Energy Networks Association response to consultation on Smarter Regulation: Strengthening the economic regulation of the energy, water and telecoms sectors

Introduction

Energy Networks Association (ENA) represents the companies that operate and maintain the gas and electricity network infrastructure in the UK and Ireland.

Serving over 30 million homes and businesses in every part of the country, they are responsible for the transmission (long-distance, high pressure/voltage) and distribution (short-distance, lower pressure/voltage) network of 'wires and pipes' that keep our lights on, our homes warm and our businesses running.

In summary:

- The electricity network in the UK and Ireland comprises of around 1,000,000km of cables – enough to go around the world 25 times[1].
- The gas network consists of 300,000km of pipelines, with 85% of homes in Great Britain relying on the energy they supply for their heating, hot water and cooking[2].
- Energy network companies' assets in Great Britain alone are valued at £64bn.
- Network companies already directly employ around 36,000 people across Great Britain and support the employment of 1,200 apprentices[3], providing direct and indirect jobs in supply chains helping support long-term, good quality, high-skilled employment in the communities they serve.

Background

ENA welcome the opportunity to respond to this consultation that focuses on a specific set of proposals that target issues raised across a broad range of areas: growth, competition, consumers, duties, and appeals. Across those five areas the government is seeking views on proposals that can improve the economic regulatory environment, increasing investment and growth, promoting competition, enhancing transparency, providing support to consumers, and bolstering the appeals regime. Although the consultation covers several utility sectors, the regulators of those sectors and associated statutory frameworks, processes and approaches, this ENA response focuses primarily on those proposals and related questions that have potential to affect regulation of the energy networks.

Regulation of Energy Networks

The consultation recognises the future challenges for our national infrastructure due to climate change and a growing population and the need to ensure our infrastructure evolves to meet those challenges.

[1] Energy Networks Association website, 'Energy Networks Explained', retrieved October 2022.
[2] Ibid
[3] Ibid

This means creating the conditions that will allow timely and efficient delivery of energy network infrastructure that will be both resilient and meet the needs and wants of current and future consumers. Ensuring that regulators are both enabled and supported in setting regulatory frameworks and in their associated decisions is key to meeting these challenges and the significant opportunities for economic growth that this presents.

We support the overall intent behind the consultation and the need to adapt the regulatory environment and approaches employed by regulators. In the context of energy networks, it is worth reflecting on Ofgem's regulation which has led to lower bills, improved customer service, better reliability, and increased network resilience. Ofgem is currently working with industry to progress the pathway to net zero and energy independence, addressing a major challenge for society. To achieve this, the regulatory framework must continue to evolve to:

- support whole system thinking;
- support long term decision making;
- allow the energy networks to deliver for customers at pace;
- accelerate investment and create the right conditions to attract the considerable capital that will be needed to meet government policy goals, including statutory emissions reductions targets; and
- be sufficiently agile to respond to changes in consumer needs whilst maintaining regulatory stability and predictability, ensuring future investment in the energy networks.

Achieving these objectives will ensure the energy networks play the transformational role required, delivering longer term benefits to consumers and supporting economic growth in a way that is equitable and ensures inter-generational fairness.

The current regulatory regime, with its focus on ex-ante incentive regulation, has delivered, and continues to deliver, transformational change in GB networks that customers have benefited from. Price control design has evolved to address changing needs, and regulators from around the world have looked and continue to look to GB as an example of best practice regulation.

It's important that the regulatory framework continues to deliver for customers. Different sectors face specific challenges and will need to evolve in different ways and to different extents in order to continue to meet customers' needs. It is recognised, therefore, that some aspects of the current approach to regulating networks will need to change to adapt to the change in scale of some activities, to adjust to the change in market conditions and to remove acknowledged shortcomings of the current regulatory approach and enable the step change in net zero investment.

ENA welcomes the opportunity to respond to this consultation. For ease of reference this response follows the order of proposals and associated questions as set out in the consultation document. This response focuses primarily on those proposals and related questions that have potential to affect regulation of the energy networks sectors.

Response to Consultation Proposals and Questions

Improved scoping of infrastructure needs

Proposal (1): A holistic assessment of infrastructure investment needs in energy networks and the water sector should be delivered. This should enhance regulatory accountability, as well as supporting decision-making approaches, respectively.

Q1. The government welcomes views on appropriate terms of reference, including scope, for such an infrastructure needs assessment, as well as views on who would be best placed to deliver this. The government welcomes any further views on the assessment.

We support a holistic assessment of infrastructure investment needs as the competition for investment capital is international and not something that can be considered on a sector-by-sector GB perspective by individual regulators. This assessment should consider where incentives for investment are most needed to be attracted into our national infrastructure, essential for our economic prosperity. The forward certainty provided by an assessment is a key component to unlocking investment in the sectors. The National Infrastructure Commission (NIC) could be well placed to do this. We suggest that energy, water, transport and telecoms are considered at least in future versions as this activity develops.

