29 August 2017

Moritz Weber
Consumer Vulnerability Strategy
Ofgem
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Email: alisonrussell@utilita.co.uk

By email only

Dear Moritz,

Re: Prepayment meters installed under warrant - Statutory consultation

Thank you for the opportunity to comment on the above consultation. Utilita has been operating in the prepayment market since 2008, and specialises in offering smart prepayment to our customers. As has been noted by the CMA, Ofgem and BEIS, smart meters offer significant benefits to prepayment customers. Smart prepay is flexible, offers a range of payment options and via the IHD, greater control and understanding of energy consumption. In addition, we offer extensive Friendly Credit hours (20 out of 24) and high Emergency Credit at £15 per meter.

Utilita is committed to supporting vulnerable customers and doing so sympathetically. We use smart prepay effectively, and where necessary, use discretionary credit processes to minimise self-disconnection. Many customers actively select prepayment. Where they do not, and are experiencing payment difficulty, prepayment offers a real, viable alternative to the more draconian approaches such as disconnection, the use of debt recovery agents or court action by suppliers.

We are members of Energy-UK and fully support their submission, which sets out our general concerns clearly, and correctly identifies unintended consequences of the proposals. As a smart prepay specialist, we have greater experience of smart prepay than many other suppliers, and we have provided further comments below, both general remarks and using the headings from the document.

On the approach taken, we have concerns with the licence drafting. We believe it would have been preferable for Ofgem to issue a decision document with informal drafting for comment before the statutory consultation. The document and the decisions contained are too broad. Ofgem has not adequately addressed the difference between customers who cannot engage (for example due to extreme vulnerability), and those who choose not to engage and don't pay for the energy they consume.

We welcome confirmation that warrant charges relating to revenue protection activities/abstraction of energy do not form part of the proposals, though the document fails to address scenarios where revenue protection issues and vulnerability may occur together. However, the drafting lacks clarity due to the definition of 'Relevant Warrant' for gas. The definition includes any warrant to "remove, inspect and re-install any meter" to ensure the meter is in "proper order"[1].

[1] Schedule 2B the gas code.

This may be a consequence of referencing of the broader 23(2)(c) in the draft licence condition rather than 7(3), which would produce more consistent drafting between gas and electricity. Failure to amend the drafting to the narrower scope may lead to safety concerns for vulnerable customers. Such customers may be less likely to engage with their suppliers to fix a potential safety issue, leading to the need for access under a warrant. We would never use such warrants lightly, but we are seriously concerned that under the proposed new drafting they may no longer be available.

Prohibition on suppliers using warrants in certain exceptional cases.

Ofgem considers that the prohibition of a supplier's right to exercise a warrant on certain vulnerable customers will not increase the levels of bad debt and encourage gaming by customers that "won't pay" rather than "can't pay", on the basis that customers affected by this prohibition will be "small" and suppliers can mitigate these risks.

The drafting of the licence raises questions on the intended extent of SLC 28B.1. Vulnerability can be ongoing or transient and have differing impacts from severe mental health issues to customers who may have physical disabilities, but no mental issues (who might be offended to be called vulnerable). All such customers would be caught by the definition, whether or not they need help.

The breadth of the definition means a rules-based approach is not a good fit; an outcome based principle would achieve better, more targeted results. Incentives on suppliers to create robust practices would be strengthened, in particular in assessing whether or not to force-fit a prepayment meter for debt recovery purposes. This approach will, by allowing suppliers to retain flexibility, mitigate the risk of increasing bad debt, which may cause stress and worsen pre-existing vulnerabilities, not protect them.

Ofgem suggests suppliers "can do more to identify alternative, less invasive and less costly debt recovery methods" as well as using alternative sources of information in the absence of contact, but does not offer views on what these might be.

Where a supplier has repeatedly sought to engage the customer by telephone, letter, text or visit with no response, it is not clear what other 'less draconian' options may be available. Ofgem should clearly set out what alternatives they believe would achieve the necessary results without detriment. This guidance must include appropriate arrangements to address data protection issues, both now and under GDPR. Approaches such as disconnection, civil action, attachment of earnings orders, IVAs, bankruptcy and bailiffs or high court enforcement action do offer alternatives, but may be of much greater long term detriment to the customer than installing a prepayment meter.

A prohibition on suppliers levying warrant-related costs in certain other cases

Ofgem states suppliers are "well placed" to mitigate the risks of distinguishing true vulnerability from gaming customers by using third parties. For assessing severe financial vulnerability, Ofgem suggest the use of debt relief orders and credit reference agencies. This requires careful consideration: credit reference information may be inaccurate or may give false positives, it also carries extra cost. If suppliers reasonably use information which is later found to be incorrect, they must not be penalised.

Under this section, more clarity is needed on the evidence base and timeliness of the vulnerability affecting a customer's ability to engage. Confirmation is required that the intent of the drafting is to apply to supplier activities and vulnerability existing in the same timeframe rather than a retrospective application to previously incurred charges. The licence drafting must also accommodate customers' wishes – for example, if a customer has refused to be added to the PSR or required a supplier to delete records of vulnerability from their account.

In addition, given the extremely broad scope of the drafting, Ofgem must provide a clearer definition of 'Severe Financial Vulnerability'. This is a crucial element of the text, but is undefined.

Cap

The cap on warrant costs will not impact all suppliers equally, it will have a greater effect on small players who have less ability to manage costs down. The cap approach, by applying a total level for both fuels significantly below the minimum costs for a single fuel warrant, risks driving perverse incentives such as the use of disconnection and debt recovery agents. The cap also does not account for variation in costs depending on individual circumstances, which may have safety impacts, e.g. the requirement for a dog handler if the customer owns a dog which may pose a danger to the engineer.

We oppose a general cap on warrant costs. It is a poorly targeted approach that will impose additional and unjustified costs on suppliers, who may not be able to recover costs legitimately incurred in carrying out their activities. The legislation recognises that suppliers can expect to be paid for the energy they supply, and that they can recover the reasonable costs of recovery actions. This proposal ignores such general legal rights. The proposal, by unduly restricting cost recovery, may mean suppliers will seek to recover in all permitted cases, where costs might previously have been waived. We do not support Ofgem's opinion that the intervention as drafted is fully justified.

We would support a requirement that all warrant costs charged should be pass-through and evidenced. We would also support an audit to confirm that these provisions had been adhered to. Given the variability in purchasing power between suppliers, an expected range per cost would be helpful. We do also support a cap (and socialisation of the unrecovered balance) for the most vulnerable customers, but this would require much clearer drafting.

Principles based Regulation

We welcome Ofgem's move towards principle based regulation and believe that a broad principle on debt is a welcome protection for consumers. In combination with the other protections available, and a principles based condition on warrant use for debt, we believe this would provide a sufficient remedy. The extreme nature of the proposed licence drafting actually works against the flexible, high quality responses that principles based regulation should achieve.

Conclusions

We support the intent of Ofgem's proposals to protect the most vulnerable customers, but we believe that the current licence drafting is too broad. We do not oppose protections for the most vulnerable, but we believe the proposed text fails to accurately target the help needed.

We would welcome the opportunity to continue to work with Ofgem and suppliers to develop alternatives. We strongly suggest that Ofgem would be well placed to host a working group on this issue.

Yours sincerely,

By email only

Alison Russell
Director of Policy and Regulatory Affairs