

Ofgem statutory consultation on prepayment meters installed under warrant

Energy UK response

29 August 2017

1. Introduction

- 1.1. Energy UK is the trade association for the energy industry. We represent over 90 members made up of generators and gas and electricity suppliers of all kinds and sizes as well as other businesses operating in the energy industry. Together our members generate more than 90 per cent of the UK's total electricity output, supplying more than 26 million homes and investing in 2012 more than £11 billion in the British economy.
- 1.2. Energy UK strongly believes in promoting competitive energy markets that produce good outcomes for consumers. In this context, we are committed to working with Government, regulators, consumer groups and our members to develop reforms which enhance consumer trust and effective engagement. At the same time, Energy UK believes in a stable and predictable regulatory regime that fosters innovation, market entry and growth, bringing benefits to consumers and helping provide the certainty that is needed to encourage investment and enhance the competitiveness of the UK economy.
- 1.3. These high-level principles underpin Energy UK's response to Ofgem's statutory consultation on prepayment meters (PPM) installed under warrant. This is a high-level industry view; Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

2. Executive Summary

- 2.1. Energy UK members take their obligations to their customers, especially those in vulnerable circumstances, very seriously. Installations of PPMs under warrant are already avoided wherever possible and our members would only go through this process following extended attempts to make contact with the customer in order to set up a repayment plan. Installing a PPM under warrant is a last resort for suppliers, short of disconnecting a supply.
- 2.2. Energy UK members have taken a range of steps to illustrate commitment to improving outcomes for vulnerable consumers including setting up a dedicated vulnerability group to consider best practice. Energy UK agrees that energy consumers in the most vulnerable circumstances should be protected from the installation of PPMs under warrant and related charges if these would exacerbate their vulnerability.
- 2.3. However, Energy UK has previously expressed serious concerns about the potential for Ofgem's proposals to make things worse, not better, for consumers in vulnerable circumstances as well as raising questions about the legality of Ofgem's proposals. We do not feel that any of our points have been adequately addressed. We continue to believe that there are better ways to achieve Ofgem's stated outcomes.
- 2.4. Our response to the initial proposals urged Ofgem to reconsider its proposals. Our initial response also offered to work with Ofgem to find alternative methods to meeting Ofgem's intended aims. We note that Energy UK members have also put together constructive suggestions in their responses to the initial proposals. We regret that Ofgem has disagreed with our concerns without

a sufficient explanation and decided to press ahead with its plans. This response reiterates our concerns.

3. Energy UK concerns

Increasing costs for all consumers

- 3.1. As set out in our response to the initial proposals, we are concerned that the cumulative impact of Ofgem's proposals will be to limit suppliers' and customers' ability to manage debt, increasing the costs associated with bad debt for all customers including those in vulnerable circumstances. This is unfair on those consumers in vulnerable circumstances who do all they can to pay their bills only to have to pay extra to help those who do not make the same efforts as they do.
- 3.2. Ofgem's statutory consultation notes that there was unanimous support for a cap from consumer groups. What the statutory consultation does not make clear, however, is how consumer groups or consumers themselves felt about the redistribution of the associated costs among all customers, including those in vulnerable circumstances.
- 3.3. We consider it highly plausible that Ofgem's proposals could lead to a situation in energy like that seen in the water sector. In 2015, the cost of bad debt in the water industry (debt that cannot be pursued) added £21 to every customer's bill. This cost may be even higher now, as water companies have received no new powers to pursue bad debt. Ofgem's plans to limit the ability of suppliers to recover debt run the risk of bad debt becoming as big a problem in energy as it is in the water sector. The relative size of energy bills compared to water means the risk is that the increase in bills could be far higher than £21 a year. These increased bills would affect all customers, including those in vulnerable circumstances.
- 3.4. It would be helpful for Ofgem to set out its thinking in this area (to justify why it thinks its proposals are fair) and to understand how consumer groups feel about these risks and the redistribution of costs on to the bills of those who pay. It's unclear whether Ofgem has properly considered the risk of bad debt causing a substantial increase in all customer bills, including what evidence Ofgem has to support its position.

Level of the cap and alternative methods of debt-recovery

- 3.5. Ofgem states in paragraph 3.22 that the cap is set at a level lower than that of indicative costs to incentivise suppliers to use alternative debt recovery methods. There are two issues with this statement. Firstly, Ofgem was informed by suppliers that the proposed cap is below the minimum, not an indicative or average, cost faced by a supplier for installing a prepayment-meter under warrant. Secondly, and perhaps more importantly, Ofgem has provided no information on what alternative debt recovery methods it thinks are available to suppliers. As previously noted by Ofgem, installing a PPM under warrant is already the last resort for an energy supplier, shot of disconnecting a supply. At no point in the initial proposals or statutory consultation does Ofgem engage with the following problem: a customer is in debt and does not answer the phone, text messages, letters, or answers the door for a period of six to twelve months. In other words, they have actively chosen not to engage with their supplier. What, in that scenario, is a supplier supposed to do as an alternative to installing a prepayment-meter under warrant? Unintended consequences could include returns to higher levels of disconnections for debt or that a substantial number of customers receive free gas and electricity subsidised by those who do pay their bills. We believe that neither of these unintended consequences would be in the best interests of customers.
- 3.6. There is also no provision for suppliers reasonably not knowing whether a customer is in a vulnerable situation. Energy UK's members have suggested measures to address this including adding a reasonableness test to the avoidance of charging a customer with a vulnerability which has significantly impaired their ability to engage or has a severe financial vulnerability. Another option would be to allow suppliers to charge a customer but then remove the charge if subsequently made aware of a relevant vulnerability. As currently drafted the proposed licence condition would be almost impossible to comply with in the case of a consumer choosing not to engage.