Any assessment will need to consider network planning functions that will be carried out by the Future System Operator including the Strategic Spatial Energy Plan, the Centralised Strategic Network Plan, and the new Regional Energy Strategic Planners. It is also important to ensure that any assessment complements, rather than duplicates the work of the NIC on the National Infrastructure Assessment (NIA), similarly further discussion will be needed with stakeholders to ensure the assessment is also complementary to work already ongoing in the energy sector by the Future System Operator. And work that will be done more regionally and locally through the Regional Energy System Planners and by local authorities as part of local heat and energy efficiency strategies/Local energy area plans (LHEES/LEAP) respectively.

Any assessment should also consider the barriers and practicalities in the delivery of new infrastructure, for example, the Governments' Transmission Acceleration Action Plan sets out a commitment to reduce the end-to-end process for delivery of network infrastructure including reform of the statutory regime for securing necessary land rights and consents. ENA has undertaken extensive consultation with its members on this question and has prepared a 'Nine-Point Plan'4, detailing those areas of the current system that require procedural and systemic reform.

We emphasise this point as whilst a strategic level assessment of infrastructure needs is a necessary first step it is the detailed plans and their delivery that will determine the extent to which the objectives set out in this consultation are realised. Creating the conditions that will attract the significant levels of investment needed, i.e. ensuring networks are 'investible' and are not hampered by an outdated land rights and consenting regime are two considerations if a truly holistic approach is to be taken.

[4] '*Our Common Sense Plan for Planning*': Land Rights and Consents for electricity infrastructure, proposals for reform from Energy Networks Association December 2023 https://www.energynetworks.org/publications/common-sense-planning-plan

Finally, on the practicalities of taking an assessment forward, we would encourage government to consider the granularity that is needed for this assessment, to ensure it complements existing, or in progress, energy planning activities (as referenced above), that the scope of the assessment is clearly defined and that those carrying it out have the appropriate capabilities to do this most effectively.

Linking infrastructure needs more closely to regulator investment decisions on energy and water

Proposal (2): When reporting on funding decisions, Ofwat and Ofgem should include comparisons to figures outlined by other public bodies, for example the NIC and the CCC, and future figures outlined in the infrastructure needs assessment. The government welcomes Ofwat and Ofgem's greater focus on the long term in their price reviews, PR24 and RIIO3 approaches, respectively.

Using expert reference points to assist sector regulators will help them make decisions. It is important regulators ensure that sectors are investible so consumers' needs can be met, but it will be vital regulators carry this emerging sentiment into final decisions when these are being made for RIIO-3.

The suggested approach will encourage regulators to look beyond near-term requirements including political pressures to minimise bills, despite this costing consumers more in the long-run and the inter-generational unfairness this gives rise to. Whilst sector and individual licensee periodic investment plans should be consistent with figures outlined by public bodies such as NIC and CCC, decisions taken by the regulator should be equally consistent with this approach. However, care should be taken when interpreting figures produced by other public bodies as the roles, responsibilities and duties between organisations differ, therefore figures in their analysis may vary for legitimate reasons and may not be derived on a consistent basis. Regulators will need to be supported by government in adopting this approach.

Ensuring continued consideration of strategic investments outside standard price review periods

Proposal (3): The government strongly supports steps taken by Ofgem and Ofwat so far in considering major infrastructure projects outside of the standard price review processes. The government encourages Ofwat to take innovative approaches to project funding, where needed, and welcomes steps taken so far, such as through its Havant-Thicket reservoir approach. The government similarly encourages Ofgem to continue to take innovative approaches where appropriate.

In the electricity transmission sector, Ofgem's Accelerated Strategic Transmission Investment (ASTI) framework has proven to be a positive development that applies a flexible approach shortening the lead time for the approval of major investments and the realisation of consumer benefits. Ofgem's current RIIO-3 Sector Specific Methodology Consultation proposes a new and improved framework for funding major new electricity transmission investments which builds on learning from the ASTI regime.

Q2. To what extent, in the standardisation of processes and procedures, is there greater scope for regulators to learn from each other?

As an example, whilst we acknowledge the steps that regulators have taken to allow major investments to come forward alongside, or at least not constrained by, the price review cycle, there is a balance to be struck between regulators standardising particular approaches and there being best practice developed and applied. At some high levels there might be some standardisation possible in some areas, but often regulators bring their own sector knowledge to bear, which improves outcomes for customers. Therefore, we suggest caution that cross regulator learning in the context of standardisation of approaches doesn't stifle innovation, best practice and improvements from being made by regulators. Different sectors face very different challenges

and within sectors there are reasonable circumstances to treat licensees in accordance with their specific economic or geographic circumstances, and any processes should be flexible enough to allow regulators to take these circumstances into account.

Q3. To ensure the outcome is fit for purpose, are there any other examples of regulatory best practice or efficiency that should be considered in addressing complexity?

Innovative approaches can make sense but regulators need to focus on delivering the right customer outcomes. The more regulators can be clear about what they want to achieve on behalf of customers, the more likely plans will come forward that meet this in the ways regulators are looking for. It is worth regulators considering how much they actually accept/drive complexity in seeking to more specifically and tightly regulate details of regulated company operations.

Competition

Q20. Do further opportunities exist to introduce greater competition for strategic investment into the water and energy sectors?

Competition should only be pursued where it is in consumer interests and will not delay progress towards net zero. The build and maintenance of the vast majority of projects are progressed as competitive tenders already. Significant competition therefore already exists through “native” competition, as well as in the connections area. For electricity distribution in particular, as well as competition in connections, much of the delivery work is contracted out to third parties and flexible services are tendered for.

