/wp-content/uploads/Final-ESAN-event-paper-23-Dec-2016.pdf>.

growth in the number of PPMs<sup>9</sup>, not always installed to pay off debt, and there is little commercial incentive to engage disenfranchised PPM customers and place them on more competitive direct debit tariffs. In this area, Ofgem should consider the case for applying outcomes from its PPM review to the licence, including capping and in some cases prohibiting charges for installing and removing PPMs.

- **SLC40 Provision of an In-Home Display (IHD):** NEA strongly supports Government's commitment to requiring all suppliers offer domestic customers an IHD at point of smart meter installation. It is this device, not the smart meter itself, through which households will engage with their energy data to manage their usage and potentially make savings. The traffic light system on an IHD and its in situ location in a property is a key prompt for all household members to look at the energy they use and how much it costs. This cannot be replaced by less accessible reference to a smart phone app. The latest findings from the smart meter energy outlook research show that nine in ten (88%) of those with an IHD say that they have a better idea of what they're spending on energy, compared to 76% of those who have a smart meter but not an IHD.<sup>10</sup> NEA is therefore concerned to make sure the prescriptive rule to provide an IHD is not rolled back by Ofgem's principle-based regulatory approach.
- **SLC 41: Smart Metering Installation and Installation Code of Practice (SMICOP):** SMICOP is a critical framework to protect and engage vulnerable consumers in smart metering installation and contains prescriptive rules such as the provision of energy efficiency advice which NEA would not want to see removed.

More broadly, we stress any obligations which specify the basic duties and timeframes to provide services to vulnerable domestic customers should be retained and not modified without meaningful engagement with affected consumers and their advocates.

**Question 11:** Do you agree with our proposed definition of 'Vulnerable Situation'? If not, please explain why with supporting evidence.

Do not agree.

NEA do not consider Ofgem have provided a convincing rationale for removing 'combine with aspects of the market' in the definition of a customer in a vulnerable situation. Removing this phrase is counter to the original intent of the definition which emphasises a customer may be vulnerable not only or not always because of the customer's own characteristics or circumstances but because of a product or service put in place by the supplier. The change is also out of step with the other stakeholders' approaches to vulnerability, including the Committee on Fuel Poverty, who identify a key risk factor contributing to vulnerability to be 'things that are largely within suppliers' control and make it hard for someone to manage their fuel consumption and costs effectively (e.g. complex call routing systems or inaccurate, confusing billing)'.<sup>11</sup> The proposed definition under SOC makes this market and supplier-driven aspect of vulnerability less clear.

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<sup>9</sup> Ofgem, 2016. Domestic Suppliers' Social Obligations 2015 annual report:

[https://www.ofgem.gov.uk/system/files/docs/2016/10/social\\_obligations\\_report\\_2015.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/10/social_obligations_report_2015.pdf).

<sup>10</sup> Smart Energy GB, 2017. Smart energy outlook, February 2017:

<file:///C:/Users/jburroughs/Downloads/Smart%20energy%20outlook%20February%202017.pdf>.

<sup>11</sup> Committee on Fuel Poverty, 2016. A report on initial positions, p. 16:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/553931/CFP\\_report\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553931/CFP_report_final.pdf).

For example, a customer may be in a vulnerable situation of living in fuel poverty because a.) they are living on a low income (personal circumstance), b.) they are at greater risk from the impact of fuel poverty due to having a cold-related health condition (personal characteristic), and c.) they have an electricity PPM installed and therefore (and according to Ofgem's own research<sup>12</sup>) face barriers to accessing a cheaper tariff and their supplier charges for removing the PPM and requires a security deposit to pay by direct debit, both charges the household cannot afford (aspects of the market). In this example the customer's low income and health condition have combined with the supplier's PPM policy to create the vulnerable situation.

However, according to Ofgem's proposed SOC definition, the customer's low income and health condition alone mean that she is more likely to suffer detriment (living in fuel poverty and unable to switch to a cheaper tariff). According to Ofgem, the supplier must then apply SOC in a way which takes account of that customer's vulnerable situation. Perhaps they may offer to waive the PPM removal charge, for example. NEA believes this interpretation of vulnerability is misleading – ignoring the fact the supplier's PPM policy exacerbated the vulnerability in the first place, regardless of their response.

As such, NEA would prefer Ofgem maintain the wording of vulnerable situation in line with the regulator's Consumer Vulnerability Strategy. We believe this wording is more likely to encourage suppliers and their representatives to reflect on their own practices which have caused or contributed to the customer's vulnerable situation when applying SOC. There is a risk that if 'aspects of the market' is removed from the definition of vulnerable situation it creates a baseline in which the customer is the cause of vulnerability and the supplier's behaviour, information and customer service approach is to be adapted to address the circumstance or characteristic identified. Instead, if the actions and processes of an energy company are identified from the beginning as a vulnerability risk factor, then inclusive and flexible service provision is more likely to be developed in a proactive, not reactive, manner.

**Question 12:** Do you have any comments on the proposal to amend SLC 5?

No comment.

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<sup>12</sup> Ofgem, 2015. Prepayment review: understanding supplier charging practices and barriers to switching: [https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/prepayment\\_report\\_june\\_2015\\_finalforpublication.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/prepayment_report_june_2015_finalforpublication.pdf).