Impact assessment

- 3.7. As highlighted in our response to Ofgem's previous consultation, it remains unclear how Ofgem has arrived at the £4.5m - £7.7m range for increased costs resulting from their proposals. In particular, the costs only seem to relate to the impact of the cap, not the other measures included in Ofgem's consultation. The measures proposed risk vastly reducing the capacity of suppliers to recover debt including raising the likelihood that those who can pay but choose not to can exploit the system. Energy UK, therefore, believes that the increased costs resulting from Ofgem's proposals could be significantly higher than £7.7m a year.
- 3.8. Ofgem must also recognise that the figure is not best described as a cost to suppliers. The cost is in fact one that will be borne by all households who pay for their energy, including those in vulnerable circumstances who work hard to ensure their bills are paid.
- 3.9. Ofgem's Impact Assessment also fails to assess other options to remedy the issues it believes exist. The IA only assesses Ofgem's own proposals and does not adequately address other options and ideas put forward by suppliers.

Legality of Ofgem's proposals

- 3.10. Paragraph 3.19 of the statutory consultation asserts that legislative framework gives Ofgem very broad licence modification powers to introduce such conditions as they consider requisite or expedient having regard to their principal objective and general duties. This response unfortunately fails to adequately engage with the legal advice that has been provided to Energy UK and which we shared with Ofgem in the spirit of collaboration. We note from the published responses that some of our members have also raised serious legal concerns with Ofgem's approach and in some cases provided legal opinion too.
- 3.11. It is worth noting that our legal advice (and that of some of our members) was so concerned about the unlawfulness of Ofgem's proposals, that we were advised to give strong consideration to mounting an appeal to the CMA. On this basis, we believe that at the very least, Ofgem must set out in far greater detail on what basis they believe they have the legal power to limit suppliers' ability to recover expenses incurred in installing a pre-payment meter for electricity and how it believes its proposals to be proportionate.

Increase in compliance burden

- 3.12. It has also been brought to our attention that there is the potential for additional problems with the proposed licence drafting, where we think there may be consequences beyond the policy intent. Ofgem is proposing to add the following words to SLC28B.1: '*or otherwise a statutory power which would give rise to the grounds for obtaining a Relevant Warrant*'. The effect of this addition appears to be to extend the prohibition to cases where a prepayment meter installation (or in the case of gas a meter exchange) is being carried out with the customer's consent and without the need to exercise a warrant. We would note that:
 - Extending the prohibition in this way will substantially increase the compliance burden on suppliers. Instead of introducing processes, including staff training, to check for relevant vulnerable circumstances ahead of exercising a warrant, suppliers will potentially need to introduce processes ahead of every PPM installation or meter exchange.
 - The risks associated with installation by consent would appear to be far less than for installation under warrant. Ofgem refers in paragraph 2.9 to examples provided by consumer groups where consumers found the experience of having a meter installed under warrant traumatic. However, it seems improbable that if the customer has given their consent, they will find the process of meter installation (as opposed to forced entry of the premise) traumatic.
- 3.13. Taken together, we think the above two points suggest that the proposed new text will have consequences for suppliers that do not appear to have been anticipated by Ofgem, and will most likely fail the test of proportionality.

4. Conclusion

- 4.1. Suppliers take their obligations to customers very seriously and will always seek to minimise action that would exacerbate vulnerability wherever possible.
- 4.2. Installations of PPMs under warrant are already avoided wherever possible and our members would only go through this process following extended attempts to make contact with the customer in order to set up a repayment plan.
- 4.3. Our members only charge to recover the costs incurred in the debt collection process. It is important that Ofgem understand that different suppliers will have different methods for collecting debt and their ability to keep down costs will vary. This is often related to a supplier's ability to take advantage of economies of scale or to absorb debt for longer periods as part of their business model.
- 4.4. There is a long list of potential unintended consequences arising from the proposals. We believe many of these have a high likelihood of occurring. These include: An increase in bad debt that pushes prices up (perhaps very significantly) for all consumers including those Ofgem is trying to protect; reduced incentives for consumers to engage with their suppliers when they have financial difficulties; a raising of the threshold of proof for identifying vulnerability; an increase in debt for customers in vulnerable circumstances; a big rise in customers who can pay but choose not to exploiting the system; creating an incentive for suppliers to allow debt to rise before engaging with a customer to provide support and workout a repayment plan.
- 4.5. We are concerned that the cumulative impact of these unintended consequences will be to limit suppliers and customers' ability to manage debt increasing the costs associated with bad debt for all customers including those in vulnerable circumstances. This would be deeply unfair on those consumers in vulnerable circumstances who do all they can to pay their bills only to have to pay extra to help those who do not make the same efforts as they do.
- 4.6. We do not feel that Ofgem has adequately engaged with the substance of our concerns and nor has Ofgem addressed the strong concerns that exist about the legality of these proposals. Energy UK members would be very willing to work with Ofgem on any new plans that can provide protection for consumers in vulnerable circumstances while limiting the potential for harmful unintended consequences.

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