In considering where competition could be promoted to drive benefits for customers, government should review the entire structure of the energy sector across retail, metering, networks and other areas. Competition has been introduced to differing extents in each area of the market with varying success. By reviewing the entire market holistically, including taking account of the ‘lessons learnt’ from where competition has been introduced and its associated impacts on consumer outcomes, would allow government to understand the implications of separating the market into different areas and the specific approaches that should be applied within each. It could then consider whether alternative approaches are needed and where greater competition could be introduced as well as areas where other approaches are needed to drive value for customers.

Due to the essential role network infrastructure provides in keeping the lights on, providing heating, enabling the transition to net zero emissions and securing the country’s future security of supply and energy independence, we believe there are four key tests which must be satisfied prior to its introduction:

1. Maintain security of supply and the high reliability standards for consumers. Avoid fragmentation of responsibility; new entrants are subject to the same rules, responsibilities, and obligations of incumbent GB Transmission Owners.
2. Accelerate, not delay, the delivery of the UK’s legally binding net zero emissions reduction targets and efforts to secure the country’s future energy independence.
3. Provide demonstrable benefits to, and be supported by, consumers, businesses, industry, and electricity generators; underpinned by robust and transparent economic impact assessments.
4. Lessons must be learned from extending competition in the energy retail market.

These tests have yet to be met, therefore we ask that government review the continued implementation of the policy as it could lead to suboptimal outcomes for consumers. The risks are clearly seen in the energy retail market.

Q21. What alternative funding/competition delivery models should be considered?

A learning from electricity transmission has been that the challenges of net zero at scale mean that giving companies certainty that they will deliver projects and in turn their supply chains then being minded to prepare will best deliver customer outcomes.

Comparative performance targets in water and energy

Proposal (6): In energy and water, regulators should consider introducing greater use of comparative metrics to promote greater competition on performance between companies.

In energy network regulation, Ofgem already uses comparative performance data to encourage performance improvement from network companies, for example through price control Annual Reports. While the annual report covers both financial and reputational incentives, the direct comparison between companies strengthens both types of incentives as customers, stakeholders and investors can see the relative performance of companies.

For financial incentives, companies are funded based on business plans that assume neutral delivery against incentives. Penalties might then be applied to those who do not meet the target and reward to those who exceed the target. With each new price control, regulators increase the targets based on improving performance and new information being revealed across the companies. This drives companies to improve their performance towards the highest performers. This contributes to a more consistent level of service across regulated companies.

It would be inappropriate to penalise companies for their performance if they cannot know in advance what they need to achieve. There is also a strong concern that without clear targets, companies cannot efficiently invest in line with consumers' willingness to pay.

On the whole our experience is that comparative metrics are therefore very difficult indeed to put in place. We suggest this is only taken forward where there is a clear specific benefits case for expending the effort implementing comparable metrics will require. Furthermore, it is not clear competition between companies on their performance is always a good thing as the goal should be for all companies to excel and meet customer needs. Competition can sometimes imply winners and losers which will not necessarily be a good outcome for some groups of customers.

Additionally, sector characteristics for the services they provide are often very specific. Customers have distinct needs, industry structures differ and also regulators have sought to incentivise and fund differing levels of performance. Even within the same general sector of energy there are tailored metrics that measure different things with their own targets. A good example being the electricity distribution sector 'broad measure of customer satisfaction' where high satisfaction is achieved but there isn't a comparable measure in electricity retail, where customer satisfaction is far lower.

Encouraging competition between companies may also be detrimental to inter-company collaboration and the benefits that it can bring for consumers, e.g. companies sharing innovations, knowledge and learning.

The need for a multi-sector Priority Services Register (PSR)

Proposal (7): The government will coordinate and work collaboratively with regulators, industry and devolved administrations to explore the creation of a single, multi-sector Priority Services Register.

Q23. What are your views on the creation of a single, multi-sector Priority Services Register?

The PSR was established to provide support and deliver targeted services to customers who may find themselves vulnerable during planned and unplanned interruptions and emergencies. It is an essential tool for keeping customers safe, particularly those medically dependent on powered equipment, as well as those who may be vulnerable due to other conditions. The PSR is also used to provide advice to improve customers' resilience and ability to plan for power cuts should they occur.

We agree with government that this is a primary area of importance and that consumers are having to disclose the same information to multiple companies, often for the same purpose. However, we believe there is an opportunity to keep the role and scope of the PSR as originally intended, to protect vulnerable consumers during outages and emergencies, whilst enabling the responsible parties to share information to best provide targeted support and services. We believe Government, Ofwat and Ofgem should support the creation of a data sharing protocol (with substantial public interest as the legal basis for sharing) across designated organisations rather than a single, multi-sector PSR. Data can be shared within an 'ecosystem' for the greater good of customers and to remove the administrative burden of having to divulge the same information multiple times. This approach would enable participating organisations to have up to date information about a customer's situation on the areas they have a valid reason for, whilst ensuring customers are only asked by an organisation about information it has a reason to know.

ENA and its members have demonstrated their support for utility (energy, water) companies to hold an aligned PSR through both the PSR Data Sharing Project with Water UK and the Support for All pilot (see further below). This is the right route to remove much of the confusion, to increase the number of customers registered, and to ensure PSR customers receive communications which would help support them with advice on energy interruptions or water shortages and enable the networks to prioritise services to customers.

ENA members take their PSR responsibilities extremely seriously and are concerned that adding wider vulnerabilities (such as financial vulnerability) to the PSR would risk diluting its focus. We would also question what new PSR services would follow from inclusion of these customers and additional data on the PSR. Our alternative, the creation of a data sharing protocol, would maximise the benefits of sharing data between appropriate parties, whilst limiting the amount of information each organisation would need to obtain from a customer at any point of interaction with them. Conversely, a universal PSR approach might require individual organisations to undertake prohibitively lengthy contacts with customers, to gather all information required. Through this ecosystem of data sharing, networks and suppliers would be able to better identify households with vulnerabilities. For example, DWP would know all homes receiving pension credits, or disability allowances. By accessing this data it would help energy and water companies to address the current gap between the number of homes on the PSR and the number of homes that are eligible and should be identifiable.

One key issue for government to consider is that energy PSR data is captured at household (MPAN / MPRN) level. The data is not captured or shared at occupier level and there is no process in place to register or share

multiple records per premise. This could be a major barrier to establishing a universal PSR based on principle of collating data on individuals. We believe the ecosystem approach would deliver many of the benefits sought in the consultation whilst being practically more feasible to implement[5].

Projects to align and widen the PSR reach:

As noted in the consultation, traditionally these registers have been managed in siloes with the energy and water sectors owning and maintaining their own PSRs. More recently, there have been developments across energy networks and water companies to embed bi-lateral sharing of PSR data:

1. *PSR Data Sharing Project with Water UK:* Sharing between energy suppliers, electricity Distribution Network Operators (DNOs) and Gas Distribution Networks (GDNs) has been happening via standard industry flows since 2017 but in March 2023, sharing between all DNOs and water companies with overlapping regions of operation also commenced. Energy supplier's will also be sharing and receiving data from water companies in early 2024. This project has seen significant progress due to the positive collaboration between Ofgem, Ofwat, the trade associations (ENA, Energy UK, Water UK) and their members. Phase 1 of this project was to deliver manual bi-lateral sharing between DNOs and Water, and Phase 2 will deliver a single automated solution that will align and transfer energy supplier and DNO PSR data to water companies and vice versa. The objective of this PSR Data Sharing Project between energy and water is to deliver a 'tell us once' outcome for consumers, and to ensure that the datasets being used by these two industries are as comprehensive and aligned as possible. Customers will still be contacted to check their data is up to date (most likely on an annual basis, but at a minimum every 2 years to align with GDPR) however, they will only have to do so with one provider. One of the key enablers to this project was energy and water changing the legal basis on which they share PSR data to be Legitimate interest and Substantial Public Interest.

2. *Support for All:* DNOs, GDNs and Water Companies (four energy networks and two water companies) have been collaborating on the 'Support for All' pilot run by Northumbrian Water and funded via the Ofwat innovation fund. This pilot aimed to design and build a solution to securely host, match and share customers registered for priority services. The solution was based on the existing, aligned PSR needs codes. Ordnance Survey were brought in as a partner to develop a validation and data matching service. The pilot was able to identify where there were discrepancies/inconsistencies between the PSRs and multiple versions of the truth. 1.29m PSR records were matched in the regional hub pilot and 350k inconsistencies in customer information between water and energy companies despite current data sharing. These included differing name and address formats as an example. The project team are looking to deliver stage two through Ofwat's Innovation funding; whereby extension to parties beyond the original six energy networks and water companies will be supported (moving from a pilot into a national scale) as well as the introduction of new data providers and users such as Third Sector members. Stage 2 will still be based on keeping the PSR's in their current form without adding additional services or vulnerabilities. Additional data sets will be aligned into the current PSR needs codes. For example, the Royal National Institute of Blind People are potential partners. Careful consideration of their data will be required to directly align to the needs codes we have already.

[5] This represents the majority view of ENA members.

We acknowledge, as the consultation notes, that consumer awareness and registration to PSRs is not reaching all vulnerable households. Increasing awareness and the number of PSR registrations is a key focus for ENA members:

- *ED2 and GD2 commitments*:[6]. DNOs have ambitious targets to increase rates of eligible customers on their PSR as part of RIIO-ED2. The DNOs dedicate a lot of resource to promoting the PSR. They use direct customer contact, public advertising and work with a wide network of partners. GDNs are more than halfway through their current regulatory RIIO-GD2 period and have established robust processes to support PSR promotion through daily interactions but also through the use of the Vulnerability & Carbon Monoxide Allowance (VCMA). Through individual and collaborative VCMA projects GDNs have seen 100,000s of new registrations via partners and awareness raised to millions. The obvious barrier is that domestic customers do not have a direct billing relationship with their DNO or GDN and so unless there is an issue with supply, customers often do not know who their network provider(s) are. Much of this gap is addressed via the data provided by energy suppliers to DNOs and GDNs and further improvements will be seen as the data sharing projects above progress.

- *Thepsr.co.uk*: Recently the energy networks have established a single sign-up portal accessible via thepsr.co.uk. A similar site already exists in Scotland (psrscotland.com). These sites allow a customer to identify their DNO and register via the respective PSR site. We recognise multiple development opportunities for these sites. Thepsr.co.uk portal can be expanded to include water and telecoms and to have a single sign-up form which is then shared with the relevant service providers for that household. We are working with partners to ensure thepsr.co.uk is accessible and advertised via charities and community organisations.

Multi-sector PSR: Ecosystem vs single multi-sector database

ENA members believe that rather than having a single multi-sector database, there should be an ecosystem of data sharing underpinned by robust data sharing protocols, such that databases remain managed by the current data controllers. Data Sharing Agreements and associated 'sharing rules' would be agreed between a trusted set of organisations and participants would likely need to be aligned to agreed user access. Some participants might input and extract data whilst others would only be permitted to undertake one of these roles. The government programme would need to define the entry requirements to the ecosystem, establish the rules on what data to draw on and what to share, what the use cases are for requesting and posting data about customers. These could develop over time to include additional levels of user, i.e. admin or user.

Learning from the data sharing projects already underway in this space, the programme would need to agree common data definitions and structures between the parties. It would also need to document accountabilities for the data sources, i.e. who is the data controller and has responsibility to cleanse the data. The complexity of combining different data sources into a meaningful and useable dataset should not be underestimated, however the benefits to the customer of this approach are significant. Once an organisation has met the required data standards, they can begin to input data into the ecosystem. At this point the data sharing should

[6] GDNs do not have an obligation to hold their own PSR. They receive PSR data through standard industry flows from DNOs, suppliers (and indirectly via water companies).

be mandated by Government and/or the Regulators so that parties can't back out at a later stage and once services and communications have been designed. There would need to be a formal governance process for any organisation wishing to exit the ecosystem.

As a result, multiple parties have access to a richer set of data that can help evolve the services of that organisation. The ambition is to ensure individuals provide data once to one party (which is relevant to that party and appropriate for them to capture) which is then shared as needed, building an accurate 'picture' of needs which can be maintained.

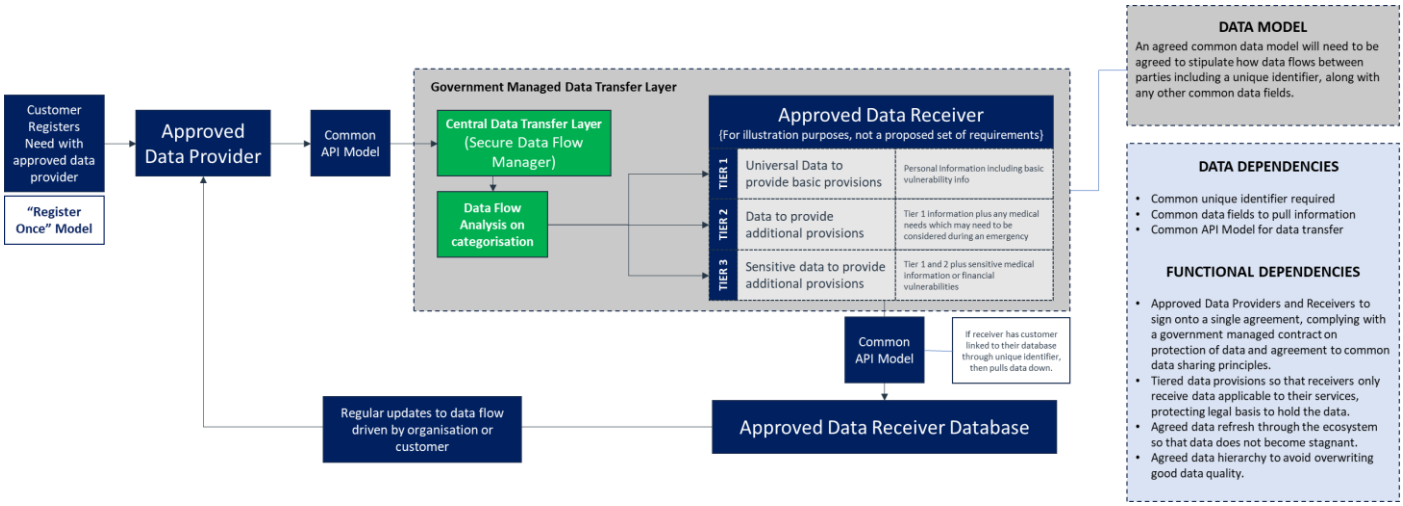
There are distinct advantages of taking this approach over a single register:

- Vulnerability data and categories are specific to the user of the data – the needs of a consumer will vary based on the scenario they are in. This approach allows the organisation providing services to consumers to use the data that best fits the services they offer.
- It may help with some of the GDPR considerations as organisations are only drawing down on data that is needed for a set purpose/use case.
- The outcome for the consumer is that they are only seeing interaction with the company they are seeking a service from and not an expectation of their data being added to a universal register that they might not want or understand. This aligns with the current customer journeys we see, i.e. customer's only proactively make contact when they require a service/support.
- The participating companies, who have a responsibility to keep vulnerable customers safe, have control over the data they are storing. If a central hub was created there would be a very strong need for data verification and validation to ensure data is not altered incorrectly.
- This approach will focus on capturing data which will drive innovative holistic support services in multiple sectors rather than restrict this though a less adaptable one-size-fits all universal PSR. Under Substantial Public Interest, new users could be added to the data sharing protocol over time without the need for a lengthy onboarding process to integrate and align data in a universal PSR.
- We believe that having a single multi-sector database rather than an ecosystem could expect customers to reveal too much data in one interaction (i.e. a long upfront form) if registering requires data for all services to be provided. This would mean that too much time is taken up and would reduce the quantity of individuals willing to register. With an ecosystem, you would be building upon existing records and adding details when a customer shares them in natural interactions with active participants.
- It is already difficult to provide a clear message to customers on the benefits of the PSR and the services on offer across utilities. For example, there are misconceptions that being on the PSR means you get reconnected quicker in a power cut[7], whereas the true message is that you will be provided the best support during an interruption to your supply based upon your needs where possible. By widening the database to include multiple other vulnerabilities for additional services, would increase the complexity in how we explain this.

[7] The DNOs do not have the ability to restore customers who are on the PSR more quickly than customers on the same feeder who are not on the PSR. Many of the outages on the electricity network affect many hundred customers and the prioritisation is on fixing faults that restore the largest number of customers as quickly as possible.

Example Data Architecture

The diagram below sets out a conceptual data architecture for the data sharing protocol. The diagram shows that the data captured on the customers and/or updated by the data provider, will differ depending on what 'tier' the provider is in. As mentioned above, not all parties will have a use case or need to source all the different elements of data from a customer either at the point of contact or via the data sharing protocol. For example, a DNO shouldn't need to source sensitive medical information, but an NHS-based data provider would do. This way, although the solution isn't a full 'tell me once' for all data elements, by sourcing the pieces of information via providers in the eco-system, a full picture is built up, whereby each element only has to be provided by the customer once, but the providers don't need to have a lengthy conversation/form for the customer to provide all the info that a fully tell-me-once process would require.



Implementation: Role, responsibilities and timing

The programme should take learnings from data sharing initiatives that have and haven't worked in the past. From our experience working on the PSR Data Sharing Project we recommend:

- The immediate priority should be on completion of the project to implement automated data sharing between energy and water. Once this is complete and benefits realised, then work should commence on wider reforms.
- Government should clarify from the outset whether it is looking to consider a central PSR database, or a single sign-up portal (e.g. 'tell it once' portal) which then feeds into decentralised PSR with individual companies.
- Government should recognise that there are considerable complexities to overcome before a true 'tell us once' approach can be implemented. These are not limited to:
    - Existing energy PSR support services operate on a household level and not individuals,
    - Unique identifiers are different across utilities and sectors (i.e. NHS number, MPAN, UPRN).
    - Addresses are registered in different ways and to different members of the household.
    - 'Needs codes' are aligned between energy and water but vulnerability data collected in other sectors will not be.

- Customers should be engaged upfront and throughout in the design of the solution. Formal customer research and user groups should inform the design of the solution.
- Issues of customer consent/data privacy are carefully worked out early in the programme. Having a working group to set the data sharing criteria, roles and responsibilities would be a good outcome.
- To be successful a single central body should be appointed to manage the coordination during implementation and post go-live.
- Government and the regulators should be cautious about setting overly ambitious timelines or expectations.

Q24. What are the best data sources of vulnerability that the PSR should use? Who should be able to input data?

Sources of data for the PSR: As explained above, the PSR data is sourced from energy suppliers, DNOs, GDNs, water companies and partners. We believe the PSR should remain a register for this data only. Customers themselves and customer's trusted advisors on their behalf should be able to register. This could be directly with their energy or water provider or via thepsr.co.uk website. The DNOs and GDNs will continue to work with partner organisations including charities to increase awareness and registrations.

Sources of data shared in the ecosystem should include:

- The NHS, Local Authorities and DWP data should be the immediate focus.
- Government data: (e.g. via the Digital Economy Act) which could help identify further eligible customers for the PSR or for wider services beyond the PSR (e.g. in relation for fuel poverty or achieving an equitable just transition to low carbon technologies).
- Royal mail and OS data: these could be used to provide data matching services to handle inconsistencies between individual companies, directly addressing some of the issues already identified in sharing between energy and water.
- Telecom companies: as households become more dependent on technology for communication and medical needs, there is a clear case for telecom companies receiving PSR data, and sharing vulnerability data, as fibre services are cut off in a power cut. Similarly, as the communications industry prepare for the PSTN Switch Off there is benefit in Communication Providers receiving aggregated PSR data to work with their customers more effectively. This is already being looked at within the scope of an ENA working group.
- Local Resilience Forums and Councils might find receiving PSR beneficial to their delivery of public services.

Q25. What vulnerabilities and services should the PSR cater for?

The existing energy sector PSRs cater for the vulnerabilities detailed below. As stated above we believe the PSR should continue to support the scope and services as originally intended. As such the PSR should continue to focus on services to domestic households only and not businesses or other non-domestic customers. We also believe financial vulnerability should not be added to the PSR but should be part of the ecosystem of wider sharing. The ecosystem of data sharing should enable companies to develop additional services for a wider range of vulnerabilities by combining datasets. These would not need to be prescribed in detail up front.

NEEDS CODE	NEEDS CIRCUMSTANCES (ALL)
1	Nebuliser and apnoea monitor
2	Heart, Lung & Ventilator
3	Dialysis, feeding pump and automated medication
4	Oxygen concentrator
8	Blind
9	Partially sighted
12	Stair lift, Hoist, Electric bed
14	Pensionable age
15	Physical impairment
17	Unable to communicate in English
18	Developmental condition
19	Unable to answer door
20	Cognitive Impairment including Dementia(s)
22	Chronic/Serious Illness
23	Medical Dependent Showering / Bathing
24	Careline/Telecare system
25	Medicine refrigeration
26	Oxygen use
27	Poor sense of smell/taste
28	Restricted hand movement
29	Families with young children 5 or under
30	Mental health
31	Additional Presence Preferred
32	Temporary - Life Changes

33	Temporary - Post Hospital Recovery
34	Temporary - Young Adult Householder (<18)
35	Hearing impairment
36	Speech impairment
37	Water Dependant

Communication and promotion of affordability support

Proposal (8): For UKRN to convene work with regulators, industry and the government to ensure greater consistency in how affordability support and bill changes are communicated, within and across sectors, looking at both household and business customers.

Q26. How can existing affordability support be better communicated to increase customer awareness?

We agree that affordability support is disjointed at the moment. DNOs and GDNs spend significant time and resources, as part of their vulnerability strategies, promoting various services to customers. The PSR is used to target affordability advice and signpost to key services, including best tariff advice, income maximisation, fuel poverty and low carbon technology services. DNOs and GDNs work closely with a network of partners to deliver this. Central signposting of the various support services available via the government and the energy sector would be valuable.

Through improved data sharing, suppliers and government could enable consistent messages and support to be offered along with more collaborative outreach campaigns. Suppliers can lead on this through their billing and customer communications. An example would be offering social tariffs to eligible homes in a consistent manner. It would be feasible to identify those customers by combining PSR and DWP data.

Regulators Duties and Functions

Proposal (10): The government, led by sponsor departments, will work with regulators to conduct a thorough review of duties, with a view to rationalise duties and enable regulators to focus more on economic duties and functions.

Q28. What would be a suitable timeframe in which to conduct a review of these regulators' duties?

If government is intent on conducting a review of regulators' duties it must do so in a timeframe that allows for full and proper consideration of any evidence of the need for and nature of any change, whilst minimising the risks that will attach to such a review, for example, investor uncertainty. These risks could to some extent be mitigated through government reassuring stakeholders at the outset providing assurances such as ensuring financeability and investability of the networks will remain within the responsibilities of the regulator. On balance this suggests a timeframe for any review of around 12-18 months including implementation.

In respect of implementation there would need to be robust transitional arrangements in place given the

overlap between an active price control and the price review for the following period with regulators being able to make decisions in accordance with the duties that apply or will apply for a particular price control period (typically 5 years). In networks this is further complicated as electricity distribution price control cycles begin two-years after the start date for other network sectors. This suggests that any new duties would have to be introduced mid-way through one of the control periods.

Supplementary guidance for regulators such as the government's 'Strategy and Policy Statement' (SPS) guidance to Ofgem/networks could be reviewed every 5 years (or whatever the duration of a price control), or in the event of a new duty. The SPS might also serve a useful purpose in providing guidance and direction to the regulator during any review and/or transitional period. It would be beneficial if a review aligns approximately with new price control periods.

Furthermore, in respect of a review of duties it will be necessary for government, regulators, industry and stakeholders to work together, which must include full and proper public consultation.

Q29. What is an effective remit for economic regulators? How can regulators improve delivery of both economic and non-economic functions?

It is critical that regulators have very clear roles and responsibilities, in particular in the context of energy, for example, the introduction of the Future System Operator (FSO) requires clarity on, and clear delineation of, the respective remits of the FSO and Ofgem.
More generally, greater clarity of role will in turn make clear the capabilities economic regulators have which will allow them to focus resources most effectively. For example, Ofgem are currently required to look at the need for certain activities which are often fully justified not just on an economic basis.

Regulators should also be encouraged to be more strategic, at present they are arguably overly focussed on good overall and long-term solutions whereas good solutions customers need in short to medium term timescales (but faster than current processes enable) seem to likely offer better consumer outcomes in the long term.

Q30. The government's provisional view is that regulators' economic core duties are: Fostering economic growth; Ensuring effective competition; Delivering Net Zero and protecting the environment; Protecting consumers. Are these the correct set of core economic duties regulators should be focused on? If not, what should regulator duties be focused on?

The duty to ensure that the network operator can finance its activities is a notable omission from the government's provisional view of regulators' economic core duties. This seems to suggest that financing is not an economic duty. A financeability duty is of fundamental importance and should be [retained] as a separate core duty or explicitly referenced in the consumer protection duty.

We assume that the core duties will replace the current principal duty, this means that there will be trade-offs between these duties which a regulator will need to be able to clearly explain in its decision making. Illustrating how changes in duties could affect decisions by taking some past decisions and re-assessing them under potential new duties would bring the issues to life.

Effort should also be made on setting out a clear framework for balancing competing duties, which will be a key issue regardless of the extent to which duties are evolved. This is also likely to vary between sectors. Equally critical is ensuring that guidance accompanying any duties, including the SPS, is kept regularly up to date and relevant, and captures the complexities of the trade-offs between various duties. See previous comments under Q.28.

Q31. What are key benefits of this approach? What might any risk or unintended consequences be?

Any review needs careful consideration to ensure that all stakeholders understand any changes proposed. A change in duties will inevitably mean that some considerations increase in importance and some decrease, resulting in different decisions than would have been made under the previous duties. If there are no real changes in decision making, then there is less value in making changes to duties. The core driver for a change in duties must be that the new duties better enable the delivery of the UK Government's long-term policy objectives. At a time when Ofgem and government rightly recognises the need to ensure investability to deliver net zero, it is vital that any developments to a regulator's duties, especially where these may change the pattern of the regulator's decision making are carefully introduced so investors remain attracted to the GB regime.

Appeals processes.

Proposal (11a): The government should provide the CMA with the necessary powers to appoint more than three members, where considered appropriate, in a group to hear appeals.

Q32. The government welcomes your views on enabling the CMA to have the additional flexibility to appoint larger groups to hear non-price control water appeals and energy appeals. What might be the downsides of this approach? Do you have any evidence of alternative models? E.g., international comparators?

As a starting point the aim here is to ensure that panels have the right levels of expertise, skills and resources to hear appeals. In that context, it may be useful for the CMA to have additional flexibility to appoint larger groups to hear appeals, but this is likely to differ on a case-by-case basis.

A potential point for debate is whether a single 'panel' is sufficient or whether provision ought to be made for multiple panels if, for example, there are issues which can be separated. This will inevitably depend on the specific building blocks of any appeal. However, this could result in different panels taking different approaches, which may be difficult to mitigate against.

Proposal (11b): The government should provide the CMA with the necessary powers to directly extend, when considered appropriate, a deadline in water and energy appeals, rather than needing to request an external party for the extension.

Q33. What are the risks to consider before giving CMA power to directly extend deadlines in energy and water appeals? What opportunities do you feel this proposal may create? Do you have any evidence regarding this proposal that the government should consider?

Permitting the CMA to extend the deadlines for appeals is sensible from a resource perspective given the CMA is best placed to understand its own resource requirements. However, this would need to be reasonable, agreed in consultation with relevant parties, and on a case-by-case basis. In addition, it would be

sensible to build checks and balances into the system that require the CMA to consult on and consider the potential implications of any extension before making any decision to extend, which should be published including the CMA addressing its views of the implications parties raised. By way of example, this might help to avoid any potential prejudice to customers where a CMA extension would mean the determination was not available at a crucial point in the tariff cycle because the decision was postponed by a month, or a situation where a company may have short-term financeability issues which might not meet the CMA's high bar for suspending the application of the licence modifications while the appeal is being heard but nonetheless point to a need for the CMA to resolve the appeal in the shortest possible time available.

Proposal (11c): The government will explore whether to give the CMA and CAT the necessary powers to be able to recover reasonable costs from the losing party incurred by an intervener when they have acted on a 'consumer interest' basis.

Q34. In what other ways can the consumer voice be represented during energy, water and telecoms appeals?

Clearly it is important to have the 'consumer voice' represented. Companies do consult widely with a variety of customers on their business plans and on critical issues such as affordability and where investment should be targeted. This allows for consumer representation in addition to Citizens Advice and other consumer facing organisations. There has been increasing input from stakeholders, including those representing the consumer voice through the enhanced engagement process in recent price controls and e.g. in PR19 Redeterminations the CMA heard directly from such groups to inform their decision making. Ultimately, if the customer voice needs to be represented during appeals, then this requires regulators to evidence how it takes the consumer voice into account in making decisions. It may require also the CMA to review how it accepts evidence presented during appeals.

Q35. Are there any concerns or opportunities you foresee in allowing interveners, who have acted on behalf of consumers interest, to recover reasonable costs incurred alongside the body hearing the appeals costs? How may this impact cases and legal practice in this sector? What would be useful to include in guidance for the appeals body to deliver this mechanism?

There is currently little clarity on what is meant by acting "on behalf of consumers' interest". We consider that this should be defined quite narrowly 'consumer body' e.g. Citizens Advice to ensure interventions are reasonable and proportionate. In some circumstances the consumer interest is arguably being advocated by a well-resourced third party (e.g. BGT in the RIIO-ED1 appeals) and it does not seem appropriate that the principles described here should apply. We agree guidance should be provided to the appeals body, if this policy change were to be made. A draft of any guidance should be consulted upon and shaped accordingly based on any feedback received.

Proposal (12): The government will include the recovery of the CMA costs as part of wider reforms work to code modification appeals. Reforms would be to amend code modification appeals to align with energy licence modifications to give discretion for the CMA to apportion its costs as it considers appropriate.

Q36. What unintended consequences or risks should the government be aware of when considering making this amendment to code modification appeals?

We are not aware of any and think it is a sensible / pragmatic proposal.

If you have any questions on the points raised in this response, please contact Energy Networks Association via email: regulation@energynetworks.org

Energy Networks Association

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